



April 29, 2019

Chairman Ajit Pai
Commissioner Michael O’Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: MB Docket No. 18-349, 2018 Quadrennial Regulatory Review

Dear Chairman Pai and Commissioners,

On behalf of the Leadership Conference on Civil and Human Rights and the undersigned members of its Media/Telecommunications Task Force, we write to comment on the Notice of Proposed Rulemaking initiating the 2018 Quadrennial Regulatory Review of the Federal Communications Commission’s Broadcast Ownership Rules. The Leadership Conference is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil rights of all persons in the United States. Media diversity has long been a top priority of The Leadership Conference and its members because we understand that meaningful protection of civil rights and advancement of key policy objectives rely in great measure on an accurate, diverse, and independent media that serves our constituencies.

As discussed in more detail below, we strongly oppose the Commission’s proposals to modify or eliminate the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule (collectively the “Media Ownership Rules”). The Media Ownership Rules serve the public interest in assuring an accurate, diverse, and independent media and are the last bulwark against already abysmally low ownership diversity rates. Given the current numbers, the FCC’s statutory obligation, existing judicial remands, and its own interpretation of the public interest standard, the FCC cannot take action that has a strong probability of harming race and gender ownership diversity without affirmatively studying the issue. Nor should the Commission replace any of these rules with the untried and untested diversity proposals in this docket. Finally, because shared service agreements (SSA) disclosure facilitates the Commission’s analysis of the broadcast industry and allows the public to analyze ownership diversity in the industry, we urge the FCC to continue to require the public filing of SSAs and conclude that sharing arrangements that circumvent ownership rules be attributed.

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A. Law, agency precedent, and judicial remands require the Commission to consider race and gender ownership diversity.

The Communications Act of 1934, as amended by the Telecommunications Act of 1996 (collectively “The Act”), regulates and avails “a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges” ... “to all of the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.”¹ Congress created the Federal Communications Commission to “execute and enforce” the government’s responsibility of regulating and availing telecommunication services to all Americans.²

The public interest standard is part of Section 202(h), the Quadrennial Review provision in the Act. The FCC interprets the public interest standard to include promoting: (a) competition for local television and radio stations; (b) localism in local TV and “preserve the balance of bargaining power between networks and affiliates;” and (c) diversity. Diversity includes several kinds of diversity but has always included race and gender ownership diversity.³ Through the *Prometheus* line of cases, the U.S. Court of Appeals for the Third Circuit has reversed and remanded three previous Quadrennial Reviews which ignored race and gender ownership diversity.⁴ Through all three *Prometheus* cases, the Third Circuit directed the FCC to affirmatively study the issue and to ensure its efforts to promote ownership diversity are effective.⁵

B. The Commission must collect racial and gender media ownership data and produce comprehensive, detailed reports about trends in media ownership diversity before modifying or repealing any rules.

The Commission has persistently failed to obtain reliable data on which broadcast outlets are controlled by women and racial minorities. As explained below, the Commission has never corrected identified reporting gaps and numerical tracking errors. Moreover, the FCC has not yet released a report

¹ 47 U.S.C. § 153.

² 47 U.S.C. §309(j)(3)(B) of the Act states that one of the FCC’s objectives is promoting opportunities for “businesses owned by members of minority groups and women.” Further, §309(j)(4)(D) obliges the Agency to “ensure small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services” with its assignment of “tax certificates, bidding preferences, and other procedures” as deemed necessary to effectuate the legislative intent.

³ “Diversity” refers to viewpoints (variety of perspectives on news and culture), programming (variety of formats and content including those aimed at minority ethnic groups), outlets (multiply independently owned media outlets), media ownership (minority and women owners of broadcast outlets), and sources (variety of content producers). Scherer, Dana A. “Federal Communications Commission (FCC) Media Ownership Rules.” *Congressional Research Service*. October 9, 2018. <https://crsreports.congress.gov/product/pdf/R/R45338>.

⁴ *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (“*Prometheus I*”); *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) (“*Prometheus II*”); and *Prometheus Radio Project v. Federal Communications Commission*, 824 F.3d 33 (3d Cir. 2016) (“*Prometheus III*”).

⁵ See *Prometheus I*, 373 F.3d at 420-21, n.58, (citing 47 U.S.C. §151); *Prometheus III*, 824 F.3d at 48 (explaining 47 U.S.C. §§257; 309(j)(4)(D); 309(j)(3)(B)); and *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) (holding that race-conscious government methods are permitted when the government entity seeks to address a compelling government interest (like a Congressionally-mandated statutory responsibility to assure diversity) has a strong basis in evidence to support its decision so long as it’s narrowly tailed and subject to strict scrutiny).

summarizing the 2017 race and gender broadcast data, although it has had these data since March 2018.⁶ Despite requests by the civil rights community, the public still has not seen the results of these reports which would show, for the first time, the impact of the incentive auction on ownership rates by race and gender.

Although the most recent data are incomplete and unreliable, what is available paints a dire picture of media ownership diversity by race and gender. Women own only 7.4 percent of all full power TV stations, Hispanics and Latinos control 4.5 percent of those stations, and all tracked racial groups collectively controlled 2.6 percent of all full power TV stations.⁷ As the following examples show, these groups are, overall, not making progress. African-American ownership has had zero or negative percent increases in all television categories, with African Americans owning fewer than 180 stations in all categories.⁸ In Commercial AM and FM radio, African Americans are experiencing fractions of even 1 percent of growth.⁹ Asian full-power TV ownership dropped precipitously between 2013 and 2015, from 1.4 percent to .7 percent.¹⁰ Female ownership growth is only 2 percent, with women now owning less than 11 percent of any industry despite making up over half the U.S. population.¹¹ In all, Hispanics and non-Hispanic minorities are experiencing no more than 3 percent growth in media ownership.¹²

The Commission cannot effectively promote racial and gender diversity without conducting comprehensive research on race and gender participation in the media industry. Because the FCC has not conducted sufficiently reliable studies, nor furnished well-developed data-backed analyses to reasonably

⁶ Media Bureau Restricted FRN Public Notice, DA 17-1088, 32 F.C.C.Red.9330 (2017).

⁷ *Federal Communications Commission's* Industry Analysis Division of the Media Bureau. "Third Report on Ownership of Commercial Broadcast Stations from FCC Form 323 Ownership Data as of October 1, 2015." May 2017. <https://www.fcc.gov/biennial-forms-323-and-323-e-broadcast-ownership-data-and-reports>.

⁸ *Id.* [Full Power Commercial TV](#): "Black or African Americans owned 12 stations (0.9 percent) in 2015 and 9 stations (0.6 percent) in 2013" at 7. For Class A TV: Black or African Americans owned 1 station (0.3 percent) in 2015 and 8 stations (2.0 percent) in 2013 at 9. For Low Power TV, "Black or African Americans owned 8 stations (0.7 percent) in 2015 and 16 stations (1.3 percent) in 2013" at 11.

⁹ *Id.* citing Commercial AM Radio statistics: "Black or African Americans owned 87 stations (2.5 percent) in 2015 and 93 stations (2.5 percent) in 2013 at 13; Commercial FM radio statistics: "Black or African Americans owned 72 stations (1.3 percent) in 2015 and 73 stations (1.3 percent) in 2013" at 15.

¹⁰ *Id.* at 7.

¹¹ *Id.* citing Broadcast ownership and gender: "Women collectively or individually held a majority of the voting interests 14 in 1,024 broadcast stations, consisting of 102 full power commercial television stations (7.4 percent) of 1,385 stations; 15 Class A television stations (9.3 percent) of 396 stations; 125 low power television stations (11.0 percent) of 1,137 stations; 314 commercial AM radio stations (8.9 percent) of 3,509 stations; and 446 commercial FM radio stations (8.1 percent) of 5,492 stations.

¹² *Id.* citing "Hispanic/Latino persons collectively or individually held a majority of the voting interests in 671 broadcast stations, consisting of 62 full power commercial television stations (4.5 percent) of 1,385 stations; 53 Class A television stations (13.4 percent) of 396 stations; 152 low power television stations (13.4 percent) of 1,137 stations; 176 commercial AM radio stations (5.0 percent) of 3,509 stations; and 228 commercial FM radio stations (4.2 percent) of 5,492 stations" at 3; "Racial minorities collectively or individually held a majority of the voting interests in 402 broadcast stations, consisting of 36 full power commercial television stations (2.6 percent) of 1,385 stations; 7 Class A television stations (1.8 percent) of 396 stations; 27 low power television stations (2.4 percent) of 1,137 stations; 204 commercial AM radio stations (5.8 percent) of 3,509 stations; and 128 commercial FM radio stations (2.3 percent) of 5,492 stations" at 4.

support modification or repeal, the FCC does not have a sufficient legal foundation to modify or repeal any Media Ownership Rules as proposed.

1. Form 323 data is riddled with errors.

Following the *1998 Biennial Regulatory Review*, and in light of stated flaws with the National Telecommunications and Information Administration's data, the FCC began collecting race and gender broadcast ownership data on Form 323 in 2000.¹³ However, significant problems with the FCC's Form 323 data continue to persist; the data have been unreliable, difficult to use, and impossible to verify.¹⁴ Over time, the FCC adopted some improvements, such as requiring a uniform filing date and broadening mandatory filters.¹⁵ However, three major problems persist and must be corrected: (1) filers use incorrect tracking numbers;¹⁶ (2) multiple individuals have used the same filing numbers;¹⁷ and (3) not all broadcasters file Form 323 with the FCC consistently or at all,¹⁸ which complicates trend analysis over multiple years because the historical data are never corrected.

2. Existing media ownership studies neglect race and gender outcomes, including the two most cited reports.

As Leadership Conference Members United Church of Christ, OC Inc. and Common Cause made clear in the last Quadrennial Review, the FCC has ignored its own studies that have found connections between race, gender and viewpoint diversity, as well as important opportunities to study them affirmatively.¹⁹

¹³ 1998 Biennial Regulatory Review; 13 F.C.C.Rcd. 23056, 23095-7 (1998).

¹⁴ *Prometheus II*, 652 F.3d at 470-71.

¹⁵ See, e.g., *Promoting Diversification of Ownership in the Broadcast Services*, 24 F.C.C.Rcd. 5896 (2009).

¹⁶ "One [tracker number, a Special-Use FRN] was used by up to 30 percent of all filers." Seventh 323, FNPRM, 30 F.C.C.Rcd. 1725, 1732 (Feb.12,2015). The Special-Use number "offers no way for the Commission to identify individuals reliably." Second R&O at 9973. The number is automatically generated with no verifying information.

¹⁷ See *Promoting Diversification of Ownership*, 31 F.C.C.Rcd. 398, 421 (2016). However, a 2017 document shows that the FCC recently eliminated the use of the less-reliable number for most, but not all, filers. *Promoting Diversification Reconsideration Order*, 32 F.C.C.Rcd.3440 (2017).

¹⁸ For example, in 2013, the number of AM stations that did not file (759) far exceeded the number of stations controlled by women (310), calling into question conclusions based on that data. UCC FNPRM Comments at 18 (citing *2014 323 Report*, Table D(1a)). In 2011, 165 more full-power TV stations filed than in 2009, calling into question whether apparent increases in ownership by various ethnic groups were real. *2012 323 Report*, 27 F.C.C.Rcd. 13814 at n.10 (2012). In 2012, the FCC acknowledged these limits on trend analysis using its own data. *Id.* at n.10 ("several factors counsel caution" with trend analysis, noting 85 percent of full-power TV stations filed in 2009 but 98 percent filed in 2011). By 2015, full-power TV reporting was at 99 percent, *2015 323 Report* at 25, Table A(1b), but radio reporting continued to be incomplete. See, e.g., *id.* at 55, Table D(1b) (no data for 980 of the total 4,489 AM radio stations).

¹⁹ *Prometheus Radio Project, et al. v. FCC*, "Brief of Citizen Petitioners Prometheus Radio Project, Media Mobilizing Project, Free Press, Office of Communication, Inc. of the United Church of Christ, National Association of Broadcast Employees and Technicians-Communications Workers of America and Common Cause" – Case #17-1107, December 21, 2018.

The FCC has procured or conducted 41 media ownership-related reports over the last two decades of ownership reviews and related proceedings, including 33 procured studies and one expert 465-page report²⁰--yet none of these reports adequately focused on the intersection of the Commission's ownership rules and race and gender ownership and employment diversity. While the FCC started with some promising *Adarand* studies in 2000, it since has abandoned that endeavor.²¹ Even worse, its most-recent Hispanic Television study turned out to be irrelevant to studying ownership diversity.²² Moreover, the FCC cancelled its innovative and thoughtful Critical Information Needs ("CIN") study, which would have analyzed whether the critical informational needs of people in the U.S. are being met.²³

Since 2000, the FCC has made no real effort to collect the necessary data to evaluate race and gender diversity. The FCC should, at a minimum and as recommended by United Church of Christ, OC Inc. and Common Cause: (1) develop workshops and study the nuances in measuring viewpoint diversity; and (2) take a closer look at the studies that demonstrate a connection between electoral participation and local media.²⁴

C. Internet-based communications are not replacing broadcast content, particularly for communities of color and low-income communities.

The Commission premises its proposed relaxation and repeal on an erroneous vision of the media marketplace. First, the Commission (again) mistakenly characterizes the availability of content *distributed* through the Internet as content *created* by online-only sources. Second, the Commission incorrectly assumes all audiences and people have equal access to internet content—a fact the Commission knows too well is incorrect.

1. Broadcasting continues to drive local news and content creation.

Eighty-six percent of Americans get local news from local TV stations, including 79 percent from radio stations, and between 61 percent to 59 percent from non-daily newspapers or listservs.²⁵ In total, 77 percent of American get most of their local news from broadcast sources, while only 23 percent of all Americans get their local news from "online only" sources.²⁶ Thus, despite the undeniable rise of internet usage, most Americans continue to heavily rely on local news offline or online, so that the two are not substitutes for each other, but rather complement each other in cultivating an educated public. The Commission acknowledges that Americans' increasing consumption of online media does not adversely

²⁰ Waldman, *The Information Needs of Communities* Report.

²¹ *Prometheus II*, 373 F.3d at 471 n.42.

²² Second R&O at 9991.

²³ Statement on Critical Information Needs Study, 2014WL842728 (2014).

²⁴ *Prometheus Radio Project, et al. v. FCC* (Case #17-1107) Petitioners Brief. Best Best & Krieger LLP. December 21, 2018.

²⁵ "For Local News, Americans Embrace Digital but Still Want Strong Community Connection." Pew Research Center. Mar 26, 2019. Accessible via: <https://www.journalism.org/2019/03/26/for-local-news-americans-embrace-digital-but-still-want-strong-community-connection/>.

²⁶ *Id.*

affect traditional radio and television consumption. “Despite new technologies competing for viewers’ attention, the amount of video Americans watch has actually been on the rise—approaching six hours a day in 2018—with a majority continuing to consist of live or time-shifted traditional television viewing... [and s]imilarly, more than 90 percent of Americans still listen to the radio each week.”²⁷ In fact, much of what most Americans are consuming online consists of uploaded video of television broadcast news.²⁸ The increase in online consumption of traditional media extends the reach of traditional media and heightens the importance of competition, localism, viewpoint diversity, and ownership diversity in broadcasting.

Radio is the single most widely consumed source of news by most Americans, reaching more than 90 percent of people in the United States weekly.²⁹ Local radio broadcasting is not the equivalent of online audio streaming. Broadcast licensees, unlike streaming services, must “serve the needs and interest of the communities to which they are licensed.”³⁰ Because Pandora, SiriusXM, and Podcasts are not responsive to localities’ particularized needs, deregulating local radio ownership will eliminate all diversity and all local news and programming such as severe weather warnings, reports of real-time local emergencies, school board decisions, and local and small business advertising.

Social media complements broadcast television, and in fact, enhances it. Though exact numbers are difficult to calculate, The Reuters Institute and Oxford University’s joint report “The Future of Online News Video” presents convincing evidence that most social media subscribers’ daily posts about news originate from TV broadcast news.³¹ Though most social media users preferred written news over video news, the market for video news is growing steadily and expected to continue to grow.³² For example, in 2018, Facebook launched “Today In” a local news initiative that aggregates and shares local news to its users within a respective geographic area. The program is active in at least 400 cities in the United States. While the company had the capacity to launch in many more areas, its studies found that 40 percent of Americans live in areas where there is not enough routine local news generated to support it.³³ Without the existing rules, large areas of the United States will continue to lack information about local elections,

²⁷ MB Docket No. 18-349, 2018 Quadrennial NPRM at ¶3.

²⁸ *Id.* citing Nielsen, *Time Flies* (stating that U.S. adults watch five hours and fifty-seven minutes of video per day, including four hours and forty-six minutes of live and time-shifted television, and finding that radio reaches 92 percent of U.S. adults on a weekly basis).

²⁹ U.S. Radio Industry - Statistics & Facts. Statista. <https://www.statista.com/topics/1330/radio/>

³⁰ See Broadcasting and Localism: FCC Consumer Facts, https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf.

³¹ “The Future of Online News Video,” Digital News Publications, Reuters Institute for the Study of Journalism, and University of Oxford. Accessible via: <http://www.digitalnewsreport.org/publications/2016/future-online-news-video/>.

³² *Id.* (citing the report, “We also found that text is largely preferred over video for each of the 26 countries in this report, with the share of respondents that prefer text ranging from 68% in the USA and Germany to 80% in Italy. Preference of video over text was higher in the USA (11%), while it was lower (4%–6%) in the other three countries.”)

³³ “Facebook says service hindered by lack of local news.” Associated Press. March 18, 2019. Accessible via: https://apnews.com/790d194cbec347149be8b598009ad1c4?utm_source=Twitter&utm_medium=AP&utm_campaign=SocialFlow

local crime trends, severe weather warnings, and other particularized news because broadcast companies will no longer be incentivized to make local news.

2. The Commission ignores people without access to reliable, high speed internet.

Not all people in the United States are connected to the internet the way that most are connected to broadcast television and radio. Thus, the FCC should not overestimate reliance on the internet as a justification to ignore statutory responsibility to regulate broadcast networks. The Commission estimates that more than 24 million people do not have broadband internet in the United States,³⁴ while a recent Microsoft study estimates that number is more than 160 million.³⁵ The Commission continues to rely on Form 477 data that the Commission itself acknowledges overestimates broadband deployment and paints an inaccurate picture of who has access to broadband.³⁶

And according to the most recent census data, 28 million households have no internet access at all and only 68.8 percent of people in the United State have a wired broadband connection.³⁷ For households earning \$20,000 a year or less, nearly 41 percent do not have a wired broadband connection and for households earning between \$20,000 and \$75,000, nearly 20 percent lack access.³⁸ Home broadband access for communities of color continues to lag behind the rest of the country. According to a recent report from Free Press, 30 percent of Hispanics, 32 percent of African Americans, and 32 percent of Native Americans do not have a wired connection.³⁹ The disparity is most severe at the lowest income levels where 49 percent of Hispanics and 50 percent of African Americans making less than \$20,000 lack access to broadband at home.⁴⁰ Significant disparities in broadband access also exist for communities of color living in rural areas. Free Press' report found that 27 percent of communities of color in rural areas are unserved.⁴¹ Further, poverty for communities of color living in rural areas is significantly greater than white rural communities.⁴² These communities often cite affordability as a reason for not subscribing to

³⁴ 2018 Broadband Deployment Report. Federal Communications Commission. Feb 2, 2018. Accessible via: <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>.

³⁵ Carrie Mihalcik, "Microsoft: FCC's broadband coverage maps are way off: The tech giant says more than 160 million Americans aren't using the internet at broadband speeds." CNet. April 9, 2019. Accessible via: <https://www.cnet.com/news/microsoft-fccs-broadband-coverage-maps-are-way-off/>.

³⁶ See "Comments of Common Cause and Public Knowledge" in the matter of the FCC's Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, WC Docket No. 18-238 (2018). Accessible via: <https://www.commoncause.org/wp-content/uploads/2018/09/Common-Cause-2018-706-Deployment-Report-Comments-9.17.18-FINAL-002.pdf>

³⁷ 2017 American Community Survey, 1-Year Estimates, Types of Computers and Internet Subscriptions, S2801, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S2801&prodType

³⁸ *Id.*

³⁹ S. Derek Turner, The Impact of Systemic Racial Discrimination on Home-Internet Adoption, Free Press (Dec. 2016), at 4.

https://www.freepress.net/sites/default/files/legacypolicy/digital_denied_free_press_report_december_2016.pdf.

⁴⁰ *Id.*

⁴¹ *Id.* at 119.

⁴² Rural Broadband Access and Communities of Color, Public Knowledge, https://www.publicknowledge.org/assets/uploads/blog/Rural_Broadband_Racial_Justice_Fact_Sheet.pdf.

broadband. Thus, broadcast remains the predominant means by which Americans consume news and cultural programming, regardless of the rise in internet consumption.

Moreover, the FCC incorrectly assumes that all people with internet-capable smart devices receive local news and specialized programming. This is of particular concern for the African-Americans and Latino communities, which over-index in their smartphone use but often rely on smartphones for *all* their internet connectivity and frequently use lower cost products that are subject to data caps and unreliable service or must utilize inconvenient and insecure public Wi-Fi for online access.⁴³

D. The Commission should not relax the Media Ownership Rules.

The Commission radically deregulated the broadcast industry late in 2017, through a Reconsideration Order that was a last-minute about-face repealing entirely the newspaper/broadcast common ownership rule and the radio/TV common ownership rule and significantly relaxing the local TV ownership rule. These changes have already led to a significant number of proposed and anticipated mergers and are currently under review in the U.S. Court of Appeals for the Third Circuit.⁴⁴

Despite this significant and recent deregulation, the 2018 Quadrennial Review NPRM proposes to take “a fresh look at our rules in light of the media landscape of 2018 and beyond,”⁴⁵ and seeks comment as to “whether the three remaining [Media Ownership] rules ... continue to be necessary in the public interest in their current forms or whether any of them should be modified or eliminated.”⁴⁶ Both for their own sake and because of the recent deregulation, these rules—the Local TV Ownership Rule, the Local Radio Ownership Rule, and the Dual Network Rule—should not be modified or eliminated. Each rule is essential to the ability of local communities to access sources of news and information. They protect competition in local advertising for small local businesses and provide critically important information about local elections, schools and economic and natural resources. Accordingly, these rules should be retained and enforced, to support a diverse television and radio marketplace as envisioned by Congress in 1996 and by the FCC in its last 2014 Quadrennial Review.

E. The Commission should maintain its SSA public disclosure requirement.

In its NPRM, the Commission seeks comment on “what action, if any, the Commission should take on shared service agreements (SSAs) in the context of our review of the Local Television Ownership Rule,”

⁴³ “Smartphones help blacks, Hispanics bridge some – but not all – digital gaps with whites” Pew Research center. Aug 31, 2017. Accessible via: <https://www.pewresearch.org/fact-tank/2017/08/31/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>.

⁴⁴ *Prometheus Radio Project v. FCC*, Docket 17-1101 et al. Reply Brief of Citizen Petitioners Prometheus Radio Project, Media Mobilizing Project, Free Press, Office of Communication, Inc. of The United Church Of Christ, National Association Of Broadcast Employees And Technicians-Communications Workers of America And Common Cause, Document #003113210932, submitted April 12, 2019. See also the *Supplemental Appendix*, Document #003113210929 citing Commissioner Copps’ statement at 4.

⁴⁵ MB Docket No. 18-349, 2018 Quadrennial NPRM at ¶5.

⁴⁶ *Id.*

particularly regarding the filing of SSAs with the Commission.⁴⁷ In its 2010/2014 Quadrennial Review Order on Reconsideration, the Commission upheld the SSA public disclosure requirement,⁴⁸ and found that lack of knowledge about the content, scope, and prevalence of SSAs “impeded its ability to evaluate the impact of these agreements, if any, on the Commission’s policy goals, particularly with respect to broadcast ownership.”⁴⁹ As the Commission notes, SSA disclosure facilitates its analysis of the broadcast industry and allows the public to analyze ownership diversity in the industry. Moreover, the Commission’s obligation under the public interest standard is to promote the public’s First Amendment right to have access to diverse sources of information. Management arrangements that consolidate two or more separately licensed television stations into a single operating unit – regardless of the nomenclature used by the parties – limit the competition and diversity in media that is essential to our democracy. These sharing arrangements are designed to circumvent media ownership rules and result in the same or substantially identical news produced by one station on one or more other stations in the same market. Therefore, the Commission should retain ownership rules that promote access to diverse sources of information, continue to require the public filing of SSAs, and conclude that sharing arrangements should be attributed.

The National Association of Broadcast Employees and Technicians-CWA (NABET-CWA) has documented how SSAs, and other arrangements such as joint service agreements (JSAs), lead to job loss. For example, a sharing arrangement between Barrington Broadcasting (now Sinclair) and Granite Broadcasting led to 40 workers in Syracuse, NY and 30 workers in Peoria, IL losing their jobs.⁵⁰ Fewer newsroom employees means less competition in the marketplace of ideas. The practical result of SSAs and JSAs is that there are fewer stations producing news, fewer TV stations competing to present a diversity of viewpoints, fewer broadcast station employees, fewer journalists, less time devoted to local news coverage, and less competition to constrain advertising rates.

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

F. The Commission should only entertain the Diversity-Related Proposals as a supplement to, not a substitution of, the existing Media Ownership Diversity Rules.

The NRPM offers three diversity proposals to quantify and stimulate diversity in broadcast radio and television: (1) extending cable procurement-type requirements to broadcasters; (2) adopting formulas aimed at creating media ownership limits that promote diversity; and (3) developing a model for a market-based tradeable diversity credit as an alternative for setting ownership limits. The NRPM defines these provisions in loose and incomplete terms, so we are unable to fully analyze these provisions. It is

⁴⁷ MB Docket No. 18-349, 2018 Quadrennial NPRM at ¶47.

⁴⁸ 2010/2014 Quadrennial Review Order on Reconsideration, 32 FCC Rcd at 9854, para. 114.

⁴⁹ 2010/2014 Quadrennial Review Order, 31 FCC Rcd at 10009-10, para. 341.

⁵⁰ See NABET-CWA *ex parte* (FCC MB Docket 09-182) (filed March 12, 2014).

clear, however, that these proposals are not adequate replacements for the Media Ownership Rules, and if intended as such, must be rejected.

Conclusion

A commitment to promoting diverse media ownership is a fundamental component of our nation's communications policy. The Commission must improve its 323 ownership data and conduct studies about the impact of the proposed rule changes on ownership by women and people of color. We further urge the Commission to retain and enforce the existing Local Radio Ownership, the Local Television Ownership, the Dual Network Rules, and SSA disclosure rules. If you have any questions about the issues raised in this letter, please feel free to contact Media/Telecommunications Task Force Co-Chair Cheryl Leanza, United Church of Christ, Office of Communication, Inc., at 202-904-2168 or cleanza@alhmail.com, Kathleen Ruane, ACLU, at 202-675-2336 or KRuane@aclu.org, or Corrine Yu, Leadership Conference Senior Program Director, at 202-466-5670 or yu@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
Asian Americans Advancing Justice – AAJC
Common Cause
Communications Workers of America
NAACP
National Consumer Law Center, *on behalf of its low-income clients*
National Hispanic Media Coalition
Institute For Intellectual Property & Social Justice
OCA - Asian Pacific American Advocates
United Church of Christ, OC Inc.