

National Organization for Women Foundation



March 24, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket No. 09-182, MB Docket No. 07-294, MB Docket No. 04-256,
BO Docket No. 12-30

Dear Chairman Wheeler:

On behalf of the National Organization for Women (NOW) Foundation, I am writing to express the Foundation's strong support for publicly attributing Joint Sales Agreements (JSAs) and to urge the Commission to undertake other actions to limit such joint agreements in the future. In our comments filed in the 2010 Quadrennial Review, we welcomed the FCC's decision to seek comment on whether to attribute certain sharing arrangements between television stations in the same market. Such agreements, which are known under various names such as JSAs, Local Marketing Agreements (LMAs), and Shared Services Agreements (SSAs), are being used by many broadcasters to evade the local television ownership limits. As a result, stations that might have otherwise been sold to new entrants, including women and people of color, are operated by another station, thereby undermining the Commission's goals of competition, localism, and diversity.

Not only do we support the current proposal to attribute JSAs, but we urge the Commission to attribute sharing agreements that meet specific criteria, such as when one station produces substantially all local news programming for another station or stations share management personnel.¹ At the very least, the Commission should require that all sharing arrangements be reported to the Commission and be made available in the stations' online public inspection files.

The Presidents of Mission Broadcasting and Nexstar Broadcasting recently stressed to the Commission that "JSA/SSAs are an ideal means for fostering diversity in the television broadcast industry," and that "Mission, as the largest female-controlled television company in the nation, is a clear example of this."² We disagree. Contrary to their claims, the JSA/SSAs

¹ See *Comments of Office of Communication of United Church of Christ, Inc., et al.*, MB Docket 09-182 (Mar. 5, 2012) at 16-17.

² See *Ex Parte* Letter from Gregory L. Mason, MB Docket 09-182 (Feb. 26, 2014), at 3.

between Mission and Nexstar neither enhance the diversity of having a female owner nor promote entry by a woman into an ownership position. First, in the 17 markets in which Mission owns television stations, Nexstar also owns a station and manages all of Mission's stations through JSA/SSA arrangements.³ These arrangements enable Nexstar stations to produce local news for Mission stations in the same market.⁴ We fail to see how continuing to allow Nexstar to provide local news for and manage multiple stations in the same market furthers the Commission's diversity goals.

Furthermore, the JSA/SSAs did not create opportunities for female ownership in the true sense of supporting new entrants. For instance, Nancie Smith, currently Mission's 51% stockholder, did not acquire her controlling shares through any JSA/SSA arrangement. Rather, it was her husband who founded Mission and entered into sharing arrangements with Nexstar in 1998.⁵ Ms. Smith inherited control only after her husband's death in 2011.⁶

Thus, we believe that the goal of increasing viewpoint and ownership diversity is best served by closing the loopholes that station owners have used to get around existing ownership limits. If it can be shown that a specific arrangement is necessary for women to own and operate a station, we trust that the FCC would consider granting a waiver. Overall, however, NOW Foundation urges the Commission to chart a course to greatly restrict the use of JSAs and SSAs in the broadcast industry.

These joint Local Marketing and Shared Services agreements are being used to overcome FCC ownership rules in nearly half of all U.S. media markets. These arrangements have resulted in an unprecedented concentration of ownership in recent years: last year alone, nearly 300 stations were sold for \$11 billion in the largest total number of transactions since 1999. Nearly a third of those agreements (83) would have violated the Commission's ownership rules, according to one close examination.⁷

A promise from the Commission to require attribution for certain joint agreements is essential, but is not sufficient, in the long run, to promote localism, diversity, and competition. Already these agreements have resulted in elimination of local newscasts and far fewer employment opportunities for women and for persons of color. At the same time, an escalation in the sales price of broadcast stations has severely limited competition and reduced the ability of minority- and women-owned enterprises to purchase and operate broadcast stations.

NOW Foundation for many years has worked to assure that women and communities of color have fair access to the airwaves. It is crucial that the Federal Communications

³ See *id.* at 2; Kate Knable, *Nexstar, Mission Separate Companies in Eyes of FCC Despite Appearances* (Feb. 4, 2013), available at <http://www.arkansasbusiness.com/article/90586/nexstar-mission-separate-companies-in-eyes-of-fcc-despite-appearances> (describing the companies' stations in Little Rock, AK specifically and their sharing arrangements across all markets broadly).

⁴ See *Ex Parte Submission of Mission Broadcasting, Inc.*, MB Docket 09-182 (Mar. 21, 2014), at 4; *Nexstar Broadcasting Group Inc. Reports Operating Results (10-Q)* (Nov. 12, 2009), available at <http://www.gurufocus.com/news/75701/nexstar-broadcasting-group-inc-reports-operating-results-10q> (explaining that Nexstar-owned KNWA provides local news to Mission-owned KFTA through a JSA/SSA).

⁵ Andrew Gauthier, *David Smith, President and CEO of Mission Broadcasting, Dies of Massive Heart Attack* (Mar. 30, 2011), available at http://www.mediabistro.com/tvspy/president-and-ceo-of-mission-broadcasting-dies_b8301.

⁶ *Id.*

⁷ S. Derick Turner, *Cease to Resist: How the FCC's Failure to Enforce Its Rules Created a New Wave of Media Consolidation* (2014).

Commission take immediate steps to reverse this course of media concentration and to do its utmost to assure a return to promoting diversity, localism and competition. We are pleased to see that the Commission is not proposing rule changes that would permit further media consolidation. NOW Foundation urges the Commission to gather the data needed to analyze the effectiveness of its rules in promoting diversity.

With best regards,

A handwritten signature in black ink, appearing to read "Terry O'Neill", with a stylized flourish at the end.

Terry O'Neill
President