Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	**)**	
	)	
2010 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules	**)** **)**	MB Docket No. 09-182

COMMENTS OF
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN
MEDIA ALLIANCE
COMMON CAUSE
BENTON FOUNDATION

Of Counsel:

Joseph O'Connor
Charles Rosson
Law Students
Georgetown University Law Center

Angela J. Campbell, Esq.
Adrienne T. Biddings, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Counsel for Office of Communication United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, and Benton Foundation

November 20, 2009

Summary

The Office of Communication of the United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, and Benton Foundation urge the FCC to gather relevant data and address the right questions to assess whether the current broadcast ownership rules are serving the public interest.

Some of the most relevant data concerning how television stations are meeting community needs could be found in Standardized Television Disclosure Form 355, which the FCC adopted two years ago in its Enhanced Disclosure Order, but for the fact that this rule has never taken effect. Thus, UCC *et al*. urge that the FCC promptly rule on the pending petitions for reconsideration and submit Form 355 to the OMB for approval. These forms will provide quantitative information about types of programming long considered to be core public interest responsibilities, such as local news, local civic affairs programming, and electoral affairs programming. Form 355 would also provide data about how local television stations are using their digital frequencies to multicast, which is needed to assess the impact that the transition to digital has had on arguments for further relaxing local television limits.

UCC *et al*. also urge the FCC to collect data about the extent to which local broadcast stations have entered into agreements to share local news gathering, programming, personnel, and other operations. The Commission should collect data on the extent, type, and impact of these agreements, as they may have significant effects on localism, diversity and competition. For example, shared news gathering directly affects the diversity and quality of local news available to viewers.

The FCC should also gather information on the financial status of broadcast stations rather than accepting at face value broadcasters' claims that the economy requires loosening the

ownership rules. This requires the FCC to obtain data from neutral, independent sources for both individual stations and their corporate parents. UCC *et al.* agree with Commissioner Copps that the FCC should not overreact to short term problems and that it must assess the role of private equity in broadcast station ownership.

While conducting the 2010 Quadrennial Review, the Commission should not defer action on pending matters that involve ownership. Specifically, the FCC should issue its own prominent public notice and require applicants to disseminate meaningful public notice whenever a licensee seeks a waiver of an ownership limit. Without meaningful public notice, members of the public are deprived of their statutory right to participate the licensing of stations serving their communities. The FCC should also conclude a rulemaking that tentatively concluded that television joint sales agreements should be attributable just as they are in radio. It should also eliminate the UHF discount because the policy rationale for the UHF discount – that UHF signals reached smaller audiences that VHF signals – no longer exists with digital television.

Finally, the FCC should enforce the existing ownership limits during the pendency of its 2010 review. Many television stations, especially in smaller markets, have been circumventing the local television limits by entering into shared service agreements that allow one top-four ranked station to effectively control another top-four station in the same market. The FCC should grant the pending applications for review of the Media Bureau decisions that allowed these agreements and put an end to these “virtual” duopolies and triopolies.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules	))	MB Docket No. 09-182

COMMENTS OF
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN
MEDIA ALLIANCE
COMMON CAUSE
BENTON FOUNDATION

The Office of Communication of the United Church of Christ, Inc. ("UCC"), the National Organization for Women ("NOW"), Media Alliance, Common Cause, and the Benton Foundation, ("UCC *et al*.") by their attorneys, the Institute for Public Representation, respectfully submit comments in response to the Public Notice issued by the Media Bureau on October 21, 2009. The Notice seeks comment on the kinds of data necessary to conduct the 2010 Quadrennial Review and how to structure the review.

I. THE COMMISSION SHOULD COLLECT DATA NEEDED TO ASSESS WHETHER THE CURRENT BROADCAST LIMITS ARE IN THE PUBLIC INTEREST

The Notice seeks comments on the questions it should ask and the data it should collect to analyze whether the current broadcast ownership limits continue to serve the public interest. UCC *et al.* believe that the Commission needs the revised Form 355 data from television broadcast stations to effectively analyze whether the existing limits are meeting the public interest goals of diversity, localism and competition. The Commission adopted Standardized Television Disclosure Form 355 two years ago, but it has not gone into effect. Thus, the

Commission should act promptly on the pending petition for reconsideration and seek OMB clearance so that it can start collecting this important data. Secondly, the Commission should collect data about joint ventures between local broadcast stations and assess their effect on the public interest. Finally, the Commission should collect data on the economic health of the broadcast industry to determine whether the current financial downturn facing the industry is sectoral or cyclical.

A. The Commission Should Act on Petitions for Reconsideration of the Enhanced Disclosure Order So That It Can Utilize the Form 355 Data in Its Analysis

Two years ago, the FCC adopted an *Enhanced Disclosure Order* requiring television broadcasters to file electronically with the FCC standardized, detailed, quarterly reports on their programming and service to local communities.[1] The order also requires broadcasters to make much of the information in their public file available online, not just at the station premises.[2] The purpose of Form 355 is to "make information about broadcasters' efforts more understandable and more easily accessible by members of the public."[3] No television licensee has filed Form 355, however, because the FCC has not yet obtained approval from the Office of Management and Budget (OMB). Some broadcasters filed for reconsideration at the FCC, while others sought review in the D.C. Circuit. The court has held the case in abeyance pending action on the petitions for reconsideration at the FCC.[4]

---

[1] S*tandardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398),* Report and Order, 23 FCC Rcd1274 (adopted Nov. 27, 2007, rel. Jan. 24, 2008) ("*Enhanced Disclosure Order*").
[2] *Id.* at ¶17.
[3] *Id.* at ¶ 2.
[4] Order, *Nat'l Ass'n of Broadcasters v. FCC*, D.C. Cir. No. 08-1135 (July 11, 2008)..

UCC *et al.* urge the Commission to promptly rule on reconsideration and seek OMB approval because the data gathered by Form 355 will provide information that is essential to its public interest analysis of localism, diversity and competition in the broadcast industry. Form 355 includes information on the amount of various types of programming traditionally identified with public service, including local news, local civic affairs programming, electoral affairs programming, religious programming, public service announcements and emergency information.[5] It will provide both the Commission and the public with a comprehensive way to assess the amount and types of community-responsive programming that broadcasters are providing and see if and how it correlates with ownership.

Form 355 would also provide comprehensive data about whether and how local television stations are using their digital frequencies to multicast.[6] This information is needed to allow the Commission to fully assess the impact that the transition to digital has had on arguments for further relaxing local television limits.

UCC *et al.* know of no other source for the type of data that would be provided by Form 355. Even if some information is available from commercial sources, it is expensive for the FCC to obtain, especially since it needs this data every four years. Moreover, commercial sources are often ill-suited for regulatory decision making. Additionally, because of licensing agreements that agencies must enter into to secure such data, the public and outside researchers are often unable to review and ensure the validity of the statistics on which the FCC bases its decisions.[7]

---

[5] *Enhanced Disclosure Order*, 23 FCC Rcd app. B at 1300 (Form 355).

[6] *Id*. at 1302 (Question 2(a)).

[7] *See generally* Philip M. Napoli & Michelle Seaton, *Necessary Knowledge for Communications Policy: Information Asymmetries and Commercial Data Access and Usage in the Policymaking Process*, 59 FED. COMM. L.J. 295, 298-299 (March 2007) ("Many observers of the policymaking process have identified a continued trend toward a greater reliance upon empirical research as part of a greater "rationalization" of policy decision making").

In contrast, Form 355 is tailored to meet the data needs of the Commission, and is more comprehensive, efficient, and cost-effective than contracting with outside parties. Equally important, Form 355 will be publicly available, thereby allowing citizens and outside researchers to review the data and "point out where information is erroneous or where the agency may be drawing improper conclusions from it."[8]

B. The Commission Should Collect Data on Broadcast Joint Ventures and Their Effect on Localism, Competition and Diversity

In the past few years, some broadcasters have entered into agreements to collaborate in various degrees with competing broadcasters. These include Local News Sharing ("LNS"), Local Marketing Agreements ("LMA") and Shared Services Agreements ("SSA").

A LNS is an arrangement to coordinate news gathering resources between television broadcasters in the same market and share the footage among the participating broadcasters. Some LNSs allow broadcasters to coordinate their own news crews to cover different stories and then share the footage among the participating broadcasters to air on their stations. In other cases, an LNS may provide that one broadcaster gathers the news, produces it, and delivers it to another broadcaster in a pre-packaged, ready-to-air format.

LMAs, or time brokerage agreements, allow a station to purchase the air time of another television station within the same market. The FCC developed the 15% ownership attribution limit to prevent the use of LMAs to circumvent the ownership rules and to promote competition and diversity within a local market.[9]

[8] Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095, 1121 (D.C. Cir. 1984).
[9] 47 CFR §73.3555, note 2, at j(2). *Attribution Report & Order*, 14 FCC Rcd 12559, 12597, ¶83 (1999), recon. denied, 16 FCC Rcd 1097 (2001).

An SSA gives one broadcaster (Provider) the contractual right to produce programming, usually local news programs, and operate a station for a Licensee in return for some consideration. The Provider typically operates the Licensee's station using its own capital, facilities and personnel while the Licensee maintains only a minimal number of employees.

Although FCC rules require LMAs involving more than 15% of program time be placed in the station's public file and be filed with the FCC, they do not require that LMAs involving less than 15% of programming be filed.[10] It is likely that even if one station provided all of its local news to another station in the same market for simulcasting, it would not meet the 15% threshold.

In addition, the FCC rules do not clearly state that licensees must file their LNS and SSA agreements. In some cases, members of the public have visited the public file of stations involved in these types of agreements and have not been able to inspect these agreements. Therefore, neither the Commission nor the public are aware of the extent of these arrangements. Press reports have documented LNSs in eight of the top ten markets and numerous SSAs, generally in smaller markets.[11]

The Commission should collect data on the extent, type, and impact of these agreements, as they may have significant effects on localism, diversity and competition. Shared news

---

[10] 47 CFR § 73.3526(e)(5), §73.3613(d)(1). *See also Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, *MO&O on Reconsideration*, 16 FCC Rcd 1097, 1119 ¶49 (rel. Jan. 19, 2001) (denying UCC's petition for reconsideration asking the FCC to require that all LMAs should be filed with the FCC and posted on its website).

[11] See, e.g., Kim McAvoy, News Sharing: One for All, All for One?, http://www.tvnewscheck.com/articles/2009/05/20/daily.1/?page=1 (last visited November 18, 2009) (identifying LNSs in eight of ten top markets, such as Chicago, Dallas, and Washington, D.C.); Jill Geisler, *Six Hazards of TV News Pooling and How to Avoid Diluting Your Coverage*, June 2, 2009, http://www.poynter.org/column.asp?id=34&aid=164309&view=print; Katy Bachman, *N.Y. Television Stations to Pool Video News Content*, June 9, 2009, http://broadcastunionnews.blogspot.com/2009/06/ny-television-stations-to-pool-video.html

gathering directly affects the quality and coverage of local news available to viewers. Similarly, LMAs, both attributable and non-attributable, may affect the diversity and quality of local programming. Shared Service Agreements, where one licensee has *de facto* control over the programming, personnel and finances of multiple stations in a market, can have a significantly detrimental impact on competition, diversity and localism, and, as discussed below in Part III, may violate existing local television limits.

C. The Commission Should Gather Data on the Extent to Which Broadcasters are Financially Struggling and the Underlying Causes for their Difficulties

FCC should collect and analyze data on the extent to which broadcast stations are financially struggling. To the extent that broadcasters argue that the ownership rules should be relaxed because they are struggling in this economy, they should be required to provide data on their financial condition and demonstrate how relaxing the rules would address their problems.

At the same, time the Commission must have data from neutral, independent sources to be able to assess such claims. The Commission should examine profitability on both the station level and at the corporate level. Collecting data at the station level will give the Commission the information it needs to assess local competition. Collecting data at the corporate level should help the Commission assess whether drops in broadcast advertising are offset by advertising or other revenues from other media ventures.

To evaluate whether the current financial state of broadcasting is a result of broad-based cyclical causes or whether it is a product of particular factors in the broadcast industry, the

Commission should compare the performance of broadcasting to other industries. UCC *et al*. agree with Commissioner Copps that the FCC should not overreact to short term problems.[12]

UCC *et al*. also agree with Commissioner Copps and members of Congress that the FCC should assess the role of private equity in broadcast station ownership.[13] As Congressmen Dingell and Markey noted in a July 12, 2007 letter to then-Chairman Markey;

> History . . . suggests that private equity ownership is marked by a management structure that is not overly transparent and by fluid asset management where actual holdings and control may vary significantly, as properties are bought and sold. These historical styles may not be consistent with many of the core public interest and localism values that Congress has assigned to local media and may implicitly undermine the Commission's media ownership rules.[14]

And in his Separate Statement to the order approving the transfer of control of Univision, Commissioner Copps observed:

> [I]t is quite significant that today's transaction involves the transfer of 114 full-power TV and radio licenses from a public corporation--one whose stock is traded on the New York Stock Exchange and is included in the S&P 500--to five private equity firms. The Commission has never analyzed the consequences of this type of transaction for its ability to ensure that licensees protect, serve and sustain the public interest. I, for one, have some real questions about how the assumption of massive amounts of debt will affect a media company's stewardship of the airwaves. I also have concerns about how the shift from public to private ownership will affect the Commission's ability to determine which entities have practical control over licensees' editorial decisions and financial strategy.[15]

The Commission should include these important issues in its 2010 Quadrennial Review.

---

[12] Remarks of Commissioner Michael J. Copps at the Media Ownership Workshop Scholars' Panel, Nov. 2, 2009.
[13] *Id*.
[14] Quoted in Clear Channel Broadcast Licenses, Inc., 22 FCC Rcd 21196, 21211 (Copps, dissent). Commissioner Copps suggests a number of important questions that he believes the Commission should ask about the role of private equity on ability of FCC to ensure licensees serve the public interest.
[15] Univision Communications, Inc., 22 FCC Rcd 5842, 5876 (Copps, concurring in part)(2007).

II. THE FCC SHOULD NOT WAIT FOR THE 2010 REVIEW TO BE CONCLUDED TO ADDRESS OUTSTANDING ISSUES IN PENDING PROCEEDINGS

Although UCC *et al.* welcome the initiation of the 2010 Review, they urge that the Commission act promptly on certain pending matters, rather than fold them into the 2010 Review.

A. The FCC Should Ensure that the Public has Meaningful Notice and Opportunity to Oppose Waivers of the Broadcast Limits

Some broadcasters have gotten around ownership limits by obtaining multiple temporary waivers. To cite just one of many examples, Tribune Co. has controlled two television stations and a daily newspaper in Hartford pursuant to temporary waivers since 2001, even though the FCC initially granted only a six month waiver of the newspaper broadcast cross ownership rule to allow Tribune to divest one of its assets and come into compliance with the rule.[16]

It is difficult for members of the public in the affected communities to find out about waiver requests. Under current practice, the Commission releases lists of applications it has received, including applications to transfer or renew licenses. These lists, however, do not

---

[16] *Application of Counterpoint Communications, Inc. & Tribune Television Co.*, *Memorandum Opinion and Order*, 16 FCC Rcd 15044 (2001). Six months after the waiver was granted, Tribune had not divested either property and it asked the FCC for a six-month extension of the waiver, which the FCC granted because Tribune had shown it had been unable to sell WTXX. *Application of Counterpoint Communications, Inc., and Tribune Television Co.*, *Memorandum Opinion and Order*, 17 FCC Rcd 3243 ¶3 (2002). The Commission explicitly conditioned the waiver on the requirement that Tribune "*expand* its current efforts if needed to sell the necessary assets." *Id.* at 3245 (emphasis added). But yet again, Tribune did not come into compliance and asked for another waiver, which the FCC granted until its next license renewal became final. *Request for Extension of Waiver of Section 73.3555(d) of the Commission's Rules for Station WTXX(TV)*, 20 FCC Rcd 8582, 8590 (2005). In the meantime, Tribune filed an application to transfer all of its cross-owned properties to Zell. *See Application for Consent to the Transfer of Control of The Tribune Company*, 22 FCC Rcd 21266 (2007). In November 2007, the FCC granted this application subject to a requirement that Zell come into compliance with the newspaper/broadcast cross-ownership rule within six months. *Id*. at 21284.

indicate whether applications include waiver or waiver extension requests. Thus, members of the listening and viewing public have no feasible means of determining whether an applicant is seeking a waiver of the ownership rules.[17]

Recognizing the role of the public, the Commission stated in the *2008 Order* that it would flag applications seeking waivers in its public notices.[18] We ask that the Commission also provide prominent public notices when applicants file for extensions of existing waivers. The FCC has authority to make these changes immediately: a rulemaking procedure is not required for modification of internal FCC procedures.[19]

However, this simple action will only solve part of the problem. It is not reasonable to expect listeners and viewers to check the FCC daily releases every day. Rather, they have traditionally relied on local public notices that the FCC requires licensees to provide on-air and in local newspapers.[20] In 2005, the Commission issued an NPRM proposing to revise the public notice requirements for transfer applications to facilitate greater public participation.[21] The NPRM expressed concern that "the required public notice does not advise the public of the opportunity to file comments, petition to deny, or informal objections or the deadlines that apply

---

[17] Meaningful public notice of waiver applications will be even more important if the Third Circuit were to lift the stay and allow the revised NBCO rule to take effect, because the presumptive waiver scheme relies on public participation to ensure that the FCC has all of the relevant information in assessing an applicant's attempt to rebut the presumption against cross-ownership.

[18] *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order*, 23 FCC Rcd 2010, 2057 ¶ 79 (2008) ("2008 Order").

[19] Administrative Procedure Act, 5 U.S.C. **§** 552(b)(3)(A) (2009) (exempting changes to agency organization, procedure, or practice from public notice requirement).

[20] 47 C.F.R. §73.3580 (2006).

[21] *Revision of the Public Notice Requirements of Section 73.3580, Notice of Proposed Rulemaking*, MB Docket No. 05-6, 20 FCC Rcd 5420 (2005).

to these filings."[22] UCC *et al*. agreed that existing local notice was inadequate and proposed several ways that it could be improved.[23] However, the FCC never issued an order in this proceeding. UCC *et al.* urge the Commission to conclude this rulemaking by adopting rules requiring transfer applicants seeking waivers to disclose this fact and to give enhanced local public notice. The FCC should also adopt similar requirements for renewal applicants seeking waivers.[24]

B. The FCC Should Complete the Rulemaking to Attribute Certain Television Joint Sales Agreements

The FCC should also conclude another rulemaking begun in 2004 concerning joint sales agreements ("JSA"). A JSA is an agreement that allows one television broadcaster (Broker) to sell the advertising time for another broadcaster's television station (Brokered Station).[25] Typically the Broker sells the advertising time on behalf of the Brokered Station in return for a percentage of the advertising revenue. The JSA can also be arranged so that the Brokered Station pays the Broker a commission and the Brokered Station retains the advertising revenue.

In the FCC's *2002 Biennial Review Order* released in 2003, the FCC decided to attribute JSAs involving radio where (1) the Broker has an attributable interest in one or more station in the local market, and (2) the joint advertising sales amount to more than 15% of the Brokered

[22] *Id*. at 5431.
[23] Comments of Office of Communication of the United Church of Christ, Inc., The National Hispanic Media Coalition, The Campaign Legal Center, Media Access Project, Benton Foundation, Chicago Media Action, and Free Press, MB Dkt. No. 05-6, filed Mar. 15, 2005.
[24] Common Cause also asked for similar relief in the Petition for Reconsideration. *See* Comments of Common Cause, Benton Foundation, Consumers Action, Massachusetts Consumers Action Coalition, NYC Wireless, James Eckles, and The National Hispanic Media Coalition, MB Dkt. No. 06-121, filed Mar. 24, 2008.
[25] *See* 47 C.F.R. § 73.3555, n. 2(k) (2008).

Station's advertising revenue.[26] The FCC reasoned that "[c]ontrol over spot sales by one station affords significant power over the other. Thus, JSAs raise concerns regarding the ability of smaller broadcasters to compete, and may negatively affect the health of the local radio industry generally."[27] The Third Circuit affirmed the FCC's decision to attribute radio JSAs in *Prometheus*.[28]

In 2004, the FCC issued a Notice of Proposed Rulemaking that proposed to adopt a similar attribution rule for television station JSAs. In its *TV NPRM*, the FCC tentatively concluded that JSAs have the same effect in local television markets as they do in local radio markets and should be treated similarly.[29] The FCC received comments, mostly from the broadcast industry, but never adopted a final order. UCC *et al*. urge the FCC to reopen this rulemaking to update the five-year-old record and then adopt the proposed attribution rule.

C. The FCC Should Eliminate the UHF Discount in a Separate Proceeding

In the *2002 Biennial Review Order*, the Commission determined that the implementation of DTV would eliminate the rationale for differential counting of UHF and VHF television stations for purposes of the national ownership limits, and it decided to sunset the UHF discount after the crossover to DTV.[30] Subsequently, Congress passed the Consolidated Appropriations Act of 2004, which directed the Commission to enact a lower national audience reach limit than it had adopted in the 2002 Biennial Review and prohibited the Commission from modifying the

---

[26] *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13744 ¶ 317 (2003) ("*2003 Biennial Review Order*").
[27] *Id*. ¶ 318; *see also* 47 C.F.R. § 73.3555, n. 2(k) (2008).
[28] Prometheus Radio Project v. FCC, 373 F.3d 372, 429-30 (3d Cir. 2004) ("*Prometheus*").
[29] *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, Notice of Proposed Rulemaking, 19 FCC Rcd 15238, 15239 ¶ 2 (2004) ("*TV NPRM*").
[30] *2002 Biennial Review Order*, 18 FCC Rcd 13620, 13847 ¶ 591 (2003).

limit in future quadrennial reviews.[31] The Commission sought comment on whether the Appropriations Act eliminated its authority to modify the UHF discount because of its effect on the national audience reach limitation.[32] UCC's comments argued that the plain language of the Appropriations Act did not affect the FCC's authority to modify or elimination the UHF discount. Even if Congressional intent were ambiguous, the only reasonable interpretation was that the FCC retained that authority.

On appeal, the Third Circuit found that the challenge to the FCC's elimination of the UHF discount was mooted by the passage of the Appropriations Act. It further noted that although the UHF discount was insulated from review in the periodic reviews mandated by Section 202(h), the Commission had sought comment on its authority to modify or eliminate the UHF discount in a separate proceeding and that it was up to the Commission to decide the scope of its authority in the first instance.[33] The Commission, however, never resolved this question.

Because the transition to DTV has occurred, the policy rationale for the UHF discount – that UHF signals reached smaller audiences that VHF signals – no longer exists. Thus, the Commission should proceed promptly to eliminate the UHF discount in its entirety.

III. THE COMMISSION SHOULD ENFORCE THE EXISTING RULES UNTIL IT ADOPTS NEW ONES

FCC rules currently in effect prohibit common control of more than one television station serving the same local community except when certain conditions are met.[34] This rule promotes diversity, competition and localism. Yet, in some cases, broadcasters have found ways to get around the limit. The Commission should not allow these violations to continue while it

[31] Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).
[32] 69 Fed. Reg. 9216 (Feb. 27, 2004); MB Docket No. 02-277.
[33] *Prometheus v. FCC*, 373 F.3d 372, 397 (3d Cir. 2004).
[34] 47 C.F.R. § 73.3555 (2008).

reexamines the rules. Otherwise, more companies will be tempted to evade the existing rules, and it will make it even more difficult for the FCC to revise the rules to promote diversity, including increasing opportunities for minorities and women to own broadcast stations.

It appears that some licensees began entering into SSAs in 2004, after the *Prometheus* court remanded the revised local television rule and extended the stay, so that the 1999 version of the local television rule remained in effect. SSAs, in essence, provide an end run around the prohibitions against controlling two top four television stations and/or controlling more than one (or two in larger markets) television stations in the same market. SSAs give one station *de facto* control over another station in the same market. SSAs typically involve large staff reductions at both stations and reduce competition and diversity in local news.

In 2004, the Media Bureau allowed a transfer application involving an SSA in *Malara Broadcast Group of Duluth Licensee, LLC.*[35] Another television licensee in the market, which had opposed the SSA, filed an application for review with the full Commission in January 2005. But the Commission has not yet acted on the application for review. In 2007, an application for review was filed with the Commission after the Media Bureau acquiesced another SSA in *Piedmont Television of Springfield License, LLC.*[36] The FCC has not acted on this application either.[37]

As explained in the Application for Review of the *Piedmont* decision:

[35] 19 FCC Rcd 24070 (M.B. 2004), *application for review filed by* KQDS Acquisition Corp. et al. (Jan. 13, 2005).

[36] 22 FCC Rcd 13910 (M.B. 2007), *application for review filed by* Koplar Communications (Aug. 29, 2007).

[37] The Media Bureau has also permitted several other SSAs. *See Nexstar Broadcasting, Inc.*, 23 FCC Rcd 3528 (M.B. 2008); *Chelsey Broadcasting Co. of Youngstown, LLC*, 22 FCC Rcd 13905 (M.B. 2007). *CFM Communications, LLC*, 20 FCC Rcd 9738, 9742 (M.B. 2005), *rescinded for unrelated reasons*, 20 FCC Rcd 10824 (M.B. 2005).

> The effects of the decision are devastating – in the small market of Springfield, the top four network affiliates (ABC, CBS, Fox and NBC) are now controlled by two entities, KY3 and Nexstar. Together KY3 and Nexstar control 98.1% of the television advertising revenues in Springfield, with KY3 alone controlling 50% of the television advertising revenue through its illegal combination of KSPR and KYTV(TV). [38]

It appears from press reports that some broadcasters have simply entered into SSAs to create "virtual" duopolies and triopolies without seeking any prior FCC approval. Many are in smaller markets, where concerns about competition and diversity are magnified.[39] The full extent of these sharing arrangements is unknown.

UCC *et al*. urge the Commission to stop the evisceration of the local television ownership rules by promptly granting the applications for review in *Malara* and *Piedmont*. Waiting to address this problem in the 2010 Quadrennial Review would only increase the number of such de facto duopolies and triopolies to the detriment of the public interest.

Respectfully Submitted,

___/s/_______________________

Of Counsel:

Angela J. Campbell, Esq.
Adrienne T. Biddings, Esq.

[38] *Piedmont Television of Springfield License, LLC*, 22 FCC Rcd 13910 (M.B. 2007), *application for review filed by* Koplar Communications (Aug. 29, 2007).

[39] For example, broadcasters use SSAs in Syracuse, New York and Peiroia, Illinois, the 81st and 116th ranked DMAS respectively. Press Release, Granite Broadcasting Corporation, Granite and Barrington Announce Joint Sales and Shared Services Agreements in Syracuse, NY and Peoria, IL (Mar. 2, 2009), http://www.granitetv.com/press/40558812.html. SSAs have also arisen in Honolulu, Hawaii. *See* Complaint and Request for Emergency Relief Regarding Shared Services Agreement between Raycom Media and MCG Capital for Joint Operation of Television Stations KHNL, KFVE, and KGMB, Honolulu, Hawai`i.

Joseph O'Connor
Charles Rosson
Georgetown University Law Center

Law Students

Dated: November 20, 2009

Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

Counsel for :
Office of Communication United Church of Christ, Inc.
National Organization for Women
Media Alliance
Common Cause
Benton Foundation