

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

2014 Quadrennial Regulatory Review –)	
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules)	MB Docket No. 14-50
Adopted Pursuant to Section 202 of)	
the Telecommunications Act of 1996)	
)	
2010 Quadrennial Regulatory Review –)	
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules)	MB Docket No. 09-182
Adopted Pursuant to Section 202 of)	
the Telecommunications Act of 1996)	
)	
Promoting Diversification of Ownership)	MB Docket No. 07-294
In the Broadcasting Services)	
)	
Rules and Policies Concerning)	
Attribution of Joint Sales Agreements)	MB Docket No. 04-256
In Local Television Markets)	

COMMENTS OF COX MEDIA GROUP

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SUMMARY

While Cox Media Group (“CMG”) continues to advocate full repeal of the now nearly 40-year old newspaper/broadcast cross-ownership rule (“NBCO Rule”), it also commends the Commission on its proposals to eliminate some of the most outdated and ineffective portions of the rule in its 2014 Quadrennial Review.

The changes in the media landscape have been seismic since the NBCO rule was adopted nearly 40 years ago, with the extraordinary explosion of the Internet and the growth of other non-traditional media sources. Indeed, the level of competition and diversity in local media markets – including in markets with cross-owned properties – is unprecedented. All of these developments have created significant challenges for traditional media outlets, some of which have been unable to survive.

If the FCC truly intends to promote the continued diversity of competitiveness of local markets, it should acknowledge that the NBCO Rule is no longer needed and is in fact impinging on the ability of traditional media to compete. The rising cost of local news production also justifies permitting local media companies to recognize the efficiencies of content production that would be brought about by new cross-ownership combinations. CMG and its viewers, listeners, and readers have enjoyed these efficiencies for years in CMG’s Dayton and Atlanta markets (where it holds cross-ownership interests that were grandfathered in 1975). Media consumers in Dayton and Atlanta have benefited from CMG’s efficient converged operations in the form of faster, deeper, and better news and information coverage. Consumers in other markets should be able to benefit from the service improvements offered by cross-owned properties. But that can only happen if the FCC eliminates or further liberalizes the NBCO Rule.

In the absence of full repeal of the NBCO Rule, CMG fully supports the FCC’s proposal to eliminate the radio/newspaper cross-ownership ban. Elimination of the ban is long overdue, and CMG agrees with the FCC’s initial conclusion that there is no evidence before the agency that would support extension of that rule. Likewise, CMG supports the FCC’s proposal to replace the current contour-overlap standard for identifying impermissible television/newspaper combinations with a DMA-based standard that uses station contours only when necessary to identify same-DMA combinations that are so remote from one another that they do not serve the same audiences. Both of these changes will further the FCC’s core ownership policy of promoting localism without producing any negative effects on diversity or competition.

If the FCC elects to retain the NBCO Rule, CMG renews its alternate proposal that the FCC adopt a presumptive waiver standard that provides a clear and concise standard to broadcasters contemplating an alliance with a local newspaper. CMG’s proposed two-pronged test would more than adequately protect the FCC’s diversity policies while promoting localism. First, the waiver standard would protect diversity by requiring that at least 20 independently-owned major media voices would remain in the market following the transaction. Second, the standard would protect localism by requiring a waiver applicant to show that at least four independently-owned media companies (including the applicant) provide local news service to the community. A universally applicable waiver standard like the one CMG proposes would give media businesses the certainty they need to plan local media combinations while protecting local media consumers from the potential dangers of over-consolidation.

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COMMENTS OF COX MEDIA GROUP

Cox Media Group (“CMG”), by its attorneys, hereby submits these comments in the above-captioned proceeding.¹

I. INTRODUCTION

CMG has long supported reform of the FCC’s media ownership rules through the Congressionally-mandated periodic review process.² In recent years, CMG has focused its

¹ See 2014 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, *et al.*, *Further Notice of Proposed Rulemaking and Report and Order*, 29 FCC Rcd 4371 (2014); *Order*, MB Docket No. 14-50, *et al.*, DA 14-926 (rel. June 27, 2014) (“*2014 Quadrennial NPRM*”).

² See Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 119 Stat. 56, 111-12 (1996) (“1996 Act”); Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Section 202(h) of the 1996 Act). *See also, e.g.*, Comments of Cox

advocacy on repeal or reform of the now nearly 40-year old newspaper/broadcast cross-ownership rule (the “NBCO Rule”). CMG continues to support full repeal of the NBCO Rule, which has found little support in the record of previous periodic reviews, and which seems to survive today by force of political and regulatory habit rather than as a result of sound, fact-driven policy analysis.

In the absence of full repeal, however, CMG supports the reforms to the NBCO Rule proposed by the FCC in this proceeding, including elimination of the radio component of the NBCO Rule and moving from a contour-based to a modified DMA-based standard for application of the NBCO Rule to television. Both of these changes are sensible first steps to modernizing the NBCO Rule for the Twenty-First Century.

First, CMG supports elimination of the radio/newspaper cross-ownership prohibition. As the FCC itself has recognized, the radio/newspaper cross-ownership ban has found no support in the record of periodic reviews stretching back a decade. Pursuant to Section 202(h) of the 1996 Act, the radio/newspaper cross-ownership ban must be eliminated because its retention is unjustifiable.

Second, CMG supports the proposal to move to a DMA-based standard for triggering application of the NBCO Rule to television stations because DMAs are simply a better measure of audience reach and economic market overlap than station contours. Viewers and advertisers are much more likely to rely on a station’s DMA location to determine the station’s audience reach than they are to examine its over-the-air service contour for that purpose. CMG also supports the FCC’s proposal to incorporate a station’s signal contour into the analysis of

Media Group, MB Docket No. 09-182 (filed Mar. 5, 2012) (“CMG 2012 Comments”); Reply Comments of Cox Enterprises, Inc., 09-182 (filed July 26, 2009); Comments of Cox Enterprises, Inc., MB Docket No. 06-121 (filed Oct. 23, 2006); Comments of Cox Enterprises, Inc., MB Docket No. 02-277 (filed Jan. 2, 2003).

applicability of the NBCO Rule in special cases where a station and a newspaper are located within the same DMA but are so far apart that they actually serve different audiences.

In addition, if the FCC decides to retain the NBCO Rule, CMG urges the FCC to take a closer look at the FCC's proposed case-by-case waiver policy for the Rule. The FCC now has more than a decade of evidence demonstrating that newspapers and broadcast properties in markets of all sizes need relief from the effects of the NBCO Rule. In keeping with this record, CMG requests that the Commission seriously consider CMG's proposal for a standardized waiver policy focusing on the promotion of newsgathering and the number of major media voices in the market following the combination. Such a clearly articulated waiver standard would give newspapers and television stations the certainty they need to plan business combinations that preserve and enhance localism while creating stronger platforms for diverse voices to reach their audiences.

II. CMG STRONGLY SUPPORTS ELIMINATION OF THE BAN ON RADIO/NEWSPAPER CROSS-OWNERSHIP

As CMG pointed out in the 2010 Quadrennial Review, the radio/newspaper cross-ownership prohibition has long been a rule in search of a policy rationale.³ Despite the vastly different audience size and market influence between TV and radio stations – not to mention the declining fortunes of newspapers – the 1975 ban on newspaper cross-ownership continues to apply equally to both radio and television stations. It appears that in previous periodic reviews, the radio/newspaper ban has simply gotten lost in the much larger battles over TV/newspaper cross-ownership, without specific consideration of whether the radio/newspaper component of the NBCO Rule continues to make any sense. In fact, it doesn't. CMG therefore commends the FCC for its decision to single out the radio/newspaper rule for separate consideration in the 2014

³ See CMG 2012 Comments at 20-21.

Quadrennial Review, and CMG strongly supports the FCC's tentative conclusion to repeal this aspect of the NBCO Rule.

The Commission last sought comment on whether to abolish the radio/newspaper cross-ownership ban in its 2010 Quadrennial Review.⁴ As the Commission concluded in its *2014 Quadrennial Order*, the record in response to this request yielded no record evidence in support of retaining the radio/newspaper rule.⁵ Instead, the *2014 Quadrennial Order* recites several paragraphs of evidence demonstrating that the radio/newspaper rule is unnecessary to promote localism or competition (repeating findings first made in 2002) and listing numerous reasons why the radio/newspaper rule likely is unnecessary to foster viewpoint diversity.⁶

This affirmative evidence supporting the radio/newspaper rule's repeal and the absence of evidence supporting retention should lead inexorably to the conclusion that the rule must be eliminated under Section 202(h) of the 1996 Act. Yet, the *2014 Quadrennial Order* gives the radio/newspaper rule a temporary reprieve to give proponents of the rule an opportunity to show that elimination of the rule might harm viewpoint diversity.⁷ This approach is unsound from both a legal and policy standpoint. Section 202(h) was designed to eliminate rules for which a case can no longer be made – not to preserve rules for which someone, someday might make a case. Moreover, CMG and others already have demonstrated that prohibiting radio/newspaper

⁴ 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, *Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17529-30, ¶ 112 (2011) (“*2010 NPRM*”).

⁵ *2014 Quadrennial NPRM*, 29 FCC Rcd at 4454 para. 191.

⁶ *Id.* at 4435-38 (para. 144-148) (citing *2006 Quadrennial Review Order*, 23 FCC Rcd at 2032, 2038, paras. 39 n.131, 46; *2002 Biennial Review Order*, 18 FCC Rcd at 13748-60, 13760-61, paras. 331-54, 356-58).

⁷ *2014 Quadrennial NPRM*, at 4437-38 paras. 148-49.

combinations is bad for consumers and the media ecosystem generally.⁸ The rule artificially constrains diversity of radio ownership by excluding an entire class of buyers with the skill and resources to increase the quality and quantity of local radio news.⁹ And the rule likely inflicts further damage on local newspapers that have struggled for much of the last decade.¹⁰ The 1975 ban on radio/newspaper cross-ownership was instituted in the hope of realizing only a small gain in diversity.¹¹ Today there is no evidence that the rule has increased diversity at all, but yet it stands in the way of radio/newspaper combinations that could strengthen both media properties and significantly improve local news production in local markets.

The Commission's request for further comment on the impact of eliminating the radio/newspaper rule on ownership diversity provides no justification for retaining the ban.¹² As the FCC noted, parties have commented on the need for the NBCO Rule to further ownership diversity, but none have provided evidence that the radio/newspaper component of the rule actually accomplishes – or even furthers in any way – that laudable goal.¹³ In addition, the FCC noted that even if the rule did foster ownership diversity there is no evidence that the radio/newspaper prohibition actually furthers viewpoint diversity due to the relatively minor role that radio stations play in local newsgathering activities.¹⁴ In other words, the FCC is interested

⁸ *See id.* at 4435-36 paras. 145-46 (citing CMG 2012 Comments at 21-22; Comments of Bonneville International Corp. and the Scranton Times, L.P., MB Docket No. 09-182 (filed Mar. 5, 2012)).

⁹ *See id.* at 4432-33 para. 139 (citing CMG 2012 Comments at 12-14).

¹⁰ *See id.* at 4432 para. 139 & n.391 (and evidence cited therein).

¹¹ Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, *Second Report & Order*, 50 FCC 2d 1046, 1076 para. 104, 1078 para. 109 (1975) (“1975 Order”).

¹² *2014 Quadrennial NPRM*, 29 FCC Rcd at 4437-38 paras. 148-49.

¹³ *Id.* at 4454 para. 191.

¹⁴ *See id.*

in the impact of the rule on ownership diversity, but any evidence this inquiry produces is highly unlikely to justify retaining the radio/newspaper prohibition.

Given the lack of evidence in the record of the past several periodic reviews of any continuing need for the radio/newspaper rule and the dim prospects that any such evidence will emerge, Section 202(h) compels the FCC to jettison this aged and obsolete rule.

III. CMG'S LONGSTANDING CROSS-OWNERSHIP COMBINATIONS DEMONSTRATE WHY THE TV/NEWSPAPER CROSS-OWNERSHIP BAN ALSO SHOULD BE ELIMINATED OR SUBSTANTIALLY REFORMED

The 2014 *Quadrennial NPRM* proposes to maintain the ban on television/newspaper combinations with a case-by-case approach to requests for waiver of the rule and a change in the triggering mechanism for the rule from a contour-based to a DMA-based standard.¹⁵ As it did in the 2010 Quadrennial Review, CMG continues to support the change to a DMA-based TV/newspaper rule. Otherwise, however, the FCC's proposal is an unfortunate and unjustified retreat from previous attempts to modernize the television/newspaper cross-ownership prohibition. While the FCC's previous proposals did not go far enough in relaxing the rule, they at least offered a discernable standard for judging whether a proposed cross-ownership waiver might be granted.

CMG submits that all available evidence continues to support repeal or a far greater liberalization of the TV/newspaper rule than the Commission has proposed. CMG therefore urges the FCC to consider repeal and offers an alternative waiver standard to the case-by-case approach proposed by the FCC.

¹⁵ *See id.* at 4438-39 para. 152, 4441-42 para. 159.

A. Movement to a DMA-Based TV/Newspaper Rule Is an Important Modernization of the Television/Newspaper Cross-Ownership Rule

CMG supports the FCC's proposal to adopt a DMA-based approach to determining when the TV/newspaper cross-ownership rule applies.¹⁶ Adoption of this standard will eliminate the anomalous situations where TV stations and newspapers serving separate DMAs are nonetheless prohibited from combining due to contour overlap. CMG agrees with the FCC that using DMAs as the primary tool for identifying which market newspapers and TV stations serve is the most accurate way to account for the audience and economic market of such properties.

CMG has experienced the ineffectiveness of the current contour-based approach at identifying TV/newspaper combinations that serve the same market. CMG's daily newspaper serving the Cincinnati suburbs is pulled into the rule due to the contour coverage of CMG's Dayton television station. The properties primarily serve distinct and separate audiences in different DMAs, but the idiosyncrasies of the contour-based approach nevertheless trigger application of the rule. The FCC's proposed change would solve this and similar problems, resulting in a rule that at least applies only in situations where there is genuine overlap in the communities a TV and the newspaper are serving.

CMG also supports the FCC's proposal to use a station's principal community contour (the "PCC") to further refine the applicability of the TV/newspaper rule.¹⁷ This portion of the rule's triggering mechanism is necessary to ensure that moving to a DMA-basis for the rule does not expand the universe of covered combinations to include newspapers and television stations

¹⁶ See *id.* at 4441-44 para. 159-166. If the FCC adopts its decision to repeal the radio/newspaper rule, then no change for the triggering mechanism for that rule will be necessary. CMG notes, however, that in its 2012 Comments, it argued that if the FCC does not repeal the radio/newspaper ban, it should adopt an Arbitron Metro Market-based standard for identifying prohibited combinations. CMG 2012 Comments at 24-25. CMG continues to support this approach as long as the radio/newspaper rule remains in effect.

¹⁷ See *id.* at 4442-43, paras. 160-164.

located in distant parts of large DMAs and serving different audiences. CMG continues to believe that the optimal solution to this problem would be for the FCC to develop a DTV equivalent to the analog Grade A contour in order to avoid increasing the coverage of the television/newspaper rule.¹⁸ Nonetheless, the FCC's proposal to use the PCC will likely prove adequate to ensure that only TV/newspaper combinations that truly overlap in service areas will be captured by the rule. The FCC should, however, consider establishing a standard under which a presumptive waiver would be available in situations where a station's simulated Grade A digital signal would not overlap with a same-DMA newspaper's community of license.

B. The FCC Should Consider Repealing or Substantially Liberalizing the Television/Newspaper Prohibition

Of course, discussion of the radio/newspaper rule and the contour-based triggering mechanism for TV/newspaper combinations should be academic because CMG continues to believe that the entire NBCO Rule should be repealed or substantially liberalized. CMG understands that the FCC has proposed to retain the rule in substantially its 1975 form for television/newspaper combinations, but CMG suggests that this tentative conclusion ignores the vast changes in local media markets over the last 40 years and the realities of operating television and newspaper properties today.

1. CMG's Experience in Its Atlanta and Dayton Markets Demonstrates that Cross-Ownership Improves Local Service Without Impeding Diversity or Competition

CMG has been operating newspapers for well over 100 years and television stations for nearly 70 years and has owned cross-owned properties in Atlanta and Dayton for much of its history. During that time, and particularly over the last two decades, CMG has watched the diversity of news and entertainment sources explode, as its markets have been flooded with new

¹⁸ See CMG 2012 Comments at 23; see also 2014 Quadrennial NPRM, 29 FCC Rcd at 4442 para.160.

entrants. This wave of diversity and competition has led to a corresponding decline in the public's interest in traditional media. Meanwhile the cost of providing local services, particularly with respect to high-quality news gathering, continues to increase. These opposing forces have created significant challenges for CMG's traditional media outlets, which are trying to continue investing in and improving local service in their hyper-competitive markets.

By combining the resources and core competencies of local newspapers and local broadcast stations in Atlanta and Dayton, CMG has been able to vastly improve service at a time when the economics of the newspaper and broadcast business would seem to dictate the opposite. For example, CMG's Dayton outlets maintain their independence while collaborating on a cross-platform 24/7 breaking news team that allows CMG to more quickly alert the Dayton community to emergency information and breaking news. In Atlanta, the community greatly benefited from the combined reporting resources and platforms of the Atlanta Journal-Constitution (AJC), WSB-TV, and CMG's Atlanta radio stations during the deadly January 2014 winter storm that forced thousands of Atlantans to spend the night on gridlocked highways and stranded students overnight at schools. The result was better, more useful and up-to-the-minute coverage for readers, viewers and listeners, wherever they were located. The collaboration also allowed reporters to cover more ground, including enabling an AJC reporter to spend two nights at the government command center observing and reporting on the traffic situation. From there she was able to supply the latest traffic information to all three properties, including appearing on air for WSB radio. CMG's experiments with convergence in its cross-owned markets is a success story for its business, but even more so it is a success story for Dayton and Atlanta media consumers that reap the benefits of being better informed every day.

2. *The Absence of Evidence that the Newspaper/Broadcast Combinations Harm Diversity in Grandfathered Cross-Owned Markets Demonstrates that the Television/Newspaper Ban Serves No Purpose*

CMG fully detailed its other arguments in favor of repeal of the NBCO Rule in its comments in the FCC's previous periodic reviews, and it will not repeat them at length again here.¹⁹ CMG reiterates, however, that continuation of the NBCO Rule cannot be justified by the FCC's ownership policies of promoting localism, diversity, and competition. The FCC long ago established the NBCO Rule is unnecessary to promote competition;²⁰ the evidence long ago established that the NBCO Rule affirmatively harms localism;²¹ and proponents of the rule long ago failed to establish that the FCC's "hoped-for" improvement in diversity has materialized to any extent.²² The reality is that the only "accomplishment" of the NBCO Rule's nearly 40-year history is prohibiting efficient newsgathering enterprises from forming and improving service in local communities.

If cross-owned properties posed a threat to localism or diversity worthy of the draconian NBCO Rule ban, then surely those threats would have indisputably manifested themselves in

¹⁹ *See supra*, n.2.

²⁰ *See, e.g., 2014 Quadrennial NPRM*, 29 FCC Rcd at 4432 para. 139; 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, *Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17520-21 para. 89 (2011) ("*2010 NPRM*"); 2006 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 23 FCC Rcd 2010, 2032 para. 39 n.131 (2008) ("*2006 Order*"); 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13620, 13748-53 paras. 331-41 (2003) ("*2002 Order*").

²¹ *See 2014 Quadrennial NPRM*, 29 FCC Rcd at 4429-30 para. 134, 4431-32 paras. 137-138 (citing CMG 2012 Comments at 15-17); *see also 2010 NPRM*, 26 FCC Rcd at 17525 para. 98; *2002 Order*, 18 FCC Rcd at 13753-60 paras. 342-54, 13760-61 paras. 356-58; *2006 Order*, 23 FCC Rcd at 2038 para. 46.

²² *1975 Order*, 50 F.C.C. 2d at 1078 para. 109; *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 786 (1978).

communities where cross-owned properties continue to exist and thrive. But despite the focused attention of numerous advocates and economists, no such problems have been shown.

Unsurprisingly, markets with cross-owned properties look about the same as markets without them: all media markets today offer a dizzying array of choices serving every conceivable audience niche. Residents of cities like Dayton and Atlanta who live in communities with grandfathered newspaper/broadcast combinations have *both* increased diversity and enhanced localism.

Elimination of the failed NBCO Rule experiment is long overdue. There is no looming diversity or localism crisis in markets with cross-ownership, and the NBCO Rule isn't protecting either of those values in non-cross-owned markets. The NBCO Rule is simply standing in the way of local media properties that want to offer consumers a better service and a deeper localism. CMG asks the FCC to reconsider its proposal to retain the NBCO Rule and to instead vote for immediate repeal.

C. Absent Repeal, the FCC Should Adopt a Presumptive Waiver Standard Rather Than Rely on Case-By-Case Adjudication

1. The FCC Should Not Adopt Its Proposal for Case-By-Case Adjudication

CMG opposes the FCC's proposal to adopt a pure case-by-case adjudication standard for TV/newspaper combinations.²³ Even if the FCC concludes that the TV/newspaper rule should be retained, the record support for the rule is far too weak to justify a waiver policy that retreats from the presumptive waiver standards the Commission has previously adopted.²⁴ If the FCC retains the NBCO Rule in any form, it should advance its presumptive waiver policy to make the

²³ See 2014 Quadrennial NPRM, 29 FCC Rcd at 4438-41 paras. 151-156.

²⁴ See 2006 Order, 23 FCC Rcd at 2040-46 paras. 53-62.

benefits of enhanced localism available in any market where prospective owners of a newspaper and a television station can show that the FCC's ownership policies are satisfied.

As the FCC recognizes, creating a predictable waiver standard for TV/newspaper combinations is crucial to allowing businesses the certainty necessary to develop effective business plans.²⁵ This is an important point because the purpose of liberalizing the TV/newspaper rule is to allow communities to realize the enhanced localism and improved newsgathering that TV/newspaper combinations will offer. That won't happen if the companies that would form such combinations have no idea how to structure such a relationship consistent with the FCC's expectations and no reasonable expectation that the Commission will grant the necessary waiver.

Planning a joint TV/newspaper operation requires complex business and operational planning. Merely preparing for the integration of newsgathering facilities, personnel, and other resources among newspaper and broadcast properties is, in itself, a difficult and expensive task. The subsequent execution of those plans is then even more time-consuming and expensive. These investments are sensible if a company has a reasonable basis for concluding in advance that its proposed combination satisfies the FCC expectations. Business owners will not, however, undertake these substantial tasks absent some assurances from the FCC regarding what an acceptable cross-ownership arrangement would look like. For these reasons, case-by-case waiver review without presumptive standards for grant, is the equivalent of no waiver standard at all.

As CMG has argued in the past, if the FCC retains its TV/newspaper prohibition, it should use its waiver standard as a model for demonstrating the effectiveness of additional

²⁵ *See id.* at 4438 para. 151.

TV/newspaper combinations at promoting localism and enhanced newsgathering in local markets.²⁶ CMG is confident that the FCC will find – as CMG itself has found in Dayton and Atlanta – that future TV/newspaper combinations provide substantial public interest benefits without damaging diversity or competition. But the FCC will never have a chance to collect additional evidence supporting repeal of the TV/newspaper ban unless it allows at least some operators to further build on the TV/newspaper business model.

To develop this evidence, CMG advocates that the FCC reject its proposal for case-by-case adjudication and return to its previous course of adopting presumptive waiver standards for proposed TV/newspaper combinations. Any presumptions the FCC adopts should be at least as permissive as those adopted in 2008. As described below, however, CMG continues to advocate that the FCC take a more holistic approach to its waiver presumptions so that media consumers in all markets may be given a chance to enjoy the enhanced service that TV/newspaper combinations promise.

2. *CMG's Proposal for a Uniform TV/Newspaper Waiver Standard Applicable to all Markets Remains the Best Way To Account for Changes to the Media Marketplace Absent Repeal*

In the 2010 Quadrennial Review, CMG advocated a presumptive waiver standard that would be applicable to all markets and would give the FCC the opportunity to examine the impact of TV/newspaper combinations in markets of all sizes.²⁷ CMG's proposal would further the FCC's localism goals by taking into account the future local newsgathering potential of proposed TV/newspaper combinations and would protect the FCC's diversity policy by ensuring

²⁶ See CMG 2012 Comments at 27-28.

²⁷ See *id.* at 26.

that sufficient major media voices would remain in the market following the proposed transaction.²⁸

The Commission sought comment on CMG's proposal in the *2014 Quadrennial NPRM*, but cast doubt on the viability of both prongs of CMG's proposed waiver standard.²⁹ The FCC's initial analysis notwithstanding, CMG continues to believe that a presumptive waiver standard that applies the same voice and local newsgathering tests to all markets is a superior alternative to the Commission's proposal of case-by-case adjudication.

a. CMG's Proposed 20-Voice Test Ensures an Abundance of Diversity Will Continue To Exist Following Formation of New TV/Newspaper Combinations

First, CMG proposes that the FCC protect diversity in local markets by ensuring that at least 20 independently owned major media voices remain following formation of a proposed TV/newspaper combination. Under CMG's proposal, major media voices would include full-power TV and radio stations, daily newspapers, cable and satellite TV systems (counting as one voice) and the Internet (counting as one voice). The FCC tentatively concluded that CMG's definition of independent media voices was too broad.³⁰ CMG counters that the FCC's conception of a "major media voice" is too constrained and that its 20-voice test is more than sufficient to protect diversity in local media markets.

In the FCC's analysis, a major media voice must be a media entity that engages in newsgathering activities.³¹ But that conception of a major media voice appears to confuse the FCC's diversity policy with its localism policy. Major media outlets in local markets increase diversity in many ways unrelated to local news production. Religious stations, foreign language

²⁸ See *id.* at 26-29.

²⁹ See *2014 Quadrennial NPRM*, 29 FCC Rcd at 4447 para. 171.

³⁰ See *id.* at 4447 para. 171, 4450-51 paras. 180-81.

³¹ See *id.* at 4451 para. 181.

stations, cable operators, and the Internet have exponentially increased the diversity of content consumers can enjoy. Many of these outlets produce local news and provide local information to the community. CMG's proposed 20-voice test is not specifically intended to ensure that sufficient newsgathering is taking place in local markets (that is a separate prong of the CMG-proposed standard); it is designed to ensure that a proposed TV/newspaper combination does not unduly constrain consumer choice of available news, entertainment, or other content in a given local market.

Moreover, CMG's proposed standard substantially undercounts the voice contribution to diversity made by multi-channel video programmers ("MVPDs") and the Internet. Each of these media options brings massive amounts of choice and a vast array of independent voices to every consumer in every market. Some of those choices are locally-oriented and many are not, but the contribution these outlets make to the diversity of choices provided by independent speakers is undeniable.³² Thus, CMG's 20-voice test is actually a conservative estimation of the diversity in local media markets because it substantially discounts the choices offered by MVPDs and the Internet. CMG believes it is permissible for the FCC to use this conservative method of counting local diversity as a first step to liberalizing the TV/newspaper ban, but it is simply not true that CMG's 20-voice test over-counts local diversity. Quite the contrary, CMG's proposal asks the

³² The importance Americans place on adding broadband to their palette of media choices is typified by the rapid adoption of these services. In 2000, only 3% of Americans were purchasing broadband services and less than 50% had online access at home. *See Home Broadband 2013*, PEW RESEARCH CENTER, August 26, 2013, at 2, available at http://www.pewinternet.org/files/old-media/Files/Reports/2013/PIP_Broadband%202013_082613.pdf. By 2013, nearly 75% of Americans have wired Internet access at home, with 70% purchasing home broadband service. *See id.* Moreover, 56% of Americans have smartphones that offer wireless broadband service, and 46% are purchasing both a home broadband connection and a wireless broadband service. *See id.* at 4. The fact that so many Americans have so quickly adopted these paid services is a testament to the importance they place on ensuring access to the diversity of news, sports, and entertainment content available through broadband.

FCC to engage in precisely the kind of regulatory line-drawing that the agency was designed to perform. And it offers the FCC the opportunity to draw that line in a very conservative place, a place far removed from the point where local diversity actually would be threatened.

b. CMG's Local News-Based Test Will Safeguard Local Markets From Undue Consolidation of Local News Sources

CMG also proposes that the FCC protect localism by requiring that any proposed TV/newspaper combination leave at least three other major media voices that produce and distribute local news and informational programming. The *2014 Quadrennial NPRM* asserts that CMG's proposed standard would be difficult to administer in a content-neutral manner and lacks evidentiary support in the record.³³ CMG contends that its proposed standard is consistent with the FCC's approach to localism and in other contexts, and the standard is strongly supported by the evidence compiled in the FCC's past periodic reviews.

Throughout the *2014 Quadrennial NPRM*, the FCC equates localism with local news gathering and production.³⁴ Given the FCC's focus on local news in discussing localism, it is disconcerting for the FCC to simultaneously claim that local news cannot be quantified in a "content neutral" way.³⁵ CMG presumes that the FCC means that it doesn't want to get embroiled in future arguments about whether particular programming actually constitutes "news." But the FCC can hardly justify making the availability of diverse local news the chief basis for preserving media ownership limits while at the same time refusing to say what "local news" is and refusing to quantify how much "local news" is enough to enhance localism.

CMG's proposal merely seeks to further localism in the TV/newspaper context by defining the point where local newsgathering and production is unduly concentrated such that a

³³ See *2014 Quadrennial NPRM*, 29 FCC Rcd at 4447 para. 171.

³⁴ See, e.g., *id.* at 4430 para. 135, 4432 para. 138, 4435 para. 144, 4465 & n.627.

³⁵ See *id.* at 4447 para. 171.

TV/newspaper combination could harm localism. Here again, CMG is asking the FCC to engage in precisely the type of line-drawing it is uniquely qualified to perform. CMG's proposal would ensure that there are at least four independently-owned major media voices producing local news in every DMA. That would be the equivalent of having three independently-owned local television stations and one independent daily newspaper separately producing local news. That is a level of localism that the FCC should deem sufficient for markets of any size, particularly keeping in mind that when the FCC adopted the TV/newspaper prohibition in 1975, few markets would have enjoyed more than four local news choices among available major media outlets – and many would have enjoyed considerably less.³⁶

CMG recognizes that there would be important details to be worked out regarding whether a major media voice would count as a producer of local news. But the FCC has experience defining these types of boundaries and could reasonably design a standard for determining whether an outlet qualifies as a local news producer, *e.g.*, establishing a minimum number of hours (or pages, or web pages) an outlet would have to produce on a weekly basis to qualify. Establishing these types of boundaries would not implicate the FCC in making content-based determinations about what constitutes local news. It would simply be transforming the abstract localism standard that already pervasively considers local news into a quantifiable target that businesses seeking to improve local service in local communities could seek to meet and exceed.

³⁶ CMG reminds the Commission that in 1975, the FCC considered newspaper/broadcast combinations to be so egregious that they required divestiture only when the combination involved a daily newspaper and the only TV station or radio station in the market. *See 1975 Order*, 50 F.C.C. 2d at 1080-84 paras. 112-117. In other words, the FCC was content in 1975 to permit levels of localism and diversity that were far below the levels that would be protected under CMG's proposed waiver standard.

CMG submits that its 20-voices/4 local news providers standard for judging prospective TV newspaper combinations promises to increase the FCC's flexibility to grant waivers to companies seeking to combine television stations with newspapers to better serve the evolving needs of American news consumers. It also promises to increase media companies' flexibility in envisioning and executing TV/newspaper combinations that accomplish this important goal. CMG strongly urges the FCC to closely consider this proposal and to use it as the basis for a TV/newspaper waiver standard with the potential to approve such combinations in any market where they would improve the local news and media choices available to local citizens.

IV. CONCLUSION

For the reasons stated above, CMG urges the Commission to eliminate the NBCO Rule or, alternatively, adopt the changes to the NBCO Rule described herein.

Respectfully submitted,

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