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 Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 14-50
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
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets	)	MB Docket No. 04-256

COMMENTS OF BLOCK COMMUNICATIONS, INC.

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SUMMARY

In this proceeding, the FCC has a decision to make. It either needs to crack down on practices that are making a mockery of the duopoly rule or it needs to eliminate that rule altogether. Block Communications, Inc. ("BCI") would support repeal of the duopoly rule, but since the FCC's *FNPRM* makes no suggestion that elimination of that rule is even under consideration, BCI strongly urges the FCC to take action against recent industry trends that undermine that rule and effectively punish broadcasters who have played by the rules.

The FCC should use this proceeding to crack down further on the creation of "virtual duopolies" in local markets through the use of new joint sales agreements ("JSAs"), shared services agreements ("SSAs"), local marketing agreements ("LMAs"), or any other arrangements that are designed to destroy the independence of local television stations (collectively, "Service Agreements"). In particular, the FCC should adopt rules that (1) establish standards for when Service Agreements are acceptable based the rules for when duopolies are permissible; and (2) establish an absolute numerical limit on the number of Service Agreements any station group may hold. BCI recognizes that the FCC may conclude that it does not yet have sufficient evidence to establish a permanent cap on Service Agreements. In that case, the FCC should set an interim cap of no more than 15 Service Agreements for any one station group. BCI is confident that an appropriate cap is lower than 15, so setting that as an interim cap is clearly within the FCC authority.

The FCC also should ban the practice of moving major network affiliations to stations' digital multicast channels in markets where there are a sufficient number of full-power stations to

accommodate all network affiliates on a stand-alone basis.[1] The practice of using digital multicasts for dual network affiliations is clearly in the public interest in small markets that do not have enough stations to support all major network affiliations on stand-alone stations. In markets with six or more stations, however, dual affiliations on multicast streams simply lead to a smaller number of viable stations. This will ultimately lead to fewer stations and diminished over-the-air service for average Americans.

Both of these dodges to the duopoly rule distort local advertising and retransmission consent markets. They reduce over-the-air service for everyone while making pay-television more expensive through increased retransmission consent fees. If the FCC wishes to bless virtual duopolies created by Service Agreements or multiple affiliations, it should make that process transparent by repealing the duopoly rule. If it intends to keep enforcing the duopoly rule, then the FCC should ban these practices that reward station groups that push the regulatory envelope while punishing those companies and consumers that play by the rules.

[1] For this purposes, "major network affiliations" should include local affiliation agreements with ABC, CBS, the CW, Fox, MyNetwork, and NBC.

TABLE OF CONTENTS

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COMMENTS OF BLOCK COMMUNICATIONS, INC.

Block Communications, Inc. ("BCI"), by its attorneys, hereby submits these comments in the above-captioned proceeding.[2]

I. INTRODUCTION

For more than a century, BCI has been serving the information and entertainment needs of communities across the country. Originally founded as a newspaper company in the early

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2 *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; 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; Promoting Diversification of Ownership In the Broadcasting Services; Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets, *Further Notice of Proposed Rulemaking and Report and Order*, 29 FCC Rcd 4371 (2014) (the "*FNPRM*"); *Order*, MB Docket No. 14-50, *et al.*, DA 14-926 (rel. June 27, 2014).

1900s by German immigrant Paul Block, BCI has grown into a full service, multi-platform media, entertainment, and broadband services company. BCI focuses primarily on small and mid-sized markets, publishing *The Pittsburgh Post-Gazette* and *The Toledo Blade* newspaper in Pittsburgh, Pennsylvania and Toledo, Ohio, respectively; operating Buckeye Cablevision, Inc. ("Buckeye"), a small cable company that serves approximately 130,000 subscribers in Northwest Ohio and Southeast Michigan; and providing local television through Fox network affiliate WDRB(TV) in Louisville, Kentucky, NBC network affiliates WLIO(TV) in Lima, Ohio, and WAND-TV, Decatur, Illinois, and MyNetwork affiliates KTRV(TV) in Nampa, Idaho, and WMYO(TV) in Salem, Indiana. BCI also owns several Class A and low power stations through its affiliate West Central Ohio Broadcasting, Inc. These stations provide local network affiliate service to parts of rural Ohio.

For the past 112 years, BCI's company ethos across its media properties has been to provide strong local service to all of its communities. All of the services BCI provides began as local services provided by members of the community that were accountable to the community for the quality of the service they offer. BCI still believes that is the best service model for ensuring that citizens get the information they need to be active and informed participants in this American democracy. And if BCI can offer our customers some entertainment as well, then that is all the better. BCI's "localism, localism, localism" approach has been good for its business and good for its customers.

For decades, the FCC media ownership rules have been designed to maintain the viability of the local service model that BCI helped pioneer and continues to practice. These rules have never been perfect, and BCI has never hesitated to oppose some of them when they stood in the way of improving local service to average citizens.[3] But the national multiple ownership rule and the local duopoly rule have served to check the local and national consolidation of TV stations and markets that easily could have destroyed the diverse local character of TV broadcasting.[4]

That is, those rules have worked that way until recently. For the past decade, a number of broadcasters have used JSAs and SSAs to assemble large -- in some cases practically nationwide – station groups composed in most cases of many local "virtual duopolies." These groups are centered in smaller markets to avoid the national multiple ownership rules.[5] And they avoid the duopoly rule by forming combination JSA and SSA arrangements between a main stations owned by a principal party and a "sidecar" in the same market that is "owned" by a compliant business partner.

A more recent phenomenon the same practical impact involves stations purchasing local market major network affiliations and moving them from stand-alone full-power stations to their own DTV multicasts.[6] Putting a network affiliation on a digital multicast makes sense in small markets where there often are not enough stations to support a stand-alone affiliate for each

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[3] *See, e.g.*, Comments of Block Communications, Inc., MB Docket No. 02-277, filed Jan. 2, 2003 (arguing for reform of the newspaper/broadcast cross-ownership rule, 47 C.F.R. §73.3555(d)); Comments of Block Communications, Inc., MB Docket No. 06-121, filed Oct. 23, 2006 (same). BCI notes that it continues to support elimination of the newspaper/broadcast cross-ownership rule. The FCC's retention of that rule long past the date when repeal could have benefitted newspaper readers has been an unfortunate failure to serve the public interest. At this point, repeal is unlikely to make any important difference to the television or newspaper industries. Nonetheless, retention of the rule is unjustifiable, and BCI urges the FCC to repeal it.

[4] *See* 47 C.F.R. § 73.3555(b), (e).

[5] BCI does not address the national multiple ownership rule in these comments because Congress removed those rules from the quadrennial review process. Nonetheless, BCI reminds the FCC that action on eliminating the UHF Discount is long overdue and should be completed as soon as possible. *See* Letter from Allan J. Block, Chairman, Block Communications, Inc., to Marlene H. Dortch, Esq., MB Docket No. 13-236, filed Dec. 16, 2013.

[6] For purposes of this discussion, "major network affiliations" include local affiliation agreements with ABC, CBS, the CW, Fox, MyNetwork, and NBC.

network. But today, local stations that already have a major network affiliation are acquiring additional affiliation and putting them on their multicast channels, even when there are plenty of in-market full powers to support independent stand-alone affiliates. This practice has the effect of threatening the viability of full-power stations that can no longer compete for network affiliations and the advertising revenue they promise. Ultimately, this will force stations out of business and off the air. Fewer stations mean less diversity and less localism.

Station groups pursuing these virtual duopoly courses now threaten to the localism and diversity the FCC's rules were designed to preserve. Recently, the FCC began looking into the overuse of these JSA/SSA arrangements, and has been rightly disturbed by what it has found. The FCC's recent decisions to limit JSAs to fifteen percent of advertising revenue and to ban joint negotiation of retransmission consent by non-commonly owned top-4 stations in the same market have been a good first two steps in stopping the abusive use of these arrangements.[7] These and further steps may mitigate some of the damage that JSA and SSA arrangements have caused in local television markets. Remarkably, the FCC has yet to recognize the dangers posed by dual affiliations and proposes not to regulate multiple affiliations on multicast streams.[8] That course must be reversed.

The FCC needs to make a choice: it must repeal the duopoly rule or enforce it. If it repeals the rule, at least local television station will know the rules and can compete accordingly.

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7 *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, MB Docket Nos. 14-50, *et al.*, FCC 14-28, paras. 340-365 (rel. Apr. 15, 2014) (adopting new attribution rules governing joint sales agreements); Amendment of the Commission's Rules Related to Retransmission Consent, MB Docket No. 10-71, FCC 14-29, paras. 24-40 (rel. Mar. 31, 2014) (prohibiting joint negotiations between stations with joint sales agreements); *see also* Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests, Public Notice, DA 14-30 (rel. Mar. 12, 2014).

8 *See FNPRM*, 29 FCC Rcd at 4398-4400 ¶¶ 66-72.

But if the FCC chooses to retain the duopoly rule, it needs to adopt clear and enforceable rules – and then it needs to enforce them. For too long, the FCC's interpretations of the duopoly rule have favored parties that basically ignore the rule and feign compliance through subterfuge. These broadcasters have profited by the assumption that the FCC will not force stations to comply with the duopoly rule as long as applicants don't misrepresent what they're doing.[9] That standard isn't enough to protect TV viewers or broadcasters that actually play by the rules.

If the FCC decides to keep the duopoly rule in place, it needs to administer the rule in a more straightforward and logical way that actually serves the public interest. That means acting decisively to stop virtual duopolies, whether they are created through JSA/SSA arrangements or dual network affiliations. At the same time, the FCC must act equally decisively to make sure that any actions against JSA/SSA combinations do not lead to stations going off the air and local communities losing free, over-the-air service. To be sure, many of the stations that end up part of a local virtual duopoly are struggling on their own and use JSAs and SSAs to improve station performance and stay on the air. When stations are struggling, JSAs and SSAs might be an acceptable solution, and any FCC's rules should allow for that possibility.

To balance the competing interests of maintaining a full complement of over-the-air television stations in every market with the need to maintain the diversity of ownership and localism that the duopoly rule is supposed to foster, the FCC should take the following next steps:

(1) Enforce the duopoly rule by establishing clear standards for when JSA and SSA arrangements are acceptable and when they amount to attributable station ownership; such standards should take into account that JSAs and SSAs may be appropriate under certain circumstances to preserve local service;

[9] *Cf. RKO General, Inc.*, 78 FCC 2d 1 (1980) (subsequent history omitted).

(2) Adopt an absolute limit on the number of JSAs or SSAs a single station group may own under any circumstances; and

(3) Prohibit stations from acquiring multiple major network affiliations in markets where there are a sufficient number of full-power TV stations available for each major network to operate on a stand-alone basis.

These modest steps are the minimum the FCC can take to ensure the preservation of the local character of the U.S. over-the-air TV broadcasting system.

II. NATIONWIDE STATION GROUPS COMPOSED OF MANY JSA/SSA COMBINATIONS DISTORT LOCAL ADVERTISING AND RETRANSMISSION CONSENT MARKETS.

The FCC's recent decisions looking closely at JSAs and SSAs have revealed that for nearly a decade, these agreements have been used to get around the FCC's duopoly rule. Of course, this should not have been news to the FCC since the agency approved many of these agreements as part of its approval of station transfer applications. What may have been surprising to the FCC is the sheer scope and magnitude of this practice and the problems it is causing. Using JSAs and SSAs to avoid attribution under the duopoly rule has led to virtual duopolies in markets of every size. And this has permitted some TV broadcasters to create the kinds of nationwide station groups that the FCC's rules always were designed to prohibit. Some broadcasters have abused JSAs and SSAs to establish all but total control over dozens of stations nationwide without being considered owners of those stations.

Among the problems with this practice are that it undermines localism and it creates unfair economic advantages for the "virtual duopoly," particularly when the JSA/SSA combination is formed in markets where duopolies otherwise would be prohibited. Allowing for the creation of massive JSA/SSA station groups harms localism because these groups are much less likely to focus their attention on the individual markets they are licensed to serve. Instead, each market becomes a cog in a national machine. These types of station groups have the incentive to provide the best service in their largest markets and to treat smaller markets as little more than revenue-generating afterthoughts.

These arrangements also create unfair economic advantages over other broadcasters in their local advertising markets and over cable operators in their local retransmission consent markets. The FCC already has established that JSAs in excess of 15% threaten to distort local advertising markets by giving the stations selling ads for multiple stations in the market the ability to manipulate prices.[10] And, the Commission has recognized that SSAs requiring coordination of retransmission consent negotiations have a similar impact on local retransmission consent markets.[11]

What the FCC hasn't adequately considered is that when these impacts are multiplied by station groups with a large number of JSA/SSA combinations markets across the country, the result is significantly worse than it appears in any single market. This is because station groups with a large number of markets gain a scale that allows them to essentially dictate terms in any particular market. When no market is essential to the group's operation, the group can essentially dictate terms to local advertisers and MVPDs in local markets. If advertisers and MVPDs resist, the group can spread any losses resulting from the delay in reaching a deal on its terms across its national footprint. The effects are unfair advertising rates and an increased number of retransmission consent disputes. The latter leads inevitably to service blackouts, and, ultimately, higher cable rates for consumers. To remedy these problems, the FCC must take firm steps to stop the aggregation of large numbers of JSA/SSA combinations in the hands of individual station groups.

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[10] *See FNPRM*, 29 FCC Rcd at 4533 ¶ 350.

[11] *See* Amendment of the Commission's Rules Related to Retransmission Consent, *Report and Order and Further Notice of Proposed Rulemaking*, 29 FCC Rcd 3351, 3358-59 ¶ 13 (2014)

III. AS THE FCC MOVES TO LIMIT JSA/SSA COMBINATIONS, IT MUST ENSURE THAT ITS REGULATIONS DO NOT THREATEN OVER-THE-AIR BROADCAST SERVICE.

BCI recognizes that Service Agreements can, in some limited instances, have beneficial effects for both stations and TV viewers. This is particularly the case when these agreements involve stations that are not economically successful and may not be viable in the long term. In such situations, Service Agreements can preserve full service television stations in local markets, which should remain an important FCC goal.

For example, BCI has entered into Service Agreements involving its Louisville station, WDRB-TV, and Louisville CW affiliate WBKI(TV). Prior to the agreements, WBKI(TV) was not performing well financially, and the station has yet to recover fully despite the efficiencies gained by the agreement. Nonetheless, the agreements are a net positive for Louisville TV viewers, WBKI(TV), and BCI because they give the station a fighting chance in an environment that has gotten very difficult for non-Big-4 affiliate stations outside the largest TV markets. Whatever minor loss of independence for WBKI(TV) is counterbalanced by the benefit viewers receive by having this local station on a sounder financial footing. BCI's single Service Agreement relationship in Louisville does not give it the national scale that would permit it to overlook the Louisville market to prove a point with advertisers or local cable operators. Thus, the negative impacts of these agreements are minimal, while their positive impact is considerable.

As the FCC moves to examine and further regulate JSAs and SSAs, it must be careful to preserve agreements that improve the prospects of marginal stations in smaller markets without creating the risks associated with the creation of larger nationwide station groups. The FCC's decades-long dedication to preserving a full complement of local television stations should not be a casualty of the need to reign in JSAs and SSAs. This is particularly important today, when the upcoming incentive auctions already threaten to remove a large number of stations from the nation's airwaves.

IV. THE FCC SHOULD ADOPT CLEAR RULES LIMITING FUTURE JSAS AND SSAS.

While the FCC must balance the need to curtail new Service Agreements with the need to protect TV service in local markets, that should not stop the agency from adopting rules designed to stop the spread of these agreements for the largest station groups that already have abused the FCC's acquiescence and non-enforcement of the duopoly rule. At this point, the only additional regulation the FCC has proposed is a reporting requirement for SSAs.[12] BCI submits that this is not enough, and that the FCC should take at least two additional steps in this proceeding.

First, the FCC should establish clear rules for circumstances under which Service Agreements are acceptable. The FCC indicated in the *NPRM* that it needs to study SSAs further before regulating them. But many, many such agreements have been approved by the FCC in the past as part of TV station transactions, so the FCC already has those agreements on file for study. Developing rules for what is and is not acceptable should not await future periodic reviews. It should be undertaken in this proceeding. Since the FCC already has indicated it does not expect to reach a decision in this review before 2016, the agency has more than enough time to review agreements that already are on file and establish rules in this proceeding. If necessary, the FCC can release a further notice of proposed rulemaking outlining such rules.

As the FCC has recognized, JSAs implicate the duopoly rule by essentially allowing one station to control another in markets where they wouldn't be permitted to own that station.[13] SSAs create the same danger. Thus, the rules governing JSAs and SSAs should reflect the same

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12 *See FNPRM*, 29 FCC Rcd at 4518-4526 ¶¶ 320-339.

13 *See id.* at 4533 ¶ 350.

types of limitations and exceptions that currently exist for the duopoly rule. For example, it may be that somewhat less demanding versions of the "top 4, 8 voices test" and "failed" or "failing" station standards should set the boundaries for determining when a Service Agreement is acceptable. In any case, any rules the FCC adopts should allow JSAs or SSAs in cases where a station is in financial peril and may go off the air absent a JSA or SSA relationship.

Second, the FCC should explore establishing an absolute numerical limit on the number of Service Agreements that any single station group may hold Such a limit would ensure that station groups cannot use Service Agreements to gain or maintain the national scope that allows them to ignore some of their local markets in furtherance of nationwide goals like higher advertising revenues or higher retransmission consent fees.

In the event that the FCC does not consider itself to be in a position during this periodic review to adopt a final cap on the number of Service Agreements one station group may hold, it should consider adopting an interim cap pending final rules. An interim cap, coupled with a requirement that any new Service Agreements must be reported would at least ensure that only a limited number of agreements will be created while the FCC considers adopting a numerical cap. While final rules on a Service Agreement cap may require extensive inquiry and FCC analysis, BCI suggests that an interim cap of 15 such arrangements, with no more than 3 in the Top 30 markets, would be a reasonable place to draw the line for an interim cap. Any party that already has more than this number of Service Agreements would be prohibited from creating new ones until the FCC settles on final rules.

A cap of 15 Service Agreements would permit station groups to realize extensive scale without allowing them to become so big that any single market would be an afterthought, as may be the case today. This approach would promote the FCC's localism and diversity policies without unduly disrupting broadcasters' reasonable business expectations or local service in any market.

The two steps BCI advocates to address JSAs and SSAs are necessary to ensure that the duopoly rule serves its intended purpose of promoting localism, diversity, and fair competition in local television markets. For too long station groups have abused that rule, and television viewers are paying the price for some broadcasters' strategy to avoid valid FCC regulations. These are important steps for the FCC to take to protect local television viewers and competing local stations that have played by the rules.

V. THE FCC SHOULD PROHIBIT STATIONS FROM ACQUIRING MULTIPLE MAJOR NETOWRK AFFILIATIONS IN MARKETS WITH ENOUGH STATIONS TO ACCOMMODATE STAND-ALONE OPERATIONS.

In the *FNPRM*, the FCC proposes not to regulate stations' acquisition of multiple major network affiliations and distribution of such network programming on multicast program streams.[14] BCI submits that this course would be a mistake because it would just permit the creation of more and more virtual duopolies. Indeed, permitting dual affiliation would just be opening up another door to abuse of the duopoly rule just as the FCC is starting to close the door to additional JSAs and SSAs. If this is the course the FCC is planning to take, it should reconsider its initial conclusion and abolish the duopoly rule now.

As with JSAs and SSAs, dual affiliations can serve communities in some cases. There currently are six major English language network affiliations: ABC, CBS, the CW, FOX, MyNetowrk, and NBC. Many smaller markets do not have enough full-power stations to support stand-alone operations for all 6 networks. In such cases, the FCC should support dual affiliations as a means to promote the maximum amount of diverse over-the-air programming is every

[14] *See FNPRM*, 29 FCC Rcd at 4398-4400 ¶¶ 66-72.

market. For example, BCI serves the Lima, Ohio market (DMA #187), which currently has just one full-power television station licensed to it. In that market, Block delivers multiple major market affiliated program streams using a combination of its full-power, Class A, and low-power stations. In Lima, there is only one full-power station, so enforcing a dual-network restriction would make no sense.

In any market with 6 or more full-power commercial stations, however, there is no reason to permit stations to stockpile network affiliations. Each time a station takes an additional affiliation, it deprives another station in the market from obtaining one. That weakens the unaffiliated stations by depriving them of the additional advertising and, perhaps, retransmission consent revenue they might realize if they were able to obtain a major network affiliation. These unaffiliated stations will likely deteriorate financially and provide lower-quality services than they could if a major network affiliation were available. When a station takes multiple affiliations despite the availability of other full-power stations, it is just gaining a duopoly by another name, and the Commission should not permit that.

Accordingly, the FCC should adopt a rule banning stations in markets with 6 or more full-power commercial television stations from acquiring more than one major network affiliation. In the event that special circumstances warrant, *i.e.* one or more stations in the market prefers to operate a station without a major network affiliation, the FCC should consider waiving the rule on a proper showing. Absent that, however, the FCC should treat dual affiliations like the virtual duopolies that they are and prohibit stations from acquiring them.

VI. CONCLUSION

First and foremost, BCI favors clear, fair, and transparent rules that are evenhandedly enforced. If the FCC decides to repeal the duopoly rule, BCI would support that course. If, however, the FCC intends to maintain the duopoly rule it should close off the old and new loopholes that permit group owners intent on evading the rule to do so with impunity. For these and the reasons stated above, BCI urges the Commission to adopt in this proceeding the rule changes described herein.

Respectfully submitted,

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