

January 24, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: MB Docket No. 09-182, 2010 Quadrennial Review
MB Docket No. 10-71, Retransmission Consent
MB Docket No. 13-189, Gannett-Belo

Dear Ms. Dortch,

On Wednesday, January 22, 2014, representatives from consumer groups, media reform organizations, civil rights coalitions, labor unions, and various multichannel video programming distributors (“MVPDs”) met with Gigi B. Sohn, Special Counsel for External Affairs to Chairman Wheeler; Maria Kirby, the Chairman’s Legal Advisor for Media, Consumer and Governmental Affairs, and Enforcement; Sara Morris, Acting Director of the Office of Legislative Affairs; and Shannon Gilson, Director of the Office of Media Relations, regarding matters in the above-captioned dockets.

The meeting participants were Todd O’Boyle for Common Cause; Debbie Goldman for Communications Workers of America; Matt Wood for Free Press; Angela Campbell and Andrew Jay Schwartzman for the Institute for Public Representation; Corrine Yu for The Leadership Conference on Civil and Human Rights; John Breyault for National Consumers League; Michael Scurato for the National Hispanic Media Coalition; John Bergmayer for Public Knowledge; Cheryl Leanza for the United Church of Christ OC Inc.; Alex Hoehn-Saric for Charter Communications; Stacy Fuller for DIRECTV; Hadass Kogan for DISH; and Cristina Pauzé for Time Warner Cable.

During the meeting, representatives from these organizations and companies explained the many harms stemming from broadcaster “sharing” agreements expressly designed to avoid the Commission’s local television ownership limits and other rules. The use of such agreements continues to accelerate, and drives today what industry analysts describe as “the biggest wave” of consolidation “in the history of television.”¹

By coordinating their activities with these arrangements, broadcasters diminish competition, local service, and diversity of voices – all the while decreasing journalistic independence and jobs, and increasing the prices that viewers pay in communities across the country. Any benefits of such agreements could be achieved without incurring these harms if broadcasters were to share certain resources without effectively transferring ownership and control from the purported licensee to another entity.

¹ Sarah Barry James, “Broadcast M&A Boom: It’s Not Over Yet,” *SNL Kagan*, Sept. 13, 2013.

The Commission's broadcast ownership rules are intended to preserve and promote competition, localism and diversity among broadcast outlets. Yet local television stations that cannot lawfully merge under the Commission's ownership limits continue to consolidate their core operations, staffs and news production. These agreements take a variety of forms such as shared services agreements ("SSAs"), local marketing agreements ("LMAs"), joint sales agreements ("JSAs") and other joint operating and outsourcing agreements, as well as less formal arrangements. Regardless of the label and means of coordination, the outcome is the same: lay-offs of station staff, reduced journalistic independence, diminished competition for audiences and advertisers, and increased costs for consumers that subscribe to MVPDs that carry these stations.

While no one would dispute the practice of two stations sharing something like a radar system or news helicopter, that is not all these agreements entail. It is possible for stations to pool resources and share physical assets without "sharing" their entire newscast or their most important business decisions and negotiations. Moreover, to the extent any arrangement actually facilitates a new service, such as a Spanish language programming stream (as opposed to repeats and re-airings of existing programs), such service could today be delivered as a multicast stream of the servicing station. It no longer requires the elimination of competition entailed by assigning a 6 megahertz channel to a so-called sidecar company that holds the license for the controlling entity.

Individual participants in the January 22nd meeting highlighted the following arguments, facts and figures illustrating the problems such sharing agreements cause.

- The Institute for Public Representation provided a copy of its March 2012 comments in the 2010 Quadrennial Review docket (attached hereto), outlining tests that the Commission might use to determine whether a sharing arrangement amounts to an attributable interest and/or a *de facto* transfer of control. The comments suggested that production of all local news programming, sharing of management personnel, and outsourcing of retransmission consent negotiations, among other indicators, should result in attribution of the license to the station providing these services.²
- Free Press highlighted its work to illustrate the impact of news sharing arrangements, which result in the same exact newscasts airing in duplicate and triplicate on multiple stations in the same community. Far from increasing the amount or quality of local news, these arrangements lead only to an increase in repeated, monotone news segments. Anchors and reporters read the same stories and offer the same viewpoints on two or three stations at a time. Free Press has produced several videos on the topic, compiling examples of identical on-air segments and news websites for putative competitors that simply echo one another – in markets from South Carolina to Hawaii, and everywhere in between.³

² See Comments of the United Church of Christ Office of Communication, Inc., Media Alliance, National Organization for Women Foundation, Communications Workers of America, Common Cause, Benton Foundation, and Media Council Hawai'i, MB Docket Nos. 09-182, 07-294, at 15-20 (filed March 5, 2012).

³ See Free Press, "Change the Channels" campaign website and shared services agreements map, <http://www.freepress.net/changethechannels> (last visited Jan. 24, 2014); see also "Change the Channels"

- United Church of Christ OC Inc. explained its view that JSAs and SSAs decrease diversity by dampening the impact of the purported licensee’s content choices for the station. For example, a female license holder that merely contracts with a different owner to produce all of the local news airing on her station would not air coverage different from that on the producing station. Moreover, when multiple stations are controlled jointly, community members seeking different or increased coverage have fewer places to turn because the newsgathering for multiple stations (and/or newspapers) is consolidated into one stream. In sum, jointly run stations eliminate the goals the ownership limits were designed to achieve, and eliminate many real opportunities for new entrants to own and operate a station.
- The MVPD participants noted research demonstrating and documenting the increase in retransmission consent fees paid in markets in which stations employ SSAs and other joint negotiating mechanisms. The pervasive use of non-disclosure clauses in retransmission consent agreements limits the amount of publicly available evidence on the magnitude of these fees and how they are affected by joint negotiations, but all of the available evidence suggests this is a serious problem. The American Cable Association, for example, has documented four instances in which MVPDs have calculated the average impact of joint negotiations on their own retransmission consent prices, and those four have reported increases ranging from 21.6% to 161%.⁴
- On a national scale, SNL Kagan reports that total retransmission consent revenues skyrocketed from \$785 million in 2009 to \$3.3 billion in 2013, and are expected to more than double to \$7.6 billion by 2019.⁵ And various MVPDs have found over 40 instances, which equates to more than 20% of all TV markets, in which a single broadcaster negotiates retransmission consent for more than one “big four” network affiliate – a number that will only grow in light of the continued pace of broadcast transactions.⁶
- The civil rights, consumer, and media reform participants noted their concerns about past proposals to permit increased cross-ownership of broadcast outlets and

video (demonstrating duplicative and identical news coverage airing simultaneously on putatively competing local broadcast stations), at <https://www.youtube.com/watch?v=E9bIgrWd1o>; “Covert Consolidation in Charleston, SC,” at <https://www.youtube.com/watch?v=0ZXqAl-acic>; “Different Channels, Same Election Coverage,” at https://www.youtube.com/watch?v=7M_0jo-XR_A.

⁴ See, e.g., *Ex Parte* Comments of SuddenLink Communications in Support of Mediacom Communications Corporation’s Retransmission Consent Complaint, CSR Nos. 8233-C, 8234-M, at 5-6 (filed Dec. 14, 2009) (showing 21.6% increases); USA Companies Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-71 (filed May 28, 2010) (showing 133% increases); Cable America Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-71 (filed May 28, 2010) (showing 161% increases); Pioneer Long Distance Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-71 (filed June 4, 2010) (showing 30% increases).

⁵ Robin Flynn, “Retrans Projections Update: \$7.6 billion by 2019,” *SNL Kagan*, Nov. 18, 2013.

⁶ See, e.g., Notice of *Ex Parte* Communication of American Cable Association, MB Docket Nos. 10-71, 09-182, at 2 (filed June 24, 2013).

newspapers in the same markets, as well as their fundamental concern that past Commissions have done too little to promote – or even study – diversity of ownership among licensees. For example, Free Press noted the opposition voiced by more than sixty members of Congress in 2012 to previously reported Commission proposals in the 2010 Quadrennial Review.⁷ These concerns about diversity in general were echoed by Senator Rockefeller’s recent suggestion that the Commission wait for GAO to complete its study on the impact of sharing agreements on local broadcast competition and consumers before approving more mergers that rely on these tactics.⁸

For these reasons, the meeting participants stressed the need for the Commission to clarify its rules and close the loopholes for existing and prospective broadcaster use of these agreements, all as part of a comprehensive effort to enforce the Commission’s broadcast ownership rules, assess the impact of specific transactions and arrangements, and promote the goals of competition, localism and diversity in broadcast services.

Please do not hesitate to contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

/s/ Matthew F. Wood

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⁷ See, e.g., Letter from Sen. Maria Cantwell to Julius Genachowski (Nov. 29, 2012), http://www.freepress.net/sites/default/files/resources/11_29_12_Media_Ownership_Letter_to_FCC.pdf; Letter from Sens. Sanders, Leahy, Harkin, Boxer, Murray, Wyden, Tester, Franken, and Merkley, to Julius Genachowski (Nov. 30, 2012), http://www.freepress.net/sites/default/files/resources/Senate_Letter_to_FCC_Media_Ownership_Letter_11_30_2012.pdf; Letter from Reps. John Lewis, Emanuel Cleaver, Keith Ellison, Raul M. Grijalva & 40 other Representatives to Julius Genachowski (Dec. 5, 2012), http://www.freepress.net/sites/default/files/resources/12_10_12_FCC_Media_Ownership_Letter.pdf; Letter from Reps. Eshoo, Doyle, Towns, Christensen and Rush to Julius Genachowski (Dec. 13, 2012), http://www.freepress.net/sites/default/files/resources/Joint_Letter_on_FCC_Media_Ownership_Rules_12-13-12.pdf.

⁸ See Letter from Sen. Rockefeller to Tom Wheeler (Nov. 25, 2013) http://www.freepress.net/sites/default/files/resources/Rockefeller_letter_to_Wheeler_SSAs_11_25_13.pdf.