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March 20, 2014

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: MB Docket Nos. 04-256, 07-294, 09-182, and 10-71

Dear Ms. Dortch:

The Coalition of Smaller Market Television Stations ("Coalition") was formed in 2006 to highlight the challenges in smaller markets and the need for duopoly relief in order to ensure that smaller markets are able to receive the localism benefits of larger markets. The Coalition is currently comprised of six broadcast groups that collectively own approximately 90 full-power television stations in markets below the top 50.[1]

Unfortunately, in the approximately eight years (*i.e.*, two quadrennial review cycles) since the Coalition's founding, despite the increase in multiplatform competition and an ever more difficult operating environment for stations in smaller markets, no relief has been forthcoming from the Commission. Indeed, the latest news is that rather than provide smaller market relief, the Commission intends to further burden smaller market broadcasters and tilt the playing field to large national players.

For this reason, today, the Coalition submits this letter to express its concern about Chairman Wheeler's proposals to attribute television stations that receive services under joint sales agreements ("JSAs") for purposes of the FCC's broadcast ownership limits and to bar stations in operating agreements from sharing retransmission consent negotiations.[2] The

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[1] The Coalition's members are: Bonten Media Group, Inc.; LIN Television Corporation; Morgan Murphy Media; Quincy Newspapers, Inc.; Raycom Media, Inc.; and Schurz Communications, Inc.

[2] Tom Wheeler, *Protecting Television Consumers By Protecting Competition* (March 6, 2014), http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition ("Wheeler Blog Post"). Chairman Wheeler also appears poised to closely scrutinize shared services agreements ("SSAs") and proposes that SSAs should be disclosed. *Id.*; *see also* Phil Verveer, (continued…)

Coalition is disappointed that the Chairman plans to proceed with these proposals notwithstanding the substantial evidence in the record that JSAs and other sharing agreements such as SSAs enhance competition, localism, and diversity in smaller markets and that the efficiencies brought about by these agreements, including shared sales and more efficient retransmission consent negotiations, support and enhance local services that would otherwise go unprovided (including by the pay-TV providers that have advocated for new regulatory burdens on their broadcast competitors). The factually unsupported arguments on the other side from pay-TV providers and from the public interest groups are based, respectively, on the desire to enhance pay-TV profits and to advance an agenda that ignores market realities (or that favors certain industries, such as wireless and cable, over others).[3] The reality is that the public interest would best be served by relaxing the local ownership rules. Yet the Chairman now proposes to tighten them — causing massive market disruption and the inevitable loss of service to the public. That loss of service flies in the face of the Commission's mandate to expand service to all and to encourage diversity in programming and ownership.

Just as in 2006, in approximately 150 markets outside of the larger markets, the eight-voices and top-four tests[4] cannot be met, and yet the need for greater efficiencies to serve the public interest is more acute. Duopolies generate efficiencies that allow limited resources to be spent on local news and other local programming. For example, Schurz's co-ownership of CBS and CW affiliates in Wichita, Kansas has permitted Schurz to add 24.5 hours per week of local news and other local programming, a locally focused website, state-of-the-art weather forecasts, and HD infrastructure to a formerly failing station. The CW affiliate is one of only a few in the country that airs a late afternoon newscast.[5] LIN's joint ownership of CBS and CW affiliates in Buffalo, New York has allowed the CW station to launch "Winging It! Buffalo Style," a weekday one-hour morning show made possible by the CW station's ability to share the CBS station's news and production resources.[6]

How the Sidecar Business Model Works (March 6, 2014), http://www.fcc.gov/blog/how-sidecar-business-model-works. The Coalition would oppose attribution of SSAs.

[3] Fred Campbell, *Congress Shouldn't Carry Water for Pay-TV* (February 4, 2014, 8:00 AM), http://thehill.com/blogs/congress-blog/technology/197300-congress-shouldnt-carry-water-for-pay-tv.

[4] Section 73.3555(b)(1) provides that a duopoly is permitted if (1) at the time of the application, at least one of the stations is not ranked in the top four stations in the market and (2) at least eight independent full-power television voices would remain in the market post-merger.

[5] Reply Comments of the Coalition of Smaller Market Television Stations, MB Docket Nos. 07-294 and 09-182 at 5 (April 17, 2012).

[6] *Id.* at 6-7.

At minimum, the Commission should not make its rules even more restrictive by attributing JSAs, SSAs, or other sharing agreements, particularly for stations in smaller markets. The elimination of JSAs and SSAs in smaller markets would be counterproductive to the goals of the ownership rules — competition, localism, and diversity of voices in the local media — and would harm the public interest. These agreements have enabled stations in smaller markets to expand and preserve local news and other services in a historically challenging and increasingly competitive economic market. In addition, sharing agreements serve the interests of competition by enhancing content offerings for viewers and improving advertising options for advertisers.

As smaller market station owners, the Coalition's members have significant experience with JSAs and SSAs as both service-providing and service-receiving stations. They — like many other broadcasters — have cited in the record numerous examples in their markets where JSAs/SSAs have generated efficiencies that allow limited resources to be spent on local news and other local programming. For example, in 2009, KWCH, a station owned by Coalition member Schurz, entered into JSA/SSA agreements with Entravision Communications Corporation ("Entravision") station KDCU, which has permitted KDCU to serve a growing Latino population in Kansas. At the time, Entravision had a construction permit for a new station in Derby, Kansas. Through these sharing agreements, KWCH provided Entravision with access to a tower and an existing digital transmitter, thereby allowing KDCU to launch its operations ahead of schedule. KWCH's local advertising sales efforts on behalf of KDCU developed a local market for Spanish-language advertising and has produced more than 300 Spanish-language spots for broadcasting on KDCU. Moreover, KWCH produces a weekday, one-hour Spanish-language local news program in HD as part of the services it provides to KDCU. Through the newsgathering resources provided by KWCH, KDCU broadcasts weather, emergency, and community activity closing "crawls" in Spanish. KDCU is the only station in Kansas providing news and other crucial information to viewers in Spanish.[7]

In the small Eureka, California market, the JSA/SSA relationship between Bonten (owner of an ABC-affiliated station) and Esteem[8] (owner of the Fox-affiliated station) have made it possible for two stations to broadcast local news. Because of the small size of the market, the stations had not previously been able to provide any local news. In fact, only a single station in the Eureka market had been providing any local news. The economies of scale created by the JSA/SSA will enable both of the stations to launch local news broadcasts: a 6 p.m. newscast on

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[7] Schurz Communications, Inc., Entravision Communications Corporation, and National Association of Broadcasters *Ex Parte* Letter, MB Docket Nos. 04-256, 09-182, and 10-71 at 2-3 (February 26, 2014) ("Schurz, Entravision, and NAB *Ex Parte*").

[8] Esteem Broadcasting LLC, Esteem Broadcasting of North Carolina LLC, Esteem License Holdings, Inc., Esteem Broadcasting of Tennessee, Inc., and Esteem Broadcasting of California LLC, are collectively referred to herein as "Esteem."

Bonten's station and a non-repeat 10 p.m. newscast on Esteem's station. The creation of these new local news operations is underway, and the parties intend to have these newscasts on the air by July of this year.[9] Bonten has cited numerous other ways in which its JSA/SSA relationships with Esteem in several other smaller markets have enabled the parties to expand and maintain local news offerings and to make substantial investments in other services and operations (*e.g.*, upgrading the stations to high definition).[10]

Raycom Media has used the efficiencies of sharing agreements to support its award-winning news operations, to the benefit of local communities. Raycom's stations in markets below the top 50, and stations receiving news programming from Raycom, collectively broadcast over 1,200 hours of news every week. In Wausau, Wisconsin, Quincy's entry into an SSA helped to launch a local news operation that had not existed previously because the station could not afford the expenses of providing local news until the SSA was implemented.[11]

Another Coalition member, LIN, has demonstrated how sharing agreements directly support investments in local programming. For example, WBDT in Dayton, Ohio receives joint sales services from WDTN, a local news leader that LIN has owned and operated for many years. LIN also owns WKBN in Youngstown, Ohio, which is a party to a JSA with WYTV. In 2013, approximately 25% of WBDT's and WYTV's net revenue was reinvested in local programming.[12] The record in the dockets is replete with similar examples from other broadcasters underscoring the important role that sharing agreements play in bringing local, competitive programming to viewers.[13]

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[9] Bonten Media Group, Inc. *Ex Parte* Letter, MB Docket Nos. 07-294, 09-182, and 10-71 at 2 (February 19, 2014) ("Bonten *Ex Parte*").

[10] *Id.* at 2-3.

[11] Coalition of Smaller Market Television Stations Notice of *Ex Parte* Presentations, MB Docket Nos. 09-182 and 10-71 at 3 (December 21, 2011).

[12] LIN Television Corporation Notice of *Ex Parte* Communication, MB Docket Nos. 07-294, 09-182, and 10-71 at 2 (March 12, 2014).

[13] *See, e.g.*, Kansas and Missouri Associations of Broadcasters *Ex Parte* Letter, MB Docket Nos. 04-256, 07-294, 09-182, and 13-249, GN Docket No. 12-268, BO Docket No. 12-30 at 3 (February 27, 2014) ("Kansas and Missouri *Ex Parte*") (providing the example of a sharing arrangement that allowed a previously dark station in Joplin, Missouri to "resume operations to serve the local community"); Mission Broadcasting, Inc. and Nexstar Broadcasting, Inc. *Ex Parte* Letter, MB Docket Nos. 09-182, 04-256, and 10-71 at 2 (February 26, 2014) (explaining that the JSA/SSA arrangement between Mission and Nexstar have "created economies of scale and cost savings which have enabled Mission's stations to air an additional 170 hours per week
(continued…)

Moreover, members of the public that Commissioner Wheeler seeks to protect recognize the value of sharing agreements. Local community organizations and advertising clients have written letters to Coalition stations attesting to the news and public service benefits that these stations have provided, and the increased efficiency that JSA relationships have facilitated for advertisers seeking to deliver their messages. A handful of examples are attached. For example, the owner of a car dealership writes:

> As a[n] advertiser in the Youngstown market, I have purchased time from both WKBN and WYTV through your shared sales force. I've found your shared sales force to be honest, reasonable, and time-saving. Instead of having multiple account executives pitching me, I'm able to get exactly what I want from both WKBN and WYTV by contacting a single sales person. In addition, the citizens of Youngstown have benefited from this relationship with more and better local sports, separate local news personalities, and new online options that may no[t] otherwise be available in our market size. I hope that the FCC doesn't take away this great service.[14]

Sharing agreements have contributed to diversity because they have helped minority owners enter the broadcast ownership business at a time when minority ownership is declining. African-American television station owners have spoken to how JSAs and/or SSAs have been vital in allowing them to enter the market and to serve their communities.[15] For example, Armstrong Williams, the owner of two stations (WEYI and WWMB), has stated that "shared services agreements allowed him to obtain access to capital that would have otherwise been unavailable to him."[16] Commissioner Clyburn has recognized that access to capital is one of the "barriers to entry" for diverse ownership and voices.[17] Once they are in place, sharing

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of locally produced news" and that "[a] number of the Mission stations would not broadcast news absent the JSA/SSA relationships").

[14] Copies of these letters are reproduced at Attachment A hereto.

[15] The Office of Commissioner Pai investigated "whether there is a link between joint sales agreements and ownership diversity" and found that they "disproportionately benefit female and African-American broadcasters." *Office of FCC Commissioner Ajit Pai Releases Results of Broadcast Ownership Diversity Research* (March 20, 2014), http://www.fcc.gov/document/comm-pai-releases-results-broadcast-ownership-diversity-research.

[16] Howard Stirk Holdings, LLC *Ex Parte* Letter, MB Docket No. 07-294 and 09-182 at 1 (March 7, 2014) ("*HSH Ex Parte*").

[17] Mignon Clyburn, *Commissioner Clyburn Remarks Before The Media Institute* (February 25, 2014), http://www.fcc.gov/document/commissioner-clyburn-remarks-media-institute; *see also* Juan Williams, *The Feds Target a Black TV Station Owner*, The Wall Street Journal (March 9, 2014, 6:31 PM), http://online.wsj.com/news/articles/
(continued…)

arrangements help minority-owned stations better serve their communities and remain competitive by allowing them to invest limited resources in programming and infrastructure.[18] The efficiencies permitted by WLOO's[19] JSA and the revenues it produces has allowed WLOO to broadcast in HD, produce its own educational content, and provide a hands-on learning experience for Tougaloo College mass communications students.[20] After meeting with Mr. Parker, WLOO's General Manager and Chief Creative Officer, Commissioner Pai observed that "Tougaloo and Mr. Parker are independent innovators whose JSA gives them the breathing space to create something where nothing would exist otherwise. . . . JSAs like this one facilitate new entry into the broadcast industry, enhance ownership diversity, and allow stations to serve the local community better."[21]

The Department of Justice's filing supporting attribution for JSAs[22] ignores the highly competitive local advertising market today, in which television stations compete not just against other television stations and radio stations, but also against websites such as Google, Groupon, Yahoo!, and Microsoft, as well as cable and newspapers.[23] Furthermore, it urges the use of a sledgehammer that even the Department has not used — prohibition in every instance, rather than case-by-case review. Of course, the Department has reviewed and allowed numerous JSAs in particular transactions, notably even after submitting its proposal to the FCC.

SB10001424052702303824204579421732340754044 (noting that "black-owned stations simply lack the economic scale to get adequate advertising rates to pay their bills or even buy the station").

[18] *HSH Ex Parte* at 2 (Mr. Williams has explained that "[i]f JSAs and SSAs were no longer allowed, or ordered to be unwound, [WEYI and WWMB] would not be able to survive the competitive marketplace").

[19] Tougaloo College, a historically African-American college that was founded in 1869, owns WLOO.

[20] WLOO *Ex Parte* Letters, MB Docket Nos. 07-294 and 09-182 at 1 (February 19, 2014 and February 28, 2014).

[21] Ajit Pai, *Statement of Commissioner Ajit Pai on Meeting with WLOO TV* (March 5, 2014), http://www.fcc.gov/document/commissioner-pai-statement-wloo-tv-meeting.

[22] *Ex Parte* Submission of the United States Department of Justice, MB Docket Nos. 04-256, 07-294, and 09-182 (February 20, 2014).

[23] *See* Bonten *Ex Parte* at 4; Schurz, Entravision, and NAB *Ex Parte* at 5 (stating that the Justice Department's conclusion "was apparently lifted intact from a 1997 filing and does not reflect changes in the television marketplace in the last 17 years"); *see also* Nexstar Broadcasting, Inc. *Ex Parte* Letter, MB Docket Nos. 04-256, 07-284, 09-182, and 10-71 at 10-11 (March 10, 2014) (noting the "plethora of other competing platforms").

Attribution of JSAs would require stations that participate in JSAs to undertake the cost of a stand-alone sales operation to secure a share of this local advertising business, which is particularly challenging in smaller markets.[24] Employing and training a sales staff with personal knowledge of the market that can engage in substantial, personal outreach (*e.g.*, knocking on doors) to meet with prospective advertisers and make sales requires substantial resources that would have to be drawn away from service to the public.[25] Supporting a separate sales staff would siphon off resources that a station could invest directly in programming and infrastructure, and it would hinder a station's ability to compete for advertising because it would have a less desirable platform on which to air those ads. Mr. Parker at WLOO has observed that several major advertisers in WLOO's market will now advertise only on HD stations. WLOO's JSA has permitted the station to invest its limited resources into upgrading to HD capability and this upgrade has been a vital step in maintaining competitiveness in the local advertising market.[26]

Attribution of JSAs (or other sharing arrangements) would not change the large investment it takes to create local news, nor would it expand the pool of local advertising dollars necessary to finance local journalism. As Commissioner O'Rielly has stated, the JSA proposal "could significantly impair the ability of broadcasters with diverse voices to offer local programming, such as news, to meet consumer needs."[27] It is contrary to market realities to assume that attribution will cause more stations to launch independent news operations. If such operations were not viable in the first place for one or both of the stations in the JSA and/or SSA relationship, then attribution can only result in fewer stations providing local news and less resources that can be used to expand the quality and quantity of other program services.

Moreover, the FCC should not change its attribution policies without holistically looking at the media ownership rules and assessing the need for updates to those rules, consistent with its statutory mandate. The Communications Act requires the FCC to review its ownership rules every four years and determine whether any of those rules are necessary in the public interest as the result of competition.[28] Congress further mandates that the Commission repeal or modify any regulation it determines to no longer be in the public interest. As Allbritton

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[24] *See, e.g.*, Kansas and Missouri *Ex Parte* at 3 (explaining that "there is a finite amount of TV advertising revenue available in any television market, and that much advertising inventory goes unsold because there is simply no one to buy it in smaller markets [and] [t]hus, joint operations are necessary to allow stations to recognize economies").

[25] Bonten *Ex Parte* at 4.

[26] WLOO *Ex Parte* Letter, MB Docket Nos. 07-294 and 09-182 at 2 (February 28, 2014).

[27] Michael O'Rielly, *Statement of Commissioner Michael O'Rielly on Media Ownership* (March 10, 2014), http://www.fcc.gov/document/commissioner-oriellys-statement-media-ownership.

[28] Section 202(h) of the Telecommunications Act of 1996.

Communications has observed, "[n]otwithstanding enormous growth in video competition in the two decades since the local ownership rules were first enacted, broadcast ownership remains strictly limited."[29] The FCC should not make changes to one aspect of the rules in a vacuum. If the FCC changes course and treats JSA arrangements as duopolies, it should assess whether the duopoly rule itself ought to be updated to reflect new technologies and changing market realities.[30] Doing so would be consistent with the Commission's established precedents, where changes in attribution have almost always occurred at the same time as changes in the ownership rules.[31] As noted above, the Coalition has long advocated for duopoly relief for smaller market television stations.

In the event the Commission pursues a piecemeal approach to the ownership rules and makes JSAs and/or SSAs attributable, notwithstanding the public interest harms of doing so, then it should do so on a prospective basis only. The FCC should grandfather agreements that are in effect as of the date on which an order becomes effective, and it should ensure that the stations can be transferred to new owners, in order to sustain the benefits that these agreements provide to local communities. Applying the new attribution rules on a prospective basis only would honor the reasonable expectations of the parties who entered into them over many years in reliance on FCC precedent and, in many cases, direct FCC review and approval of such agreements. Furthermore, unwinding these relationships would harm diversity, localism, and competition because the likely result of unwinding existing sharing arrangements would be that the smaller station will have no local news, and the larger station will, due to the loss of efficiencies, reduce its own local news staff and program offerings.

Finally, the FCC should not change the retransmission consent rules to prohibit stations in operating agreements with another station to participate together in retransmission consent negotiation. The revenues received from the grant of retransmission consent are critical to the economic viability of smaller television stations around the country and support the production

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[29] Allbritton Communications *Ex Parte* Letter, MB Docket Nos. 04-256, 07-294, and 09-182 at 1 (February 27, 2014).

[30] A holistic approach is consistent with the March 6, 2014 discussion draft of the Reauthorization of the Satellite Television Extension and Localism Act, which would prevent the FCC from attributing JSAs, SSAs, or other sharing arrangements until it completes its statutory duty to review all of its media ownership rules. *See* Discussion Draft of Reauthorization of the Satellite Television Extension and Localism Act, 113th Congress, § 4, (available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/BILLS-113hr-PIH-STELA-Reauthorization.pdf).

[31] *In Re Revision of Radio Rules & Policies*, 7 FCC Rcd 2755, 2788-89, ¶¶ 64-67 (1992); *In the Matter of Review of the Comm'n's Regulations Governing Attribution of Broad. & Cable/MDS Interests*, 14 FCC Rcd 12559, 12597 ¶ 83 (1999).

of local news in addition to the acquisition of network programming so that it is available to all members of the community, regardless of whether or not they have the resources to subscribe to cable or satellite services. Commissioner Wheeler seeks to "return retransmission consent to one-on-one negotiations,"[32] but any imbalance in these negotiations already favors pay-TV operators. Negotiating these agreements is an expensive process for local broadcasters who must expend significant resources to hire outside counsel to negotiate with operators such as Comcast, Time Warner Cable, DirecTV, and DISH, who have in-house teams of full-time, experienced retransmission consent negotiators to handle these negotiations. Each of these entities has a market capitalization that is exponentially bigger than even the biggest of Coalition members. Cable and satellite operators have significant leverage in retransmission negotiations and do not need the protection of government intervention. In order to reach fair agreements with operators with tremendous resources and leverage, it is sensible and in the public interest for stations, particularly in smaller markets, to conserve their limited resources in these negotiations, and invest the savings in programming, infrastructure, and operations. Moreover, although cable and satellite operators claim to be victimized by joint negotiations, in the Coalition members' experience, where the service-providing station has the authority to negotiate on behalf of the service-receiving station, the operators rarely even request separate negotiations. And in some cases, the MVPDs request that a station negotiate one agreement for both stations.[33] Further, the oft-repeated claim that joint retransmission negotiations have harmed consumers by leading to higher retransmission rates has been shown to rest on a bogus calculation.[34] The claim that the retransmission consent process needs fixing in this way is unfounded.

The Commission should neither change its attribution policies to make JSAs or SSAs attributable nor prohibit stations in the same market that are not commonly owned from negotiating retransmission consent together. Chairman Wheeler has said that he is taking these actions to foster the FCC's goals, but their impact would be — as demonstrated definitively in the docket — the opposite. The public interest would not be served by making the ownership and attribution rules more stringent, but by recalibrating the rules to reflect current market conditions, particularly by providing relief for smaller market stations.

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[32] Wheeler Blog Post.

[33] *See, e.g.*, Schurz, Entravision, and NAB *Ex Parte* at 6.

[34] *Id.*

Respectfully submitted,

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Attachments

cc: Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Maria Kirby
Adonis Hoffman
Clint Odom
Matthew Berry
Courtney Reinhard
Erin McGrath