Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age	)	GN Docket No. 10-25
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COMMENTS OF COMMUNICATIONS WORKERS OF AMERICA AND MEDIA COUNCIL HAWAI`I

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SUMMARY

Communications Workers of America (CWA) and Media Council Hawai`i (MCH) file these comments to inform the Commission about the increasing use of "shared services agreements" and "local news services" to circumvent the local television ownership limits and to undermine the public interest goals of promoting a diversity of views, ensuring competition, and providing programming that meets the needs of local communities.

A shared services agreement (SSA) consists of one or more agreements between two broadcast licensees in the same market that essentially allows one station ("the brokering station") to take over the operation of a second station ("the brokered station"). We have identified at least twenty-five markets where stations have entered into SSAs. SSAs typically include a local marketing agreement, in which the brokering station provides local news programming to the brokered station, and a joint sales agreement, under which the brokering station sells advertising time on the brokered station. SSAs may also include agreements to share office space, studio and transmission facilities, personnel, and support functions and an option for the brokering station to purchase the brokered station.

SSAs directly reduce the diversity of local voices in a community by replacing independent newscasts on the brokered station with those of the brokering station. Even if the SSA recites that the licensee of the brokered station retains editorial control, the brokered station typically has few employees and receives little or no advertising revenue, and thus lacks the practical ability and economic incentive to produce programming on its own. Moreover, SSAs invariably lead to reductions in news personnel. With fewer reporters and camera crews on the street, the quality, diversity, and quantity of local news coverage suffers.

Although SSAs are often found in smaller markets, rival stations in many large markets have recently joined together to form “local news services” (LNSs). Stations participating in an LNS contribute crews to the joint venture. The stations jointly decide, or delegate to a single managing editor, what stories the LNS should cover and provide to the participating stations for their use. Although styled as a “pool,” this coordinated editorial selection and newsgathering is nothing like the traditional press pool model used where physical space at an event is limited. LNSs reduce the number of independent voices covering the news, which inevitably reduces the diversity of perspectives presented and diminishes the quality of the reporting. In addition, LNSs reduce the ability and incentive for each participating station to vigorously compete in local newsgathering, lead to lay-offs of news personnel, and provide opportunities for collusion.

Both SSAs and LNSs undermine the Commission’s longstanding public interest goals of diversity, competition, and localism. Moreover, these types of joint ventures permit companies to evade the letter or spirit of Commission’s local television ownership rules. We urge the Commission to tighten up the rules for attributing local marketing agreements and joint service agreements, as both are critical subcomponents of SSAs. In addition, we urge the Commission to vigorously enforce existing rules against unauthorized transfer of control by acting promptly on several pending petitions, including MCH’s complaint against Raycom’s SSA with HITV that has given Raycom *de facto* control over three television stations serving Honolulu. Finally, we urge the Commission to revise its reporting and disclosure requirements so that both the Commission and the public know about these agreements and can better assess their effects on diversity, competition, and localism.

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Communications Workers of America and Media Council Hawai`i (CWA and MCH), by their counsel, the Institute for Public Representation, respectfully submit these comments in response to the Public Notice *FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*.[1] CWA and MCH commend the Commission for launching this inquiry into the critically important subject of the health of our national media. As the Public Notice warns (and as CWA and MCH strongly agree), the decline in local "journalism . . . could have dire consequences for our democracy and the health of communities, hindering citizens' ability to hold their leaders and institutions accountable."[2] CWA and MCH hope that this inquiry can lay the groundwork for needed changes to the Commission's rules that can enhance and maintain the diversity of local media voices in a rapidly evolving competitive environment.

To this end, these comments focus especially on the questions in the Public Notice that ask for information on the role of consolidation and staff reductions on the amount and quality of

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[1] *Public Notice, FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Jan. 12, 2010 (hereinafter *Future of Media Notice*).
[2] *Future of Media Notice*, *supra* note 1, at 2.

news aired.[3] In particular, these comments describe the recent consolidation trends in the broadcast television industry that have eroded local news variety and depth. By utilizing various forms of joint venture arrangements that are arguably not attributable under the Commission's ownership rules, broadcasters have stifled news competition and reduced the number of independent sources reporting on issues of public importance. Accordingly, CWA and MCH recommend a number of concrete steps that the Commission should take to ensure that the letter and spirit of its ownership rules are followed and to ensure that the Commission has the data necessary to adapt its rules to the contemporary media landscape.

I. BACKGROUND

The Commission may only grant broadcast licenses when it finds that the public interest, convenience, and necessity will be served.[4] The Commission has consistently identified its public interest goals as fostering diversity of broadcast voices, promoting competition, and ensuring that broadcasters serve the needs of their local communities. To further these goals, the Commission traditionally has refused to grant anyone more than one broadcast television license in each geographic area.[5] When the Commission relaxed its local television ownership rules in

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[3] *See Future of Media Notice*, *supra* note 1, at 5-6 (especially questions 13 and 18).
[4] 47 U.S.C. § 309.
[5] *E.g.*, *Review of the Commission's Regulations Governing Television Broadcasting*, 10 FCC Rcd 3524, 3578 ¶ 125 (1995) (discussing the policies and motivations behind the Commission's ownership rules); *see also Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12910 ¶ 15 (1999) (hereinafter *1999 Duopoly Rules*) ("The ultimate objectives of [the Commission's] ownership rules are to promote diversity and to foster economic competition.").

1999,[6] it simultaneously recognized the need to maintain "tight, effective" attribution rules to ensure that the ownership limits could not be circumvented by other sorts of agreements.[7]

However, some broadcasters have evaded these rules through joint ventures that fall short of an actual license transfer, but nonetheless impair diversity and competition. These comments discuss the impacts of two new types of agreements: (A) shared services agreements, a variant on the older local marketing agreements and joint sales agreements; and (B) local news service agreements. The popularity of these agreements has skyrocketed in the last few years, to the point that we are aware of agreements in at least forty-two different markets, which are listed in the Appendix, including two markets involving both a shared service agreement and a local news service. CWA and MCH call for the Commission to take steps to ensure that these agreements do not continue to undermine the Commission's goals of diversity, localism, and competition.

II. TELEVISION STATIONS HAVE INCREASINGLY USED VARIOUS TYPES OF "SHARING" AGREEMENTS TO EVADE OWNERSHIP RESTRICTIONS AND THEREBY FRUSTRATE THE COMMISSION'S GOALS OF DIVERSITY, LOCALISM, AND COMPETITION.

A. Shared Services Agreements

Generally, a shared services agreement (SSA) consists of one or more agreements between two broadcast licensees in the same market that gives one broadcast station ("broker" or "brokering station") the right to provide operational support and programming for the other station ("brokered station") in return for some consideration.

[6] *1999 Duopoly Rules*, 14 FCC Rcd at 12907 ¶ 8.
[7] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559, 12593 ¶ 70 (1999) (hereinafter *1999 Attribution Order*) (attributing LMAs).

Media Council Hawai`i (MCH) first became aware of SSAs when Raycom Media, the licensee of two television stations in Honolulu, announced that it was entering into an SSA with a third television station licensed to HITV. The SSA gave Raycom control over the programming, personnel, and financing of the HITV station. MCH filed a complaint with the Commission, which is still pending, alleging that the SSA resulted in a *de facto* transfer of control in violation of both §310(d) of the Communications Act and the FCC's local television ownership limit. Raycom responded that no FCC approval was required because the SSA had not resulted in any change in the ownership or control of the stations and, moreover, the FCC had approved similar arrangements in the past.

As a result, counsel for MCH examined the cases cited by Raycom and conducted independent research to identify other SSAs. We have listed all twenty-five agreements we have found in the Appendix. We found SSAs in markets as large as Denver (DMA-18) and as small as Duluth, Minnesota (DMA-139). Most SSAs do not involve network owned-and-operated stations, but do involve other large station groups such as Sinclair, which is involved in nine SSAs, and Raycom, Nexstar, and Granite, which are involved in three SSAs each. However, the trend may be spreading to larger markets and to network owned-and-operated stations: NBC is currently in talks to form an SSA between its station KNTV and rival KRON in the San Francisco-San Jose market (DMA-6).[8]

It is difficult to discover which stations have SSAs because the stations have taken the position that SSAs do not transfer control of the license and thus do not require Commission approval. Only a handful of SSAs have been reviewed by the Commission, usually in the context

[8] *NBC in Talks to Partner with KRON*, BROADCASTING & CABLE, Feb. 16, 2010.

of a license transfer or renewal. The Media Bureau denied one transfer,[9] but declined to take action against SSAs in five other cases.[10] In two of these cases, other broadcasters in the market sought Commission review of the Bureau's decision.[11] The Commission has not yet acted on these petitions even though one, involving two television stations in Duluth, has been pending for five years.

In 2001, the Commission found that Sinclair had *de facto* control over stations licensed to Cunningham in violation of the local television rules. Although the FCC assessed a fine and required certain modifications to the parties' LMA agreements, it declined, over Commissioner Copp's strong dissent, to designate the applications for hearing.[12] Rainbow PUSH Coalition has argued in a petition for reconsideration that Sinclair continues to control Cunningham in defiance of the Commission 2001 decision, but the Media Bureau has yet to act on the petition.[13] In a 2004 Petition to Deny, Free Press argued that Sinclair was systematically "abusing the anti-duopoly policy through its LMAs…by flagrantly employing long-term LMAs as *de facto* purchases of stations which the Commission has explicitly refused to transfer to Sinclair."[14]

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[9] *CFM Communications, LLC*, 20 FCC Rcd 9738, 9742 (M.B. 2005), *rescinded by*, 20 FCC Rcd 10824 (M.B. 2005).

[10] *Nexstar*, 23 FCC Rcd 3528; *Chelsey Broadcasting Co. of Youngstown, LLC*, 22 FCC Rcd 13905 (M.B. 2007); *Piedmont Television of Springfield License, LLC*, 22 FCC Rcd 13910 (M.B. 2007), *application for review pending*; *Malara Broadcast Group of Duluth Licensee, LLC,* 19 FCC Rcd 24070; *SagamoreHill of Corpus Christi Licenses, LLC*, DA 10-495 (M.B. 2010) (slip op).

[11] *Piedmont*, 22 FCC Rcd 13910; *Malara*, 19 FCC Rcd 24070.

[12] *Edwin L. Edwards, Sr.*, 16 FCC Rcd 22236, 22249 ¶ 21 – 23 (2001). Cunningham Broadcasting was known as Glencairn, Ltd. at the time of the *Edwards* decision.

[13] *See* Letter from David Honig, Counsel for the Rainbow PUSH Coalition, to Marlene Dortch, *FCC*, Dec. 11, 2009, In re: Applications of WRGT Licensee, LLC, for Assignment of License, BALCT-20031107AAU.

[14] *WXLC License, LLC*, BRCT-20040730ART, Petition to Deny and for Other Relief, filed by Free Press, Nov. 1, 2004.

1. Characteristics of SSAs

SSAs typically include a local marketing agreement (LMA) and a joint sales agreement (JSA). In addition, SSAs often include agreements to share office space, studio and transmission facilities, personnel, and support functions. They may also include an option for the brokering station to purchase the brokered station. Although the licensee of the brokered station remains nominally responsible for fulfilling the station's public interest obligations, the brokering station decides what programming to air, whom to hire, and how much to charge for advertising.

Under an LMA, sometimes called a "time brokerage agreement," the brokered station sells discrete blocks of airtime to the brokering station. The brokering station supplies programming to fill that airtime and sells the advertisements for that programming.[15] The brokering station typically retains all or most of the advertisement revenue for the programming it supplies.

In 1999, the Commission amended its attribution rules, the rules used to determine what constitutes an "ownership interest" for purposes of the ownership limits, to attribute ownership where a brokering station supplies programming accounting for fifteen percent or more of the weekly broadcast time of the brokered station.[16] The Commission emphasized that LMAs confer a significant degree of control over the brokered party's station.[17] It also cited a letter from the Antitrust Division of the Department of Justice which argued that "LMAs are quite similar, in competitive effect, to ownership of the licensee station."[18]

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[15] For instance, the licensee of station A might sell competing station B the right to provide programming on station A for the 5 o'clock hour on weekdays.
[16] *1999 Attribution Order*, 14 FCC Rcd at 12597; 47 C.F.R. § 73.3555(j).
[17] *1999 Attribution Order*, 14 FCC Rcd at 12597.
[18] Letter to Reed E. Hundt, Chairman, Federal Communications Commission, from Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, U.S. Department of Justice, May 8, 1997 (hereinafter DOJ Letter). In several recent cases involving both television and radio, the Department of Justice required a broadcaster to divest one of two competing broadcast stations.

In practice, the fifteen percent threshold for LMA attribution has allowed the brokering station to provide all of the local news aired on the brokered station. According to a recent RTDNA study, the average total amount of local news programming is 26.4 hours per week,[19] or approximately 15.7% of total weekly airtime. Many stations air fewer than the average of 26.4 hours per week—the RTDNA study indicates that stations in DMAs ranked 101 to 150 air only 22.9 hours of local news per week, or only 13.6% of total airtime.[20] Thus, many stations can outsource their entire news operations without meeting the 15% threshold.

Providing local news is an attractive option for the brokering stations because even though local news constitutes a relatively small percentage of airtime, local news generates 45% of a station's revenue on average.[21] In most of the SSAs we found, the brokered station completely outsourced the news operation to the brokering station. For instance, in Honolulu, Raycom Media operates a single newsroom that provides programming to three participating television stations—the NBC affiliate, the CBS affiliate and the MyNetwork affiliate.[22] In Fort Smith, Arkansas, an SSA between Nexstar and Mission Broadcasting provides that Nexstar's

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In each of these cases, the DOJ specifically stipulated in the consent decree that the broadcasters were not to enter into any local marketing agreements or joint sales agreements, suggesting that the DOJ continues to believe that those agreements are similar in form and competitive effect to a merger. *See* United States v. Raycom Media, Inc., 2008 U.S. Dist. LEXIS 109217, *19 (D.D.C. 2008); United States v. Bain Capital, LLC, 2008 U.S. Dist. LEXIS 71270, *26-28 (D.D.C. 2008); United States v. Clear Channel Communications, Inc., 2001 U.S. Dist. LEXIS 24735, *24 (D.D.C. 2001); United States v. News Corp., 2001 U.S. Dist. LEXIS 24734, *18-19 (D.D.C. 2001).

[19] BOB PAPPER, RADIO TELEVISION DIGITAL NEWS ASSOCIATION, TV AND RADIO STAFFING AND NEWS PROFITABILITY SURVEY 2009 at 1, http://www.rtdna.org/media/pdfs/research/TV%20and%20Radio%20Staffing%20and%20Profitability.pdf.

[20] *Id.*

[21] *See* PEW PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2009, LOCAL TV, http://www.stateofthemedia.org/2009/narrative_localtv_intro.php?cat=0&media=8 (hereinafter PEW 2009 STUDY).

[22] Rick Daysog, *KHNL-KGMB unveils new lineup*, HONOLULU ADVERTISER, Oct. 20, 2009.

NBC affiliate will provide *all* of the local news for Mission's Fox affiliate.[23] In Duluth, Minnesota, an SSA between licensees Malara Broadcast Group and Granite Broadcasting provides that Granite will supply news programming for both the local NBC and CBS affiliates, which will be located in the same building.[24]

SSAs typically involve a joint sales agreement (JSA) as well as an LMA.[25] In a JSA, the brokering station typically pays a flat fee to the brokered station and/or is entitled to all or part of the revenues from the ads its sells on the brokered station.[26] Thus, the brokering station could sell all of the advertising time on the brokered station. For instance, the Duluth SSA includes a JSA which provides that Granite will sell one hundred percent of the advertising time on the station licensed to Malara.[27]

Granite Broadcasting has entered into two SSAs with Barrington Broadcasting involving stations in Syracuse, New York and Peoria, Illinois. Under these SSAs, Barrington operates three stations in Syracuse—its own CBS and CW affiliates as well as Granite's NBC Syracuse affiliate—all under one roof. Granite jointly operates three stations in Peoria—an NBC affiliate licensed to Granite, an ABC affiliate licensed to Barrington, and a third station licensed to Venture Technologies.[28] Just as players in a game of *Monopoly* might trade properties in order

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[23] *Nexstar Broadcasting, Inc.*, 23 FCC Rcd 3528, 3535 (M.B. 2008).
[24] *See Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (M.B. 2004), *application for review pending.*
[25] *E.g.*, *Nexstar*, 23 FCC Rcd at 3529 (analyzing an agreement providing for both shared services and joint sales); *see also* 47 C.F.R. § 73.3555(k) (defining JSAs).
[26] *See Report and Order*, *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13743 ¶ 316 (2003) (describing radio JSAs).
[27] Malara-Granite Shared Services Agreement, § 2.2.3, *available at* https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101031969&qnum=5100&copynum=1&exhcnum=1.
[28] *See* Granite/Barrington Joint Sales Agreement and Shared Services Agreement, *available at* http://www.cnycentral.com/uploadedfiles/wstm/Home/About_Us/WSTM-WTVHtransaction.pdf; John Lammers, *Syracuse's Channel 5 shuts down its newsroom*,

for each to obtain a tighter grip on a particular color group, Granite and Barrington have effectively swapped licenses to obtain a *de facto* duopolies.

2. The Impact of SSAs on Local News

Shared service agreements like those in Duluth, Honolulu, Peoria, and Syracuse directly reduce the diversity of local "voices" in a community by replacing independent newscasts with a rebroadcast or simulcast of another station's news.[29] Even if the SSA recites that the licensee of the brokered station retains editorial control, the licensee may lack the practical ability and/or financial incentive to produce its own programming. Because the brokered station typically has only a small number of employees[30] and only a limited right to receive advertising revenue (or no right at all), the licensee is unable to fulfill its public interest obligations.

After entering into an SSA, reductions in news personnel invariably follow. For example, the SSA in Honolulu led to sixty-eight layoffs, or more than one-third of the combined news staff of the three participating stations.[31] As a result of the Granite-Barrington SSA, forty newsroom employees were laid off in Syracuse[32] and as many as thirty were laid off in Peoria.[33]

SYRACUSE POST-STANDARD, Mar. 2, 2009, *available at* http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html; Steve Tarter, *WEEK-TV taking over WHOI operations*, PEORIA JOURNAL STAR, Mar. 2, 2009, *available at* http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-over-operations-of-WHOI-TV.

[29] *See* Prometheus Radio Project v. F.C.C., 373 F.3d 372, 405-406 (3rd Cir. 2004) (holding that sources which merely republish content do not contribute to local viewpoint diversity).

[30] For example, in Raycom-HITV SSA in Honolulu, the brokered station has only two employees.

[31] Rick Daysog, *Honolulu TV stations KGMB, KHNL, K3 will combine operations; will eliminate more a third of their 198 employees*, HONOLULU ADVERTISER, Aug. 19, 2009.

[32] John Lammers, *Syracuse's Channel 5 shuts down its newsroom*, SYRACUSE POST-STANDARD, Mar. 2, 2009, *available at* http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html.

[33] Steve Tarter, *WEEK-TV taking over WHOI operations*, PEORIA JOURNAL STAR, Mar. 2, 2009, *available at* http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-over-operations-of-WHOI-TV.

With fewer reporters and camera crews on the street,[34] the quality, diversity and quantity of local news coverage is reduced.[35] Ownership and viewpoint diversity is further decreased in communities such as Syracuse, where the SSA transferred management of one of the market's few remaining minority-operated stations to a nonminority-owned corporation.[36]

Thus, from the standpoint of local news programming, SSAs have the same detrimental impact on diversity, competition and localism as do outright duopolies and triopolies. Indeed, broadcasters are deliberately using SSAs to circumvent the duopoly rules. As Granite disclosed in its 10-K, "We are actively pursuing this strategy which includes the creation of *duopoly-type operating arrangements* in our current markets through ownership of one station and a combination of agreements (such as shared services, local services, sales representation, marketing, operating or other agreements) with a second station in that market."[37] This indication that SSAs are designed to circumvent the ownership rules is consistent with the fact that most SSAs seem to have been created beginning in 2004, when the Court of Appeals for the Third Circuit blocked the Commission's attempt to relax the ownership rules.[38]

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[34] Television newsrooms are small even in the absence of *de facto* duopoly consolidations. In 2007 (the most recent year for which data is available), the median newsroom size in the largest markets (DMAs 1-25) was 58. PEW 2009 STUDY, *supra* note 21. In markets ranked below 100, where SSAs have been particularly common, the average newsroom size was only 28. *Id.*

[35] Pew Research Center's Project for Excellence in Journalism, Local TV News Reports a Drop in Revenue, Ratings, Mar. 26, 2009, http://www.journalism.org/commentary_backgrounder/local_tv_sees_drop_revenue_and_ratings (noting that TV news remains the most popular source for Americans despite recent ratings declines).

[36] Statement of LaVonda Reed-Huff, Assoc. Professor of Law, Syracuse Univ., FCC Minority Media Ownership Workshop (Jan. 27, 2010).

[37] Granite Broadcasting Corp., S.E.C. Form 10-K at 32, Mar. 29, 2004, *available at* http://www.sec.gov/Archives/edgar/data/839621/000110465904008726/a04-3748_110k.htm (emphasis added).

[38] *See* Prometheus Radio Project v. F.C.C., 373 F.3d 372 (3rd Cir. 2004).

B. Local News Service Agreements

Over just the past few years, a new type of sharing strategy called a "local news service" has expanded rapidly. Generally, a local news service (LNS) is an arrangement between broadcasters to cooperate in the gathering and production of local news content. Communications Workers of America (CWA) first became aware of LNSs in labor negotiations because they typically involve significant layoffs at participating stations. For example, in Los Angeles, 120 people were laid off at the Fox station KTTV with the advent of their LNS.

The first local news service began in January 2009 between the Fox and NBC owned-and-operated stations in Philadelphia (DMA-4).[39] Fox and NBC indicated that they intended to bring the LNS model to other markets.[40] Over the course of 2009, they launched LNSs in eight of the top nine DMAs. Other station owners quickly hopped on the bandwagon. For instance, in New York, the local Fox, NBC, The CW, and CBS stations have all joined in an LNS,[41] and in Los Angeles, Fox, Telemundo, NBC, and The CW all participate.[42] Notably, not all station owners have embraced the trend—for instance, to our knowledge no ABC owned-and-operated stations have joined an LNS, nor have any stations owned by Hearst-Argyle Television, Cox Television, or Allbritton Communications.[43] Altogether, we know of nineteen markets where two or more stations participate in an LNS (see Appendix).

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[39] Michael Malone, *Fox, NBC Dive Into Pool; Launching Local News Service in Philly*, BROADCASTING & CABLE, Nov. 17, 2008.
[40] *Id.*
[41] Michael Malone, *New York Pool: WNYW, WNBC, WCBS, WPIX*, BROADCASTING & CABLE, June 8, 2009.
[42] Michael Malone, *Three L.A. Stations to Begin Local News Video Share June 15*, Broadcasting & Cable, June 2, 2009. Both the local NBC affiliate and the local Telemundo affiliate are owned by NBC Universal, operating under a temporary waiver from the FCC which has expired.
[43] Kim McAvoy, *News Sharing: One for All, All for One?*, TV NEWSDAY, May 20, 2009; *see also* Lewis Lazare, *WMAQ-WFLD agreement to share resources seems ill-conceived*, CHI. SUN-TIMES, Nov. 14, 2005 (describing the general manager of ABC's Chicago O&O as "decidedly"

Details of many of these LNSs are hard to pin down because the agreements are not required to be disclosed under current Commission rules. Indeed, one executive urged stations to be more clandestine about LNSs to avoid alienating viewers: "Just do the damn things . . . . Don't send out a press release about it."[44] One market analyst blasted ABC for not participating in the LNSs, refuting ABC's concern that LNSs would affect the quality of newsgathering by emphasizing that the "LNS is *invisible to viewers*."[45]

Despite the participants' efforts to keep the agreements quiet, we have obtained a redacted version of an LNS in Boston between the owned-and-operated CBS and Fox stations, and a copy of the Detroit LNS between the Fox owned-and-operated station and an ABC affiliate owned by Scripps. These contracts are likely representative of most LNS contracts because both involve a Fox owned-and-operated station. Fox owned-and-operated stations are parties to twelve of the seventeen LNSs we have identified, and Fox has typically been "the real driver behind the sharing movement."[46] Moreover, the two contracts contain several key provisions which are identical. Under the terms of both the Boston and Detroit LNSs, participating stations contribute crews to the joint venture, and a single managing editor dispatches those crews as he or she sees fit. "[N]o less frequently than daily," the managing editor is to distribute to the participating station a list of the stories the LNS will cover. Any content produced by the crews

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not interested in the LNS and quoting her "steadfast [] determination to remain an independent news operation").

[44] Michael Malone, *Swim at your Own Risk; Stations involved in content pools may save money. But they could also jeopardize ratings—and revenue*, BROADCASTING & CABLE, June 22, 2009.

[45] Michael Malone, *Greenfield: Get in the Pool, ABC*, BROADCASTING & CABLE, July 9, 2009 (emphasis added).

[46] McAvoy, *supra* note 43. *But see id.* (noting that "[t]he nature and size of the sharing agreements vary," and quoting a Fox executive saying "It's not one size fits all. Everyone has different needs and requirements.").

then becomes the intellectual property of both stations jointly, and both stations may air identical reports on their respective newscasts.

Broadcasters tend to analogize LNSs to coverage "pools," but in fact they operate in a different manner than a traditional pool. Historically, pools have been designed to accommodate physical access or space constraints. For example, if a judge only allows one camera in a courtroom, news outlets might all cooperate to send one camera crew into court, and then each outlet would produce its own reporting based on that single source of video footage. In other circumstances where space is limited, such as the presidential press "pool," one reporter may even provide a single pool report to several news organizations, but each news organization develops its own unique content working from that single pool report. By contrast, in many of the LNSs we have analyzed, the participants decide in advance what stories the LNS will cover and then send only one station's crew to cover that story. For example, the Detroit LNS contract describes how the assignment editor is to coordinate with the desks at participating stations to discuss what stories will be covered by the LNS and what stories will be covered by the stations separately. The assignment editor of the LNS distributes a "planning sheet" each morning to each participating station that lists all stories to be covered. The LNS crews' reports are then delivered to other stations in a pre-packaged, ready-to-air format. Thus, despite the fact that no access constraints limit the number of reporters who can cover and share their own perspective on, for example, a local city council meeting, each participating station will cover the story based on only one crew's reporting.

Additionally, unlike a coverage pool, the LNSs increasingly cover breaking news stories and not just pre-planned events. Originally, participants in the Philadelphia LNS said they would use it to primarily to cover "routine" events, but it has grown to the point that it is now producing up to 30 video pieces a day.[47] One Fox executive bragged that their LNSs have "grown from a video-sharing partnership to a real breaking-news service."[48] A Temple University graduate student wrote about his experience interning at the Philadelphia LNS and described listening to police scanners and racing to crime scenes to feed live, late-breaking stories to both Fox and NBC simultaneously.[49]

The LNS trend threatens local media diversity and competition for several reasons. First, although participants in an LNS retain the right to compete with one another by producing their own content independent of the joint venture, it is not clear whether they would have the ability or incentive to do so. When analyzing the legality of an agreement between competitors, one factor the antitrust enforcement agencies consider is "whether the relevant agreement requires participants to contribute to the collaboration significant assets that previously have enabled . . . participants to be effective independent competitors . . . . If such resources must be contributed . . . the participants may have lost some or all of their ability to compete against each other . . . even if they retain the contractual right to do so."[50] An LNS requires each station to devote resources (crews) to the venture, thus reducing the number of resources available for each station to compete independently. Since broadcast television newsrooms have already been shrinking,[51] committing multiple personnel to the LNS may reduce the number of reporters left to conduct independent investigative journalism to a dangerously low level. For instance, Fox and NBC indicated that the original Philadelphia LNS would pull twenty to twenty-five staffers total from

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[47] P.J. Bednarski, *Philly Stations Like Share and Share Alike*, TVNEWSCHECK, Apr. 21, 2010.
[48] Malone, *supra* note 42.
[49] Local News Service/Fox29: The Internship Portfolio of Brian Donathan, http://fox29interndonathan.wordpress.com/2009/05/ (May 5, 2009).
[50] U.S. FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS 19 (2000) (hereinafter FTC/DOJ JV GUIDELINES).
[51] Fifty-six percent of newsrooms cut staffs in 2009, leading to a 4.3% decline in jobs industry-wide. PAPPER, *supra* note 19, at 5.

their respective stations.[52] Given that the average newsroom size in the twenty-five largest DMAs was only sixty-one in 2009,[53] this suggests that somewhere in the ballpark of twenty percent of each station's newsroom would be committed to the joint venture.

The competitive resources problem is even more severe if the adoption of an LNS agreement is accompanied by layoffs at the participating stations. Paradoxically, station owners have denied that LNSs have led to staffing reductions. But if LNSs do not enable stations to lay-off personnel, it is difficult to imagine how the stations could achieve the "cost savings" they routinely brag about.[54]

Furthermore, as LNSs increasingly center around core newsgathering and editorial decision-making, they severely reduce the diversity and depth of local news sources.[55] Under the Boston LNS, each station retains the right to conduct its own "investigative" and "enterprise" reporting. But even if the stations actually exercise this right with respect to some stories, the number of voices commenting on the jointly produced stories is reduced by the LNS.[56] Although "enterprise" journalism is important, local viewers also have a strong interest in having access to multiple viewpoints on even the more "ordinary" news stories of the day. This problem is particularly acute in places like Austin, Texas (DMA-49), where the local Fox, ABC, NBC,

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[52] Michael Malone, *Fox, NBC Dive Into Pool; Launching Local News Service in Philly*, BROADCASTING & CABLE, Nov. 17, 2009.
[53] PAPPER, *supra* note 19, at 4.
[54] Malone, *supra* note 52; Jill Geisler, *Six Hazards of TV News Pooling and How to Avoid Diluting Your Coverage*, POYNTER ONLINE, Jun. 2, 2009, http://www.poynter.org/column.asp?id=34&aid=164309 (warning that though sharing might theoretically free up resources for enterprise journalism, "in these tough times management may be tempted to see the pool arrangement as 'outsourcing' and an excuse to cut positions").
[55] *See* FTC/DOJ JV GUIDELINES, *supra* note 50, at 13 (describing the category of "production collaborations," in which LNSs would fall, as "often procompetitive," but potentially anticompetitive when they involve joint decisionmaking on "competitively significant variables" or otherwise "limit[] independent decisionmaking").
[56] *See* Prometheus Radio Project v. F.C.C., 373 F.3d 372, 405-406 (3rd Cir. 2004) (holding that sources which merely republish content do not contribute to local viewpoint diversity).

CBS, and MyNetwork affiliates all participate in the LNS. Thus, in Austin, viewers have access to *only one broadcast perspective* on any story covered by the LNS.

We are also concerned that the need of an LNS to serve multiple stations may reduce the depth of coverage. The Pew Project for Excellence in Journalism recently warned that the depth of local news reporting is declining on stories that are routine, yet still vitally important to democratic participation.[57] For instance, Pew compared coverage of a local budget battle in 2009 to a similar battle in 1991, and it discovered that reporting increasingly consisted of parroting of quotations from politicians and less in-depth analysis of the policy implications of the dispute.[58] The proliferation of LNSs threatens to accelerate this trend toward bare-bones reporting of issues important to voters. Specifically, Jill Geisler, a scholar at the journalism school the Poynter Institute, warns that LNS coverage may become nothing more than "stenography," including only the obvious "who, what, and where" and not "the more valuable 'why and how.'"[59] In addition, given "its targeted story assignment and loyalty to all its member stations, the pool crew won't have the time or motivation to mine [the story] more deeply at the scene."[60]

Finally, the direct lines of communication and information sharing between each broadcast station can facilitate even more damaging forms of collusion. In traditional antitrust analysis, joint ventures raise concerns if they place key decisionmakers in contact with one another and thus open up opportunities for covert collusion.[61] Because the assignment editors of each participating station must be in close communication with one another and with the LNS

[57] PEW PROJECT FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY 12 (2009) (a case study of newsgathering in Baltimore).
[58] *Id.* at 14-15.
[59] Geisler, *supra* note 54.
[60] *Id.*
[61] FTC/DOJ JV GUIDELINES, *supra* note 50, at 15.

personnel,[62] an LNS makes it very easy for rival stations to make (and conceal) clearly illegal agreements such as a joint decision not to cover an important but expensive story.[63]

Even if sharing agreements can help broadcasters recognize real cost savings, those savings are only in the public interest if the scope of an LNS can be properly limited to preserve the quality and diversity of local news coverage. A simple local agreement to share the cost of a news helicopter, for instance, might enable news organizations to improve news quality in a way that they simply could not afford to do on their own.[64] But the comprehensive extent and scope of LNSs that have sprung up around the country in the past year are a deeply alarming development for diversity and competition in local newsgathering.

III. THE COMMISSION SHOULD IMMEDIATELY REVISE ITS RULES TO ACCOUNT FOR THESE NEW AGREEMENTS TO ENSURE THAT THE OWNERSHIP RULES EFFECTIVELY PROTECT THE QUALITY AND DIVERSITY OF LOCAL NEWS.

To prevent continued evasion of the ownership limits, the Commission should promptly complete several pending matters regarding sharing agreements and should initiate a new rulemaking to consider other rule changes. Through the combination of eliminating gaping loopholes in the attribution rules, instituting modest disclosure requirements, and enforcing

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[62] *See* Local News Service/Fox29: The Internship Portfolio of Brian Donathan, http://fox29interndonathan.wordpress.com/2009/05/ (May 13, 2009) (describing regular communications with both station desks to describe what the LNS would be covering).

[63] To be clear, we have not evidence that any such illegal arrangements have actually taken place. We only mean to emphasize that from a traditional antitrust standpoint, arrangements between competitors like LNSs are worthy of intense scrutiny and should be more transparent both to the general public and to agencies like the Commission charged with protecting the public interest. *See infra* Part III.D.

[64] However, as described above, LNSs have sprung up in most of the largest DMAs, including New York, Los Angeles, and Chicago. In these markets, it is considerably harder to believe that each station cannot independently generate the needed scale to offer all the content features that viewers demand.

existing ownership regulations, the Commission can foster a healthy diversity of news sources. This multifaceted regulatory approach is necessary to preserve the integrity of the Commission's longstanding ownership rules and to slow the continuing decline in the quality of local news.

A. The Commission Should Lower The LMA Attribution Threshold So That Stations Cannot Completely Outsource Local News Operations.

First, the Commission should lower the LMA threshold to a level at which wholesale outsourcing of local content would be considered attributable. By adopting the rule stating that LMAs involving more than fifteen percent of total airtime must be attributable, the Commission has already taken the important first step of recognizing that LMAs can provide brokering stations substantial control over brokered stations. However, the proliferation of SSAs (all of which include an LMA) has demonstrated that the fifteen percent threshold is not adequate to prevent the harms to diversity and competition that the Commission sought to avoid. In light of experience with the 15% attribution threshold, the Commission should initiate a rulemaking to consider establishing a lower threshold.

Additionally, revisiting the rule is appropriate at this time because one of the key efficiency justifications for LMAs has been rendered moot by the digital transition. Broadcasters once sought to sell newscasts to other stations because it provided an opportunity to shift the traditional newscast schedule to accommodate viewers who wished to watch the news at atypical hours.[65] Now that the digital transition has occurred, broadcasters can instead shift their

[65] PEW 2009 STUDY, *supra* note 21 ("Sharing or selling newscasts generates additional revenues for stations and allows a station to shift schedules across channels without altering its own schedule.").

schedules by utilizing their multicast streams without impairing the independence of another licensee.[66]

Importantly, reducing the LMA attribution threshold would not categorically forbid LMAs—it would only require that they comply with the limits in the ownership rules. Thus, a top-four local station in a large market might still be able to provide some news content to a small independent station that would otherwise not have any news. But two top-four stations could not combine and simulcast their local news operations, reducing the number of "voices" in a market.[67]

B. The Commission Should Complete its Pending Rulemaking to Extend the Radio JSA Attribution Rule to Apply to Television Stations.

In addition to tightening attribution of local marketing agreements, the Commission should also limit abuses of the related joint sales agreements. The Commission first considered adopting rules to attribute JSAs in 1999. At that time, the Commission declined to adopt a rule attributing all JSAs,[68] but warned that JSAs would be attributable on a case-by-case basis if they "contain terms that affect programming or other core operations of the stations such that they are, in fact, substantively equivalent to LMAs."[69] Shortly thereafter, the Commission concluded in the *Ackerley* case that the JSA in that case was substantively equivalent to an LMA, even though it did not contain any explicit contractual provisions granting influence over programming. [70]

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[66] *See* 47 U.S.C. § 309(j)(14)(A) (mandating the transition to digital signals); Edward Sanders, *TV firms split over "multicasting"*, L.A. TIMES, Dec. 14, 2003 (explaining that current digital compression technology permits up to six standard definition streams, or one high definition stream and two additional standard definition streams).
[67] *See 1999 Duopoly Rules*, 14 FCC Rcd at 12933-34 (indicating that top four stations typically have local newscasts, and that the duopoly rule is specifically designed to enable those stations to partner with smaller stations without reducing local news viewpoint diversity).
[68] *1999 Attribution Order*, 14 FCC Rcd at 12613.
[69] *Id*.
[70] *Ackerley Group, Inc.*, 17 FCC Rcd 10828, 10841 ¶ 28 (2002).

The agreement gave Ackerley Group the right to provide up to fifteen percent of rival television station KCBA's programming, and entitled Ackerley to virtually all of KCBA's advertising revenues. The Commission ruled that Ackerley held an attributable interest in KCBA because the agreement eliminated any incentive for the KCBA licensee to exercise independent control over any of its programming. The Commission found that, in practice, KCBA merely deferred to Ackerley's programming "suggestions."[71]

In the 2002 Biennial Review Order, the Commission decided that JSAs between radio stations should be automatically attributable where more than fifteen percent of the advertising time of a station is brokered by another station in the same market.[72] The Commission never articulated a specific reason for treating television JSAs differently; rather, it simply declined to consider attributing television JSAs because the issue had not been properly raised by the Notice of Proposed Rulemaking.[73] Instead, the Commission issued a separate Notice of Proposed Rulemaking in 2004 that tentatively concluded that the JSA rule should apply to television for the same reasons it applies to radio.[74] However, the Commission has yet to make a final decision in this docket.

In light of the new trend of JSAs in SSAs, the Commission should reopen this docket and finalize the rule. As discussed above, JSAs have been used to eliminate all economic incentive for local station to compete with one another. Although the brokering station in an SSA may only provide fifteen percent of the brokered station's programming (typically local news),[75] a

[71] *Id.*
[72] *2002 Biennial Regulatory Review Report and Order*, MB Docket 02-277, 18 FCC Rcd 13620, 13743-44 (2002).
[73] *Id.* at 13743 n. 691.
[74] *Notice of Proposed Rulemaking, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket No. 04-256, 19 FCC Rcd 15238 (2004).
[75] *See supra* Part II.A.2.

JSA in which the brokering station receives all or mostly all of the ad revenues grants the brokering station significant influence over all aspects of the brokered station's operations.[76] Moreover, in the SSAs we have examined, the brokered station typically retains only two employees, suggesting that in practice the brokering station's personnel must call most of the shots day-to-day.

The Commission should adopt a rule attributing television JSAs that broker more than a certain threshold of advertising time because experience has shown that brokering stations exert significant control over brokered stations. Both the DOJ and the Commission have observed that it is commonplace for the brokering station in a JSA to exert de facto control over programming. The DOJ indicated that in its experience, "even when they comply with FCC regulations, JSAs are often accompanied by close cooperation and coordination among the affected stations, encompassing programming and other competitively significant decisions."[77] In 1999, an attempt by the NBC and CBS affiliates in Scranton/Wilkes-Barre to enter into a JSA was scuttled after DOJ raised serious antitrust objections.[78] Similarly, in *Ackerley* the Commission recognized that the JSA provided the brokering station with significant influence and control over the brokered station because the brokered station had no economic incentive to make decisions independently.[79]

However, the current case-by-case approach is not in the public interest. All JSAs diminish the economic incentives of each broadcaster to compete vigorously with one another.

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[76] *See 1999 Attribution Order*, 14 FCC Rcd at 12597 ("Attribution is based on influence or control that should be considered cognizable and defines what [the Commission] means by ownership.").
[77] DOJ Letter, *supra* note 18, at 9.
[78] Press Release, U.S. Dep't of Justice, Abry Broadcast Partners Abandons Deal with Bastet Broadcasting (July 16, 1999), *available at* http://www.justice.gov/atr/public/press_releases/1999/2565.htm.
[79] *Ackerley Group, Inc.*, 17 FCC Rcd 10828, 10841 (2002).

With a JSA in place, the brokered station has no reason to invest in improving the quality of its programming because the brokered station sees little (if any) of the return from that investment.

Even if the brokered station retains some programming independence, JSAs reduce the incentive of the *brokering station* to improve the quality of its *own* programming. If the brokering station were to increase the quality of its local newscasts, it might attract viewers who previously watched the programming of the brokered station. While this shift would increase the ad revenues of the brokering station, it would decrease the ad revenues the brokering station received from the brokered station.[80] This competitive concern is particularly significant if the brokering station and the brokered station are very close competitors for the programs for which advertising time is brokered (e.g., if the stations are two of the only four stations to provide local news).[81] In other words, JSAs provide a self-enforcing mechanism for two previously fiercely competitive stations to reduce jointly the quality of their broadcast content.

Finally, there is no justification for the difference in treatment between radio and TV JSAs. The Commission has been clear that attribution rules should "apply across the board to all relevant ownership limits."[82] When the Commission applied the same LMA attribution rules to television as it had previously applied to radio, the Commission explained that "[t]here is no reasonable basis for treating television LMAs any differently."[83] Similarly, the Commission has no basis for treating television and radio any differently with respect to JSAs. If the competitive

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[80] *See* Daniel P. O'Brien and Steven C. Salop, *Competitive Effects of Partial Ownership: Financial Interest and Corporate Control*, 67 ANTITRUST L.J. 559, 575-76 (2000) (illustrating the anticompetitive effects of one firm owning a financial interest in a competitor even if that firm exercises no managerial control).

[81] *See id.* at 598-99 (demonstrating mathematically that anti-competitive effects are most acute when the two firms involved are close competitors, as measured by the "diversion ratio").

[82] *1999 Attribution Order*, 14 FCC Rcd at 12598.

[83] *Id*. Notably, the decision to attribute TV LMAs eliminated what was at the time the last discrepancy in the attribution rules for radio and TV. *Id.*

landscapes of the radio and television industries differ in important ways, the appropriate place to factor in those differences is in the ownership limits, not in the attribution rules.[84] Harmonizing the radio and television JSA attribution rules would limit their use in SSAs and would prevent broadcasters from continuing to use these agreements to frustrate competition. The Commission is also justified in revisiting this issue because the Commission's seven years of success administering the JSA rule for radio provides strong evidence that it would be feasible to extend the same rule to television.[85]

C. The Commission Should Immediately Act on Pending Applications for Review Involving SSAs to Set a Precedent That These Agreements are Unlawful.

Reforming the attribution rules regarding LMAs and JSAs, as outlined above, would curb SSAs that reduce competition and diversity in local news. In the meantime, the Commission should vigorously enforce policies prohibiting the unauthorized transfer of control of broadcast stations. Specifically, the Commission should act on the two pending applications for review on

[84] In comments to the Commission's proposal to attribute television JSAs, *Notice of Proposed Rulemaking, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket No. 04-256 (2004), industry commenters repeatedly emphasized the difference in the level of competition faced by radio and television broadcasters. However, commenters never indicated why the appropriate place to account for these differences (if they are even accurate) is in the *attribution* rules, which fundamentally should be about control, rather than the ownership limits. *Cf. 1999 Attribution Order*, 14 FCC Rcd at 12599 (explaining that any competitive benefits to further consolidation through LMAs is "relevant to the question of how much common ownership should be permitted…rather than the cognizability of the interest). Indeed, the radio and television broadcast ownership limits *do* differ significantly, partly to account for these supposed market differences. *Compare* 47 C.F.R. § 73.3555(a) *with* 47 C.F.R. § 73.3555(b).

[85] *Cf. 1999 Attribution Order*, 14 FCC Rcd at 12598 (explaining that the Commission's experience administering LMA rule for radio demonstrated the wisdom of extending the rule to television); *see also* Prometheus Radio Project v. F.C.C., 373 F.3d 372, 429-30 (3rd Cir. 2004) (upholding the 2002 radio JSA rule).

matters involving SSAs and on the pending Honolulu complaint.[86] These cases provide an opportunity for the Commission to reestablish its role in protecting diversity and competition in local news media. Otherwise, by simply structuring a transaction as a shared services agreement rather than as a literal license transfer, broadcasters can reduce competition and diversity without Commission oversight. Although the rule revisions outlined above are necessary to prevent future abuses, the Commission already possesses the legal authority to take action where a de facto transfer of control has occurred and should use that authority to send a clear signal to broadcasters that violations of existing rules will not be tolerated.

D. The Commission Should Adopt Disclosure Rules That Ensure Local News Services Are Transparent to Viewers and That Provide the Commission the Data Necessary to Craft Effective Attribution Rules.

The Commission should also proactively prevent abuse of local news service agreements. Currently broadcasters are not required to disclose news-sharing agreements with other stations.[87] The first step toward ensuring that LNSs do not frustrate the Commission's localism, diversity, and competition goals is to adopt robust disclosure and reporting obligations for any news production collaborations between local broadcast stations in the same DMA. To be effective, disclosure requirements must include three important elements: (1) disclosure of the agreements themselves, (2) disclosure to the viewers of a newscast, and (3) ongoing disclosure of data regarding the effects of an LNS. These disclosures would arm both the public and the Commission with the information necessary to ensure that LNSs do not go too far.

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[86] *Piedmont Television of Springfield License*, LLC, 22 FCC Rcd 13910 (M.B. 2007), *application for review pending*; *Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (M.B. 2004), *application for review pending.*
[87] *See* 47 C.F.R. § 73.3526.

First, just as it has with JSAs and LMAs, the Commission should require copies of LNS agreements to be placed in a station's public file.[88] Just as with LMAs and JSAs, disclosure of LNSs will "facilitate monitoring … by the public, competitors and regulatory agencies."[89] Specifically, disclosure would enable the public, the Commission, and the antitrust enforcement agencies to preemptively identify particularly egregious agreements that on their face violate the spirit of the Commission's rules and/or antitrust laws. To ensure that these agreements are easily accessible to the public and to researchers, the agreements should be posted online.[90] In addition, the agreements should be filed with the Commission.

Second, to ensure that viewers know the source of their news, the Commission should require that any contribution by an LNS to a report be credited on-air. For instance, just as national news programs often acknowledge any footage or reports that were provided by local affiliates, local stations should disclose on air whenever a joint news operation contributed to a report. Crediting the contribution of the LNS would also be analogous to how a newspaper credits the contributions of wire services to the content of a story. A mandatory disclosure requirement could be structured similarly to requirements the Commission is considering imposing on "video news releases."[91] Just as with video news releases, these disclosures are extremely important because even if a particular LNS is carefully limited so as not to harm localism, diversity, or competition, viewers have a "right to know" the origin of the news content

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[88] *See* 47 C.F.R. § 73.3526(e)(16), (e)(14).

[89] *1999 Attribution Order*, 14 FCC Rcd at 12559.

[90] The Commission has already adopted a rule requiring the contents of the public file to be placed online, but has not yet implemented this rule. *Standardized and Enhanced Disclosure Requirements for Television Broadcast License Public Interest Obligations,* 23 FCC Rcd at 1281 ¶ 17; 47 C.F.R. § 73.3526(e)(11)(i).

[91] *See Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd 10682, 10691 ¶ 15 (2008).

they watch.[92] Without knowledge of the degree of editorial independence exercised in each news report, viewers cannot assess the quality and reliability of the news conveyed.

Finally, the Commission should implement its rules requiring a standardized programming report from broadcasters (Form 355) so that the Commission will have ongoing access to information about how the sharing agreements are operating in practice. The Commission adopted the standardized, comprehensive quarterly report form in early 2008, but the form has never been implemented.[93] The form would require, among other things, information on the number of hours of "local news programming produced by [an] entity other than the station";[94] whether any local news programming is rebroadcast;[95] and whether the licensee is a party to any LMA, JSA, or "similar agreement."[96] In addition to finally implementing Form 355, the Commission should clarify that "similar agreement" includes local news service agreements and shared services agreements. The Commission should also clarify that any news reports produced with the assistance of an LNS count as "news programming produced by [an] entity other than the station" and must be disclosed on the form. This requirement would provide the Commission and the public with data needed to study the effect of LNSs on the quality and diversity of local news content. From these studies, the Commission can assess what, if any, additional rules are required to ensure that the ownership rules accomplish their intended purpose of protecting local competition and diversity.

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[92] *Cf. id.* at 10682 ¶ 1.
[93] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 23 FCC Rcd 1274, 1281 ¶ 17 (2008).
[94] *Id.* at 1305.
[95] *Id.*
[96] *Id.* at 1309.

IV. CONCLUSION

These comments document the increasing use of SSAs and LNSs by television stations within the same market. These arrangements are contrary to the public interest because they reduce the amount, diversity, and quality of local news reporting available to the public. In the case of SSAs, they also provide a means for local television stations to circumvent the Commission's local television ownership rules. Thus, CWA and MCH urge the Commission to enforce its existing rules more vigorously, to act on pending petitions raising issues concerning SSAs, and to revise its rules for attributing LMAs and JSAs. We also urge the FCC to adopt rules requiring public disclosure of LNS agreements as well as on-air identification of programming obtained through an LNS.

Respectfully Submitted,

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Dated: May 7, 2010

Local New Service: An LNS is an arrangement to share news gathering resources between television broadcasters in the same market and share the footage among the participating broadcasters.

Joint Sales Agreements: A JSA is an agreement that allows one television broadcaster (Broker) to sell the advertising time for another broadcaster's television station (Brokered Station). 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.

Shared Service Agreements: An SSA gives one broadcaster (Provider) the contractual right to produce programming and operate a station for another broadcaster (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 as few as two employees.

News Joint Ventures

Please note that this data is from our own internal research and is not an exhaustive list.

DMA Rank	City	Service Type	Call Letters	Station Affiliate	Station Ownership	Joint Sales	Joint News	Shared Building	Other Services
1	New York, NY	Local News Service	WNYW/WWOR	Fox	Fox News Corp*		YES		YES
			WNBC	NBC	NBC Universal		YES		YES
			WPIX	CW	Tribune*		YES		
			WCBS	CBS	CBS Network		YES		
2	Los Angeles, CA	Local News Service	KTTV	Fox	Fox News Corp		YES		
			KHWY/KVEA	Telemundo	NBC Universal**		YES	YES	YES
			KNBC	NBC	NBC Universal**		YES	YES	YES
			KTLA	CW	Tribune		YES		
3	Chicago, IL	Local News Service	WMAQ	NBC	NBC Universal		YES	YES	YES
			WSNS	Telemundo	NBC Universal		YES	YES	YES
			WFLD	Fox	Fox News Corp		YES		YES
			WBBM	CBS	CBS Network		YES		
			WGN		Tribune*		YES		
4	Philadelphia, PA	Local News Service	WTXF	Fox	Fox News Corp		YES		
			WCAU	NBC	NBC Universal		YES		

LEGEND

Colour	Meaning	Symbol	Meaning
(blue)	Local News Service	*	Owns local newspaper
(yellow)	Shared Service Agreement	**	Expired Temporary Waiver
(red)	Shared Service Agreement & Joint Sales Agreement		
(green)	Shared Service Agreement & Local News Service		
(orange)	Joint Service Agreement & Local News Service		

DMA Rank	City	Service Type	Call Letters	Station Affiliate	Station Ownership	Joint Sales	Joint News	Shared Building	Other Services
5	Dallas-Ft. Worth, TX	Local News Service	KDFW	Fox	Fox News Corp		YES		
			KXAS	NBC	NBC Universal		YES		
			KDAF		Tribune		YES		
7	Boston, MA	Local News Service	WFXT	Fox	Fox News Corp		YES		
			WBZ	CBS	CBS Network		YES		
8	Atlanta, GA	Local News Service	WAGA	Fox	Fox		YES		
			WXIA	NBC	Gannett		YES	YES	YES
			WATL	MyNetworkTV	Gannett		YES	YES	YES
9	Washington, DC	Local News Service	WTTG	Fox	Fox News Corp		YES		
			WRC	NBC	NBC Universal		YES		
			WUSA	CBS	Gannett		YES		
11	Detroit, MI	Local News Service	WJBK	Fox	Fox News Corp		YES		
			WXYZ	ABC	Scripps		YES		
12	Phoenix, AZ	Local News Service	KSAZ	Fox	Fox News Corp		YES		
			KNXV	ABC	Scripps		YES		
			KPHO	CBS	Meredith		YES		
13	Tampa, FL	Local News Service	WTVT	FOX	Fox News Corp		YES		
			WFTS	ABC	Scripps		YES		
			WTSP	CBS	Gannett		YES		
17	Cleveland, OH	Local News Service	WOIO	CBS	Raycom		YES		
			WKYC	NBC	Gannett		YES		
18	Denver, CO	Shared Service Agreement	KDVR	CW	Tribune		YES	YES	
			KWGN	Fox	Local TV		YES	YES	

LEGEND

(blue)	Local News Service	*	Owns local newspaper
(yellow)	Shared Service Agreement	**	Expired Temporary Waiver
(red)	Shared Service Agreement & Joint Sales Agreement		
(green)	Shared Service Agreement & Local News Service		
(orange)	Joint Service Agreement & Local News Service		

DMA Rank	City	Service Type	Call Letters	Station Affiliate	Station Ownership	Joint Sales	Joint News	Shared Building	Other Services
21	St. Louis, MO	Shared Service Agreement	KPLR	CW	Tribune		YES	YES	YES
			KTVI	FOX	Local TV		YES	YES	YES
26	Baltimore, MD	Shared Service Agreement	WNUV	CW	Cunnigham		YES	YES	YES
			WBFF	Fox	Sinclair		YES	YES	YES
29	Nashville, TN	Shared Service Agreement	WZTV	Fox	Sinclair		YES	YES	YES
			WUXP	MyNetworkTV	Sinclair		YES	YES	YES
			WNAB	CW	Tennessee Broadcasting Group		YES	YES	YES
32	Columbus, OH	Shared Service Agreement & Local News Service	WCMH	NBC	Media General		YES		
			WSYX	ABC	Sinclair		YES	YES	YES
			WTTE	Fox	Cunnignham		YES	YES	YES
36	Greenville, SC	Shared Service Agreement	WLOS	ABC	Sinclair		YES	YES	YES
			WMYA	MyNetworkTV	Cunningham		YES	YES	YES
37	San Antonio, TX	Local News Service	KENS	CBS	Belo		YES		
			KSAT	ABC	Post-Newsweek		YES		
			KABB	Fox	Sinclair		YES		
49	Austin, TX	Local News Service	KTBC	Fox	FOX News Corp		YES		
			KVUE	ABC	Belo		YES		
			KXAN	NBC	LIN		YES	YES	YES
			KEYE	CBS	Four Points Media		YES		
			KNVA	CW/MyNetworkTV	LIN		YES	YES	YES
58	Richmond, VA	Shared Service Agreement	WWBT	NBC	Raycom		YES	YES	YES
			WUPV	CW	Southeastern Media Holdings		YES	YES	YES

LEGEND

(blue)	Local News Service	*	Owns local newspaper
(yellow)	Shared Service Agreement	**	Expired Temporary Waiver
(red)	Shared Service Agreement & Joint Sales Agreement		
(green)	Shared Service Agreement & Local News Service		
(orange)	Joint Service Agreement & Local News Service		

DMA Rank	City	Service Type	Call Letters	Station Affiliate	Station Ownership	Joint Sales	Joint News	Shared Building	Other Services
64	Dayton, OH	Shared Service Agreement	WRGT	Fox	Cunningham		YES	YES	YES
			WKEK	ABC	Sinclair		YES	YES	YES
65	Charleston, WV	Shared Service Agreement	WCHS	ABC	Sinclair		YES	YES	YES
			WVAH	Fox	Cunningham		YES	YES	YES
69	Wichita, KS	Shared Service Agreement	KSAS-TV	Fox	Newport Television		YES	YES	YES
			KMTW	MyNetworkTV	Mercury Broadcasting		YES	YES	YES
71	Des Moines, IA	Local News Service	KDSM	Fox	Sinclair		YES		
			WHO-TV	NBC	Local TV/Oakhill		YES		
72	Honolulu, HI	Shared Service Agreement	KHNL	NBC	Raycom		YES	YES	YES
			KGMB	CBS	MCG Capital		YES	YES	YES
			KFVE	MyNetworkTv	Raycom		YES	YES	YES
74	Springfield, MO	Shared Service Agreement & Joint Sales Agreement	KSPR	ABC	Perkin Media	YES	YES	YES	YES
			KYTV	NBC	Schurz Communications	YES	YES	YES	YES
			K15CZ (LP)	CW	Schurz Communications	YES	YES	YES	YES
78	Cape Girardeau, MO	Shared Service Agreement	KBSI	Fox	Sinclair		YES	YES	YES
			WDKA	MyNetworkTV	Paul Lucci		YES	YES	YES
81	Syracuse, NY	Shared Service Agreement & Joint Sales Agreement	WTVH	CBS	Granite	YES	YES	YES	YES
			WSTM	NBC	Barrington	YES	YES	YES	YES
			WSTQ (LP)	CW	Barrington	YES	YES	YES	YES
88	Cedar Rapids, IA	Shared Service Agreement	KGAN	CBS	Sinclair		YES	YES	YES
			KFXA	Fox	Second Generation Iowa LTD		YES	YES	YES

LEGEND

Color	Meaning	Symbol	Meaning
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DMA Rank	City	Service Type	Call Letters	Station Affiliate	Station Ownership	Joint Sales	Joint News	Shared Building	Other Services
99	Charleston, SC	Shared Service Agreement	WTAT	Fox	Cunningham		YES	YES	YES
			WMMP	MyNetworkTV	Sinclair		YES	YES	YES
100	Ft. Smith, AR	Shared Service Agreement	KFTA-TV	Fox	Mission Broadcasting		YES	YES	YES
			KNWA-TV	NBC	Nexstar Broadcsting		YES	YES	YES
105	Lincoln, NE	Shared Service Agreement	KFXL-TV	Fox	Omaha World-Herald	YES			YES
			KHGI-TV	ABC	Pappas Telecasting	YES			YES
109	Youngstown, OH	Shared Service Agreement	WKBN	CBS	New Vision		YES	YES	YES
			WFXX	FOX	New Vision		YES	YES	YES
			WYTV	ABC/ MyNetworkTV	Parkin Broadcasting		YES	YES	YES
115	Augusta, GA	Joint Service Agreement & Local News Service	WJBF	ABC	Media General	YES	YES		YES
			WAGT	NBC	Schurz Communications	YES	YES		YES
116	Peoria and Bloomington, IL	Shared Service Agreement & Joint Sales Agreement	WWEK	NBC	Granite	YES	YES	YES	YES
			WHOI	ABC	Barrington	YES	YES	YES	YES
			WAOE (UHF)	MyNetworkTV	Venture Technologies	YES	YES	YES	YES
		Local News Service	WYZZ	Fox	Sinclair		YES		
			WMBD	CBS	Nexstar		YES		
124	Monterrey-Salinas, CA	Shared Service Agreement	KION-TV	CBS	Cowles Publishing		YES		YES
			KCBA	Fox	Seal Rock Broadcasters		YES		YES
128	Columbus, GA	Shared Service Agreement	WTVM	ABC	Raycom		YES	YES	YES
			WXTX	Fox	Holdings		YES	YES	YES

LEGEND

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Red	Shared Service Agreement & Joint Sales Agreement		
Green	Shared Service Agreement & Local News Service		
Orange	Joint Service Agreement & Local News Service		

DMA Rank	City	Service Type	Call Letters	Station Affiliate	Station Ownership	Joint Sales	Joint News	Shared Building	Other Services
129	Corpus Christi, TX	Shared Service Agreement & Joint Sales Agreement	KZTV	CBS	Eagle Creek	YES	YES	YES	YES
			KRIS	NBC	Cordilera Communications	YES	YES	YES	YES
134	Wilmington, NC	Shared Service Agreement	WECT	NBC	Raycom		YES	YES	YES
			WSFX	FOX	Southeastern Media Holdings		YES	YES	YES
139	Duluth, MN-Superior, WI	Shared Service Agreement	KDLH	CBS/The CW	Malara Broadcast Group		YES	YES	YES
			KBJR-TV	NBC	Granite Broadcasting		YES	YES	YES
152	Terra Haute,IN	Joint Service Agreement & Local News Service	WTWO	NBC	Nexstar	YES	YES		YES
			WFXW	FOX	Mission	YES	YES		YES

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