

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Rules and Policies Concerning) MB Docket No. 04-256
Attribution of Joint Sales Agreements)
In Local Television Markets)

To: The Commission

REPLY COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. (“Nexstar”), by its attorneys, respectfully submits these reply comments in the above-captioned rulemaking proceeding, which asks whether television joint sales agreements (“JSAs”) should be deemed attributable interests.¹ Not one party who submitted comments in this proceeding supports the Commission’s tentative conclusion that television JSAs should be deemed attributable interests. In fact, the record herein clearly establishes that television JSAs are sufficiently different from radio JSAs so that they need not be treated identically; that television JSAs do not provide JSA brokers with control over core station operations; and that television JSAs provide significant public interest benefits.² Accordingly, the Commission should retain its current policy of not treating TV JSAs as attributable interests.

¹ *In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, Notice of Proposed Rulemaking*, FCC 04-173, rel. August 2, 2004 (MB Docket 04-256) (“NPRM”).

² *See Comments of Clear Channel Communications, Inc.; Comments of White Knight Broadcasting, Inc.; Comments of Belo Corp.; Comments of Communications Corporation of America; Comments of Fisher Broadcasting Company; Comments of Pappas Telecasting Companies; Comments of Sinclair Broadcast Group, Inc.; Comments of Paxson Communications Corporation; Comments of Holston Valley Broadcasting Corporation; Comments of NBC Universal, Inc.; Comments of Entravision Holdings, LLC; Comments of Hoak Media, LLC; Comments of Minden Television Corporation; Comments of Granite Broadcasting Corporation; Comments of KTBS, Inc. and Comments of the National Association of Broadcasters* (all filed on October 27, 2004).

Nexstar also supports those commenters who urge that the Commission defer consideration of whether to attribute pre-November 1996 grandfathered time brokerage/local marketing agreements until such time as the Commission initiates its 2006 quadrennial review.

I. THE RECORD DOES NOT SUPPORT ATTRIBUTION OF TELEVISION JSAs.

Several commenters agreed with Nexstar that this proceeding is premature and that any decision with respect to attributing television JSAs should be delayed until such time as the Commission's television ownership rules are settled.³ These commenters agree that in light of the current unsettled state of the Commission's television ownership rules, any decision that television JSAs are attributable may result in the interruption or termination of JSAs that ultimately may be permitted once the Commission has adopted court-approved local television ownership rules. Therefore, to avoid the unnecessary disruption and harm to parties participating in television JSAs, and loss of service to the public that TV JSAs enable, Nexstar reiterates its position that the Commission defer this proceeding until such time as its new rules for local television ownership are in effect and "final."

If the Commission nonetheless determines to move forward with this proceeding, it must acknowledge that the record herein wholly repudiates the Commission's chief premise for concluding that television JSAs should be deemed attributable interests – that the terms and conditions of television JSAs are substantively the same as those of radio JSAs; that television JSAs have the same negative effects in local markets as radio JSAs; and, therefore, that television JSAs should be treated the same as radio JSAs.⁴ As numerous commenters explain, there are significant differences between the radio and television markets. Some commenters,

³ See *Entravision Comments*; *Hoak Comments*; *Minden Comments*; *Granite Comments*; *KTBS Comments* and *NAB Comments*.

⁴ *NPRM* at ¶ 2.

for example, emphasize that the Commission's radio ownership rules are significantly less restrictive than the television ownership rules – in particular, the Commission's radio ownership rules allow significant opportunity for in-market consolidation, whereas the television ownership rules do not (particularly in the medium and smaller markets that could most significantly benefit from the benefits of consolidation).⁵ Others highlight the fact that the television industry faces significantly higher operating costs than the radio industry, with television station operating budgets generally many times those of radio station operating budgets (without factoring in the enormous expenses television broadcasters face in completing the DTV transition).⁶ Likewise, some commenters observe that the economics for each industry are significantly different and radio stations do not face the same type of competition that television stations do from cable or satellite and, in competition for local advertising, from cable interconnects.⁷ Accordingly, the Commission's assertion that television JSAs have the same impact on the local markets as radio JSAs do is entirely unsupported.

In addition, television JSAs do not reduce a licensee's incentive to select programming or otherwise fully oversee core operations of its station. As some commenters note, JSAs involve only the sale of advertising and have nothing to do with the provision of programming or core operating decisions.⁸ Other commenters highlight the fact that most television JSAs contain

⁵ *Hoak Comments* at pp. 4-6; *Granite Comments* at pp. 2-8; *KTBS Comments* at pp. 14-17; *NBC Universal Comments* at pp. 6-7, 9 and *Belo Comments* at p. 6.

⁶ *Granite Comments* at pp. 8-9; *Minden Comments* at p. 8 and fn. 16; *Hoak Comments* at pp. 5-6; *NBC Universal Comments* at p. 8 and *Holston Comments* at pp. 8-9.

⁷ *KTBS Comments* at pp. 6-14; *NAB Comments* at pp. 9-10; *CCA Comments* at pp. 4-6, 8; *NBC Universal Comments* at p. 8; *Pappas Comments* at pp. 11-12; *Sinclair Comments* at pp. 11-12; *Fisher Comments* at pp. 10-11; *Belo Comments* at pp. 4-5, *White Knight Comments* at pp. 2-4 and *KTBS Comments* at pp. 6-12.

⁸ *White Knight Comments* at p. 2; *Fisher Comments* at pp. 3, 5; *Pappas Comments* at pp. 3-4; *Sinclair Comments* at pp. 5, 8; *CCA Comments* at pp. 3-4 and *Paxson Comments* at p. 7.

“right to reject” provisions, which at all times allow the brokered station the ability reject any material supplied by the broker that the licensee deems unsuitable.⁹ Likewise, several commenters point out that most stations are parties to network affiliation agreements which provide the station’s programming during a significant part of the day. As one commenter acknowledges, “the network arrangement is not something a JSA broker could control, even if it was capable of doing so.”¹⁰ Accordingly, the Commission’s reliance on one “bad apple” television JSA to support its conclusion that television JSAs have the potential to allow the broker to affect the brokered station’s core operating decisions is misplaced. Television JSAs certainly can be structured so as to prevent the brokering station from having undue influence or control over the brokered station.

Commenters in this proceeding also provide ample discussion of the significant public interest benefits that derive from television JSAs. For example, television JSAs can allow two weaker stations to compete effectively with a more dominant station.¹¹ Television JSAs also reduce operating expenses and produce cost savings, which enable stations to provide better service to their communities. As the Commission is aware, local news production costs in small and medium size markets run in excess of \$2 million and many stations continue to lose money producing local news.¹² However, television JSAs provide struggling stations with significant

⁹ *Belo Comments* at pp. 8-9 and *Minden Comments* at p. 10.

¹⁰ *Entravision Comments* at p. 4. *Accord Belo Comments* at p. 8; *CCA Comments* at pp. 4-5 and *Pappas Comments* at pp. 5-8.

¹¹ *CCA Comments* at pp. 7-8 ; *Pappas Comments* at p. 11; *Sinclair Comments* at p. 9 and *Minden Comments* at p. 5.

¹² *Granite Comments* at fn. 22. *Accord NAB Comments* at p. 4.

cost savings that can help sustain on-going local news and better quality programming.¹³ Likewise, these cost savings support greater station participation in the local community through involvement in activities such as charitable fund-raisers, community fairs, and the broadcast of high school sporting events.¹⁴ In addition, the cost savings generated through television JSAs are imperative to facilitate these stations conversion to full-power digital television operations.¹⁵

Because the record in this proceeding entirely undermines the Commission's rationale for its tentative conclusion to deem television JSAs attributable interests, the Commission should speedily determine that television JSAs do not warrant attribution, in order to return certainty to the marketplace. To do otherwise will only harm the many broadcasters who are parties to these agreements – agreements which are allowing broadcasters to provide significant public interest benefits to their communities.¹⁶

¹³ *Hoak Comments* at pp. 2-3; *Minden Comments* at pp. 7-10; *Granite Comments* at pp. 10-11; *Clear Channel Comments* at pp. 2-3; *Sinclair Comments* at p. 8; *Fisher Comments* at pp. 5-6; *NAB Comments* at pp. 2-3 and *Paxson Comments* at pp. 10-12.

¹⁴ For example, Nexstar continues to broadcast a daily half-hour agricultural program on its station KFDX-TV, Wichita Falls, Texas, that has been on the air for forty years. In addition, in a number of Nexstar's JSA markets, fundraising and charitable events are supported on both Nexstar's station and the other station, providing wider exposure and/or generating larger donations for the organization.

¹⁵ *Fisher Comments* at p. 7; *Belo Comments* at p. 2; *White Knight Comments* at p. 5; *NAB Comments* at pp. 10-11; *Granite Comments* at pp. 9-10 and *Minden Comments* at p. 11.

¹⁶ If, despite the clear record in this proceeding, the Commission deems television JSAs attributable, it should at a minimum grandfather existing television JSAs for an extended period as recommended by many of the commenters. See *Minden Comments* at pp. 11-12; *Entravision Comments* at pp. 6-8; *Clear Channel Comments* at pp. 3-4; *White Knight Comments* at pp. 5-8; *Belo Comments* at pp. 9-10; *CCA Comments* at p. 9; *Sinclair Comments* at p. 16 and *Paxson Comments* at pp. 16-22.

II. REVIEW OF GRANDFATHERED TIME BROKERAGE AGREEMENTS SHOULD BE DEFERRED.

Nexstar supports those commenters who urge the Commission to delay review and reevaluation of grandfathered time brokerage/local marketing agreements until the Commission's 2006 quadrennial review.¹⁷ Nexstar agrees that (1) such a review would be premature given the continued unsettled nature of the Commission's ownership rules; (2) there remain significant public interest benefits to these agreements; and (3) a review of these agreements now will impose significant costs on the Commission and the parties thereto. Further, allowing these agreements to remain in place until the next quadrennial review does not harm the public interest because there will be no change in the status quo.

III. CONCLUSION.

For the foregoing reasons, Nexstar respectfully urges the Commission to retain its current policy and continue to treat television JSAs as non-attributable interests.

Respectfully submitted,

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¹⁷ See *Clear Channel Comments*; *Sinclair Comments*; *Hoak Comments*; *Joint Comments of LIN Broadcasting Corporation, Waterman Broadcasting Corporation and Montclair Communications, Inc.*; *Comments of KRXI-TV, Reno, Nevada*; *Comments of Peak Media of Pennsylvania Licensee, LLC and Palm Television, L.P.*; *Comments of RKM Media, Inc.* and *Comments of 54 Broadcasting, Inc.*