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

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Communications Act of 1996	))))))	MB Docket No. 09-182
	)	
Promoting Diversity of Ownership In the Broadcasting Services	))	MB Docket No. 07-294

<u>REPLY COMMENTS OF MISSION BROADCASTING, INC.</u>

Mission Broadcasting, Inc. ("Mission") hereby submits these reply comments in response to the Public Notice released on December 3, 2012 in the above-captioned proceeding.[1] The Public Notice seeks comment on commercial broadcast station ownership data contained in a report released by the Commission on November 14, 2012 (the "Ownership Report").[2] The Ownership Report and opening comments show that female and minority ownership of commercial broadcast stations is disproportionately low, a fact that has been "well established in [the FCC's] media ownership docket."[3] The Public Notice states that the data contained in the Ownership Report "are part of the record and have been considered in [its] current quadrennial

[1] *See Commission Seeks Comment on Broadcast Ownership Report*, Public Notice, DA 12-1946 (MB, rel. Dec. 3, 2012) ("Public Notice").

[2] *See 2010 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*, MB Docket No. 09-182, Report on Ownership of Commercial Broadcast Stations, DA 12-1667 (MB rel. Nov. 14, 2012) ("Ownership Report").

[3] Public Notice at ¶ 2.

review."[4]

Mission is one of the largest female-owned broadcast television companies in the nation, and is thus uniquely situated to comment on the Ownership Report and its relationship to the pending quadrennial review proceeding. In particular, the trade press has reported that the draft order circulating in the proceeding proposes, among other things, to effectively tighten the FCC's local television ownership rule by treating television joint sales agreements ("JSAs") as attributable ownership interests. Furthermore, in its comments, the Office of Communication of United Church of Christ, Inc. ("UCC") expressed concerns that cooperative agreements are used by broadcasters to circumvent the Commission's local television ownership rule and may reduce opportunities for women and minority market entrants by allowing struggling stations to avoid exiting.[5] There is, however, no actual evidence of abuse,[6] and any suggestion that JSA attribution might improve the already low levels of female and minority broadcast television station ownership is misplaced.

As discussed below, Mission is party to a number of JSAs and other cooperative agreements which are integral to its ability to deliver a superior level of public service to the communities that its stations serve. Mission's own experience demonstrates that JSAs, along with shared services agreements, local news agreements and other collaborative arrangements, can enhance, rather than hinder, female and minority ownership of television broadcast stations. Accordingly, Mission urges the Commission to continue, consistent with a long line of precedent, to treat JSAs and other types of cooperative agreements as non-attributable interests.

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[4] *Id.*

[5] *See* Comments of Office of Communication of United Church of Christ, Inc., *et al.* ("UCC Comments") at 16.

[6] *See, e.g.*, Reply Comments of Mission Broadcasting, Inc. (filed Apr. 17, 2012).

A break from that precedent would adversely affect the ability of female-owned broadcasters like Mission to serve the public interest, and would thwart the ability of women and minorities to enter the broadcast market and to remain viable once there.

I. <u>MISSION'S OWNERSHIP AND OPERATIONS</u>

As the owner of nineteen full- and low-power television stations and four digital multicast channels reaching nearly 3 million households in eight different states, Mission is among the largest female-owned broadcast television companies in the country. Its majority shareholder, Nancie J. Smith, brings more than fifteen years of broadcasting experience to Mission. In addition to being the largest shareholder in the company, Ms. Smith serves as Chairman of the Board and Secretary. Ms. Smith has been actively involved in the company since its founding.

Mission's stations serve medium and small markets ranging from WYOU(TV) in Wilkes Barre-Scranton, Pennsylvania (the nation's 54th Designated Market Area ("DMA")), to KSAN-TV in San Angelo, Texas (the nation's 197th DMA).[7] Fifteen of Mission's stations are affiliated with a top-four television network.[8] For each of its stations, Mission has entered into contractual agreements with Nexstar Broadcasting, Inc. ("Nexstar") that take the form of shared services agreements and JSAs. Under these agreements, Mission and Nexstar stations share certain facilities and functions (such as "back office" services, traffic, master control, and engineering) as well as local news operations. Nexstar's sales staff also undertakes the sale of advertising time on the Mission station, with Nexstar remitting 70% of the station's net advertising revenue

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[7] Mission also owns stations in Little Rock-Pine Bluff, AR (#56), Springfield, MO (#75), Evansville, IN (#104), Amarillo, TX (#130), Rockford, IL (#134), Monroe, LA (#137), Wichita Falls, TX (#142), Lubbock, TX (#143), Erie, PA (#146), Joplin, MO (#149), Terre Haute, IN (#154), Abilene-Sweetwater, TX (#164), Billings, MT (#168), and Utica, NY (#172).

[8] Mission's stations are affiliated with NBC (3 stations), FOX (5 stations), ABC (5 stations), and CBS (2 stations). In addition, 2 stations are affiliated with MyNetworkTV, 1 with the CW, and 1 station is independent.

to Mission as consideration.

II. ATTRIBUTION OF TELEVISION JSAS WOULD BE CONTRARY TO THE PUBLIC INTEREST AND DETRIMENTAL TO BROADCASTERS, WHILE HINDERING ALREADY LOW FEMALE AND MINORITY OWNERSHIP LEVELS.

The Commission has "long recognized" that "minorities and women own broadcast stations in disproportionately small numbers."[9] Data compiled in the Ownership Report confirm this and provide further, quantitative evidence of the extent to which female and minority ownership lags behind that of non-minorities and males. According to the Ownership Report, women collectively or individually hold a majority voting interest in just 6.8 percent of the nation's full power commercial television stations.[10] Racial minorities, meanwhile, hold a majority interest in only 2.2 percent of such stations.[11] These data, however, do not provide a basis for attributing television JSAs, and any decision by the Commission to do so would be directly contrary to the public interest.

A. JSAs Serve the Public Interest by Enhancing Television Service.

Interfering with television broadcasters' ability to freely enter into JSA relationships would be detrimental to the public interest. A decision by the Commission to attribute JSAs would adversely impact the ability of successful, female- owned broadcasters like Mission to provide their audiences with quality, local programming and other important services.[12] As

[9] Public Notice at ¶ 2.

[10] Ownership Report at ¶ 5.

[11] *Id.* at ¶ 7. At the same time, NAB points out that the Ownership Report reflects some positive trends in broadcast ownership by women and minorities. For example, the number of women and minorities holding a majority voting interest or a majority of voting shares in broadcast stations has increased since 2009. So too has the number of stations controlled by a single majority shareholder who is a woman or a minority. *See* Comments of the National Association of Broadcasters at 2-6; *see also id.* at Appendix A (summarizing positive trends).

[12] The record in this proceeding also demonstrates that minority-owned broadcasters would be harmed by JSA attribution. *See* Ex Parte Letter from Barry A. Friedman, counsel to Entravision Communications Corporation, to

Mission's experience amply demonstrates, JSAs promote strong, productive ownership. The cost savings, synergies, and operating efficiencies created by Mission's cooperative arrangements allow its stations to serve the public interest in ways that would not be possible otherwise. Indeed, Mission's stations are able to offer more local news, weather, sports, and public affairs programming and be more actively involved in the community as a result of Mission's relationships with Nexstar.

For example, in Rockford, Illinois (DMA #134), Mission's WTVO has expanded local news coverage by 10 hours per week in the last twelve months alone due to its JSA and shared services agreement with Nexstar's WQRF-TV. Without this relationship, due to the expense associated with news operations, it would not be economically feasible for WTVO to produce stand-alone news programming, let alone increase its news coverage. As a result of their cooperative agreements, the stations air news at different times of the day, making it easier for viewers to get local news at the times most convenient to them. The JSA also affords WTVO and WQRF-TV the resources necessary to allow them to take a more active role in their community. In 2012, the stations raised over $140,000 for ARC, a local advocacy group for the mentally challenged, and more than $90,000 in support of a local homeless shelter.

Similarly, sharing agreements between Nexstar's WFXV and Mission's WUTR in Utica, New York (DMA #172) have allowed both stations to begin airing local, unique newscasts in September 2011, something that neither station had been able to do for nearly a decade. Today, the stations broadcast a combined 10 hours of local news per week, with more planned later in 2013. Combining the resources, audience reach, and promotional capacities of two stations has

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Marlene H. Dortch, FCC Secretary (dated Dec. 17, 2012) (explaining how cost savings and operating efficiencies fostered by JSAs allow minority-owned Entravision to provide diverse programming, including Spanish-language programming, to smaller markets).

also allowed WFXV and WUTR to better promote the fundraising efforts of numerous local and national charities. For example, the stations recently helped America's Greatest Heart Run and Walk raise over $1,250,000 and Relay for Life raise $1,000,000.

Meanwhile, in the Monroe, Louisiana-El Dorado, Arkansas market (DMA #137), Mission's KTVE and Nexstar's KARD have entered into cooperative arrangements, including a JSA, that help the stations to provide their viewers with more local newscasts, each with a different format and feel. Since the beginning of their relationship, KARD has added nearly eight hours of local news programming to its schedule while KTVE has added more than five. This represents an increase of 300% and 52%, respectively, for the stations. The sharing agreements also allow the stations to provide more extensive news coverage. For example, in May 2012, two fast breaking news stories with far-reaching public health consequences affected the market – a chemical plant explosion, and an oil field explosion. Satellite trucks and electronic news gathering vehicles purchased by KARD and available to both KARD and KTVE as a result of their cooperative agreements were quickly deployed. Once on the scene, reporters from both stations provided their respective viewers with critical emergency information and on-the-spot coverage.

Further, Mission's relationships with Nexstar quite literally allow its stations to save lives. For example, in Lubbock, Texas (DMA #143), a JSA and shared services agreement allow Mission's KAMC to share a live Doppler radar system with Nexstar's KLBK-TV. That radar proved essential on April 29, 2012, when a dangerous hail storm approached Lubbock. Using the radar's real-time tracking capability to determine storm direction and distance, meteorologists from both stations alerted their viewers to the severe weather and provided other emergency information. At its height, the storm produced hail measuring more than 4 inches in diameter and winds in excess of 80 miles per hour that caused an estimated $30 million worth of damage to the area. The early warnings provided by the stations doubtlessly saved lives. Absent its relationship with Nexstar, however, KAMC would not have been able to afford this radar, nor would it have had access to this radar from Nexstar, and consequently could not provide the same high level of service to its viewers.

Similarly, in Joplin, Missouri (DMA #149), a JSA and shared services agreement between Mission's KODE-TV and Nexstar's KSNF allowed the stations to provide essential, lifesaving information to the community during a devastating EF-5 tornado that struck the city on May 22, 2011. As a result of the relationship, KODE-TV has access to KSNF's Doppler radar, the only in-market radar, which provided the only accurate information on the path of the tornado. Further, although many KODE-TV and KSNF staff members were affected by the storm and physically unable to get to the stations, the agreements allowed the stations to combine resources and simulcast their post-tornado coverage. As a result, viewers of both KODE-TV and KSNF received critical storm-related emergency information, live weather updates, and continuous storm coverage during the tornado and in its aftermath.

As these examples and the record already before the Commission in this proceeding demonstrate, cooperative arrangements like JSAs promote, rather than undermine, the Commission's public interest objectives.

B. JSAs Foster Minority and Female Ownership by Facilitating Market Entry and Encouraging Long-Term Sustainability.

Parties advocating for tightened ownership restrictions as a means to promote female and minority ownership appear to assume that frequencies and facilities vacated as a result of such changes would be snatched up by under-represented groups.[13] There is no basis in the record to

[13] *See* UCC Comments at 16.

support such an assumption. To the contrary, cooperative agreements such as JSAs *foster* female and minority ownership by making it easier and more cost efficient for women and minorities to enter and remain sustainable competitors in the broadcast industry.

Becoming a broadcaster is an expensive undertaking that requires a substantial outlay of capital. As numerous commenters in this proceeding have noted, financing is difficult to obtain in today's economic environment, particularly for individuals or entities attempting to set-up shop in smaller markets.[14] By partnering with another same-market station, however, start-up and operating costs are reduced, therefore making the business of broadcasting less costly and allowing more people (including women and minorities) to enter the ownership ranks.

Tightening already restrictive ownership rules would have the opposite effect, making it harder for new entrants, including minorities and women, to become broadcasters. Indeed, attributing JSAs could not only force some broadcasters – including some owned by women and minorities – to exit the business, but would also deprive those looking to enter of a creative and effective solution to the lack of access to, and significant cost of, capital, which are persistent barriers to entry. A decision to attribute JSAs would also weaken local stations, with local news operations especially likely to be affected. Such devalued properties would then be unattractive to the investment community, rendering them less attractive targets for acquisition by female- and minority-owned companies that already face substantial barriers regarding access to capital.

Cooperative arrangements like JSAs also promote long-term station stability. The vast majority of a broadcaster's revenue is derived from the sale of advertising time on its station. As

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[14] *See* Comments of Diversity and Competition Supporters at 5 ("lack of access to capital" is one of "several barriers that prevent minority and women entrepreneurs from entering the broadcasting industry…"); *see also* Comments of National Association of Media Brokers at 2 ("[I]t is clear that the biggest impediment to minority ownership in broadcasting is … the lack of financing to make an acquisition."). Even Free Press, which favors tightened ownership restrictions, acknowledges the lack of capital available to women and minorities. *See* Comments of Free Press at 21 (females and minorities face "discrimination in access to deals, capital and equity…").

revenue from advertising increases, so too does the broadcaster's ability to serve the public interest by providing quality programming and other services to its audience. Advertising revenue is, however, notoriously susceptible to bumps in the economy as a whole and can swing wildly from year-to-year. This is particularly true in medium and small markets where the advertising base is smaller to begin with. In a particularly bad year, declines in advertising revenue can be so severe as to force broadcasters out of business. Cooperative agreements are one way to promote stability. By entering into cooperative arrangements, broadcasters are able to leverage operating synergies and cost efficiencies to weather an economic downturn while continuing to provide quality programming to their audiences.

JSAs may also promote stability in the period preceding and during the planned spectrum auctions. Some commenters expressed concern that the auctions will result in further declines in female and minority ownership because "the lowest performing broadcasters . . . are more likely to be stations owned by women and people of color" and those broadcasters are more likely to participate in order to exit the market.[15] At the same time, UCC contends that cooperative agreements allow struggling stations to avoid exiting the market, thereby reducing opportunities for women and minority entrants.[16] These arguments are logically inconsistent as applied to broadcasters that are party to JSAs and other cooperative agreements. In reality, female- and minority-owned broadcasters able to leverage the cost savings and operating efficiencies afforded by these arrangements are *more likely* to be financially viable and *less likely* to exit, whether as a result of the auction or otherwise. Simply put, JSAs and other collaborative arrangements provide broadcasters a viable option for staying in business and continuing to

[15] *See* UCC Comments at 16-19; *see also* Comments of Media Alliance at 2.

[16] *See* UCC Comments at 16.

provide their communities with valuable programming and other services. As a result, a decision to attribute these relationships would harm the public interest in general and diversity of ownership in particular.

III. CONCLUSION

The Ownership Report and opening comments demonstrate that female and minority broadcast ownership is low, but do not provide any basis for concluding that attribution of JSAs would improve such ownership. To the contrary, Mission's own experience shows that JSAs provide an effective means for female and minority broadcasters to enter the industry, and to become and remain strong competitors that offer high-quality programming and service to the public. For these reasons, Mission urges the Commission to keep JSAs and other cooperative arrangements non-attributable ownership interests.

RESPECTFULLY SUBMITTED,

MISSION BROADCASTING, INC.

/s/

Nancie J. Smith
Secretary/Chairman of the Board

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