

BROADCASTING OWNERSHIP IN THE 21ST CENTURY

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

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BROADCASTING OWNERSHIP IN THE 21ST CENTURY—DAY 1

FRIDAY, SEPTEMBER 25, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 2123, Rayburn House Office Building, Hon. Robert E. Latta (vice chairman of the subcommittee) presiding.

Members present: Representatives Latta, Shimkus, Blackburn, Lance, Guthrie, Bilirakis, Johnson, Collins, Upton (ex officio), Eshoo, Welch, Yarmuth, Clarke, Loeb sack, DeGette, Butterfield, Matsui, McNerney, Luján, and Pallone (ex officio).

Staff present: Ray Baum, Senior Policy Advisor, Communications and Technology; Rebecca Card, Staff Assistant; Grace Koh, Counsel, Communications and Technology; David Redl, Chief Counsel, Communications and Technology; Charlotte Savercool, Legislative Clerk; Gregory Watson, Staff Assistant; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; Jerry Leverich, Democratic Counsel; Lori Maarbjerg, Democratic FCC Detailee; Timothy Robinson, Democratic Chief Counsel; and Ryan Skukowski, Democratic Policy Analyst.

OPENING STATEMENT OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LATTA. Thank you very much, and I appreciate our witnesses for being here today and discussing a very important matter, broadcast ownership. The FCC has been entrusted to regulate media ownership, ensuring the broadcast industry remains competitive and meets the information needs of local communities. However, the FCC has failed to act in completing its mandatory review of current rules governing this dynamic marketplace.

As a result, longtime industry participants that are subject to these rules and regulations are placed at competitive disadvantage as newer market entrants who are afforded greater flexibility to compete in an environment transformed by the Internet. Ignoring the need to make media ownership rules more relevant only hurts the industry and public interest. We need updated laws that better reflect the 21st century communications landscape. I look forward to today's witnesses talking about the current regulatory framework governing broadcast ownership and the impact that it is having on businesses, consumers, and on the economy.

With that, I am going to yield my time, and I will now recognize the gentlelady from California, the ranking member of the subcommittee.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Latta. I appreciate it.

I just want to make a comment. Yesterday was a day filled with joy in the Congress. We welcomed the historic visit of Pope Francis. I think today is a sad day with the news of John Boehner announcing that he is stepping down as Speaker. He has my respect and my gratitude for what he has done over the years in the Congress.

Mr. Chairman, a digital content revolution is underway. Thanks to the power of broadband, millions of Americans are using social media and over-the-top video services for original content, news, entertainment, and sports. A consumer can Hulu the last episode of "Glee," Netflix "House of Cards," or stream Major League Baseball games over Apple TV. There is no doubt that the media landscape is rapidly changing, but consumers continue to rely on traditional bastions of 20th century media, including broadcast television, radio, and newspaper for local news, public information, and weather.

Consistent with the goals of the Communications Act, our subcommittee and the FCC should remain focused on promoting localism, advancing competition, and encouraging diversity across all content platforms. A lack of diversity in particular continues to plague the industry. Data reported by the FCC this year shows that just 3 percent of broadcast TV licenses are held by people of color. Similar challenges exist among the highest ranks of management, with just 4 percent of TV networks and studios led by minorities.

A 21st century broadcast system should reflect the composition of our country. This is not only the right thing to do, it is good business as well. And this is clearly an area where little to nothing has changed.

We know that nothing we deal with has easy answers, but one thing is certain: Relaxing the FCC's media ownership rules will pave the way for increased industry consolidation, which does, in my view, nothing to promote localism, competition, or diversity, and I think it flies in the face of our democracy, where we believe there should be many voices to the many and not fewer.

I had a much longer, magnificent statement, but given the beginning of this hearing later, I will yield back, Mr. Chairman. Thank you.

Mr. LATTA. Thank you very much.

Ms. ESHOO. And thank you to the witnesses for being here.

Mr. LATTA. The gentlelady yields.

The Chair recognizes the gentleman from Illinois, Mr. Shimkus.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman.

Welcome to Washington and a subcommittee in Washington where once you think you have got it figured out, stuff changes. So I want to thank the ranking member of the subcommittee for her focusing on obviously a big issue that is going on here in the House and also the Republican Conference, and we will miss John.

So we will do our best to wrap ourselves around your testimony and the issue at hand, but, please, especially for folks on this side and probably on both, there is a lot of other thoughts going through a lot of my colleagues' minds right now, and we will try to drag them back to this hearing as soon as possible.

So with that, I yield back my time.

Mr. LATTA. The gentleman yields back. And the Chair now recognizes the gentleman from New Jersey, the ranking member of the full committee, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you. I am going to try to limit it to 2, Mr. Chairman.

It is easy to say the way we get news and information is changing. That is certainly true. But it is equally true that we continue to turn to broadcast TV and radio, and that means a diversity of voices over the air remains essential. Some say that we should overlook the need for diverse voices because the broadcast industry must consolidate if it is going to survive, but the fact is broadcasters are thriving, even without consolidation.

The data speaks for itself. The radio industry last year raised advertising revenue to the tune of nearly \$15 billion. TV broadcasters earned \$20 billion from on-air ads in 2014. Billions of dollars in political ad buying helped drive this total, and that number will likely skyrocket with the upcoming 2016 Presidential election cycle.

The FCC must continue to serve as a sentinel, protecting the ideals of localism, diversity of ownership, and diversity of viewpoints. And given the impact of political ads, the Commission also has an obligation to make sure the public knows who is spending that money to control their airwaves.

We do not need to look any further than my home State of New Jersey to see what can happen when consolidation goes too far. Nearly 9 million New Jerseyans are forced to rely on mostly out-of-State stations for news and information. One of the few New Jersey stations we do have is part of a trio where one entity owns three TV stations in the New York market, and this station still does not serve adequate news about New Jersey for our local residents.

So again, I am pleased we are having this hearing to discuss these issues, and I look forward to the testimony.

I yield back, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you Chairman Walden and Ranking Member Eshoo for today's hearing. Thanks also to our witnesses for being here today.

It is easy to say the ways we get news and information is changing. That is certainly true. But it is equally true that we continue to turn to broadcast TV and radio. For instance, when Pew researchers studied last year how Americans got their information, 91% of the people they called listened to over-the-air radio the very week they were surveyed. Similarly, local TV stations saw an increase in viewership last year.

The fact remains that Americans still rely on broadcasters to bring them the news. A diversity of voices over the air remains essential.

We will hear from some today that we should overlook the need for diverse voices because the broadcast industry must consolidate if it is going to survive. But the fact is broadcasters are thriving even without consolidation.

The data speaks for itself. The radio industry last year raised advertising revenue to the tune of nearly \$15 billion. TV broadcasters saw a 7% increase in advertising revenues—that means they earned \$20 billion from on-air ads in 2014. Billions of dollars in political ad buying helped drive this total, which means that number will likely skyrocket with the upcoming 2016 Presidential election cycle.

But while the broadcast industry is doing well without additional consolidation, a loss of voices over the air would cause irreparable harm to our democracy. That is why the Federal Communications Commission must continue to serve as a sentinel, protecting the ideals of localism, diversity of ownership, and diversity of viewpoint. And given the impact of the billions of dollars spent on political ads each cycle, the Commission also has an obligation to make sure the public knows who is spending that money to control their airwaves.

We do not need to look any further than my home State of New Jersey to see what can happen when consolidation goes too far. New Jerseyans are forced to rely on out-of-State stations for news and information. Sometimes they serve us well, like during Hurricane Sandy. But the fact remains that while nearly 9 million people live in New Jersey, we have almost no commercial TV stations. And one of the stations we do have is part of a triumvirate where one entity owns three TV stations in the New York market. And this station still does not serve up adequate news about New Jersey for our local residents.

Finally, minority and female ownership of stations remain at abysmal levels—even with recent spin-offs of stations to minority and female-owned entities. I don't believe that we should cave into a simplistic call for deregulation to solve this complex problem.

Again, I'm pleased we are having this hearing to discuss these issues. I look forward to the testimony.

Mr. LATTA. Thank you very much. The gentleman yields back.

And at this time, on behalf of the chairman, I want to thank all of our panelists for being here today. We really appreciate your being here and your testimony.

And at this time, the Chair will recognize Mr. Gerald Waldron of the National Association of Broadcasters for 5 minutes. Thanks very much.

And just turn that mic on and pull it closer to you, and we will get started.

Thank you.

STATEMENTS OF GERARD J. WALDRON, PARTNER, COVINGTON & BURLING LLP, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS; PAUL BOYLE, SENIOR VICE PRESIDENT OF PUBLIC POLICY, NEWSPAPER ASSOCIATION OF AMERICA; KIM M. KEENAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL; MICHAEL SCURATO, VICE PRESIDENT, POLICY, NATIONAL HISPANIC MEDIA COALITION; TODD O'BOYLE, PROGRAM DIRECTOR, MEDIA AND DEMOCRACY REFORM INITIATIVE, COMMON CAUSE; AND JASON KINT, CHIEF EXECUTIVE OFFICER, DIGITAL CONTENT NEXT

STATEMENT OF GERARD J. WALDRON

Mr. WALDRON. Thank you. Good morning, Chairman Latta, Ranking Member Eshoo, and members of the subcommittee. My name is Gerry Waldron. I am a partner at the law firm of Covington & Burling. I am pleased to be here today on behalf of the National Association of Broadcasters.

The FCC's broadcast ownership rules were adopted with the stated purpose of fostering three longstanding policy goals: Competition, localism, and diversity of voices. But an honest assessment of the current video environment shows these rules failed to advance any of those objectives.

I want to make three points for your consideration. First, the current ownership rules actually inhibit rather than promote broadcasters' ability to compete in a vibrant video marketplace. Second, as a result, these rules undermine broadcasters' uniquely local focus. And third, the rules actually fail to promote diversity.

The broadcast ownership rules do not serve the public interest because they are simply out of touch with the reality of today's media landscape. These days, watching TV frequently does not mean watching the big screen in your living room. Consumers are increasingly likely to turn instead to their laptops or tablets. Millennials do not necessarily watch channels. Rather, they consume programs whenever they want and wherever they may be. Consumers create their own content packages through services such as Amazon Instant Video, Hulu, and Netflix.

The risk of a powerful broadcast owner, a Citizen Kane, if you will, that drove the creation of the broadcast ownership rules in the 1970s, is not just unlikely, it is almost nonexistent. The media landscape is simply too diverse and evolving too quickly, both with regard to content creation and content distribution, to justify the current rules.

Against that backdrop, the FCC's rules pick winners and losers in this new media landscape. They limit broadcasters' ability to compete with the cable, satellite, and online media outlets that face no comparable restrictions. As a result, these competitors have grown and have taken away both audience share and advertising revenue from traditional broadcasters.

The reality is that today broadcasters' main competition for advertising dollars comes from companies such as Google and Facebook, the newly merged AT&T/DirecTV, and cable companies like the soon-to-be merged Time Warner. I bring this information to the committee's attention not to complain about competition, but

rather to underscore that the FCC's rules pretend this competition does not exist.

My second point is that, while the FCC's rules should be promoting localism, they have had the opposite effect. A healthy, vibrant broadcast industry serves the public interest through locally focused news, sports, public affairs programming, and emergency services. No other industry has that responsibility, and most importantly, the ability or incentive to serve the needs of the public. Yet, the broadcast ownership rules act to inhibit broadcasters' ability to serve this basic responsibility by limiting investment and synergies that could otherwise fuel locally focused programming.

To maintain the ability to provide quality local service, the FCC's ownership rules must permit reasonable combination of station ownership. Broadcasters are a critical source of information and entertainment in every community across the country, but it takes significant resources to provide up-to-the-minute news, local and national emergency information, and highly valued entertainment programs. To compete and serve their communities successfully, broadcasters should be governed by regulations that at least account for the new and varied competition that is all around us.

Finally, the record is clear that the current rules have failed to promote minority ownership of broadcast properties, and yet support for these rules is sometimes justified on diversity grounds. NAB has long supported the goal of diversity among broadcast stations, and to that end supports the reinstatement of a tax certificate program. But our industry is not alone in having a great deal of room for improvement in this area. However, ownership rules that are out of step with today's competitive reality only suffocate smaller broadcasters and limit new entrants.

In conclusion, we are asking Congress for help to hold the FCC accountable for completing its review of the rules and making the necessary changes to the benefit of both communities and consumers across the country.

I thank you for your attention to this important issue and look forward to your questions.

[The prepared statement of Mr. Waldron follows:]



Hearing on “Broadcasting Ownership in the 21st Century”

**United States House of Representatives
Committee on Energy and Commerce
*Subcommittee on Communications and Technology***

September 25, 2015

**Statement of Gerard J. Waldron
on behalf of the National Association of Broadcasters**

Good morning and thank you for the opportunity to address the Subcommittee today. My name is Gerry Waldron. I am a partner at Covington & Burling LLP and counsel to the National Association of Broadcasters. NAB represents more than 8,000 free and local radio and television broadcasters who serve communities large and small across the country.

The FCC's broadcast ownership rules are intended to foster three long-standing policy goals: competition, localism, and diversity of voices. Yet the current rules are outdated and fail to serve any of these objectives. Congress emphasized this purpose when it instructed the FCC to conduct a quadrennial review of its broadcast ownership rules in the Telecommunications Act of 1996. The FCC has failed to live up to its statutory obligation, and as a result, broadcasters and the local communities they are tasked to serve suffer.

My remarks today focus on three key points. First, the video industry today has changed dramatically this decade—even over the past twelve months—such that there has never been a better time to be a consumer of video programming. The level of *competition* for viewers (“eyeballs”) is at an all-time high with new competitors such as Apple and Sony looking to take on “established” online video providers such as Netflix and Hulu, who of course for several years have been challenging traditional cable and broadcast channels. Against this backdrop, the FCC's broadcast ownership rules—which presume that broadcasters compete only against one another for both advertising dollars and eyeballs—are not only out of place, they stifle broadcasters' ability to compete on a level playing field with the rest of the video marketplace and thus fail to serve the public interest.

Second, as a result, while the FCC's rules should be designed to promote *localism*, they have had the opposite effect. A healthy, vibrant broadcast industry serves the public interest through locally-focused news, sports, public affairs programming and emergency services. No

other industry has the responsibility—and most importantly, the ability or incentive—to serve the needs of the public in communities across the nation. Yet the broadcast ownership rules act to inhibit broadcasters’ ability to serve this basic responsibility by limiting investment and synergies that could otherwise fuel locally-focused programming.

Third, the record is clear that the current rules have failed to enable minority ownership in broadcast television, and yet support for these rules is sometimes justified on *diversity* grounds. NAB supports the goal of diversity among broadcast station owners, and we recognize that the broadcast industry has a great deal of room for improvement in this area. However, ownership rules that are out of step with today’s competitive reality only suffocate smaller broadcasters and limit new entrants.

The Current Ownership Rules Inhibit Broadcasters’ Ability To Compete In An Otherwise Vibrant Video Marketplace

The current broadcast ownership rules do not serve the public interest because they are out of touch with the reality of the current media marketplace. These days, “watching TV” frequently does not mean watching a television set; consumers are increasingly likely to turn instead to their laptops or tablets. Millennials do not necessarily watch channels; they consume programs wherever they may be and whenever they want. They receive those programs frequently not through a cable or satellite service, or through antennas alone (although that number is on the upswing); they create their own content packages through subscriptions to services such as Amazon Instant Video, Hulu, and Netflix. And companies like DISH, CBS, and HBO are responding to consumers’ changing demands with new offerings such as Sling TV, CBS All-Access, and HBO Now. The reality is that the risk of a powerful broadcast owner that drove the creation of the broadcast ownership rules in the 1970s is not just unlikely, it is almost

non-existent. The media landscape is simply too diverse and evolving too quickly, both with regard to content creation and content distribution, to justify the current rules.

In fact, the current FCC rules distort broadcast competition in this new media landscape. They limit broadcasters' ability to respond to market forces, while cable, satellite and Internet-based media outlets without comparable restrictions proliferate and take away both audience share and advertising revenues from traditional broadcasters. The reality is that today, broadcasters' main competition for advertising dollars comes from the cable industry, and increasingly from the Internet, yet the broadcast ownership rules have not adapted to account for this progressively more competitive playing field.

The television duopoly rule, for example, which prohibits common ownership of two television stations in many markets, assumes that television broadcasters compete against only other television broadcasters. *That assumption is demonstrably false.* One need only look at the ever-growing presence of cable "interconnects," which sell local advertising for placement across hundreds of cable programs distributed locally, to understand that there is real and direct competition between broadcast and cable channels. And while the FCC has effectively prohibited even two broadcast TV stations from engaging in the joint sale of advertising, the largest pay-tv companies in the country have merged (AT&T/DirecTV) or are merging (Charter/TWC), and these companies along with other cable companies, satellite TV companies, and the telcos, have joined forces to create a single interconnected platform for local and national TV advertisers. That is not some mythical future: that conglomeration of MVPDs to jointly sell local advertising spots exists today.

To illustrate: Cable operators alone earned over \$1.7 billion in local ad revenues in the Top 10 markets in 2012. That equals the same revenue generated by three broadcast TV stations

in each of those markets. A broadcaster in a small California market (Chico, DMA #132) estimates that the cable interconnect there takes around \$3 to \$4 million in local advertising that formerly would likely have gone to local TV stations. I bring this information to the Committee's attention not to complain about competition, but rather to underscore that the FCC's rules pretend this competition does not exist and inhibit broadcasters' ability to compete. It is advertisers and consumers who pay the price.

Similarly, the shift of local advertising to Internet-based services also presents real competition for television broadcasting, and this competition only grows as broadband expands. Industry expert BIA projects that from 2013 to 2017, online ad revenues will rise from \$26.5 billion to \$44.5 billion, while location-targeted mobile ad revenues will increase from \$2.9 billion to \$10.8 billion. With regard to local ad revenue specifically, SNL Kagan found that Internet advertising had a compound annual growth rate (CAGR) of 24.7% from 2003 to 2012, while broadcast TV ad revenue had a negative CAGR (0.1%) over that same period. And last year, online media appealed to the largest percentage of local advertisers and took the largest share of ad budget, according to a report issued by Borrell Associates. Some analysts have even declared *2015 as the year when online will finally overtake traditional local media*. Despite this massive increase in competition directly relevant to broadcast ownership considerations, the FCC continues to insist that cable and online video do not provide "meaningful" competition for ad dollars.

The public interest is best served by broadcast ownership rules that permit radio and television stations to compete effectively in the broader media landscape to the benefit of both advertisers and consumers. The FCC began its last media ownership proceeding in 2009, but nothing has come of it. Yet, in that time, the Commission has managed to work heavily on

measures that benefit the cable industry, while the broadcast ownership rules have not been adapted to account for today's competitive realities.

The Current Ownership Rules Undermine Broadcasters' Uniquely Local Focus

That leads to my second point. A healthy, vibrant broadcast industry serves the public interest through locally-focused news, sports, public affairs programming and emergency services. No other industry has the responsibility—and frankly, ability or incentive—to serve the needs of the public. Broadcasters have this obligation in 210 distinct media markets, yet the broadcast ownership rules act to inhibit broadcasters' ability to serve this basic responsibility.

The cross ownership rules and television duopoly rule undermine the ability of these industries to leverage joint resources for the benefit of local communities, while competing industries—those without public interest obligations and community focus—consolidate and innovate outside of regulatory scrutiny. It is beyond question that the content distribution industry has consolidated significantly in recent years, both on the MVPD side and on the broadband side. But those industries have no incentive or ability to take any efficiency savings and invest in the needs of a community. By contrast, that is how broadcasters succeed in a market and win audience share: by investing in the community and local news, weather, sports and public affairs. So any efficiency gains for broadcasters will benefit the important goal of localism. Clearly, the broadcast industry is undergoing dramatic changes, and the competition I mentioned earlier is having a profound effect on the industry. But one truth is emerging out of this swirl: local content remains important. Local content serves communities and benefits the public. Localism is a value that is at the core of the American broadcast system, and we believe it remains vital today. One could argue that as the media landscape becomes more fractured and narrowed, local content—the kind that promotes civil discourse on matters of local importance—

actually becomes *more important*. That is why the FCC's rules are so counterproductive: they discourage investment in localism when it is needed the most.

To maintain the ability to provide quality local service, the broadcast ownership rules must permit reasonable combinations of station ownership. Broadcasters are a critical source of information and entertainment in every community across this country. One need look no further than the life-saving role that broadcasters play in times of emergency to understand the importance of a strong, vibrant broadcasting system. But it takes significant resources to provide up-to-the minute news, local and national emergency information and highly-valued entertainment programming. Stations therefore must be able to operate under policies that make sense in today's world. To compete and serve their communities successfully, broadcasters should be governed by regulations that at least account for the new and varied competitors that are all around us. Instead, broadcasters are subject to outdated ownership constraints that stifle their ability to compete with other content providers and distributors. In light of current competitive realities, the Commission must do what is required by law, and critically evaluate and update its broadcast ownership rules.

The Current Ownership Rules Fail To Promote Diversity

My last point is that the FCC's rules also do not serve the goal of promoting diversity. The record is clear that the current rules have failed to promote minority ownership in broadcast television. Additional prophylactic rules will only further suffocate the industry, preventing it from having a sustainable business model. The FCC is on the verge of making diversity even harder to achieve in the broadcast space as it recently, over vigorous dissents, proposed to take so-called "vacant" channels away from broadcasters. If adopted, this measure will eliminate a key avenue for minority broadcasters to break into the business. And, this measure will follow

the broadcast incentive auction, which itself is likely to lead to a sizable portion of the existing minority broadcasters going off the air.

NAB has a deep record of supporting initiatives to promote diversity. It has long supported and advocated for a minority tax certificate, though this idea has languished. NAB also supports an exclusive filing window for an AM radio station to file for FM translators to make the AM band more desirable and an entryway into radio station ownership. In addition, the NAB Educational Foundation promotes minorities in broadcasting through ownership and management training programs. The industry is also working to better understand how it covers issues of race throughout its news and information platforms. But clearly more needs to be done, and we stand ready to work with this Committee to pursue other innovative strategies to address this significant issue.

* * *

The FCC's failure to closely examine the evolution of the media landscape and update its broadcast ownership rules accordingly discourages investment and opportunities in broadcasting, and that undermines Congress's long-standing objectives of competition, localism and diversity. We are asking Congress for help to hold the FCC accountable for completing its review of the rules, and making the necessary changes to the benefit of both communities and consumers across the country.

Mr. LATTA. Well, thank you very much. I appreciate your testimony.

And the Chair now recognizes Mr. Boyle, who is vice president of public policy, Newspaper Association of America.

And we appreciate your being here today, and thank you for your testimony.

STATEMENT OF PAUL BOYLE

Mr. BOYLE. Vice Chairman Latta, Ranking Member Eshoo, and members of the subcommittee, on behalf of my 2,000 member newspapers, thank you for this opportunity to testify.

Congress and the administration have long been concerned about the future of newspaper journalism as our industry adjusts to new economic realities. The challenges that newspapers face today are well-documented. For the most part, these challenges are market driven. The one striking exception is the FCC's ban on cross-ownership that prohibits investors from owning or investing in both a daily newspaper and a television or radio station in the same market.

The rule may have been reasonable and appropriate in 1975, but with the surge of media across multiple platforms—cable, satellite TV, satellite radio, and the Internet—the cross-ownership ban no longer makes sense. Today, the American public has access to more information and more viewpoints than ever before, including through new digital platforms and social media Web sites. As the Pew Project for Excellence in Journalism summarized in its State of the News Media report: "The pace of technological evolution and the multiplicity of choices—from platforms to devices to pathways—show no sign of slowing down."

Newspapers are investing significant resources of their own on digital and mobile platforms and applications, providing consumers with news and information how, when, and where they want it. Most newspapers are also providing video to enhance news reports and provide viewers with in-depth features, videos that closely mirror the work of traditional broadcasters.

For example, the New York Times received a 2013 Pulitzer Prize for a multimedia project about skiers killed in an avalanche and the science of such disasters. And the Detroit Free Press received an Emmy for documentaries that live exclusively online.

The point is, media companies and consumers have embraced digital and mobile platforms, yet the FCC is desperately holding on to a media ownership rule that was constructed 40 years ago.

The FCC's cross-ownership ban is not only outdated, it is siphoning much needed investment in newspapers. Since 2008, print advertising in newspapers has decreased by 55 percent. Yes, digital advertising is a growing source of revenue, but it only produces a fraction of the resources that newspapers have historically relied upon to sustain their newsrooms.

In 1996, Congress required the FCC to review its media ownership rules every 4 years and to repeal or modify any rule that is no longer in the public interest. The FCC has consistently ignored this directive.

As this Commission continues to delay, this ban on cross-ownership is much further removed from the reality of today's media

marketplace. In fact, the FCC inaction has contributed to the decision by some media companies to either sell their broadcast stations or to divide their publishing and broadcast properties. After 20 years of waiting for regulatory relief, many media companies have moved on from cross-ownership as a strategy.

These actions do not mean that the rule is irrelevant. Local newspapers will come on the market, and there will be situations where the most logical buyer is a broadcaster who shares a commitment to local journalism. And there will be a daily newspaper interested in buying a TV station so that it can diversify its revenue stream in support of journalism.

But let's be clear, the repeal of the cross-ownership ban will not lead to massive consolidation. More likely, mergers would occur in a few select markets where it makes economic sense and where there are synergies that would support local journalism.

Finally, because the scope of this hearing includes diversity of ownership in the broadcast industry, I would like to point out that NAA has consistently supported many of the diversity proposals put forward by MMTC and others, such as the incubator program and a reinstatement of the minority tax certificate.

In the past, some have argued that the FCC should not change the cross-ownership ban until the Commission takes certain steps to increase diversity in media. We believe the Commission is fully capable of doing both at the same time.

Thank you.

[The prepared statement of Mr. Boyle follows:]

Subcommittee on Communications and Technology
Committee on Energy & Commerce
United States House of Representatives

Broadcast Ownership in the 21st Century

Testimony of Paul Boyle
Senior Vice President of Public Policy, Newspaper Association of America
September 25, 2015

EXECUTIVE SUMMARY

The Newspaper Association of America commends this subcommittee for focusing on issues of broadcast ownership in the 21st Century. We believe that one of the most important aspects of media ownership today is ensuring that ownership is not restricted by outdated regulations that do not reflect today's 21st century media marketplace. Specifically, my comments focus on the newspaper-broadcast cross ownership ban, a regulation that does not reflect the diversity of today's media.

The newspaper-broadcast cross ownership ban was enacted in 1975, when the Federal Communications Commission feared that if an owner had both a newspaper and a TV or radio station in the same market, that owner could control all of the news in the community. That is simply not true today. The growth of media across all platforms has created a much broader range of news sources for consumers than anyone could have contemplated forty years ago, including digital-only sites for national, regional and local news. Newspapers are adapting to well-documented challenges in the marketplace by investing in their print, online and mobile platforms – providing consumers with news and information how, when and where they want it.

The federal government should not prohibit a company from investing in newspapers just because they also have broadcast interests—especially when broadcast companies may share the same core journalistic values as newspapers. Indeed, such investments have been shown to improve journalism. Nor does the cross-ownership ban help promote diversity in the industry, which is better addressed through specific and tailored efforts that NAA supports. The Commission can provide newspapers with regulatory relief while at the same time encouraging diversity of broadcast ownership.

House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications and Technology

Broadcast Ownership in the 21st Century

Testimony of Paul Boyle
Senior Vice President of Public Policy, Newspaper Association of America

September 25, 2015

Good morning and thank you for the opportunity to appear before you to discuss issues of broadcast ownership in the 21st Century. I am Paul Boyle, senior vice president of public policy at the Newspaper Association of America, which represents the publishers of nearly 2,000 newspapers in the United States and Canada.

I commend the subcommittee for examining issues relating to media ownership. I appeared before the subcommittee last summer to speak about these issues, and I am pleased to appear before you again to continue this important dialogue. Your focus on broadcast ownership in the 21st century is particularly relevant, because many of today's ownership regulations are stuck in the 1970s and they do not fit today's media marketplace. Indeed, restrictions on media ownership can stifle innovation and investment that could benefit the communities our members serve.

I want to focus today on one such regulation: the newspaper-broadcast cross ownership ban. That ban prohibits investors from owning or investing in both a daily newspaper and a television or radio station in the same market. The Federal Communications Commission adopted the cross-ownership ban in 1975. At that time, the FCC feared that if an owner had both a newspaper and a TV or radio station in the same market, that owner could control all of the news and editorial viewpoints in a community. That was 40 years ago, when each market had one newspaper and three television stations, and cable and the Internet did not exist. Today, amid the surge of online media that have become vital to the 21st century media marketplace, the cross ownership ban simply does not make sense.

Media today face many challenges. For the most part, these challenges are marketplace issues, which the industry is working steadfastly to address, and are not government issues. The one striking exception is the cross ownership ban, which is a relic that undermines the FCC's

own goal of preserving strong journalism to serve the information needs of American communities. When we talk about broadcast ownership in the 21st century, we believe one of the most critical areas for consideration is ensuring that today's media ownership regulations reflect today's media.

We all recognize that Americans today have access to more information and more viewpoints than ever before, including through new digital platforms and social media websites. Young people are particularly likely to rely on such platforms for news. According to the Pew Research Center, a poll of adults younger than age 30 showed that just as many saw news on a social networking site the prior day (33%) as those who saw any television news (34%).¹

The growth of media across all platforms has created a much broader range of news sources for consumers than anyone could have contemplated forty years ago. The endless capacity of the Internet has enabled the rise of well-funded online news sites including Vox, BuzzFeed, and Vice News. A rich breeding ground also exists for local and regional news sites, such as the Texas Tribune, Voice of San Diego and ARLnow.com across the Potomac in Arlington, VA. We also see interesting collaborations between traditional media outlets and nonprofit organizations such as ProPublica and the Center for Investigative Reporting. As the Pew Project for Excellence in Journalism summarized in its State of News Media 2015 report, "the pace of technological evolution and the multiplicity of choices—from platforms to devices to pathways—show no sign of slowing down."² These sites are not simply aggregating the content published by traditional media, but are contributing their own original content to the media marketplace.

Newspapers are adapting to well-documented challenges in the marketplace by investing in their print, online and mobile platforms – providing consumers with news and information how, when and where they want it. Every day, newspapers innovate to ensure the communities they serve receive the robust journalism that has been a cornerstone of this country since the nations' founding.

¹ See Pew Research Center, in *Changing News Landscape, Even Television is Vulnerable* (Sept. 27, 2012), *available at* <http://www.people-press.org/2012/09/27/in-changing-news-landscape-even-television-is-vulnerable>.

² See Pew Research Center, *State of the News Media 2015*, *available at* <http://www.journalism.org/2015/04/29/state-of-the-news-media-2015>.

Newspapers are attracting users to their digital and mobile platforms by combining videos, photos, and storytelling—not unlike the work of traditional broadcasters. The Radio Television Digital News Association has recognized this work, awarding the 2015 Edward R. Murrow Award for overall excellence in online news to the Denver Post, for a project that combined video with photos and text storytelling. Similarly, The New York Times received the 2013 Pulitzer for Feature Writing for a multimedia project about skiers killed in an avalanche and the science of such disasters, and the Detroit Free Press received an Emmy Award for several locally focused documentaries that live online. The point is, as media companies and consumers move to digital and mobile platforms, the FCC is still holding on to a rule that was designed for the media landscape in the 1970s.

In today's media environment, the FCC's cross-ownership rule is not only unnecessary—it is actively stifling much needed investment in newspapers.

For the past five years, newspaper ad revenue has maintained a consistent trajectory: print ads have produced less revenue. While digital advertising revenue has increased at newspapers, digital ads produce a fraction of the revenues that newspapers have traditionally relied upon to sustain their newsrooms. Furthermore, newspapers compete for advertising revenue with search engines and a growing number of social platforms – Internet companies that do not invest in newsgathering or content creation. According to the Pivotal Research Group, advertising in search represented 13.5 percent of total advertising revenues in 2014, while advertising in newspapers represented 8.7 percent in total advertising revenues.³

Congress and the Administration have long been concerned about the future of journalism as the industry adjusts to new economic realities. Yet, we still have a 40-year old regulation on the books that essentially prohibits investments in newspaper journalism. As Walter Isaacson, a longtime journalist and president and chief executive officer of the Aspen Institute told the FCC last year we must “do all we can to encourage investment in newspapers and improve the business models for local journalism.”⁴

³ See Pivotal Research Group, U.S. Advertising Forecast (July 10, 2015).

⁴ See Walter Isaacson, Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, Re: 2010 and 2014 Quadrennial Regulatory Reviews, MB Docket Nos. 14-50, 09-182, 07-294 (July 9, 2014).

It makes little sense to continue enforcing a ban prohibiting any company with in-market TV ownership from investing in newspaper companies, when such investments have actually been shown to help improve journalism. According to FCC-commissioned research, on average a cross-owned television station produces more local news than a stand-alone station.⁵ Sharing newsgathering and production resources—which is made possible by newspaper-broadcast combinations—results in better breaking news coverage, increased resources for investigative reporting, and more Pulitzer Prizes, including in small and medium-sized media markets that would otherwise be unlikely to dedicate significant levels of investment to these efforts.

In 1996, Congress recognized in that the rules that govern media ownership need to reflect the reality of today's media. That is why Congress required the FCC to conduct a comprehensive review of its media ownership regulations every four years, and to "repeal or modify any regulation that it determines to be no longer in the public interest."⁶ The FCC has consistently ignored this congressional directive and recently wrapped up two quadrennial reviews into one (2010/2014). As the Commission continues to delay, and delay, and delay, this outright ban on cross-ownership gets much further removed from the reality of today's media marketplace. In fact, the FCC's inaction on the cross-ownership rule has contributed to the decision for some media companies to either sell their broadcast stations or to divide their publishing and broadcast properties. In the space of only a few years, Gannett, Dispatch Printing Company, E.W. Scripps, Fox, Journal Communications, Media General and Tribune all spun off their publishing divisions or sold their newspaper interests. After 20 years of the FCC examining the validity of the 1975 cross-ownership ban with no regulatory relief or certainty in sight, these companies have moved on. But these actions do not mean that the rule is irrelevant.

The media industry is in need of continued investment and innovation. Local newspapers will come on the market in the future where the most logical buyer is a local broadcaster with a proven commitment to local journalism. And, there will be a daily newspaper interested in buying a TV or radio station if one becomes available. In Ohio, for example, a newspaper might be interested in purchasing a TV or radio property so that it could diversify its revenue stream—

⁵ See FCC, 2010 Quadrennial Regulatory Review, Notice of Proposed Rulemaking ¶ 98 (Dec. 22, 2011).

⁶ Telecommunications Act of 1996 § 202(h).

particularly with the growth of political advertising on broadcast stations in “swing” states. This is important revenue that would support both the broadcast and newspaper journalism.

Let’s be clear, the repeal of the cross-ownership ban will not lead to massive consolidation. More likely, mergers would occur in a few, select markets where it makes sense to support the journalism provided in that community.

Finally, the scope of today’s hearing is on broadcast ownership, including the diversity of ownership. One stated purpose underlying the adoption of the newspaper-broadcast cross-ownership rule in the 1970s was the maintenance of diversity in the broadcast industry. As we all know, when the FCC made changes to the media ownership rules in 2003, The U.S. Court of Appeals for the Third Circuit sent the rules back to the FCC because of flaws in the “diversity index” used in support of multiple media ownership rule changes. The Court in remanding rule changes back to the Commission concluded that cross-ownership prohibition “was no longer in the public interest.” We strongly believe that the Commission can provide newspapers with regulatory relief while at the same time encouraging a diversity of broadcast ownership.

NAA specifically supports many of the diversity proposals put forward by the Multicultural Media Telecommunications Council, such as the “incubator program” that provides broadcasters incentives to finance or incubate minority owned businesses or a reinstatement of the Tax Certificate policy that would allow companies to defer capital gains taxes from the sale of media properties to minorities. In fact, NAA has filed in favor of most of the diversity-enhancing proposals advocated by the Multicultural Media and Telecommunications Council at the FCC. NAA supports efforts to increase diversity of the airwaves, and in the changed media marketplace, we see the tailored and specific approaches being undertaken by the MMTC as the right way to achieve greater diversity. The cross-ownership rule has never fostered diversity, and forcing its retention now will not increase minority ownership of broadcasting stations at all.

We look forward to working with this Subcommittee and the full Energy & Commerce Committee as you move forward on these broadcast ownership issues.

Mr. LATTA. Thank you very much for your testimony.

And the Chair now recognizes Kim Keenan, president and CEO of the Multicultural Media, Telecom and Internet Council.

Thank you very much, and you are recognized for 5 minutes.

STATEMENT OF KIM M. KEENAN

Ms. KEENAN. Thank you, Vice Chairman Latta, Ranking Member Eshoo, distinguished members of the subcommittee, and esteemed colleagues on the panel. I am honored to appear today to address the Nation's efforts to promote and preserve opportunities for diversity in the ownership of our Nation's airwaves.

My name is Kim Keenan, and I do serve as president and CEO of MMTC, or Multicultural Media, Telecom and Internet Council. This nonprofit was founded 29 years ago to promote equal opportunity and social justice in mass media, telecommunications, and the broadband industries. We proudly partner with dozens of national and local civil rights and advocacy organizations.

In an effort to do our part to increase minority broadcast ownership, MMTC's nonprofit Media and Telecom Brokerage division has participated in nearly one-third of all broadcast station sales to women and people of color since 1997. At MMTC, we believe that consistent with the mandate of Sections 151, 257, and 309 of the Communications Act, our Nation's media must reflect the cultural and viewpoint diversity of our Nation.

The late Dr. Everett C. Parker was one of our cofounders and a minister of the United Church of Christ. He passed away last week at the age of 102. And he fought very hard to desegregate both radio and television stations. Why? He said, "If we want the voiceless to have a voice that everyone can hear, we must have a robust minority broadcast ownership. It is essential to our democracy."

This message of advancing diverse media ownership still resonates as MMTC and other media advocates push for equity in representation and participation in the industry. So for the purpose of this hearing, I want to focus on three things.

First, the FCC has not been proactive in advancing minority broadcast ownership. First, the FCC must swiftly act upon proposals and policies that address the market-entry barriers that limit diversity and inclusion in broadcasting.

The FCC has four decades of minority ownership jurisprudence. In response to a 1973 court decision, the FCC first began to consider minority ownership as a factor in comparative broadcast hearings. It followed that decision in 1978 with the famous tax certificate policy, which, until its repeal in 1995, quintupled the number of bona fide minority-owned broadcast stations. Unfortunately, since 1978, the FCC's activity regarding minority ownership has been marked by inconsistently applied policies and in some cases repeal of minority ownership initiatives without the implementation of new or alternative approaches.

In the FCC's most recent media ownership report issued in 2014 and reporting on October 2013 data, people of color, including Hispanics, held a majority voting interest in only 6 percent of full-power commercial television stations, 11.2 percent of commercial AM stations, and 6.2 percent of commercial FM stations. And because these stations are mostly small and underpowered, MMTC

estimates that they represent no more than 2 percent of broadcast industry assets as a whole. It is well settled that this is an indispensable element of broadcast ownership diversity.

One of the other things that the FCC did under Michael Powell in 2004 was to create the Advisory Committee on Diversity for Communications in the Digital Age to advance media ownership opportunities for minorities and women.

For our part, MMTC, joined by over 50 national civil rights, professional, and civic organizations, has placed before the FCC some 44 race-neutral and almost entirely deregulatory proposals for rule changes and legislative recommendations that would advance minority ownership and participation in broadcasting. Despite clear interest in promoting ownership by women and minorities, the Advisory Committee on Diversity has not met since September 17, 2013.

The last Section 257 Market Entry Barriers report to Congress was due December 31, 2012. The FCC rejected 23 of MMTC's 44 pending proposals with no analysis or consideration in the 2014 quadrennial report and order on the theory that they were beyond the scope of the 2014 rulemaking.

In 2004, and again in 2011, the Third Circuit Court of Appeals had commanded the agency to consider pro-diversity proposals as a part of the quadrennial process. MMTC had to go to court to compel the FCC to simply rule on dozens of mostly unopposed proposals that have been pending for over a decade.

To be fair, the FCC took a significant step by relaxing its foreign broadcast investment policy, an action that MMTC immediately lauded, yet the agency had rejected nearly all of the other diversity proposals presented to it and has been consistently tardy in issuing the congressionally mandated Section 257 reports regarding the status of minority ownership.

My time is running short. I want to make sure I make both of my final points.

Reform must continue on JSAs and SSAs to ensure that they promote meaningful ownership opportunities for minorities. We applaud their long-overdue crackdown on joint service agreements, JSAs, and shared service agreements, sometimes called sidecars. They allow one station to sell advertising for or operate another station in the same market. These arrangements have almost always been used to evade the TV duopoly rule.

Although a handful of those selected to operate sidecars happen to be minorities, these arrangements do not help people of color advance in broadcasting. As a practical matter, most sidecar licensees own 100 percent of nothing.

For decades, before sidecars were invented, women and people of color actually operated real television stations successfully. The owners hired the staff and chose to address and put on local programs to address those issues.

We should note that there are rare instances where a JSA or an SSA can effect a legitimate purpose, and an example is Tougaloo College's WLOO-TV, which was donated to the college by Raycom Media and is owned and operated by the college to train mass communication students. The student is a JSA with American Spirit's WDBD-TV.

Finally, and I think this is the most important, the FCC has an immediate opportunity to foster minority media ownership through its broader efforts to revitalize AM radio. Pending before the FCC is the proposal to create an AM-only window to allow AM stations to apply for FM translators as a part of this proceeding. Last month, in an unprecedented mass letter——

Mr. LATTA. Pardon me, Ms. Keenan, if you could wrap up, because I know they are going to be calling votes here real quick. So if you can just wrap up in about another 10 seconds.

Ms. KEENAN. Excellent. I will do that.

Given this, 12 members of the Congressional Black Caucus have written to Chairman Wheeler urging the Commission to open the AM-only translator window. I respectfully urge other Members of Congress to follow suit and help guarantee that AM stations obtain the translators they need to remain competitive and provide our communities with the service that they need.

We respectfully implore the subcommittee to exercise their oversight powers to ensure that the FCC makes up for lost ground and takes dramatic and timely steps to increase minority broadcast ownership. Thank you.

[The prepared statement of Ms. Keenan follows:]

STATEMENT
OF
KIM M. KEENAN, ESQ.
PRESIDENT AND CEO
MULTICULTURAL, MEDIA, TELECOM AND INTERNET COUNCIL (MMTC)

“Broadcast Ownership in the 21st Century”

BEFORE THE
UNITED STATES HOUSE COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

SEPTEMBER 25, 2015

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INTRODUCTION

Chairman Walden, Ranking Member Eshoo, distinguished Members of the Subcommittee, and esteemed colleagues on the panel, I am honored to appear before the Subcommittee today to address this nation’s efforts to promote and preserve opportunities for diversity in the ownership of our nation’s airwaves.

My name is Kim Keenan, and I serve as President and CEO of the Multicultural Media, Telecom and Internet Council (“MMTC”), a national nonprofit founded 29 years ago to promote equal opportunity and social justice in the mass media, telecommunications and broadband industries. MMTC proudly partners with dozens of national and local civil rights and advocacy organizations. We have worked with both the private and public sectors to facilitate diverse

ownership in the broadcast industry. In an effort to do our part to increase minority broadcast ownership, MMTC's nonprofit Media and Telecom Brokerage division has participated in nearly \$2B in transactions, which represent nearly one-third of all broadcast station sales to women and people of color since 1997.

At MMTC, we believe that, consistent with the mandate of Sections 151, 257 and 309 of the Communications Act, our nation's media must reflect the cultural and viewpoint diversity of our nation. The late Dr. Everett C. Parker, one of MMTC's co-founders and a minister for the United Church of Christ, who passed away last week at the age of 102, said he fought to desegregate radio and television stations because: *"if we want the voiceless to have a voice that everyone can hear, we have to have robust minority broadcast ownership. It is essential to our democracy."* This message of advancing diverse media ownership still resonates as MMTC and other media advocates push for equity in representation and participation in the broadcasting industry.

For the purpose of this hearing, I will address why minority ownership continues to lag in the broadcast industries, and close with an immediate opportunity available through the FCC's current AM revitalization Notice that could foster meaningful engagement for minority broadcasters. In reference to the House Background Memo, MMTC will not testify regarding cross-ownership and takes no position on the cross-ownership rule given the changes in the marketplace.

I. THE FCC HAS NOT BEEN PROACTIVE IN ADVANCING MINORITY BROADCAST OWNERSHIP

First, the FCC must swiftly act upon proposals and policies that address the market entry barriers that limit diversity and inclusion in broadcasting. The FCC has produced four decades of

minority ownership jurisprudence. In response to a 1973 court decision,¹ the FCC first began to consider minority ownership as a factor in comparative broadcast hearings. It followed that decision in 1978 with the famous tax certificate policy² which, until its repeal in 1995,³ quintupled the number of bona fide minority owned broadcast stations. Unfortunately, since 1978 the FCC's activity regarding minority ownership has been marked by inconsistently applied policies and, in some cases, repeal of minority ownership initiatives without implementation of new or alternative approaches. This lack of consistent engagement has led to a pervasively low level of engagement by people of color as station owners and operators despite the emergence of an increasingly diverse viewing and listening public.⁴

In the FCC's most recent Media Ownership Report, issued in 2014 and reporting on October 2013 data, people of color, including Hispanics, held a majority voting interest in *only* 6.0 percent of full power commercial television stations, 11.2 percent of commercial AM stations, and 6.2 percent of commercial FM stations.⁵ And because these stations are mostly small and under-powered, MMTC estimates that they represent no more than 2 percent of broadcast industry asset value. In fact, the FCC's own criteria in awarding broadcast licenses delayed diverse ownership; it took 50 years under prior regulation before people of color owned even 1 percent of the nation's broadcast stations.

¹ *TV-9 Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973), *cert. denied*, 418 U.S. 986 (1974).

² See *Minority Ownership of Broadcast Facilities*, 68 FCC2d 979, 983 (1978).

³ Deduction for Health Insurance Costs of Self-Employed Individuals, Pub. L. No. 104-7, §2, 109 Stat. 93 (1995).

⁴ See Brief of Intervenor Multicultural Media, Telecom and Internet Council in *Howard Stirk Holdings, LLC v. FCC*, No. 14-1090 *et al.* (D.C. Cir., filed August 27, 2015), pp. 3-6.

⁵ See Federal Communications Commission, *Report on Ownership of Commercial Broadcast Stations* (June 27, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-924A1.pdf (last visited Sept. 24, 2015).

Today it is well settled that minority ownership is an indispensable element of broadcast ownership diversity. In 1996, Congress adopted Section 257 of the Communications Act to require the FCC to report every three years on its efforts to eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services.”⁶ And in 2004, under Chairman Michael Powell, the FCC created the Advisory Committee on Diversity for Communications in the Digital Age to advance media ownership opportunities for minorities and women.⁷

For our part, MMTC, joined by over 50 national civil rights, professional and civic organizations, has placed before the FCC forty-four race-neutral and almost entirely deregulatory proposals for rule changes and legislative recommendations that would advance minority ownership and participation in broadcasting.

Despite clear interest in promoting ownership by women and minorities, the Advisory Committee on Diversity has not met since September 17, 2013. The last Section 257 Market Entry Barriers Report to Congress was due on December 31, 2012. The FCC rejected 23 of MMTC’s 44 pending proposals, with no analysis or consideration, in the 2014 Quadrennial Report and Order – on the theory that they were “beyond the scope” of the 2014 Quadrennial rulemaking.⁸ In 2004 and again in 2011, the Third Circuit of the U.S. Court of Appeals had commanded the agency to consider pro-diversity proposals as part of the Quadrennial dockets.⁹ In 2008, the FCC merged its

⁶ 47 U.S.C. §257(a) (1996).

⁷ 2014 Quadrennial Regulatory Review, *Review of the Commission’s Broadcast Ownership Rules, Further Notice of Proposed Rulemaking and Order* (“2014 Quad Review Order”), 29 FCC Rcd 4371, 4517 n. 989 (2014).

⁸ *Id.* at 4371.

⁹ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 421 n. 59 (3d Cir. 2004); *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011).

“Diversity Docket” with the Quadrennial Docket,¹⁰ thereby making all of MMTC’s proposals definitively within the scope of the Diversity Docket. MMTC had to go to court to compel the FCC to simply *rule* on dozens of mostly unopposed proposals that have been pending for over a decade, including over a dozen that have received the enthusiastic support of scores of civil rights organizations as well as the Newspaper Association of America and the National Association of Broadcasters.

To be fair, in 2013, the FCC took a significant step by relaxing its foreign broadcast investment policy,¹¹ an action that MMTC immediately lauded. Yet the agency has rejected nearly all of the other diversity proposals presented to it and has been consistently tardy in issuing the congressionally-mandated Section 257 reports that assess the status of minority media ownership. These examples represent missed opportunities by the Commission to facilitate substantive ownership opportunities for minority broadcasters.

II. REFORM MUST CONTINUE ON JSAs AND SSAs TO ENSURE THAT THEY PROMOTE MEANINGFUL MINORITY OWNERSHIP OPPORTUNITIES

Second, MMTC applauds the FCC’s long overdue crackdown on television Joint Service Agreements (JSAs) and Shared Services Agreements (SSAs) – sometimes called “sidecars”, that allow one station to sell advertising for, or operate, another station in the same market.¹² These

¹⁰ See 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCCRcd 5922, 5925 (2008).

¹¹ *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244, 16251 (2013) (stating that the Commission would exercise its statutory discretion to consider, on a case-by-case basis, applications and transactions that propose foreign broadcast ownership exceeding the 25 percent benchmark of Section 310(b)(4)).

¹² See Phil Verveer, *How the Sidecar Business Model Works* (Mar. 6, 2014), <http://www.fcc.gov/blog/how-sidecar-business-model-works> (last visited Sept. 24, 2015).

arrangements have almost always been used to evade the TV duopoly rule.

Although a handful of those selected to operate sidecars happen to have been minorities, these arrangements do not help people of color advance in broadcasting. As a practical matter, most sidecar licensees “own” 100 percent of nothing. Most such arrangements are shams in which the “sidecar” station’s supposed owner has no meaningful opportunity to operate the station, choose its programming, or produce any news. For decades, before sidecars were invented, women and people of color actually operated *real* television stations successfully, where the owners hired the staff, chose issues to address, and put on local programs to address those issues.

To be fair, we do recognize that there are rare instances where a JSA or an SSA can serve a legitimate purpose. An example is Tougaloo College’s WLOO-TV, which is largely operated as a training institution by Raycom Media’s WLBT-TV in an SSA arrangement we have closely reviewed and found to be legitimate.

MMTC hopes that the FCC’s much-needed JSA and SSA reforms will lead to new, legitimate opportunities for minority broadcast station ownership.

III. **AM REVITALIZATION IS AN IMMEDIATE PATHWAY TO INCREASED MINORITY OWNERSHIP**

Third, the FCC has an immediate opportunity to foster minority media ownership through its broader effort to revitalize AM radio. Pending before the FCC is the proposal to create an AM-only window to allow AM stations to apply for FM translators as part of this proceeding. Last month, in an unprecedented mass letter, 50 CEOs of minority owned AM radio licensees wrote to the Commission, declaring that “AM radio has been the technological gateway for entrepreneurs of color in broadcasting; two-thirds of minority-owned broadcast stations are AM radio stations.”¹³ Earlier this week, former FCC Acting Chair Michael Copps and former Commissioner

¹³ Letter to FCC Chairman Wheeler (Aug. 31, 2015), available at <http://www.mmtconline.org/wp->

Robert McDowell jointly wrote:¹⁴

Translators have been a boon for those stations lucky enough to find one, but too many AM stations are stuck on the sidelines because demand for translators far outstrips supply in many areas. Opening the promised AM-only translator application window would help fix this problem. In fact, such a window is the only way many AM radio stations will ever be able to obtain a translator and provide improved, expanded service to their listeners. This approach is especially important for women and minority owners of AM stations, who are more likely to run small standalone stations on shoe-string budgets.

Twelve members of the Congressional Black Caucus have written to Chairman Wheeler urging the Commission to open an AM-only translator window.¹⁵ I respectfully encourage other Members of Congress to follow suit and help guarantee that AM stations obtain the translators they need to remain competitive and provide our communities with the service they need.

CONCLUSION

MMTC respectfully implores the Subcommittee to exercise its oversight powers to ensure that the FCC makes up for lost ground and takes dramatic and timely steps to increase minority broadcast ownership.

Thank you again for the opportunity to testify and I look forward to your questions.

[content/uploads/2015/09/AM-Broadcasters-Letter-FINAL-083015.pdf](#) (last visited Sept. 24, 2015).

¹⁴ Michael Copps and Robert McDowell, *Will FCC Keep Its Promise to Help AM Radio?*, The Hill Blog (Sept. 23, 2015, 7:30 AM), <http://thehill.com/blogs/congress-blog/technology/254527-will-fcc-keep-its-promise-to-help-am-radio> (last visited Sept. 24, 2015).

¹⁵ Congressional Black Caucus Letter to FCC Chairman Wheeler (Sept. 1, 2015) (on file at MMTC and available upon request).

Mr. LATTA. Thank you.

The Chair now recognizes Michael Scurato, who is the vice president of policy, National Hispanic Media Coalition.

Thank you very much. You are recognized for 5 minutes.

STATEMENT OF MICHAEL SCURATO

Mr. SCURATO. Vice Chairman Latta, Ranking Member Eshoo, members of the subcommittee, thank you very much for inviting me to testify here today on this important issue of broadcast ownership in the 21st century.

Broadcasting remains incredibly important in today's media landscape, yet despite an increasingly diverse population and near universal recognition of the importance of broadcast ownership, people of color and women remain shut out. For many years, the National Hispanic Media Coalition has issued a number of recommendations that we think would help remedy this.

First, the FCC should tighten and enforce its existing media ownership rules to create opportunities. Recent action to close the joint sales agreement loophole has already demonstrated how further and long-overdue action on this recommendation can create positive change.

Second, the FCC should aggressively improve its collection of ownership data and perform analysis that is necessary to create proactive policies that promote diversity.

And third, Congress should reinstate the minority tax certificate, which increased ownership diversity before being abandoned many years ago.

Promoting ownership diversity in broadcasting should be prioritized given the role of the media in fostering public discourse on critical issues and providing important local news and information. The FCC also has a statutory obligation to promote diversity.

Broadcasting remains the way that most people in this country access important local news and information. Broadcast television reaches 98 percent of Americans. Radio is similarly pervasive. In Los Angeles, over 95 percent of the population listens to radio on a given week, including 98 percent of Latinos and 99 percent of Spanish-speaking Latinos.

However, excessive consolidation and lack of diversity has caused harm to diverse communities and prevented these communities from fully benefiting from the public resource that broadcasters use to serve them. Last year, before this subcommittee, NHMC compellingly recounted the harms that result from the prevalence of hate speech in the media.

Examples from the past few weeks show this problem remains. For instance, one host on a conglomerate-owned station in Iowa recently suggested that all undocumented immigrants be enslaved. Additionally, the repeated broadcast of the hateful remarks of a high-profile public figure was recently revealed to be directly responsible for the violent and vicious beating and degradation of a Latino in Boston.

While Internet access holds great promise, for two key reasons it is not yet able to match the power of broadcasting. First, as many as one in three Americans lack home broadband access. People living in rural areas, people of color, the poor, seniors, non-

English speakers, and people with disabilities are far less likely to access the Internet at home. Second, local news and information online still by and large originates from traditional media sources, such as local newspapers and broadcasters.

The FCC's latest diversity statistics are shameful. There are more than 1,300 full-power television stations in this country. In 2013, African Americans held the majority interest in only nine; by early 2014, only four, many of those entangled in JSAs and other arrangements that limit control or wealth-generation potential. For Asians, the number of stations owned is five. Latinos held the majority interest in only 3 percent of full-power television stations in 2013, despite accounting for 17 percent of the population.

Female ownership continues to remain low or decrease. Women owned only 6.3 percent of full-power commercial television stations in 2013. And radio, once considered a key entry point for diverse broadcasters, presents a similarly bleak picture. There was a 20 percent decrease in African American owners and a 10 percent decrease in Asian owners between 2011 and 2013. These numbers are persistently bad at a time when nearly 38 percent of the population is comprised of people of color, and they have remained bad for quite some time. There is a strong possibility that these numbers could decline further following the upcoming incentive auction.

NHMC envisions a world in which broadcasters reflect the diversity of our population and adequately serve the needs of all communities. Congress should promote diversity in broadcasting by encouraging the FCC to strengthen its media ownership rules and perform the research and analysis necessary to create new diversity initiatives. Congress should also reinstate the minority tax certificate. These are important steps towards achieving NHMC's vision.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Scurato follows:]



**Testimony of
Michael Scurato, Vice President, Policy
National Hispanic Media Coalition**

**Before the
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology**

Broadcast Ownership in the 21st Century

September 25, 2015

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for inviting me to testify this morning.

I represent the National Hispanic Media Coalition (NHMC), a media advocacy and civil rights organization working towards a media that is fair, inclusive, and accessible to all people.

A little over a year ago, my colleague, Jessica González, testified before this Subcommittee at a hearing similar to this one, entitled “Media Ownership in the 21st Century.”¹ I am glad that the Subcommittee is continuing to examine this issue and I am thankful for the desire to explore ways to promote ownership diversity.

Broadcasting remains incredibly important in today’s media landscape. Broadcast content reaches nearly everybody in this country on a regular basis and facilitates local and national discourse on important issues. Yet, despite an increasingly diverse population and near-universal recognition of the importance of broadcast ownership diversity, women and people of color continue to be shut out of this industry.

¹ NHMC’s previous testimony, delivered to this Subcommittee on June 11, 2014, can be found at App. A.

NHMC recommends that Congress urge the Federal Communications Commission (FCC or Commission) to tighten its current media ownership rules to create opportunities for new entrants. The FCC's recent action to make Joint Sales Agreements (JSAs) attributable ownership interests closed a loophole that limited the efficacy of the FCC's existing rules and it has already paid dividends by allowing a number of diverse owners to purchase stations. NHMC also recommends that Congress support FCC efforts to continue to improve its collection of ownership data and perform the analysis necessary to create proactive policies that promote diversity. Finally, NHMC recommends that Congress reinstate the "minority tax certificate."

Broadcasting Remains A Critically Important Source Of News And Information, Particularly For Diverse Communities

Promoting ownership diversity among traditional media outlets should be a top priority given the role of the media in fostering public discourse on critical issues and providing important local news and information. The FCC also has a statutory obligation to promote diversity. Broadcast television reaches 98 percent of Americans and reliance on over the air television is prevalent in poor, rural and non-English speaking communities. Nearly 1 in 4 Latinos rely on over-the-air signals to receive television programming. Radio is similarly pervasive, reaching over 90 percent of Americans each week. In Los Angeles, California, where many of NHMC's employees reside, over 95 percent of the population listens to the radio during the week in the morning to midday hours, including 98 percent of Latinos and almost 99 percent of Spanish-speaking Latinos. Further, studies demonstrate that broadcasters are incredibly influential in shaping attitudes and behaviors among and towards people of color, women, rural communities, and so on.

However, excessive consolidation and lack of diversity have directly resulted in harm to diverse communities and led to the inability of these communities to fully benefit from the public

resource that broadcasters use to serve them. Last year, before this Subcommittee, NHMC compellingly recounted the numerous harms that result from the prevalence of hate speech in the media. Unfortunately, this remains a significant problem. A few examples from just the past few weeks include one host on a conglomerate-owned station in Iowa recently suggesting that all undocumented immigrants be enslaved by the state. Additionally, the repeated broadcast of the hateful remarks of one high-profile public figure was revealed to be directly responsible for the vicious and violent beating and degradation of a Latino in Boston, Massachusetts.

For two key reasons, the Internet is not yet able to match the power of broadcasting. First, as many as 1 in 3 Americans lack home broadband access. Low-income, rural communities are among the most disconnected. For example, nearly 70 percent of families making less than \$35,000 per year in Brownsville, Texas, lack home Internet access. People living in rural areas, Latinos, African-Americans, seniors, the poor, non-English speakers and people with disabilities are far less likely to be connected to the Internet. Second, online news and information still, by and large, originates from traditional media sources, such as local newspapers and broadcasters.

Broadcast Ownership Diversity Remains Virtually Non-Existent

As I was preparing NHMC's testimony last year, I had the opportunity to review FCC data on the number of broadcast outlets owned by women and people of color. Examining the data, I could not help but recall the word that the Commission itself had used to describe these numbers just a few years earlier: "dismal."

About two weeks after NHMC's testimony, the FCC released the results of its 2013 biennial ownership data collection. Unbelievably, in many respects, the latest numbers are the worst yet.

Below is a selection of shameful statistics found in the latest data:

Latinos held a majority interest in only 3 percent of full power commercial television stations, virtually unchanged from the 2.9 percent in 2011. This is despite currently accounting for more than 17 percent of the population.

African Americans held a majority interest in only 9 full power commercial television stations in 2013, down from 11 in 2011. Independent research done by FCC Commissioner Pai and others revealed only 4 African American owned stations remained by early 2014.

A footnote in the FCC's report reveals that an apparent increase in Asian ownership of full power television stations was due to a temporary ownership arrangement – meaning that there were actually only 5 Asian owned stations by the end of 2013, down from 6 in 2011.

These numbers are out of a total of 1,386 full power commercial television stations and are persistently bad in the face of increasing diversity within this country, with nearly 38 percent of the population comprised of people of color.

Low power television stations and radio outlets have long been assumed to offer more attractive opportunities for diverse broadcasters, as these stations tend to be more affordable, making access to capital issues slightly less problematic. Unfortunately, the latest data shows that even among these outlets, women and people of color are woefully underrepresented.

African Americans owned only 16 out of 1,258 low power television stations in 2013, the exact same number as in 2011.

Asians owned 14 low power television stations, half of the 28 owned in 2011.

Latinos have been more successful, owning 126 low power television stations in 2013, but that number has remained stagnant for some time and still represents only 10 percent of low power stations.

According to FCC data, there was a 20 percent decrease in African American owned FM radio stations and 10 percent decrease of Asian owned FM stations between 2011 and 2013.

Female ownership has remained stuck at very low levels or decreased across the board. For instance, women owned only 6.3 percent of full power commercial television stations in 2013, down from 6.8 percent in 2011.

There is a strong possibility that many of these numbers could decline sharply following the upcoming incentive auction. A recent analysis of Commission data reveals that people of color frequently own smaller outlets in large markets with 46 percent of stations owned by people of color located outside of the top four ranked stations in the largest 20 Designated Market Areas (DMAs). According to the same analysis, people of color are often single owners in markets with widespread consolidation, making financial distress much more likely and creating pressure to exit the market. These characteristics may mean that these broadcasters will be more likely to participate in the upcoming auction and exit the market completely.

Recommendations

Recognizing the continued importance of broadcasting, NHMC has consistently proposed a number of steps that can be taken by the FCC and Congress to help improve this dire situation.

First, NHMC contends that the FCC's media ownership rules play an important role in preserving opportunities for women and people of color who may wish to enter or remain in the market. The FCC's limits and restrictions provide a race- and content- neutral way to curb concentration and create opportunities for new entrants. The FCC's positive move to make certain television JSAs attributable to station ownership, closing a gaping loophole and signaling enforcement of its existing rules, has already paved the way for 10 new stations owned by women or people of color – an impressive number in a short period of time given the low

ownership rates and stagnation described above. Clarifying similar treatment for other types of outsourcing agreements and tightening media ownership rules could create additional opportunities.

Second, NHMC has urged the FCC to explore creating proactive policies that would increase ownership diversity. However, various court decisions prevent the FCC from taking such action without first completing studies analyzing the current state of ownership by women and people of color and assessing the impact of any rules or proposals on ownership diversity. While the FCC's biennial ownership data collection through Form 323 is slowly improving, much work remains. Further, the type of analysis and studies contemplated in a series of decisions by the Third Circuit Court of Appeals remain out of reach. Should the FCC determine that race-conscious measures are necessary, a reasonable conclusion given remarkably bleak levels of ownership diversity, such policies would need to withstand strict scrutiny during any judicial review, a standard only met with robust, data-driven analysis, among other factors.

Third, NHMC has long urged Congress to pass legislation reinstating the "minority tax certificate." From 1978 to 1995, Congress' "minority tax certificate" program opened doors for people of color to own broadcast stations at record rates. However, should Congress choose to pursue this objective, it could also greatly benefit from additional data and analysis about the state of diverse ownership in broadcasting. Reinstating the "minority tax certificate" is a popular idea deserving of serious consideration.

Conclusion

NHMC envisions a world in which broadcasters reflect the diversity of our population, and adequately serve the needs of all communities. Promoting diversity in broadcasting by encouraging the FCC to strengthen its media ownership rules under its existing regulatory

framework and perform the research and analysis necessary to create new diversity initiatives, as well as using your lawmaking power to reinstate the “minority tax certificate” are important steps towards achieving that vision.

Thank you and I look forward to your questions.

[Additional information submitted by Mr. Scurato has been retained in committee files and also is available at <http://docs.house.gov/meetings/IF/IF16/20151203/104240/HHRG-114-IF16-Wstate-ScuratoM-20151203.pdf>.]

Mr. LATTA. Well, thank you very much.

And the Chair now recognizes for 5 minutes Mr. Todd O'Boyle, who is the program director, Media and Democracy Reform Initiative, at Common Cause.

Thank you very much. You are recognized for 5 minutes.

STATEMENT OF TODD O'BOYLE

Mr. O'BOYLE. Good morning, Mr. Vice Chairman, Ranking Member Eshoo, and members of the subcommittee. Thank you for inviting me to be a part of this discussion about the future of broadcast ownership. Former FCC Commissioner Michael Copps leads our media reform work at Common Cause, and he sends his warmest rewards.

Mr. LATTA. Thank you.

Mr. O'BOYLE. At Common Cause we advocate for inclusive, responsive governance and a diverse local media ecosystem that informs the electorate. Therefore, we oppose further relaxation of media ownership rules and support the unwinding of shell operations that undermine lively civic discourse. Waves of mergers and consolidation, too often with the blessing of the Federal Communications Commission, have eroded the vitality of local communications media to the detriment of our electorate.

In recognition of the special compact at the heart of broadcasting, Congress wisely empowered the FCC to prevent local broadcast monopolies, and the diversity of voices enlivens the marketplace of ideas in which democracy depends. And competition for news-gathering resources means more newsroom jobs as rival news crews hustle to get the scoop. More local journalists, in turn, means more sunlight, the best disinfectant for corruption and graft.

In other words, localism increases employment and enhances the quality and quantity of news—a win, win, win. But the inverse is also true. Consolidation wreaks havoc on journalism. The record is grim. The FCC has for many years sanctioned merger after merger, formally entrenching local information monopolies. And to be clear, this has been a bipartisan problem that has facilitated an arms race between big cable and big broadcast at the expense of audiences everywhere.

Meanwhile, the agency has regularly looked the other way as media monopolists found and exploited loopholes to effect a covert consolidation through shared services and joint sales agreements.

The consequences have been staggering. Diverse and female ownership took a nosedive. Is it any surprise that minorities and women still struggle with backwards portrayals in the media when they control so little of it? Clearly, ownership matters.

There is scant evidence that these arrangements promote the public interest and reams of data that they harm it. Researchers at the University of Delaware found that SSAs resulted in duplicated content in every market they studied. They found stations sharing anchors, graphics, videos, and scripts. In some markets, such as Honolulu, broadcasters simply simulcast the exact same content on multiple channels. In short, more shells mean fewer journalists and less journalism.

While we are disappointed the FCC has not yet reined in SSAs, thankfully, the agency has addressed JSAs. Last year Common

Cause applauded when the Commission took an important first step back to media diversity. It brought more parity between radio and television broadcasters by making joint sales agreements attributable in ownership calculations. Within months of the FCC's action, the agency reported 10 new minority/female ownership arrangements, the first meaningful gains in years.

This represented a great first step, but should be viewed as only the beginning of pro-diversity reforms. Indeed, the FCC's own ownership data paint a dire picture. Female minority ownership still lags in the single digits.

Broadcasters frequently defend these tricks of the trade as essential to keeping the lights on. They often claim that without these financial instruments, broadcasters would go dark. On the contrary, the bevy of recently announced mergers illustrates the broadcast business is booming thanks to record ad sales, the bulk of which come from political advertising.

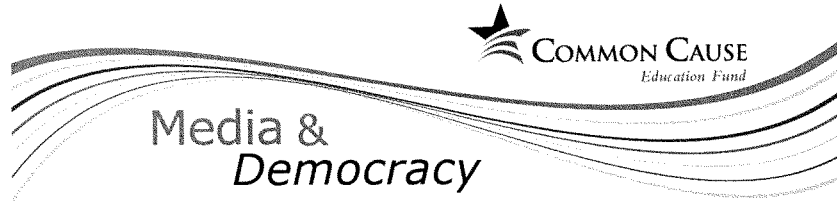
Presently, Congress is considering legislative vehicles to eliminate JSA reform. We call on you to halt them forthwith. A reversal would be a staggering step backwards and foreclose future pro-local, pro-diversity policies. Indeed, the rule in question includes a waiver process that broadcasters can make the case to keep the arrangements if they truly are serving the public interest.

There are other areas where the FCC could improve. We have long urged the agency to do a better job of collecting ownership data with Form 323. The reporting tool itself is cumbersome and the agency has been known to grant extension after extension, rendering the underlying data of questionable quality. Notably, the courts twice previously rejected attempts to relax cross-ownership rules, citing insufficient record on ownership and how proposed changes would affect historically disadvantaged groups. Regardless of where each of us stands on ownership, any change would require more and better data.

I close with this observation. The present moment is one of opportunity. Will the FCC, with your oversight, approve another slew of broadcast consolidations, or will it go down a different path, one of diverse voices and an informed electorate, the path of local and diverse ownership? Let's hope it seizes the opportunities before it, first by putting the brakes on media consolidation, and then by building on its JSA reform to rein in SSA abuses.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. O'Boyle follows:]



**COMMENTS OF TODD O'BOYLE
PROGRAM DIRECTOR, MEDIA AND DEMOCRACY REFORM INITIATIVE
COMMON CAUSE
WASHINGTON, DC
SEPTEMBER 25, 2015**

Chairman Walden, Ranking Member Eshoo, and distinguished members of the Subcommittee: Thank you for inviting me to be a part of these important discussions concerning the future of broadcast ownership. Founded in 1970, Common Cause advocates on behalf of inclusive, responsive governance at the federal, state, and local level. Because an informed citizenry is essential to effective self-governance, we support communications policies that connect the entire community, and facilitate robust civic discourse. Former FCC Commissioner Michael Copps leads our work, and sends his warmest regards.

Waves of mergers and consolidation – too often with the blessing of the Federal Communications Commission – have eroded the quality and quantity of local communications media, to the detriment of our electorate. On behalf of Common Cause's more than 400,000 members and supporters I urge this Committee to foster policies that promote the timeless values of localism and diversity.

In recognition of the special compact at the heart of broadcasting – exclusive license in exchange for public interest obligations – Congress wisely empowered the

FCC to prevent local broadcast monopolies. Indeed, a diversity of voices enlivens the marketplace of ideas on which democracy depends. Competition for newsgathering resources means more newsroom jobs and rival newscrews hustle to get the scoop. More local journalists means more sunlight, the best disinfectant for corruption and graft. In other words, localism increases employment and enhances the quality and quantity of news. A win, win, win.

The inverse is also true: consolidation wreaks havoc on journalism. The record is grim. The FCC has for many years blessed merger after merger, formally entrenching local information monopolies. At times, the agency has granted waivers to its own concentration rules. To be clear, this has been a bipartisan problem, that has facilitated an arms race between Big Cable and Big Broadcast at the expense of audiences everywhere.

Meanwhile, the agency regularly looked the other way as media monopolists found and exploited loopholes to effect “covert consolidation” through Shared Services and joint sales agreements. The consequences have been staggering. Diverse and female ownership took a nose dive – is it any surprise that minorities and women still struggle with backwards caricature portrayals in the media when they control so little of it? Clearly ownership matters.

There is scant evidence these arrangements promote the public interest and reams of data that they harm it. Researchers at the University of Delaware found that SSAs resulted in duplicated content in every market they studied. They found stations sharing anchors, graphics, video, and scripts. In some markets, such as Honolulu, broadcasters simply simulcast the same content on multiple channels.

Thankfully, the FCC more recently did a good job of recognizing that sophisticated, nested ownership structures which facilitate financial shell games violate the public interest. In March of 2014, Common Cause cheered as the agency took an important first step back to media diversity. It brought more parity between radio and television broadcasters by making joint sales agreements attributable in ownership calculations. Its order afforded TV broadcasters a window to unwind their JSAs, a timeframe which Congress has subsequently extended.

Within months of the FCC's action, the agency reported 10 new minority/female ownership arrangements, the first meaningful gains in minority and female ownership in years, thanks to the JSA reform. This represented a great first step, but should be viewed as only the beginning of pro-diversity reforms. As the Leadership Conference on Civil and Human Rights has noted, the FCC's own ownership data paint a dire picture: female and minority ownership is still in the single digits.

Broadcasters frequently defend these tricks of the trade as essential to keeping the lights on. They often paint a grim picture that but for these financial arrangements, broadcasts would go dark. Those protestations notwithstanding, we are hard pressed to find evidence of JSAs and SSAs that keep the books balanced during tough economic times. On the contrary, the bevy of recently announced mergers illustrates that broadcast business is booming, thanks to record ad sales – the bulk of which come from political advertising.

Let's dispel any misunderstandings: we want to see broadcast flourish, and would never advocate broadcasters go dark. And indeed all FCC rules are subject to a waiver process, so any broadcaster is free to make the case that its JSA advances the public interest, and deserves a waiver.

Presently this chamber is considering legislative vehicles to eliminate this reform. We call on you to halt them forthwith. Whether through standalone legislation or via appropriations rider, reversing the FCC's JSA reform would be a staggering step backwards and foreclose future pro-local, pro-diversity policies.

There are things the FCC could be doing better – we have long urged the agency to do a better job of collecting ownership data with Form 323. The reporting tool itself is cumbersome, and the agency has been known to grant extension after extension, meaning the underlying quality of the data is questionable. Multiple parties have suggested granular improvements to the form to make it more useful. The FCC should take these recommendations under serious advisement. It is worth noting that the courts twice rejected previous attempts to relax cross-ownership rules citing the insufficient record on ownership and how proposed changes would impact historically disadvantaged groups.

I close with this observation. The present moment is one of opportunity; will the FCC – with your oversight – approve another slew of broadcast consolidations? Or will it go down a different path; one of diverse voices and an informed electorate, the path of local and diverse ownership? Earlier this year the Commission prepared to reject the Comcast/Time Warner Cable merger as inimical to the public interest. In so doing it struck a blow for choice and local communities. Let's hope that it seizes the opportunities before it – first by putting the brakes on further consolidation, then by building on its JSA reform to rein in SSA abuses.

Mr. LATTA. Well, thank you very much, and I appreciate your testimony.

Our next witness is Jason Kint, who is the chief executive officer, Digital Content Next.

We appreciate your being here, and you are recognized for 5 minutes.

STATEMENT OF JASON KINT

Mr. KINT. Thank you. Vice Chairman Latta, Ranking Member Eshoo, and the members of the subcommittee, it is my honor to appear here before you today.

I am the CEO of Digital Content Next, DCN, formerly known as the Online Publishers Association. We are the only trade group dedicated to serving high-quality digital content companies that manage trusted relationships with both consumers and advertisers.

By way of background, I have spent over 20 years in digital media in a number of executive roles, operating both established and native digital companies and brands. Much of that work involved shifting these brands into multiplatform brands in a short period of time based on consumer demand. I am proud now to represent media companies from every segment of the market, from large to midsize companies, to newer upstarts that are carving niche market in the delivery of original content over the Internet.

The members of DCN reached 230 million unique visitors, over 100 percent of the U.S. online population, and they are leading the revolution of the marketplace.

In the late 1990s, consumers turned to the disruptive power of the Internet because of the ease of access to content and the availability of this content on new platforms. As we have all witnessed over the course of nearly two decades since the beginning of this transformation, the current media landscape looks vastly different than it once did. When we examine where consumers turn for news and information, even more consumers are now turning online.

In my full testimony, I provided some data on this transition, but I would like to highlight two important findings here. According to a 2015 Reuters Digital News Report, 74 percent of respondents got their news online, compared to 64 percent on television, 26 percent on radio, and just 23 percent from print media. If you look at the under-35 audience, less than 25 percent still get news from television. These statistics inform the debate.

The underlying intent of the media ownership rules is to ensure diversity of independent voices is available to consumers. However, the rules have also served to limit investment in media companies, which for newspapers in particular has made their transition to a digital world much more difficult.

At its core, the Internet is an innovative, and importantly, open platform that has produced a diverse ecosystem that allows businesses small and large to engage with consumers in a variety of ways, limited only by their creative capacity. It allowed a variety of consumer and professional voices to flourish. Recognition of what the Internet delivers and its potential is critical to analyzing the media ownership rules.

I understand that developing the rules in this environment is difficult. On the one hand, consumers are increasingly moving online

for their news and entertainment, as demonstrated by the data I have previously shared. On the other hand, broadband adoption to access that content is not ubiquitous yet, although that is changing.

Moreover, there has been a decades-long decline in ad revenue for newspapers that digital ad revenue has not offset. That decline has resulted in job cuts and other reductions impacting their available news resources. However, there are new digital native news sites providing coverage from a variety of perspectives. Pew estimates that as many as 400 new native digital news sites now exist.

Of course, others suggest that absent the ownership rules the growth in digital news sites may have been even greater. Balancing these competing data points and many others that speak to the levels of competition, localism, and diversity in media should provide an impetus for the FCC to decide what modifications to the media ownership rules should be made to reflect the new reality.

In a digital age, consumers have even more access to a diverse amount of content than 20 years ago. DCN's members have been at the forefront of this change. We have venerable institutions attempting to reform their business models and adapt their trusted brands to this digital ecosystem. We also have new digital native companies challenging the assumptions for how news should be covered and delivered.

The Internet has been the great equalizer as content creators are able to access markets on a global scale while still having the ability to reach hyperlocal markets with original and compelling content.

As any DCN member can tell you, there is no business model that can succeed long term without being built around the consumer demand. It should be no different in this case. It starts with the consumers. The key to any assessment of media ownership rules should be rooted in the answer to this question: Are consumers getting the news and content they want, and are those business models sustainable? My answer is that they are and that the offerings and offerors continue to proliferate.

It is important to the marketplace, and ultimately consumers, that the Commission update and relax the ownership rules to reflect the media landscape as it exists today. I fear that expansion of outdated regulations to the online environment could stunt the growth of online content in a way that will prove detrimental to the consumer experience.

DCN looks forward to working with this committee and engaging with policymakers and regulators on this issue, and I thank you for the opportunity to testify before you today.

[The prepared statement of Mr. Kint follows:]

Testimony of

Jason Kint
Chief Executive Officer, Digital Content Next

Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

September 25, 2015

“Broadcasting Ownership in the 21st Century”

Chairman Walden, Ranking Member Eshoo and the members of the Subcommittee, it is my honor to appear before you today. I am the CEO of Digital Content Next (DCN), formerly known as the Online Publishers Association (OPA). We are the only trade organization dedicated to serving the high-quality digital content companies that manage trusted, direct relationships with consumers and marketers. By way of background, I have spent over 20 years in the digital media business in a number of executive roles with both established media brands and digital natives that often evolve into multiplatform brands in a short period of time based on consumer demands. I am proud to represent media companies from every segment of the market, from large to mid-sized companies to newer entrants that are carving out niche markets in the delivery of original content over the Internet. The members of DCN reach 230 million unique visitors or 100% of the U.S. online population and they are leading the evolution of the marketplace.

Current Landscape

In the late 1990's, consumers turned to the disruptive power of the internet because of the ease of access to content and the availability of this content on new platforms in rich and colorful ways. As we have all witnessed, over the course of the nearly two decades since the beginning of this transformation, the current media landscape looks vastly different than it once did.

This observation is supported by surveys that detail consumer preference for and interaction with digital content over traditional media. According to Deloitte's Ninth Digital Democracy Survey, streaming content has overtaken live programming as the viewing method-of-choice, with 56 percent of consumers now streaming movies and 53 percent of consumers streaming television on a monthly basis, as compared to 45 percent of consumers watching television programs live. Moreover, younger viewers have moved to watching TV shows on mobile devices rather than on traditional televisions. Among Trailing Millennials (age 14-25), nearly 60 percent of time spent watching movies occurs on computers, tablets and smartphones, making movie viewing habits decidedly age-dependent.¹

¹ <http://www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/digital-democracy-survey.html>

When we examine where consumers turn for news and information, even more consumers are turning online. According to the 2015 Reuters Institute for the Study of Journalism Digital News Report, 74 percent of survey respondents got their news online, compared to 64 percent on TV, 26 percent on radio, and 23 percent from print media.² If you look at the under 35 audience, less than 25 percent still get news from television.

These statistics inform the debate about media ownership in a changing landscape and the robust competition my members face in the creation and distribution of their content.

The underlying intent of the media ownership rules is to ensure a diversity of independent voices is available to consumers. However, the rules have also served to limit investment in media companies, which, for newspapers in particular, has hindered their transition to a digital world.

As the members of this Committee are well aware, the Federal Communications Commission maintains media ownership rules and since 1996 has been required to review those rules every two and later every four years to determine whether each rule is “necessary in the public interest as the result of competition.” Under that Congressional directive, the Commission has worked over the last almost decade to make modifications to the rules. The 2006 Quadrennial Review Order, which relaxed newspaper/broadcast

² <http://www.digitalnewsreport.org/survey/2015/sources-of-news-2015/>

cross-ownership, was ultimately remanded to the Commission in 2011 for failing to comply with the notice and comment provisions of the Administrative Procedures Act. The Commission initiated its 2010 Quadrennial Review with a Notice of Inquiry in which it asked some core questions on the analytical framework under which should review its rules. That review was later combined with the 2014 review and remains pending.

Changing Dynamics

With the advent of the Internet and consumers choosing a diverse array of content to access on a daily basis, media ownership rules need to be reviewed regularly to ensure that they are not becoming anachronistic and continue to reflect the on-the-ground reality that exists in the market. In its 2010 review, the FCC recognized just this evolution. The FCC stated at that time “the proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace. Consumers are increasingly turning to online and mobile platforms to access news content and audio and video programming.” The Commission also recognized the potential of broadband for the broadcast and newspaper industries, noting that broadband and other media platforms present both challenges to established business models and provide opportunities to reach new audiences and generate new revenue streams.

At its core, the Internet is an innovative, and importantly, open platform that has produced a diverse ecosystem that allows businesses large and small to engage with consumers in a myriad of ways – limited only by their creative capacity. As such, it has allowed a variety of consumer and professional voices to flourish. Recognition of what the Internet delivers and its potential is critical to analyzing the media ownership rules.

I understand that developing the rules in this environment is difficult. On the one hand, consumers are increasingly moving online for their news and entertainment, as shown in the earlier data I mentioned. On the other hand, broadband adoption to power the access to that content is not ubiquitous, although that is changing.

Moreover, there has been a decades-long decline in ad revenue for newspapers that digital ad revenue has not offset. That decline has resulted in job cuts and other reductions impacting their available news resources. However, there are new digital native news sites providing coverage from a variety of perspectives. Pew estimates that as many as 400 new digital native news sites now exist.³ Of course others suggest that absent the ownership rules the growth in digital news sites may have been even greater. Balancing these competing data points and many others that speak to the levels of competition, localism, and diversity in media should provide an impetus for the

³ <http://www.journalism.org/2015/04/29/digital-news-audience-fact-sheet/>

FCC to decide what modifications to the media ownership rules should be made to reflect the new reality.

Conclusion

In a new digital age, consumers have even more access to a diverse amount of content today than 20 years ago. DCN members have been at the forefront of this change. We have venerable institutions attempting to reform their business models and adapt their trusted brands to the continually evolving digital ecosystem. We also have new, digital-native companies challenging the assumptions for how news should be covered and delivered. The Internet has been the great equalizer as content creators are able to access markets on a global scale while still having the ability to reach hyperlocal markets with original and compelling content.

As any DCN member can tell you, there is no business model that can succeed long term without being built around consumer demand. It should be no different in this case – it starts with the consumers. The key to any assessment of media ownership rules should be rooted in the answer to this question: are consumers getting the news and content they want and are those business models sustainable? My answer is that they are and that the offerings and offerors continue to proliferate.

It is important to the marketplace, and ultimately consumers, that the Commission update and relax the ownership rules to reflect the media landscape as it exists today. I fear that expansion of outdated regulations to the online environment could stunt the growth of online content in a way that will prove detrimental to the consumer experience.

DCN looks forward to working with the Committee and engaging with policymakers and regulators on this issue and I thank you for the opportunity to testify before you today.

Mr. LATTA. Well, thank you very much for your testimony. We appreciate it.

And in the interest of where we are right now, because we are almost at the end of this first vote, we are going to recess the subcommittee at this time, and committee staff will be back with you, because with all of the other events that have happened today, probably we won't have members coming back in. So what we will do, we will recess the hearing and then be back in touch with you all as to furthering the committee hearing at that time.

We appreciate your testimony and—sorry, the gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman. What I would like to suggest, given 11 votes coming up, and we are very late for the first one, and the importance of the testimony and the issues that are embedded in the testimony, I would request that this hearing be continued until a date certain is set rather than members just submitting questions to the witnesses. I really think we need to have an exchange, and it would be a healthy and worthy one.

So that is the preference on this side, and I hope that that could be honored. Thank you.

Mr. LATTA. So I think what we can do, both committee staffs will work to get that put together.

I thank you.

Ms. ESHOO. Good. Wonderful.

Mr. LATTA. And again, we appreciate your time this morning. And we will recess the committee at this time.

[Whereupon, at 10:50 a.m., the subcommittee was adjourned.]

PREPARED STATEMENT OF HON. FRED UPTON

Our conversation today offers us a great opportunity to discuss ways we can modernize our laws to better reflect a media industry that serves consumers in the innovative and dynamic 21st century. How people get their news has changed dramatically and continues to evolve on a near daily basis. But the media ownership rules in place today have failed to keep pace. Local broadcast stations and newspapers are now in direct competition with not only traditional national media outlets, but also a wide variety of nontraditional outlets as well as social media sites like Facebook and Twitter. Growing up in Southwest Michigan, you could count on one hand the source of news that was available—with the only options being local TV evening news, radio, or the morning hometown newspaper. Now, we have access to unlimited sources of real time information, 24 hours a day. But our laws are stuck in the 20th century, desperately needing an update that reflects the ever-changing market.

Without relief, media companies have slowly sold off their newspaper and print operations, and it is unclear still what fate ultimately awaits many of our daily newspapers. Competition from the Internet has eroded traditional media companies' market share and ad revenues—a point made even clearer as a result of the Great Recession. Modern laws might have allowed broadcasters and newspapers to better weather the rise of the Internet or the economic impact of the recession, but that relief has not been forthcoming.

We are all committed to fostering competition, localism, and diversity of perspectives in a healthy and vibrant media industry. The parties here may not agree how best to achieve those goals, but we have the obligation to push forward and find agreement on something better because the status quo is unacceptable.

PREPARED STATEMENT OF HON. GREG WALDEN

Good morning and welcome to today's hearing on broadcasting ownership in the 21st century. For the last century, broadcasting and newspapers have been the

media that connect communities. Whether it's the local radio call-in show that amplifies the voices of average citizens, the local television news that's "live, local, and late-breaking," or the newspaper column that has everyone talking, broadcasters and newspapers are a part of our communities. These voices have served as the primary way Americans' news needs were met for the majority of our republic's history, but times have changed.

The current broadcast ownership laws reflect a significantly different time in American history. Cable, satellite, and the Internet have become integral parts of our communications infrastructure and our daily lives, changing the way we consume news and giving national scope to their voices. But despite the massive changes to the communications marketplace and American consumption of news, our laws are stuck in a bygone era.

Our laws were written for an era of limited voices. But this is an era of communications competition. Competition between broadcast news and cable news; competition between print journalism and online journalism; and competition between traditional media and new media. In an era of such intense competition, our laws should not unduly hamper the ability of any one segment to provide the high-quality content consumers have relied on for decades.

But that's exactly what our laws do. Our laws limit the number of households a broadcast station group can reach; our laws hold on to artificial distinctions between AM and FM radio stations; and our laws prevent broadcasters dedicated to serving their communities from saving local newspapers from extinction. These laws must change.

While we work to change the laws to empower broadcasting and newspapers for a new era of American media, we must also look to empower our Nation's minorities in the traditional media marketplace. Despite the wealth of voices and viewpoints in our society, ownership of traditional media by minorities remains low. Empowering broadcasting for the 21st century means embracing policies that diversify it to reflect the society it serves. I look forward to hearing from our witnesses on ways that we can encourage greater minority ownership in broadcasting.

We all share the same goal of promoting localism in our communities. Broadcasters and newspapers play a critical role in ensuring Americans have reliable news sources and work to bring us all together whether you live in the largest city or on the most rural of ranches. As technology continues to change our society, it is important that we ensure our laws keep pace. Our priority should be to encourage innovation and diversity within communities without placing more restrictions on businesses. I thank our witnesses for being here today and offering your valuable input.

BROADCASTING OWNERSHIP IN THE 21ST CENTURY—DAY 2

THURSDAY, DECEMBER 3, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:17 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Lance, Johnson, Ellmers, Eshoo, and Pallone (ex officio).

Staff present: Ray Baum, Senior Policy Advisor, Communications and Technology; Andy Duberstein, Deputy Press Secretary; Kelsey Guyselman, Counsel, Communications and Technology; Grace Koh, Counsel, Communications and Technology; Charlotte Savercool, Professional Staff, Communications and Technology; Gregory Watson, Legislative Clerk; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; Ashley Jones, Democratic Director of Communications, Member Services and Outreach; Jerry Leverich, Democratic Counsel; Lori Maarbjerg, Democratic FCC Detailee; and Ryan Skukowski, Democratic Policy Analyst.

Mr. WALDEN. We will call the Subcommittee on Communications and Technology to order.

And, by unanimous consent, Ms. Eshoo and I would like to ask our colleagues to waive opening statements so that we can actually resume this hearing or have the new hearing of the resumption of the hearing going forward.

And I would suggest that if the panel members who had the opportunity to give your opening statements before, if you want to share a few comments, that would be fine, but if you want to kind of move through them rapidly, that would be fine. I tell you all that because they just called votes on the House floor. So, best-laid plans. There will be seven votes.

And I understand you all have agreed to waive statements, so thank you. We could just pass bills and get everything done this morning at this rate.

So, with that, thank you for returning. As you know, this is a resumption of the hearing on ownership. And so, with that, I guess we go right into Q&A then, right?

So let me start with a question to Mr. Waldron.

Tax incentives are generally considered a relatively efficient way for the Government to encourage certain policies. The minority tax certificate is a voluntary instrument that entities can take advantage of or not, depending on whether the situation is appropriate.

Do you think the FCC would be able to structure a program around the minority tax certificate that would prevent arbitrage?

And then I would like to get the views of the other panel members as well.

So, Mr. Waldron, what do you think of that?

Mr. WALDRON. Thank you, Mr. Chairman.

Yes, NAB has long supported tax certificates, and we think they can be structured in a fair and balanced way. I do want to emphasize that tax certificates did exist, and there were more than 50 tax certificates that were done. And so we think it can be structured.

And, as you point out, it is a voluntary program, really a market-based program, to incentivize minorities to get into the business. So we think it is an excellent idea and a step that the Commission and the Congress should take.

Mr. WALDEN. Mr. Boyle?

Mr. BOYLE. Mr. Chairman, NAA has supported the tax certificate and some other proposals that the MMTC has put forward to increase diversity of ownership. So we think it can be done, and we hope Congress would enact it.

Mr. WALDEN. Ms. Keenan?

Ms. KEENAN. Hello.

Mr. WALDEN. Good morning.

Ms. KEENAN. I am president and CEO of MMTC, Multicultural Media, Telecom and Internet Council.

I absolutely concur with what has been said. MMTC has long been in the forefront of pushing for these tax certificates. They are the right way to handle this at the right time.

If you were to do a bar graph of what it looks like when you have tax certificates and when you don't, this is what it looks like when you don't. Imagine the bottom. But when you have it, this is what it looked like. If you were to go back, you would see that the highest period of growth in ownership by women and people of color was under the tax certificate program. And those were bona fide people who entered at that level. But, once that program was taken away, we are back at those levels that were negative.

So, absolutely, this is the right way, and it is the right time.

Mr. WALDEN. Thank you.

Mr. Scurato?

Mr. SCURATO. Yes, the National Hispanic Media Coalition, we support the idea of reinstating the minority tax certificate. Moreover, we would hope that Congress could reinstate it in a way that is race-conscious, as the prior tax certificate was. We think that would have the most impact on ownership diversity.

Mr. WALDEN. OK.

Mr. O'Boyle?

Mr. O'BOYLE. Common Cause also supports the reinstatement of the minority tax certificate program. I think this is a consensus position, not only because raising diverse ownership, increasing diverse ownership is an important public interest goal, but because we believe the evidence shows that female and diverse ownership drives more and better representative content of female and minority populations and that there is a problem with misogynistic and racist characterizations in the media because there is such a limited ownership of the media by females and minorities.

Mr. WALDEN. Got it.

Mr. Kint?

Mr. KINT. My name is Jason Kint. As CEO of Digital Content Next and kind of representing the future of digital media, any issue around promoting the voice of minorities is of paramount im-

portance to us. And the details on that, I would like to follow up with you, if that would be all right.

Mr. WALDEN. All right. Thank you.

I am going to yield back the balance of my time so we can get to Ms. Eshoo for her questions, as well, and to Mr. Latta.

Ms. ESHOO. Thank you, Mr. Chairman.

First, I would like to ask for unanimous consent to place two pieces in the record.

Mr. WALDEN. Without objection.

[The information appears at the conclusion of the hearing.]

Ms. ESHOO. Thank you. Do I need to name them?

Mr. WALDEN. No.

Ms. ESHOO. No. OK. Save that time. All right.

Thank you to all the witnesses.

And I want to thank the chairman for agreeing to reschedule the rest of this hearing. I thought that it was important, and I thank him for agreeing and doing so.

To Mr. O'Boyle, can you tell me how many shared services agreements, the SSAs, and joint sales agreements still remain in place today? And does the Commission require broadcasters to disclose the existence of such agreements?

Mr. O'BOYLE. Thank you for the question.

Determining the precise number of these arrangements is surprisingly difficult. Credit to Free Press for doing some good research to try and infer, by looking through SEC filings, the exact number. But it should not be this hard.

The FCC's Form 323 is a problematic reporting tool. It is complex and cumbersome. And noncompliance is also an issue. So there are issues with the reporting tool itself.

But, more broadly, to take another issue, the 2014 JSA Reform Order, which Common Cause supported, did not actually require broadcasters to disclose SSAs. So we feel the most direct and easiest way for us to get a handle on a census, the number of arrangements out there, is to require they be disclosed.

And I would offer that this bespeaks the bigger problem, that we need better data, and that regardless of where panelists—

Ms. ESHOO. Sounds like it is an area that really needs some work—

Mr. O'BOYLE. Yes, ma'am.

Ms. ESHOO [continuing]. From what you have said.

To Mr. Scurato, how do you respond to those that suggest that the JSAs and the SSAs actually increase broadcast ownership diversity?

And I appreciate the comments, the responses to the chairman's question a moment ago. That was terrific.

Mr. SCURATO. So, looking at the available data, we don't actually think that the advent and rise of these types of sharing arrangements do anything to help support greater ownership diversity. In fact, if you look at the data, you know, these agreements have really come to prominence over the last 10 years or so, going from about 37 agreements—

Ms. ESHOO. What do you think, shorthand, they actually produce?

Mr. SCURATO. Well, what they do is they allow current owners in the market to circumvent media ownership rules and own more. And that is at the expense of opportunities for people of color and women that may want to enter the market.

Ms. ESHOO. To Mr. O'Boyle, I know that you know that there have been efforts from this side of the aisle, led by Mr. Yarmuth, earlier this year in introducing legislation to require the disclosure of the true sponsors of political ads on the public airwaves. We have a huge problem in our country, obviously, especially on the heels of Citizens United.

Now, in the absence of any newly enacted law—which, obviously, is not going to take place, I mean, because there is opposition from our friends on the other side of the aisle—what do you think the FCC can do? What steps do you think they should take, in terms of disclosure relative to the airwaves?

Mr. O'BOYLE. Well, section 317 of the Telecommunications Act empowers the FCC to write sponsorship identification rules—that is, to write rules requiring the disclosure of the, quote, “true identity” of that sponsor. And the FCC, in interpreting its own authority decades ago, said that the name of the sponsoring committee was—

Ms. ESHOO. How long ago was that?

Mr. O'BOYLE. I can get the exact year, but I think it was in the seventies. At the time, that may have—

Ms. ESHOO. Almost a half-century ago.

Mr. O'BOYLE. But times and circumstances have changed.

Ms. ESHOO. I think so.

Mr. O'BOYLE. And in the post-Citizens United world, we have unprecedented amounts of unaccountable spending. Voters don't know who is trying to persuade them.

Ms. ESHOO. Well, that is the problem. What would you recommend?

Mr. O'BOYLE. I would recommend that the FCC undertake a notice of proposed rulemaking to begin to rewrite the sponsorship identification rules, updating them for—

Ms. ESHOO. So an update of that section.

Mr. O'BOYLE. That is right. And we could do that in time for the 2016 general election.

Ms. ESHOO. I will yield back, Mr. Chairman. Thank you.

Mr. WALDEN. The gentlelady yields back the time.

And we now go to Mr. Latta.

Mr. LATTA. Well, thank you, Mr. Chairman.

And, Mr. Waldron, in your testimony, you noted that the FCC has not completed its statutorily mandated quadrennial review of ownership rules in a timely manner.

Can you explain how the FCC's failure to complete its quadrennial review affects the ability of broadcasters to effectively compete in the marketplace and why it is important to get this done?

Mr. WALDRON. Thank you, Mr. Latta.

It has been more than 12 years since the FCC actually has given a thorough look at ownership. Think about how the landscape has changed in that time. We have Facebook and Google that are a significant source of competing ad space for local broadcasters. We have cable companies that have formed interconnected pacts, so

they compete against broadcasters for advertising, for audience and eyeballs.

And, in that environment, we still have an ownership rule which exists as if a broadcaster only competes with broadcasters. It does not acknowledge that your local car company can go place an ad on Facebook or they can place an ad with Google or they can place an ad with other broadcasters or they can place an ad with every cable company.

And so we think if the FCC actually did the job that Congress gave it, to look at its ownership rules and look at the current environment today, we think that they would actually come out with a sensible rule that would allow reasonable combinations of TV stations. But looking at the prism through 2003 distorts what the rules should be.

Mr. LATTA. Thank you.

Mr. Chairman, I think I am going to yield so maybe the gentleman from New Jersey can get his questions in. Thank you.

Mr. WALDEN. The Chair recognizes the gentleman from New Jersey.

Mr. PALLONE. Thank you.

Mr. Chairman, I just wanted to follow up to some extent on what Ms. Eshoo was asking, because the broadcasting industry, particularly TV stations, have benefited greatly from billions of dollars in revenue from political advertising every cycle. And although the FCC took a step forward by putting the public and political file online for TV stations, I am concerned that isn't enough for consumers.

Are consumers able to easily use these online political files to determine who is behind the issue ads that they see? And, you know, don't Americans have the right to know who is behind these ads? If you can comment on, you know, the access to finding out the information about who is doing these ads.

I was going to ask Mr. O'Boyle.

Mr. O'BOYLE. Thank you, Mr. Pallone.

We feel that there are important steps the FCC could take to improve the quality of the online public file by making it a searchable, queryable database that, as other Government agencies make their data machine-readable so that you can search—

Mr. PALLONE. Well, you agree that right now it is hard to find?

Mr. O'BOYLE. It is not particularly useful. In many cases, we have public files that have been handwritten, scanned into a PDF, and uploaded so that they can't actually be searched and you have to decipher sort of a scrawl. And that could be made much more usable.

More broadly speaking, even if that were made as usable as we would like, it still would not disclose the true identity of an actual sponsor of an ad.

And to your question about whether voters are able to determine who is trying to persuade them, no. To get that, we need to get the FCC to undertake a rulemaking updating its sponsorship identification rules for 2015.

Mr. PALLONE. OK.

I have one more question. Do we have time?

Mr. WALDEN. We have let the cloakroom know that we are trying to finish.

Mr. PALLONE. All right. Then let me stop. Thanks.

Ms. ESHOO. No, ask it.

Mr. PALLONE. All right. All right. Well, this is a New Jersey question, though.

Mr. WALDEN. Oh, forget that.

Mr. PALLONE. I can wait till we come back.

Mr. WALDEN. No, no, we are not coming back.

Mr. PALLONE. Oh, all right.

Well, I am just worried that in New Jersey—you know, this is from Hurricane Sandy and the local broadcasters—in New Jersey, we already have too few TV stations. And one of them is owned by an entity that already owns two other stations in the same market.

So I was going to ask either Mr. O'Boyle or Mr. Scurato, can you elaborate on whether joint ownership as well as situations where there are sharing agreements between stations produces more local news and information for consumers? This is our concern in New Jersey.

Mr. O'BOYLE. Briefly. And I will allow Mr. Scurato to respond, as well.

University of Delaware Professor Danilo Yanich has studied extensively the nature of nested ownership structures and the impact they have on content. And in every market they have studied, they yield homogenization of content.

So, rather than plowing the efficiencies into new investigative local reporting that holds local officials accountable and informs the local electorate, instead, they are padding the bottom line.

Mr. PALLONE. OK.

Mr. SCURATO. Further, I would just add that, you know, there is evidence that, as these agreements are entered into, these sharing agreements, that newsrooms shrink and there are fewer jobs at these stations. And so that has a pretty direct impact on the quality of local news and information.

Mr. PALLONE. I think you are right.

All right. Thank you very much.

Mr. WALDEN. We want to thank our panelists.

We have seven votes, so the intent would be to adjourn, unless there is an objection.

I am getting mixed signals.

Ms. ESHOO. Well, I wish we could stay all morning because there is so much that we can be discussing, but, you know, all the well-laid plans in the world.

I don't see any other members that showed up from our side for the hearing. So do you anticipate any? Because if you don't, then—

Mr. WALDEN. I don't believe so. So I think other questions can be submitted for the record.

Ms. ESHOO. Yes.

Mr. WALDEN. Otherwise, they are going to be here another hour before we get back.

Ms. ESHOO. I have some more questions, so I am going to submit them to you.

Mr. WALDEN. Thank you for your participation. Sorry this hearing was abbreviated, as well. We appreciate your input, and maybe we can have a further discussion on these issues down the road. We are adjourned.

[Whereupon, at 10:33 a.m., the subcommittee was adjourned.]

12/3/2015

Who's behind those annoying political ads? | TheHill



September 21, 2015, 07:00 am

Who's behind those annoying political ads?

By Newton Minow and Micheal Copps

After a summer dominated by Donald Trump, the only thing we know for certain about the 2016 election is that tons of money, including hundreds of millions of dollars from anonymous donors, will be poured into contests for president, Congress, governorships and down-ballot offices. Most of it will be used to pay for political advertising.

The fundraising totals already are eye-popping. Major party candidates and political action committees (PACs) have raised more than \$370 million. Leading the money chase, former Florida Governor Jeb Bush and his supporting PACs reported donations of more than \$100 million at the end of June, with the first real voting still a half-year away. Former Secretary of State Hillary Clinton and her supporting PACs reported in excess of \$60 million. But that's just the beginning.

Thanks to the Supreme Court's *Citizens United* decision, shadowy "independent" groups with nebulous names like "Americans for Patriotism" can raise and spend limitlessly to influence elections. Shouldn't we know if "Americans for Red White and Blue Flags" is actually a front for Big Oil or Big Labor, or just a Big Billionaire with a left or right agenda? Instead, anonymity reigns and voters suffer through long months of untraceable smears and distortions. Worse, this unaccountable money not only buys ads now, but will influence winning candidates after the elections are over. It's insidious and destructive of democracy.

In this age of unprecedented dark money, reform might seem hopeless. Thankfully, it isn't. True, Capitol Hill hasn't accomplished much in recent years, but the Federal Communications Commission (FCC) can require effective "sponsorship identification" (SID) rules thanks to a little-known section of the Communications Act (Section 317). Imagine that: instead of being given the name of a nebulous political action committee at the end of each political or controversial issue commercial, voters might hear an on-air in the ad a list of the top four or five individual donors.

The FCC has had SID authority for more than 80 years, but has applied these requirements only to commercial advertising, not political—even though the statute clearly covers both and in spite of FCC rules clearly stating that voters are entitled to know who is trying to influence their votes. The agency should update these rules to keep pace with the ever-changing world of big money campaigning. The agency can assert its statutory authority and sort out the dark money groups, which are frequently nested within one another like Russian dolls.

Members of Congress have introduced legislation in both houses of Congress to ensure the FCC takes action. We welcome that Congressional leadership, but the FCC does not have to wait. It already has the legal authority to give voters the transparency they deserve in time for the 2016 general election.

Wrong as most of the *Citizens United* decision was, the Supreme Court emphasized that donor disclosure would be an entirely acceptable antidote to the plague of money it loosed upon the campaign system. Full disclosure would clearly pass constitutional muster.

The FCC, under Chairman Tom Wheeler, has had a great year. Unfortunately, it has not yet made this necessary reform a priority. Sure, it will be opposed by the donor class and the vested interests, but we can tell you this: once you get outside the Beltway to talk with the American people, this is a non-partisan proposal. Republican voters, Democratic voters and independent voters want and deserve to know who is trying to sway their votes. The FCC exists to enforce the provisions of the Communications Act—all of them. It is time to act.

The FCC can update its rules and put them into effect in plenty of time for the 2016 campaigns. But it needs to get on with this job right away. As Justice Brandeis wrote: "sunlight is the best disinfectant."

Minow served as chair of the FCC from 1961 to 1963. Copps served as FCC chair in 2009. He currently is special adviser to Common Cause's Media and Democracy Reform Initiative.

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**The Leadership Conference
on Civil and Human Rights**

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20006



The Honorable Kurt Schrader
U.S. House of Representatives
Washington DC 20510

The Honorable C.A. Dutch Ruppersberger
U.S. House of Representatives
Washington DC 20510

The Honorable Paul Tonko
U.S. House of Representatives
Washington DC 20510

November 3, 2015

The Honorable Greg Walden
U.S. House of Representatives
Washington DC 20510

The Honorable John Shimkus
U.S. House of Representatives
Washington DC 20510

The Honorable Billy Long
U.S. House of Representatives
Washington DC 20510

The Honorable Renee Ellmers
U.S. House of Representatives
Washington DC 20510

**Support Media Diversity: Oppose Attempts to Exempt Application of the Joint Sales
Agreements (JSA) Attribution Rule to Existing Agreements**

Dear Representatives Walden, Shimkus, Long, Ellmers, Schrader, Duppersberger and Tonko:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we write to express our opposition to any efforts to exempt application of the Joint Sales Agreements (JSA) attribution rule in existing agreements, including any attempts to achieve the same ends through the appropriations process. Media diversity has long been a top priority of The Leadership Conference and our members because we understand that meaningful protection of civil rights and advancement of key policy objectives rely in great measure on an accurate, independent, and diverse media. We are writing to you because you are a co-sponsor of H.R. 3148, which would undermine a March 2014 Federal Communications Commission (FCC) decision on JSAs, by grandfathering JSA agreements among broadcasters that otherwise violate media ownership limits. The FCC's March action on JSAs led to the first meaningful increase in female and minority ownership in years, resulting in ten new diverse ownership arrangements, in communities from Odessa, Texas to Charleston, South Carolina.¹ H.R. 3148 and efforts like it would have an adverse impact on media diversity.

The National Association of Broadcast Employees and Technicians-CWA (NABET-CWA) has documented how JSAs and other arrangements such as shared services agreements

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Dennis Williams
International Union, UAW

**Policy and Enforcement
Committee Chair**
Michael Lieberman
Anti-Discrimination League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

¹ See *Making Good on the Promise of Independent Minority Ownership of Television Stations* at <https://www.fcc.gov/blog/making-good-promise-independent-minority-ownership-television-stations> (December 4, 2014).

November 3, 2015
Page 2 of 2



(SSAs) lead to job loss. For example, a sharing arrangement between Barrington Broadcasting (now Nexstar) and Granite Broadcasting led to 40 workers in Syracuse, NY and 30 workers in Peoria, IL losing their jobs.² Fewer newsroom employees means less competition in the marketplace of ideas. Homogenized content harms the community and results in less-informed civic discourse and voting.

Media concentration leads to fewer owners and fewer entrepreneurial opportunities, while actions to tighten the media ownership rules will lead to more owners and more such opportunities for people of color, people with disabilities, and women. JSA and SSA agreements that mimic joint ownership but do not offer true operational independence circumvent those rules and lead to the same negative outcomes as media consolidation.

For that reason, we supported the FCC's decision to count JSAs toward ownership determinations for full power television stations. The FCC has made clear that waivers of these rules are available should they promote the public interest.

We oppose H.R. 3148 or attempts to achieve the same ends through appropriations riders. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ, OC Inc., at 202-904-2168 and Gabe Rottman, ACLU, at 202-675-2325, or Corrine Yu, Leadership Conference Managing Policy Director, at 202-466-5670, if you would like to discuss the above issues.

Sincerely,

American Civil Liberties Union
Common Cause
Communications Workers of America
The Leadership Conference on Civil and Human Rights
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network
National Hispanic Media Coalition
OCA – Asian Pacific American Advocates
United Church of Christ, OC Inc.

Cc: The Honorable José E. Serrano

² See NABET-CWA *ex parte* (FCC MB Docket 09-182) (filed March 12, 2014) (attached).



6TH FLOOR, 501 3RD STREET, N.W., WASHINGTON, DC 20001-2797 • 202/434-1254
FAX: 202/434-1426

JAMES C. JOYCE
PRESIDENT

VIA FACSIMILE

March 12, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: Ex Parte Notice. 2010 Quadrennial Regulatory Review, MB Docket No. 09-182. Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294.

Dear Chairman Wheeler:

The National Association of Broadcast Employees and Technicians-CWA (NABET-CWA) and the Communications Workers of America (CWA) applaud your efforts to promote diversity and competition in media with rules that limit the ability of broadcasters to get around Commission ownership rules by creating shell/sidecar companies and shared service agreements that effectively merge the operations of two or more separately licensed stations.

Management arrangements, including both joint service agreements (JSAs) and shared services agreements (SSAs), that consolidate two or more separately licensed television stations into a single operating unit limit the competition and diversity in media that is so essential to our democracy, and lead to significant job reduction. After all, when two or more stations combine, employees at one of the stations are no longer needed. According to a recent academic study, "these arrangements have invariably resulted in a loss of jobs in at least one of the stations involved in the agreement."¹

NABET-CWA knows from painful experience that collapsing two or more separate news operations into one kills jobs. NABET-CWA represents 9,000 workers in the broadcast industry. CWA represents 700,000 workers in communications, media, airlines, manufacturing, and public service. We cite a few examples from our recent experience:

- **Syracuse NY and Peoria IL.** Barrington Broadcasting (now Nexstar) and Granite Broadcasting entered into a shared services agreement in 2009. Barrington and Granite

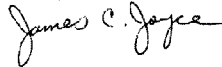
¹ See Danilo Yanich, "Local TV News and Service Agreements: A Critical Look," University of Delaware: Center for Community Research and Service, 2011, page 102.

agreed to swap and combine news operations in these two cities. In Peoria, Granite took control of Barrington's operations at WHOI, and now runs three stations there, WHOI, WWEEK, and WAOE. Thirty workers were laid-off. In Syracuse, Barrington took control of Granite's operations at WTVH, and now runs WTVH, WSTM and WSTQ. As a result of this shared service agreement, 40 workers at WTVH lost their jobs. Laid-off employees included the entire news operation of on-air reporters, anchors, newswriters, producers, news photographers, editors, and broadcast technicians. The Syracuse and Peoria markets also lost a competing and different point of view in news coverage as newscasts are now simulcast on the CBS and NBC stations.

- **Honolulu, Hawaii.** Raycom, which already owned and operated two television stations in Honolulu, entered into a series of agreements in 2009 with a third station, swapped call-signs and ended up directly owning (in contravention of FCC rules) both KHNL and KGMB, the NBC and CBS affiliates, and operating a third television station KFVE. KFVE, a MyNetwork affiliate, is currently licensed to Hawai'i Television, but is in the process of being transferred to American Spirit, a company that has six other sharing arrangements with Raycom. Raycom produces local news for all three Honolulu stations under the name of Hawai'i News Now. This includes seventeen hours per week of identical programming shown on KHNL and KGMB. However, even the local programming that Hawai'i News Now produces "exclusively" for one or another station includes the same stories, same interviews, same graphics, and in some cases even the same anchors. Nearly 70 employees between the three stations have been laid off because of this transaction. The viewing public is harmed by the loss of an independent news voice and a reduction in competition between formerly competing news operations.
- **Youngstown OH.** In 2006, New Vision Television (NVT) purchased WKBN and its sidcar company, Parkin Communications, purchased WYTV. New Vision Television closed down the WYTV facility and moved all operations to WKBN. The net result of the combination was a loss of 30 full-time jobs. Today, the joint services arrangement continues, although under different ownership. (In 2011 LIN purchased WKBN and Vaughan Media LLC purchased WYTV.)
- **Erie PA.** Lilly Broadcasting LLC owns both WICU and WSEE. In 2009, the company merged all WSEE operations into WICU. Lilly then eliminated all 35 off-air WSEE employees. The WSEE news programming is taped in advance and includes simulcasts of WICU's news program, essentially eliminating any competition and independence for the WSEE news operation.
- **Wilkes-Barre/Scranton PA.** Nexstar and Mission entered into a shared services agreement. The news operation at Nexstar's station, WBRE, was combined with Mission's at station WYOU. Nexstar combined master controls and laid off the WYOU News staff.

It is simply common sense that shared and joint service arrangements between two or more broadcast stations result in fewer employees gathering and producing the news. Such arrangements reduce the competition that is essential to quality journalism and to providing the diversity of voices that is the foundation of our democracy. The Commission is taking the right step by calling these arrangements what they are: an attempt to get around the Commission's ownership rules designed to preserve localism, diversity, and competition.

Sincerely,



Jim Joyce
President
National Association of Broadcast Employees and Technicians/CWA

IC:kab
open2all-cio

cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3841

January 13, 2016

Mr. Gerard J. Waldron
Partner
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001

Dear Mr. Waldron:


Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, December 3, 2015, to testify at the hearing entitled "Broadcast Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on January 27, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES
NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Gerard J. Waldron

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956

January 26, 2016

Via Email and U.S. Mail

Rep. Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy & Commerce
2125 Rayburn HOB
Washington, D.C. 201515

Dear Chairman Walden:

Thank you for the opportunity to appear before the Subcommittee recently to testify on behalf of the National Association of Broadcasters at the hearing entitled, "Broadcast Ownership in the 21st Century." Enclosed are responses to questions that you submitted on behalf of Subcommittee Members in your January 13, 2016 letter to me. I appreciate the further opportunity to respond to Members' questions and trust that the Members will find the enclosed attachment responsive.

Sincerely,

/s/

Gerard J. Waldron

cc: Rep. Anna Eshoo, Ranking Member

Responses to Additional Questions for the Record

The Honorable Gus Bilirakis

1. *Mr. Waldron, I am concerned with the FCC rules effect on localism, or a preference for one's own area or region, which you highlight in your testimony.*

I agree that local content remains vitally important, and that Americans still rely on local programming for necessary information every day. Can you explain a bit further how updating these rules will allow broadcasters to retain and expand their vital role in times of emergencies and local concern?

A healthy, vibrant broadcast industry serves the public interest through locally focused news, sports, public affairs programming, and emergency services. No other industry has the responsibility – or, frankly, the ability or the incentive – to serve the needs of the public, and certainly not in 210 distinct media markets. It takes significant resources to provide up-to-the minute news, local and national emergency information and highly-valued entertainment programming. The current broadcast ownership rules inhibit broadcasters' ability to serve this basic responsibility. For example, the cross ownership rules and television duopoly rule undermine the ability of broadcasters to leverage joint resources for the benefit of local communities. The efficiency gains that will be generated by more realistic ownership rules will enable broadcasters to invest more in news and local programming, from updated weather forecasting equipment to news trucks. Regulatory policies that starve local media of capital investment serve no one – not current broadcasters, not possible new entrants, and most importantly, not the American people.

2. *Mr. Waldron, this hearing is focused on the legacy ownership regulations that were instituted around the time Elvis was still performing in Las Vegas, and I think we've heard a lot on how these rules may be actually counterproductive today.*

Aside from the FCC updating its rules, what can Congress do to improve competition, diversity, and localism for broadcasters?

There are a number of actions that Congress can take to ensure that broadcasters continue to serve communities across the country. First, Congress would improve the environment for broadcasters if it required the FCC to complete its long-delayed review of the ownership rules *and* ensured that the FCC's analysis is based on today's incredibly vast and ever-expanding video environment, and not a picture frozen in the 1970s. That is a high priority.

Second, the Incentive Auction that Congress authorized will cause many broadcasters who are committing to continuing to serve the public to relocate their antennae and other facilities, but the amount allocated for the relocation fund is likely to fall short. The Incentive

Auction should not saddle broadcasters with extraordinary expenses when they simply want to continue to serve their local communities. Similarly, the FCC has set an arbitrary and insufficient 39-month deadline for such relocation to occur given the number of stations that the FCC's own estimates suggest may need to be repacked, and the physical requirements necessary to move a broadcast station out of its current channel – including availability of tower crews, the limited number of antenna and tower manufacturers, and even seasonal weather limitations. Unfortunately, absent a change in policy at the FCC or Congressional action, it is likely that broadcast viewers will lose access to certain stations and the public good that they provide.

Finally, Congress should ensure that broadcasters are fairly compensated for the high-quality news, entertainment, and sports programming that local broadcasters deliver to their viewers. The pay-TV industry is constantly seeking to distort the process to enable them to make money off of the broadcast industry's high-quality content without fairly compensating local broadcasters. Congress should be on guard against any efforts to undermine the retransmission consent system that provides vital resources to local broadcasters.

The Honorable Anna G. Eshoo

1. *In your September testimony, you highlighted the NAB's Education Foundation and its Broadcast Leadership Training Program (BLT). Have you found a quantifiable increase in the number of minorities serving as station heads or owners since the program started? With respect to station management, why do you think there are so few minorities being elevated into positions of leadership?*

While more work needs to be done, NAB has a deep record of supporting policy initiatives to promote diversity – including reinstatement of the tax certificate program – and stands ready to work with this Committee to pursue innovative strategies to increase media diversity. Additionally, the NAB Educational Foundation's Broadcast Leadership Training (BLT) program promotes minorities and women in broadcasting through its ownership and management training curriculum. The BLT program is a 10-month Executive MBA-style program that focuses on the unique process of assessing, purchasing, owning and operating radio and television stations. It provides a blueprint for talented businesspeople to become a greater part of the industry and increase the diversity of voices available to the public.

NAB is proud of both the individual and statistical difference the BLT program has made in broadcast diversity. Since the first annual class in 2001, BLT has graduated 255 individuals, 140 (55 percent) of whom are people of color, and 205 (80 percent) of whom are women and/ or people of color. Of the 205 women and/ or people of color who completed the program, 16 (8 percent) went on to purchase their first or additional stations, 70 (42 percent – excluding owners) have been promoted, and 47 (30 percent – excluding owners) have been promoted to station management or corporate level positions. 2

2. *Broadcasters hold a special place in the communities of our country - they use the public airwaves and are the primary source of local news. Yet we keep hearing from some that broadcasters should not be subject to industry-specific legal and regulatory obligations. Don't we have an obligation to make sure broadcasters keep to their side of the bargain?*

Broadcasters cherish their special place in the communities across our country and simply want to have rules that enable them to serve better those communities. To that end, broadcasters should be subject to obligations that (a) are based in today's reality and not one that existed last century, and (b) actually benefit the public by giving broadcasters the ability and incentive to invest in news and programming that serves those communities. The video industry has changed dramatically this decade — in fact, it has changed substantially in just the past twelve months, such that there has never been a better time to be a consumer of video programming. The level of competition for viewers is at an all-time high with new competitors such as Apple and Sony looking to take on “established” online video providers such as Netflix and Hulu, which of course for several years have been challenging traditional cable and broadcast channels. Against this backdrop, the FCC's broadcast ownership rules — which are premised on the idea that broadcasters compete only against other broadcasters for viewers and advertisers — make no sense because they fail to take this reality into account. In addition, and perhaps most troubling, the current rules fail to benefit the public since they act to discourage investment in the essential objectives of broadcast: localism and diversity.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

January 13, 2016

Mr. Paul Boyle
Senior Vice President of Public Policy
Newspaper Association of America
4401 Wilson Boulevard
Arlington, VA 22203

Dear Mr. Boyle:

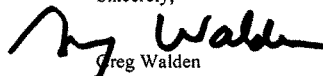
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



Paul J. Boyle
Senior Vice President/Public Policy

January 21, 2016

Mr. Greg Watson
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Watson:

Attached are my answers to questions submitted by Representatives Gus Bilirakis and Anna Eshoo at the December 3, 2015 hearing on "Broadcast Ownership in the 21st Century." If you need additional information or have other questions, please contact me at

Sincerely,



Attachment



Response of Paul Boyle to Question Posed by The Honorable Gus Bilirakis

Mr. Boyle, your testimony focuses on the newspaper/broadcast cross ownership ban. Can you describe what you expect the next 15 years to look like in your industry operating under the current rule, and describe what the next 15 years would realistically look like in your industry if this rule were done away with in the next year or so?

As a result of the Great Recession and structural changes in the industry, total newspaper revenue has declined from \$48.8 billion in 2008 to \$36.2 billion in 2014. An unfortunate consequence of this is that newspapers have had to downsize their newsrooms. If the 1975 ban on newspaper/broadcast cross-ownership remains in place, it is likely that over the next 15 years many newspapers will be forced to continue to downsize to meet the challenges of ongoing declines in revenues, particularly from print advertising. This will mean less professional reporting of city, county and state government, which will in turn mean a less informed electorate and a less accountable government.

Despite this decline in revenues, no local media devotes more resources to covering issues of importance to their communities than newspapers. If the newspaper / broadcast cross-ownership ban were repealed we would see, over the next 15 years, it is likely new investors who are already supporting broadcast journalism will begin to invest in newspapers. We may also see the combination of local broadcast and newspaper properties in certain markets but by no means do we expect there to be widespread consolidation. In some markets, a newspaper may be able to find a strategic financial partner in an owner of local television or radio station which will help the newspaper company transition with the broadcast station into a combined sustainably profitable business enterprise that would preserve the scale of reporting resources that the newspaper company employs today.

Response of Paul Boyle to Question Posed by The Honorable Anna G. Eshoo

Some have suggested that if the FCC were to allow more consolidation between the broadcast and newspaper industries, there would be a reduction in the number of jobs in both industries. How can the public be assured that if the FCC were to relax its newspaper-broadcast cross-ownership restrictions that it would not reduce employment and lead to a reduction in local news coverage and diversity of viewpoints?

In 2011, the Newspaper Association of America conducted a survey of newspaper / broadcast combinations, many of which were grandfathered when the cross-ownership ban was adopted in 1975. The survey found that cross-owned properties did not reduce journalism jobs as each property maintained separate newsrooms. Most of the savings from convergence came from back-office operations (e.g., accounting) or colocation of the media properties in the same building. A benefit of convergence is that many newspaper / broadcast combinations allow for newsrooms to collaborate on long-term investigative projects, share breaking news tips, and produce in-depth analysis of current events, particularly when covering a natural disaster impacting the local community.

Repealing the ban on newspaper/broadcast cross-ownership would actually increase diversity of viewpoints and increase local news coverage. FCC-commissioned research demonstrates that television stations that are cross-owned with newspapers devote more resources to local news coverage than other commercial stations. On average, a cross-owned television station produces nearly 50 percent more local news,¹ airs 30 percent more coverage of state and local political candidates² and devotes 40 percent more time to candidates' speeches and comments³.

Repeal of the newspaper / radio cross-ownership ban actually would add to diversity, as well. For example, newspaper-owned radio stations produce local news and public affairs programming, rather than just picking up a generic news feed from satellite as many radio stations do now.

The experience of grandfathered cross-owned stations led the FCC in 2002 to conclude that newspaper / broadcast combinations promote localism, have the potential to enhance diversity, and have no negative impact on competition. In 2004, the Third Circuit Court of Appeals in *Prometheus I* agreed with the Commission's determination that the outright ban on cross-

¹ Jack Erb, Media Ownership Study 4, *Local Information Programming and the Structure of Television Markets*, at pp. 27-28

² Jeffrey Milyo, *Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, FCC Media Study 6 (Sept. 2007)

³ Id.

ownership is no longer in the public interest. The Third Circuit came to this conclusion three years before the launch of the iPhone and seven years before the iPad which has revolutionized the way news, information and entertainment is distributed to consumers. Meanwhile, the FCC has wrapped its 2010 and 2014 quadrennial review into one with little expectation the FCC will recalibrate the 1975 ban to reflect the modern media landscape as required by law.

FRED UPTON, MICHIGAN
CHAIRMAN

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Minority (202) 225-3641

January 13, 2016

Ms. Kim Keenan
President and CEO
Multicultural Media, Telecom and Internet Council
727 West 15th Street
Washington, DC 20001

Dear Ms. Keenan:

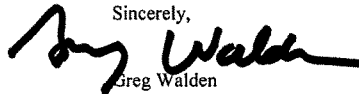
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Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Hearing: Subcommittee on Communications and Technology – Thursday,
Dec. 3, 2015 – “Broadcast Ownership in the 21st Century”
Name of the Member: The Honorable Ann Eshoo
Question: **How do you respond to those that suggest that JSAs and SSAs
actually increase broadcast diversity ownership?**

Answer:

Today, thanks to the relaxation of the Federal Communications Commission’s (FCC) structural media ownership rules over the past two decades, minorities own very few “real” television stations. The Multicultural Media, Telecom, and Internet Council (MMTC) believes that legislation to restore the tax certificate policy is the way to incentivize the industry to increase minority ownership. We live in an age where television viewers of all ethnicities and backgrounds deserve to receive the diversity of viewpoints that genuine television ownership makes possible.

In MMTC’s view, a JSA or SSA strips away the assets that make a television station a credible independent voice. In a JSA, control of sales inherently drives control of the programming that is sold. An SSA is even worse, allowing a theoretically unrelated but actually dominant company to make virtually every significant decision. Most of the time, the “owner” of a station in a JSA or SSA is only a figurehead installed to circumvent the FCC’s rule against allowing a single company to dominate local television station ownership. The impact is devastating. In most cases, a station “owner” in a JSA or SSA usually does not “own” or “direct” the station operations. The rare exception is in the context of education where the stations are used to train students.

MMTC has recognized FCC Chairman Tom Wheeler’s efforts to crack down on these inherently sham operations. Ultimately, MMTC does not believe that most JSAs and SSAs increase diversity of broadcast ownership.

Kim Keenan, President and CEO
Multicultural Media, Telecom, and Internet Council

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
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Majority (202) 225-2927
Minority (202) 225-3641

January 13, 2016

Mr. Michael Scurato
Vice President, Policy
National Hispanic Media Coalition
1825 K Street, N.W.
Washington, DC 20006

Dear Mr. Scurato:

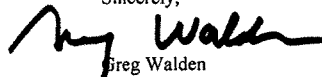
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Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Questions for the Record
To
Mr. Michael Scurato
“Broadcast Ownership in the 21st Century”
December 3, 2015

The Honorable Anna G. Eshoo

In your previous testimony you highlighted two primary reasons why the Internet has yet to match the power of broadcasting: 1) the lack of home broadband access for many Americans and 2) a plethora of online news sources that simply mirror traditional media sources.

Question 1. How can Congress and/or the FCC address these challenges?

Response 1. There are several steps the federal government must take to alleviate the many barriers to the Internet reaching its full potential as a challenger to broadcasting. First, it is true that dwindling broadband adoption numbers have prevented the Internet from becoming as pervasive as broadcasting. Overall, broadband adoption has declined nationwide since 2013, from 70 percent to 67 percent, most affecting low-to-middle income families. Hispanics and African-Americans are far less likely to access broadband than their white counterparts, at rates of 50 percent and 54 percent, respectively.¹ Comparatively speaking, in the National Hispanic Media Coalition’s (NHMC) home of Los Angeles, California, over 95 percent of the population listens to the radio during the week in the morning to midday hours, including 98 percent of Latinos and almost 99 percent of Spanish-speaking Latinos.² It would therefore come as no surprise that broadcasting outlets would currently play a more critical role in disseminating news and information than their online counterparts.

One way that Congress and the Federal Communications Commission (FCC) can address this challenge is to prioritize making broadband more affordable and spurring broadband adoption in underserved communities as a form of economic empowerment. Many barriers exist to getting non-adopters online, but none more so than the high cost of broadband: 33 percent of non-adopters cite monthly broadband subscription cost as main reason for lacking home broadband.³ The FCC has taken a very important step towards making broadband more affordable by working through the process of modernizing the Lifeline program to also help defray the high cost of broadband for low-income consumers. Lifeline is the only federal effort providing direct-to-consumer support addressing the affordability barrier to adopting communications services, and it is invaluable in providing a pathway out of poverty for millions who would otherwise be unable to access education, employment, healthcare, civic participation, and public safety resources. Lifeline is well positioned for an update, as measures implemented

¹ John B. Horrigan and Maeve Duggan, “Home Broadband 2015,” Pew Research Center at 8 (December 21, 2015), available at <http://www.pewinternet.org/files/2015/12/Broadband-adoption-full.pdf> (“2015 Broadband Report”).

² Southern California Broadcasters Association, Los Angeles Metro Report (2010), <http://rope.zscb.fimc.net/pdfs/LA%20Metro%20Profile.pdf>.

³ 2015 Broadband Report at 16.

since 2012 have improved program integrity. There is no better initiative able to immediately expanding broadband access today than Lifeline, and Congress should fully support any potential FCC actions to modernize the program.

Moreover, in our comments before the White House's Broadband Opportunity Council last year, NHMC urged the federal government to conduct and promote research on broadband deployment, adoption, and competition. Research aimed at the impact of varying levels of competition, adoption, and availability in certain markets can specifically inform policy that can help foster new entrants into the marketplace and potentially lower prices for consumers. Moreover, any insight into the financial cost of broadband service can help the federal government craft better adoption programs and set appropriate subsidy amounts in relevant current or future programs.

Additionally, even as online media continues to grow, many voices continue to be the same that have dominated journalism for decades. According to a study in Baltimore by the Project for Excellence in Journalism, 95 percent of digital stories with original information came directly from traditional media sources, such as newspaper or television outlet. In and of itself, this phenomenon is not necessarily problematic. However, when these traditional platforms lack diverse perspectives and voices, this practice serves to create an echo chamber with diverse viewpoints and stories left out. According to the FCC's media ownership data, Latinos held a majority interest in only three percent of full power commercial television stations, and African-Americans held a majority interest in only nine stations total. Even when people of color do own these stations, they tend to be smaller outlets in large markets, with only 46 percent of stations owned by people of color located outside of the top four ranked stations in the largest 20 DMAs. According to the same analysis, people of color are often single owners in markets with widespread consolidation, making financial distress much more likely and creating pressure to exit the market, perhaps through the upcoming incentive auction.⁴

Part of promoting source and viewpoint diversity should include creating opportunities for broadcasters of color to enter the market. NHMC recommends the FCC abandon any plans to relax media ownership rules without thoroughly examining how such rules impact ownership diversity. Further, the FCC should continue recent effort to improve the collection of ownership data (including Form 323), which would allow the agency to move forward with creating proactive diversity policies that would not otherwise be preempted by court decisions. Congress must also pass legislation to reinstate the "minority tax certificate," which from 1978 to 1995 empowered many people of color to own broadcast stations at record rates.

One other solution to this lack of diverse voices is for Congress to support and defend the FCC's Open Internet rules, which will help foster new online voices and their audiences. By ensuring that online content creators continue to enjoy low barriers to online dissemination, the federal government can promote new and diverse perspectives in the online media space. While traditional broadcast models have required significant up-front costs, the Internet provides a space for any entrepreneur or content creator to reach millions with little capital investment outside a broadband connection. NHMC has long championed such rules as a way of ensuring that Latinos have an outlet through which to share their own stories without having to deal with the traditional media gatekeepers.

⁴ Comments of Free Press, MB Docket Nos. 09-182, 07-294, filed Dec. 21, 2012, available at <http://apps.fcc.gov/ecfs/document/view?id=7022089263> ("Comments of Free Press").

Question 2. Do you envision a day when the Internet will rival traditional bastions of 20th century media as a primary source for local news, public information and weather?

Response 2. NHMC hopes that the Internet can one day achieve the prominence of traditional media outlets, but unfortunately far too many barriers currently exist. The foundation of an open Internet is in place for non-traditional voices to reach large audiences with limited barriers, but as mentioned in the previous response, many consumers continue to lack access to true home broadband networks. Such entrepreneurs stand to gain little from an open Internet without access in the first place.

There is little doubt that many Americans are becoming more aware of the impairments faced by those who lack daily access to home broadband. In fact, according to a recent Pew study, 52 percent of Americans believe that broadband non-adopters are at a “*major* disadvantage when it comes to accessing job opportunities or improving their career skills,” and 46 percent said that “lacking broadband is a *major* disadvantage for accessing or learning about government services.” Importantly in this context, 63 percent believe those without home broadband are at a disadvantage when it comes to keeping up with news and information.⁵ By ensuring more Americans gain the ability to go online, the federal government can help reinforce the “virtuous circle” phenomenon of the Internet—as more and more people get online, they create a feedback loop in growing the demand for content and need for more content creators. Subsequently, as more diverse voices grow online, the Internet will grow as a desirable platform for finding alternative sources of information. Likewise, entrepreneurs who find financial success online will be able to create more content and grow their audiences further.

This phenomenon demonstrates one way that the Internet has a leg up on broadcasting — it is an open platform with low barriers to participation for entrepreneurs and content producers. The FCC’s Open Internet rules, adopted in February 2015, have gone a long way towards protecting this platform. Whereas a person of color may find it difficult to raise the capital and obtain the licenses and permits necessary to start a broadcast station or be unable to navigate the behemoth gatekeepers in place that hinder new and independent cable networks, it is relatively easy and inexpensive to produce and promote an online video or podcast and reach a wide audience.

However, we recognize that this openness is constantly under attack. Recently, one party to litigation opposing the FCC’s rules suggested that broadband providers have a First Amendment right to be treated more like a traditional news source — a newspaper — and that it should be free to impose its gatekeeper power on content producers by picking and choosing the content it wants to “publish.” Should the FCC’s rules be reversed, the value of the Internet as a platform for new and diverse voices could be lost. Congress must work to ensure the Internet remains accessible by protecting the FCC’s open Internet rules. Within the Internet, non-traditional voices face very few hurdles to reaching large audiences, as opposed to seeking out publication via broadcast. Whereas conventional mediums require significant capital and social connections, a free and open Internet allows anyone with a broadband connection to share his or her message the world over.

⁵ 2015 Broadband Report at 11.

The promise of the Internet is real, and there are things that we all must do to safeguard its existence, but there is more work to be done to ensure that it can become the primary distribution platform for news and information in communities across the country.

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CHAIRMAN

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January 13, 2016

Mr. Jason Kint
Chief Executive Officer
Digital Content Next
727 West 15th Street
Washington, DC 20001

Dear Mr. Kint:

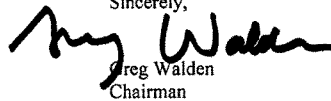
Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, December 3, 2015, to testify at the hearing entitled "Broadcast Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on January 27, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman

Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

The Honorable Anna G. Eshoo

Question – Your members have been very successful moving into the online space – a space where there is no shortage of viewpoint diversity. Why are basic net neutrality protections important to your members?

Answer – Digital Content Next (DCN) members include many of the Internet’s most trusted and respected online publishing brands, collectively reaching an unduplicated audience of 220.4 million unique visitors – or 100% reach of the U.S. online population – monthly. Importantly, DCN is the only trade association that exclusively represents creators of premium digital content. With this in mind, DCN supports the Federal Communication Commission’s (FCC) goal of protecting and promoting the Internet as an open platform for innovation, competition, economic growth, and free expression.

The crux of the FCC’s order is the ban on blocking, throttling or prioritizing content. The FCC sought to preserve consumers’ unfettered access to content or experiences on the Internet. Just as importantly, however, the order also protects the ability of content creators to reach their audience without having to seek the permission of the ISPs. These provisions are critical to ensuring that the Internet continues to serve as an open and effective platform for the exchange of ideas and information and for content innovation to continue flourishing online.

Another key component of the FCC’s order is the requirement that a broadband provider provide transparency about “the network management practices, performance, and commercial terms of its broadband Internet access services.” This kind of transparency is vital to helping consumers fully understand the internet services they have purchased and whether they are getting full value. This information is also critical to content creators who need to know that new applications, content and services will operate as expected.

In our view, the FCC rightly focused on the consumer experience in the development of the Open Internet rules. Content creators should not need permissions from ISPs in order to reach consumers, and ISPs should not restrict consumers from accessing lawful content. We believe the FCC has taken important steps to encourage investment and innovation in content creation for consumers and ensure that the Internet is an open platform that supports consumer choice and the open exchange of ideas and information.