Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
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	)	MB Docket No. 14-50
	)	MB Docket No. 09-182
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. 07-294
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 04-256
	)	
Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets	)	

To: The Commission

COMMENTS OF NEXSTAR BROADCASTING, INC.

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SUMMARY

The Commission concluded more than a decade ago that the Local TV Ownership Rule does not foster its goals of localism and diversity. Therefore, as the Commission initiates its statutorily required 2014 quadrennial review to determine whether its existing media ownership rules remain necessary in the public interest as a result of competition, the Commission must focus its inquiry not on the question of with whom local broadcasters compete in providing programming, but instead on the question of with whom local broadcasters compete in generating the revenues necessary to support their high quality programming offerings. This inquiry, in today's highly competitive media marketplace, clearly establishes that the existing Local TV Ownership Rule with its top-four/eight voice restrictions does not foster or support the Commission's policy goals of competition.

The Local TV Ownership Rule, which relies on market share and voice tests to purportedly enhance local programming, is merely discrimination without logic – the same competitive conditions apply to every media company from the largest like Comcast/NBCU and Disney to the single market, single station owner. Furthermore, those same competitive conditions impact a smaller competitor that competes in a smaller revenue pool much more significantly.

However, it is local television stations that play a unique and vital role in their local communities through the provision of local news, including school closings and AMBER alerts; through their active support of local community organizations; and through their role as a first alerter and first reporter in emergency conditions affecting their communities. No other media market entity offers consumers and viewers this service. Nonetheless, broadcasters are

competing for the very revenues necessary to continue to serve this role with an over burgeoning number of competitors that seems to grow weekly.

Yet, it is this same competitive media environment that motivates television broadcasters to provide viewers with the best possible programming. Nexstar's stations compete for audience share across the entire panoply of entertainment options available solely on the popularity and quality of their programming because the popularity and quality of its stations' programming has a direct effect on the advertising rates Nexstar can charge its advertisers and the revenues Nexstar can earn therefrom. If Nexstar shirks its programming obligations, its revenues will be negatively affected.

Therefore, the existing Local TV Ownership Rule only serves to deny television-only broadcasters in medium and small markets the ability to compete effectively against large, integrated, multi-platform video companies that do not provide any local content to serve the local viewer. In order for medium and small market broadcasters to provide the most robust and high quality local news and other programming, the Commission must bring its Local TV Ownership Rule into the 21st Century and permit duopoly ownership in all television markets; because as the Commission and the courts concluded more than a decade ago, duopolies "ensure that small-market stations [] realize the efficiency benefits of consolidation" which is necessary because stations "in those small and mid-sized markets are experiencing greater competitive difficulty than stations in large markets." Doing otherwise merely serves to continue handicapping local broadcasters in their ability to provide high quality programming to viewers.

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To: The Commission

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. ("Nexstar")[1] respectfully submits these comments in response to the Commission's Further Notice of Proposed Rulemaking and Report and Order (FCC 14-28, released April 15, 2014) (the "FNPRM") in the above-captioned proceedings.

The Commission is statutorily required to review its broadcast ownership rules every four years to determine whether these rules remain "necessary in the public interest as the result of

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1 Nexstar owns and operates 55 full-power television stations serving 46 predominantly medium and small markets.

competition."[2] The Commission formally initiated its last required quadrennial review in 2010 but, although the 2010 record provided a robust picture of the challenges facing television broadcasters then and now, the Commission did not complete that review.[3] The instant FNPRM initiates the 2014 Quadrennial Review by seeking to build on the unresolved record created in the 2010 Quadrennial Review, and simultaneously proposes rules based on the 2010 Quadrennial Review record.[4] Nexstar's comments herein focus on the Commission's conclusion to retain the existing local television ownership rule (the "Local TV Ownership Rule")[5] without modification, and the reasons that such retention is contrary to the public interest.

I. INTRODUCTION.

As the Commission recognizes, "broadcast television stations continue to play a unique and vital role in local communities that is not meaningfully duplicated by non-broadcast

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2 Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004).

3 *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 (the "20110 Quadrennial Review").

4 Pursuant to the 1996 Act's directive, the Commission is required to assess whether its media ownership rules remain necessary in the public interest based on the marketplace as it exists today. Given the significant and continuing rapid changes to the media environment, many of the Commission's and commenters' previous studies are now outdated and no longer are reliable assessments of the current level of competition in today's media environment. Accordingly, the Commission's proposed rules are based on a stale record and such proposals must be assessed in light of the competitive environment developed in this proceeding.

5 The Local TV Ownership Rule permits one entity to own, operate or control two television stations in the same Designated Market Area ("DMA") if the Grade B contours of the stations do not overlap or, if at the time an application to acquire the second station is submitted, at least one of the stations is not ranked among the top-four stations in the market and at least eight independently owned and operating full-power television stations would remain in the market.47 C.F.R. §73.3555(b). Nexstar notes that the Commission is seeking comment on its proposal to modify the Rule to replace the Grade B contour overlap with the digital NLSC contour. *FNPRM* at p. 13. Nexstar does not object to such modification solely as long as the Commission concurrently adopts its proposal to grandfather existing ownership combinations that would exceed the numerical limits under this revised contour approach.

sources."[6] Local broadcasters do so by providing current and up-to-date information with respect to general news in the local community, school closing notices and AMBER alerts. They also actively support and promote local community organizations and activities. And most importantly, local broadcasters serve as first alerters and reporters of emergency and life-saving information during severe weather and other natural disaster emergencies as well as other critical community events.[7] Finally, local television stations remain the primary place American adults turn to for news.

For local stations to continue to play their unique and vital role in today's media environment, it is critical that the Commission allow television broadcasters to compete effectively and efficiently with all other participants in the media marketplace. However, continued Commission retention of its more than forty-year old outdated local television

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6 *FNPRM* at p 12.

7 Nexstar has detailed some (and only some) of its stations' extensive service to their communities over the past decade in its previous quadrennial review filings. *See e.g., 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. 02-277 et al., Comments of Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC submitted January 2, 2003; *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. 02-277 et al., Reply Comments of Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC submitted February 3, 2003; *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket 04-256, Comments of Nexstar Broadcasting, Inc. submitted October 27, 2004; *2006 Quadrennial Regulatory Review*, MB Docket No. 06-121 et al., Comments of Nexstar Broadcasting, Inc. submitted October 23, 2006; *2006 Quadrennial Regulatory Review*, MB Docket No. 06-121 et al., Reply Comments of Nexstar Broadcasting, Inc. submitted January 16, 2007; *Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Comments of Nexstar Broadcasting, Inc. submitted May 7, 2010; *2010 Quadrennial Regulatory Review*, MB Docket 09-182 (NOI), Comments of Nexstar Broadcasting, Inc. submitted July 12, 2010; *2010 Quadrennial Regulatory Review*, MB Docket 09-182 (NOI), Reply Comments of Nexstar Broadcasting, Inc. submitted July 26, 2010; *2010 Quadrennial Regulatory Review*, MB Docket 09-182 and *Promoting Diversity of Ownership*, MB Docket 07-294, Comments of Nexstar Broadcasting, Inc. submitted March 5, 2012; *2010 Quadrennial Regulatory Review*, MB Docket 09-182 and *Promoting Diversity of Ownership*, MB Docket 07-294, Reply Comments of Nexstar Broadcasting, Inc. submitted April 17, 2012; *2010 Quadrennial Regulatory Review*, MB Docket 09-182, Notice of Ex Parte Communications submitted on January 16, 2013 by Wiley Rein LLP on behalf of Nexstar Broadcasting, Inc. and Mission Broadcasting, Inc.; *2010 Quadrennial Regulatory Review*, MB Docket 09-182, Written Ex Parte Presentation submitted on January 24, 2013 by Nexstar Broadcasting, Inc.; *2010 Quadrennial Regulatory Review*, MB Docket 09-182, Written Ex Parte Presentation submitted on February 20, 2014; *2010 Quadrennial Regulatory Review*, MB Dockets 10-71, 09-182, 07-284, 04-256 Written Ex Parte Presentation submitted on March 10, 2014. Selected excerpts are included in Exhibit A attached hereto; however the filings themselves include extensive additional information on both Nexstar's and its shared service partner's service to their local communities.

ownership rule that restricts local broadcasters from owning more than one television station in nearly all medium and small markets prevents such companies from competing effectively in today's media marketplace against media behemoths like Comcast/NBC Universal (which owns the nation's largest cable distribution system, 10 cable networks, two television networks, 20 television stations, interests in nine regional sports networks, a movie studio, theme parks, a one-third interest in Hulu, and multiple websites);[8] no longer "new" social media platforms such as Facebook (which posted nearly $8 billion in advertising revenues in 2013); Discovery Communications (which owns 14 cable networks and their associated websites); Google (which generated more than $58 billion in revenues in 2013; i.e., nearly as much as the entire U.S. news industry generated in revenues for that year)[9]; and numerous others.

Only with an updated Local TV Ownership Rule that allows television duopoly ownership in all markets, including the medium and small markets facing the most operational challenges, will companies such as Nexstar be able to effectively compete in today's extremely competitive media marketplace. Therefore, Nexstar respectfully urges the Commission to eliminate its anachronistic existing Local TV Ownership Rule and adopt an all-markets duopoly ownership rule that permits television-only broadcasters like Nexstar to compete effectively in today's ever-expanding, technologically advancing media marketplace.

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8 Comcast is poised to get significantly larger upon the closing of its purchase of Time Warner Cable's distribution system and cable programming channels.

9 *State of the Media 2014: The Revenue Picture for American Journalism and How it is Changing*, Jesse Holcomb and Amy Mitchell, Mar. 26, 2014, http://www.journalism.org/2014/03/26/the-revenue-picture-for-american-journalism-and-how-it-is-changing/ (last visited Aug. 6, 2014).

II. THE MEDIA MARKETPLACE TODAY.

When the Local TV Ownership Rule was implemented over forty years ago the media marketplace was vastly different, with most local markets receiving news and entertainment programming from three or four local television stations, a handful of radio stations and newspapers. Neither multichannel video programming distributors ("MVPDs") nor the Internet existed in any material way and the world was still "analog." When the Local TV Ownership Rule was last updated sixteen years ago, cable systems were predominantly 28-50 channel analog systems, DBS had just launched and the Internet was in its infancy. Accordingly, viewers and consumers had significantly fewer choices from which to select video delivered programming content – whether national or local news or entertainment programming.

In the intervening sixteen years there have been dynamic changes in the media marketplace with the growth of digital MVPD delivery systems that provide viewers with multiple hundreds of programming channels, the proliferation of broadband Internet service providing access to millions of informational and entertainment based websites, and other technological advances that have changed the ways in which consumers access entertainment, news, and information programming.[10] Today, consumers can find entertainment programming and news and information from numerous sources (radio, television, MVPD programming channels, the Internet, newspapers, social networking sites, community newsletters and bulletin boards, among others) in a variety of formats (audio, video, RSS, SMS, MMS, mobile) at virtually any time.

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[10] *FNPRM* at p. 2. Nexstar provided extensive information regarding the changes that had occurred or were occurring in the media marketplace in its 2010 Quadrennial Review Comments. *2010 Quadrennial Regulatory Review*, MB Docket 09-182 and *Promoting Diversity of Ownership*, MB Docket 07-294, Comments of Nexstar Broadcasting, Inc. submitted March 5, 2012, at pp. 5-8 ("Nexstar 2010 Comments"). These changes have only continued and accelerated in the last 30 months.

Consumers also have convenience and choice as to when and how they obtain their news and information, with technology advances giving consumers more ways to find information on specific topics and access to more targeted programming, all at the exact time they want it. In addition to the many and varied places consumers may obtain entertainment programming (Hulu, Netflix, Video-on-Demand, network and other programmer websites, iTunes, Amazon Prime and so on), online media entities like the Huffington Post, Buzzfeed, Mashable and Vox have launched news operations and social media has exploded.[11] In fact, today, more people get some or all of their news content online and via mobile devices.[12]

According to the latest Pew Research Journalism Project State of the Media Report, half of Facebook users get news from Facebook even though they did not go there looking for it, and half of those watching online video are watching news videos.[13] However, such news is mixed in with other content and the information these individuals receive may be less robust and more narrowly focused due to these companies' algorithmic feed interest determinations. Moreover, as the Commission has recognized, broadband is neither ubiquitous nor inexpensive; and – contrary to local television which is available without "searching" – the online universe cannot and does not provide information to consumers without the consumer actively making an effort to find and learn the information.

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[11] For example, Twitter reports that its users create approximately 500 million Tweets every day. Twitter, Inc. Form 10-K for the fiscal year ended December 31, 2013, submitted to the Securities and Exchange Commission Mar. 6, 2014, at p. 5. Facebook reports that it had 757 million daily active users on average in December 2013. Facebook, Inc. Form 10-K for the fiscal year ended December 31, 2013, submitted to the Securities and Exchange Commission Jan. 31, 2014, at p. 5 ("Facebook 10-K").

[12] *State of the Media 2014: Overview*, Amy Mitchell, http://www.journalism.org/2014/03/26/state-of-the-news-media-2014-overview/ (last visited Aug. 6, 2014).

[13] *Id.*

In addition, as the Commission and some commenters in prior quadrennial reviews have discussed, MVPDs do not originate local content and national programmers are not likely to respond to local market needs. Further, while there are a plethora of Internet sites that serve as sources for national and international news, "gossip" and entertainment news and programming and an abundance of mobile "apps" that provide the same; the majority of local content available via television or online or through apps originates with local media sources including local broadcast stations. Accordingly, local broadcasters play a significant role in providing important "untailored" news information to the community as a whole.

As the Commission undertakes this current quadrennial review its focus should not be on handicapping broadcasters who have continued to serve their local communities despite all of the challenges in this rapidly changing media marketplace. Rather, the Commission should be focusing on changes to its rules that will allow broadcasters to compete more effectively and efficiently with other media in order to maintain and promote an environment in which local broadcasters are able to continue to provide their core service of informing and alerting their local communities. Accordingly, the Commission should adopt a local television ownership rule that ensures that local broadcasters, especially those in smaller markets, are governed by a rational rule that affords them the opportunity to compete effectively with all of the other media content competitors in today's media marketplace.

III. COMPETITION IN TODAY'S MEDIA MARKETPLACE.

The Commission proposes to retain the Local Ownership Rule to promote competition among broadcast television stations because the Commission has previously determined that consumers do not view non-video entertainment and non-delivered video options as good substitutes for watching television and because it perceives (incorrectly) that broadcasters will not make investments in high quality programming if the market definition is expanded.[14] The Commission, therefore, asserts that the Local TV Ownership Rule must remain unchanged in order to drive broadcasters to offer higher quality programming. With all due respect to the Commission, Nexstar believes the Commission has lost the forest in the trees.

A. The Media Marketplace.

The Commission may or may not be correct that other forms of media – whether MVPD programming channels, video gaming, listening to music, reading, viewing DVDs or attending movies or theater – are not good substitutes for watching local broadcast television.[15] But the Commission is correct that despite the plethora of other news sources, currently none are a good substitute for *local television* as a *local news source* and broadcasters continue to play a unique and vital role in their local communities that is not duplicated by other programming and media sources.

However, the Commission's analysis of whether the Local TV Ownership Rule remains necessary in the public interest for competition reasons should not be driven by the question of whom and what do local television stations compete against in providing local news content, but rather *with whom and what do local television stations compete in earning the revenues that support their unique position as the still primary source of local news and information programming in their communities*. Indeed, the Commission is very wrong in assuming that none of the plethora of entertainment options or the many online information sites compete

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[14] *FNPRM* at pp. 10-11.

[15] *FNPRM* at p. 10. Nexstar is not aware of any study in any quadrennial review record that examines viewer/consumer comparisons with respect to usage of all forms and mediums of entertainment and/or their substitutability. Nor is Nexstar aware of any study from any previous proceeding that effectively establishes whether, as the Commission posits, viewers actually distinguish between local television and MVPD provided "television" programming. Although Nexstar has not itself conducted a study, there is ample evidence that viewers in fact do not consider cable and broadcast programming channels separately and differently; rather all are "television" available for watching.

directly with local television stations for viewer time and attention and, therefore, revenues. For example, Facebook states that its competition includes "traditional and online businesses that provide media for marketers to reach their audiences and/or develop tools and systems for managing and optimizing advertising campaigns,"[16] i.e. local broadcasters among others. Facebook further stated that it generated the substantial majority of its nearly $8 billion in revenue from selling advertising placements to marketers.[17] And Facebook is just one example of the vast number of competitors local broadcasters face in earning the revenues necessary to support their operations.

B. Competition From All Sources Drives Broadcasters to Create High Quality Programming.

As the Commission states in the FNPRM, viewers benefit from competition because they receive higher quality programming. Indeed, Nexstar's stations compete for audience share across the entire panoply of entertainment options available solely on the popularity and quality of their programming. In fact, the popularity and quality of its stations' programming has a direct effect on the advertising rates Nexstar can charge its advertisers and the revenues Nexstar can earn therefrom. That is, popular and high quality programming will drive viewers to Nexstar's stations from every other form of entertainment available which in turn increases its stations ratings and, therefore, its revenues. If Nexstar shirks its programming obligations, its revenues will be negatively affected.

Nexstar and other local broadcasters further have significant incentive to broadcast strong local news and information programming because typically it is this programming which generates higher ratings among attractive demographic profiles and enhances audience loyalty,

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[16] *Facebook 10-K* at p. 9.

[17] *Id.* at p. 34.

which in turn results in higher ratings for programs both preceding and following the news. And high ratings and strong community identity make the stations that Nexstar owns and operates more attractive to local advertisers. All of which serves to increase Nexstar's revenues. This remains true regardless of whether the Commission defines the market as comprised of only local television stations or every medium of entertainment existing today. That is, every television station must put its best programming forward to capture and engage viewers, otherwise the station will not achieve the highest possible revenues from its operations. Nexstar is certain its competitor local broadcast stations recognize this indisputable fact.

Consequently, the question the Commission must focus on and answer in its determination of whether its Local TV Ownership Rule remains necessary in the public interest as a result of competition should not be with whom do local television stations compete in providing local news, but rather with whom do television stations compete to generate the revenues necessary to allow them to then compete with each other in providing the best local news and information programming. The answer is unequivocally that local television stations compete with MVPDs and MVPD interconnects, radio and satellite radio, billboards (digital and traditional), direct mail, newspapers, Google, Yahoo!, every social media platform, the television networks and every other media in existence – both online and offline – for advertising revenues. If a broadcaster does not offer the highest quality programming to its viewers, the station hurts its own revenues. Accordingly, there is no reason for the Commission to retain its antiquated approach to defining the local market for purposes of competition as comprised solely of local television stations. If the Commission truly wants to promote stronger local television stations and localism, the Commission must bring its Local TV Ownership Rule into harmony with the media marketplace of today and allow duopoly ownership in all television markets, large and small. Doing otherwise merely serves to handicap local broadcasters in their ability to provide the highest quality programming to their viewers.

IV. THE CURRENT "TOP FOUR/EIGHT VOICE" RESTRICTIONS ARE NOT NECESSARY IN TODAY'S HYPERCOMPETIVE MEDIA ENVIRONMENT.

The FNPRM contends that the existing Local TV Ownership Rule "top four/eight voice" restrictions remain necessary because the competition engendered from such restrictions provide incentive to television stations to invest in higher quality programming, which in turn strengthens their position in the market allowing them to better compete for advertising and retransmission consent revenues.[18] As discussed above, the current media environment motivates television broadcasters to provide viewers with the best possible programming, and there is no evidence that common ownership of two stations leads to or will lead to the owner investing less in programming for one station verses the other. Indeed, intuitively it is the reverse – common ownership leads to investment in better programming for both stations in order for the owner to achieve the highest revenues from advertising and retransmission consent possible. Therefore, the "top four/eight voice" restrictions are not only unnecessary, they are actively detrimental to ensuring local television broadcasters ability to serve the public interest.

A. Elimination of the Top Four Restriction Will Not Reduce Competition or Decrease Local Programming.

The top four restriction of the existing Local TV Ownership Rule prohibits any television broadcaster from owning two stations in the same market when each is among the top-four ranked stations by market share in the stations' market. This prohibition rests on the Commission's outdated findings (and flawed assumptions) that commonly owned top-four

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[18] *FNPRM* at p. 11.

stations have reduced incentives to improve their programming, that the stations coordinate their programming to minimize competition, and that such combinations create welfare harms.[19]

Market share has no correlation to a station's incentive to compete. Every station owner seeks to maximize revenues in order to maximize profit. In order to maximize its revenues every station must offer the best and highest quality programming to drive consumers to watch the station. This is true regardless of the station's market share. Nexstar cannot fathom any broadcaster saying "well my programming on station X is good enough that it does not matter to my bottom line what is broadcast on station Y." In today's highly competitive marketplace, owners are highly motivated to provide the best possible programming (whether national, syndicated or local) on every outlet in order to attract the widest possible audience in today's noisy multi-media environment so as to generate the most possible revenues.

Further, the Commission's fears of programming coordination leading to less high quality programming are entirely unfounded. A significant portion of a station's programming (whether top-four ranked or otherwise) is provided by its affiliated network and the networks program and counterprogram aggressively against each other in order to obtain the highest network ratings and, therefore, highest revenues from advertisers. For that portion of each station's syndicated programming, a broadcaster will seek to obtain the most highly rated programming that will attract the widest possible audience to the stations, again to attain the highest revenues. The same holds true for local news. As Nexstar can attest based on its experience with producing directly competing newscasts on its stations and stations owned by Mission[20] (i.e., when both stations are affiliated with one of the ABC, CBS or NBC networks and the local news falls in the

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[19] *FNPRM* at p. 20.

[20] Nexstar has shared services agreements with stations owned by Mission Broadcasting, Inc. which include terms for Nexstar's production of local news for broadcast on the Mission stations.

same competing time period), Nexstar does not produce coordinated or identical newscasts for the stations. Indeed, doing so would be counter-productive to its goal of attaining the highest viewership of local news for the stations' collectively in order to maximize the revenues it earns from the sale of advertising time for its news and the commissions it earns for the sale of the Mission station's news.

In addition, to the extent the Commission continues to consider whether common ownership results in more or less local news production, Nexstar notes that station rankings have nothing to do with whether a station produces local news or the amount of news a station produces. Local broadcasters have provided ample evidence in prior proceedings substantiating that common ownership leads to an increase in local news and programming. For example, as detailed in Nexstar's 2010 Quadrennial Review Comments, Nexstar's second stations in the Champaign and Little Rock DMAs have added additional local news and sports programming.[21] These increases were possible only because Nexstar is able to do so economically as a result of its ownership of another station in each market.

Accordingly, it is time for the Commission to acknowledge that a station's in-market ranking has no bearing on how vigorously a station will compete in the media marketplace or on the amount of local news a station will produce and eliminate the top-four restriction.

B. The Eight Television Voice Restriction Actually Harms Competition.

The Commission proposes to retain the eight voice restriction because the Commission alleges it serves to improve local programming and increase local news by inducing

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[21] Nexstar Comments a pp. 23-24. And contrary to the allegations of public interest group submitted in prior quadrennial review proceedings, the vast majority of Nexstar's additional local programming is not repurposed across the co-owned stations. Nexstar actively works to maintain this differentiation because it does not increase revenues by broadcasting the same programming on its co-owned stations.

competition.[22] Contrary to Commission assumption, there is no magic number of "voices" that assures consumers have access to compelling programming and local news.[23] As discussed above, it is not competition from other local broadcast stations that ensures a broadcaster has incentive to compete by providing compelling local programming. In fact, there are fewer than 100 markets that have the requisite eight stations necessary to be deemed "competitive" by the Commission. Nonetheless, Nexstar assures the Commission that in its 42 markets that lack the Commission sanctioned minimum threshold of stations for robust competition between itself and its in-market competitors, Nexstar does in fact seek to offer high quality programming, acquire the most sought after syndicated programming and strive to serve its local markets to the best of its abilities with strong local news and a robust community presence to provide viewers with a connection to the station and drive the station's revenues.

In addition, Nexstar is a publicly traded company focused on maximizing value for its shareholders through increased operating revenues. Therefore, Nexstar further confirms that it will not abandon obtaining the best network and syndicated programming for its stations or reduce its commitment to providing local news if the Commission eliminates the eight voice restriction and permits one owner to own two stations in a market. Nexstar also anticipates that its broadcast station competitors will – regardless of number of stations in their markets – continue to actively compete with Nexstar and the wider media market to obtain the highest viewership (and thereby highest revenues) by seeking to obtain and/or produce the best programming.

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22 *FNPRM* at p. 24.

23 In fact, with the eight voice test in place, more than thirty percent of commercial broadcast stations do not provide local news today. That is, only 952 of the 1387 commercial television stations currently broadcast local. *State of the Media: A Boom in Acquisitions and Content Sharing Shapes Local TV News in 2013*, Deborah Potter and Katerina Eva Masta, Mar. 26, 2014, http://www.journalism.org/2014/03/26/a-boom-in-acquisitions-and-content-sharing-shapes-local-tv-news-in-2013/ (last visited Aug. 6, 2014).

Commission retention of a requirement for a mandatory eight voices in a market before allowing broadcasters to own more than one television station does nothing to improve local programming in the market. Rather, it ignores the reality that smaller markets desperately need to achieve greater efficiencies in order to compete effectively in today's media marketplace. Accordingly, this restriction no longer serves the public interest, actually harms localism, and should be eliminated.

V. THE LOCAL TV OWNERSHIP RULE MUST BE MODIFIED IN ORDER TO SERVE THE COMMISSION'S POLICY GOALS.

A. The Existing Local TV Ownership No Longer Serves the Commission's Policy Goals.

The Commission's long held tenet underlying its broadcast ownership rules is preserving and fostering competition, localism and diversity. However, the existing Local TV Ownership Rule no longer fosters these goals. Indeed, a decade ago the Commission determined that the Local TV Ownership Rule does not foster its goals of localism and diversity.[24] And, as discussed *supra*, the existing Rule is premised on the wrong competitive analysis. That is, the

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[24] *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, ¶¶ 169, 179 (2003) (subsequent history omitted). The Local TV Ownership Rule governs only how many television stations a broadcaster may own in a market and has no correlation to the question of whether and how a broadcaster is serving its community's needs with diverse and locally responsive programming.

Moreover, the existing Local TV Ownership Rule does not, and retention will not, further the Commission's interest in expanding and promoting opportunities for minority ownership of television stations. Indeed, the single biggest factor contributing to lack of minority ownership is lack of access to capital. For example, Nexstar recently entered into a purchase agreement to sell a station to a third party pursuant to which Nexstar initially thought it was selling the station to a minority broadcaster. Subsequently, Nexstar learned that the entity, while led by a minority individual, is 100% controlled by the private equity backer who holds more than fifty percent of the entity's equity interest as well. Further, on June 13, 2014 Gray Television, Inc. announced it had retained the brokerage arm of the Minority Media and Telecommunications Council to facilitate the sale of six television stations to socially disadvantaged enterprises for a purchase price that "merely reimburses Gray for its expenses associated with a particular station sale." Gray Television, Inc. News Release dated June 13, 2014, http://gray.tv/uploads/documents/pressreleases/1939828.pdf (last visited August 5, 2014). To date, and notwithstanding the relatively de minimis purchase price for each station, the Commission's Consolidated Database System does not reflect any submission for consent to the sale of any of these stations to a third party.

Rule focuses only on those with whom local television stations compete in providing local programming wholly ignoring that television stations compete with the entire media and entertainment universe for a viewer's time and attention and, in order to maximize revenue, must provide the most compelling programming to the widest possible audience. This basic competition fact will not change if the Commission modifies its Local TV Ownership Rule to allow duopoly ownership in all markets.

Further, as the Commission notes, there is substantial evidence in the record that existing duopolies have created substantial tangible public interest benefits that more than offset any potential harms that are associated with common ownership.[25] Nexstar questions why this conclusion applies only in the largest of markets. Indeed, it would seem to be axiomatic that the markets with the least amount of revenue available have the largest need to operate efficiently, and that allowing duopolies in smaller markets would create the same tangible public interest benefits achieved in larger markets. Yet, by permitting common ownership of two television stations only in markets with eight or more independently owned stations, the current rule fails entirely to provide relief in the small and medium markets where it is needed the most.

The Local TV Ownership Rule is discrimination without logic – the same competitive conditions apply to every media company from the largest like Comcast/NBCU and Disney to the single market, single station owner. Furthermore, those same competitive conditions impact

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[25] *FNPRM* at p. 18. Nexstar notes that the public interest groups have and continue to decry these public interest benefits, routinely ignoring the empirical data submitted by the actual operators of local television stations detailing the increased news programming made available, the countless lives saved, millions of dollars donated in support of local non-profits, hundreds of elections covered, increased numbers of reporters hired, and millions invested in new equipment in favor of theoretical and flawed studies that support a return to a reality that no longer exists. *See e.g.*, Nexstar's correction to the information provided in a 2011 study conducted by Dr. Danilo Yanich, as set forth in Nexstar's 2010 Quadrennial Review Reply Comments (*2010 Quadrennial Regulatory Review*, MB Docket 09-182 and *Promoting Diversity of Ownership*, MB Docket 07-294, Reply Comments of Nexstar Broadcasting, Inc. submitted April 17, 2012, pp. 18-20); and Nexstar's correction of the factual inaccuracies of several commenters set forth in Nexstar's *2010 Quadrennial Regulatory Review*, MB Dockets 10-71, 09-182, 07-284, 04-256 Written Ex Parte Presentation submitted on March 10, 2014.

a smaller competitor that competes in a smaller revenue pool much more significantly. Indeed, the existing Local TV Ownership Rule serves the sole purpose of denying television-only broadcasters in medium and small markets the ability to compete effectively against large, integrated, multi-platform video companies that do not provide any local content to serve the local viewer. Accordingly, in order for medium and small market broadcasters to provide the most robust and high quality local news and other programming, the Commission must bring its Local TV Ownership Rule into the 21st Century and permit duopoly ownership in all television markets for television-only broadcasters such as Nexstar.

B. Modification of the Local TV Ownership Rule Will Strengthen the Commission's Goal of Strong Local Programming.

The Commission relies on its media ownership rules to support its policies of localism and diversity in the provision of local programming. However, the Commission's *ownership* rules do not require a television station to broadcast local news and other programming. Indeed, medium and small market broadcasters do not provide service to their communities because the Commission limits television ownership to one station in their markets, but rather because it is what makes them unique to their viewers. By providing local news and other community service they engage their community, which in turn drives viewers to the station, which drives revenues to the station.

However, the costs associated with producing local news are extremely high and require significant capital investment.[26] The existing Local TV Ownership Rule negatively impacts a smaller market station's ability to produce news and other local programming by limiting the funds available for news production. The rule's impact is particularly acute in many small and medium markets where the total amount of available market revenue is simply insufficient for

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[26] *See e.g.*, Appendix A to Nexstar 2010 Comments included herewith in Exhibit B.

four, or even three, separately owned television stations to invest the substantial outlay required to undertake a local news operation. For example, without the limited efficiencies generated by through shared services and joint sales agreements between Nexstar and Mission in the Utica DMA, there would not be three hours of local news per week on Nexstar's WFXV or 6 hours of local news per week on Mission's WUTR; there would only be local news on station WKTV.[27]

The significant efficiencies inherent in joint ownership and operation of television stations in the same market include not only the obvious efficiencies of co-location and sharing of studio and office facilities, sharing of management, administrative and technical staff, and efficiencies in advertising, sales and newsgathering, but also less obvious efficiencies (that are not available under sharing arrangements) such as reduced corporate overhead (with one corporate structure rather than two), cost of money efficiencies from having one loan instead of two, and less consulting expenses. In addition, being able to purchase programming for two stations in a market allows a broadcaster to achieve a better purchase price, with the savings available to fund the stations' local operations.

In prior quadrennial reviews, Nexstar and other broadcasters have provided ample evidence that co-ownership of two stations in a market allows the stations to provide more local programming (whether such programming is additional news, coverage of local sporting events or a telethon in support of a local charity) to viewers both because of increased resources and the ability of co-owned stations can shift such programming from one station or the other as necessary to comply with the limited preemption rights found in their various network programming agreements. For example, Nexstar provided details of the benefits of duopoly ownership have provided to its Champaign and Little Rock markets in its 2010 Quadrennial

[27] Utica is DMA 171. The entire DMA had estimated market revenues of $13.5 million in 2013, of which more than $8 million were earned by WKTV.

Review Comments. Specifically, duopoly ownership has created more local news, more local sports programming and greater community involvement by both stations as a direct result of the efficiencies Nexstar has been able to achieve as a result of its permitted duopoly ownership of WCIA and WCIX in Champaign and KARK-TV and KARZ-TV in Little Rock.

As the Commission recognized, and the Court affirmed almost a decade ago, duopolies "ensure that small-market stations [] realize the efficiency benefits of consolidation" which is necessary because stations "in those small and mid-sized markets are experiencing greater competitive difficulty than stations in large markets."[28] It is past time for the Commission to accept that if the Commission desires to encourage medium and small market local broadcasters to continue providing local news and programming, it must modify the Local TV Multiple Ownership to permit duopoly ownership in all markets, especially medium and small markets.

VI. CONCLUSION.

The Commission has long used its media ownership regulations as a proxy to ensure that its policy goals of competition, diversity and localism are met. In turn, the Commission has used these policy goals to encourage the provision of local news. The 2010 Quadrennial Review record provides a robust picture of the challenges facing television broadcasters then and those challenges continue today. Updating the Local TV Ownership Rule to permit duopolies in all markets for television-only broadcasters (regardless of the number of stations in the market or a station's "rank") will not make the local television market any less competitive, will not deprive viewers of television programming focused on their communities' needs and will not subject viewers to a less diverse array of programming. Indeed, updating the Local TV Ownership Rule

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[28] *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 415-17 (3d Cir. 2004).

to permit duopolies will do much to preserve consumers' access to robust and competitive broadcast television stations.

WHEREFORE, for the foregoing reasons, Nexstar respectfully urges the Commission to modify the Local TV Multiple Ownership Rule to allow television broadcasters to own two commercial TV stations in any market.

Respectfully submitted,

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