

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission’s Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

**COMMENTS OF**  
**OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.**  
**PROMETHEUS RADIO PROJECT**  
**MEDIA ALLIANCE**  
**NATIONAL ORGANIZATION FOR WOMEN**  
**NATIONAL HISPANIC MEDIA COALITION**  
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## SUMMARY

The Office of Communication of the United Church of Christ, Inc., Prometheus Radio Project, Media Alliance, National Organization for Women, National Hispanic Media Coalition, Common Cause, and Benton Foundation are pleased that the FCC has begun a comprehensive review of its media ownership rules. As the Commission begins its 2010 Quadrennial Review of broadcast ownership limits, it should keep foremost in mind that the rules are intended to ensure that the general listening and viewing public have access to diverse and competing sources of local news so that they can be active participants in our democratic system.

To accomplish this goal, the Commission must also complete pending proceedings on the public interest obligations of digital television stations, enhanced disclosure, and localism. The Commission cannot make rational decisions about structural rules without addressing behavioral rules as well. Nor can it evaluate the effectiveness of its policies without information about how broadcast stations are serving their communities. The Commission should not change its rules simply because some stations are experiencing short term economic difficulties.

The Commission should promote the public interest in diversity, competition and localism by tightening up the current limits. In reviewing the local television rule, the FCC should consider whether allowing duopolies remains justified in light of television stations' ability to digitally multicast. It should assess whether the failing station rule is working as intended to promote opportunities for minorities and women to obtain broadcast stations. It should also investigate whether "shared services arrangements" and "local news services" agreements are being used to circumvent the local television rule and/or undermine the goal of ensuring diverse and competitive sources of local news.

The Commission should lower the numerical limits for radio station ownership to create more opportunities for minorities and women to enter the radio business. It should also close loopholes in the newspaper-broadcast cross-ownership rule.

Finally, the Commission should eliminate the UHF Discount, which discounts the audience reach of UHF television stations by 50% for purposes of determining the national audience limit, which Congress set at 39%. The digital transition has rendered the UHF discount moot because UHF stations are now comparable to VHF, and in fact, many former VHF stations have changed to UHF. If the FCC fails to eliminate the UHF Discount, large group owners may try to expand their audience reach in contravention of Congressional intent.

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**COMMENTS**

The Office of Communication of the United Church of Christ, Inc., Prometheus Radio Project, Media Alliance, National Organization for Women, National Hispanic Media Coalition, The Benton Foundation and Common Cause (collectively “*UCC et al.*”), respectfully submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry (“NOI”) in the 2010 Quadrennial Media Ownership Review.<sup>1</sup>

Because counsel for these parties have simultaneously been working on briefs in the appeal of the 2006 Quadrennial decision, a petition to deny Tribune’s assignment of licenses for cross-owned stations, and comments on the proposed Comcast-NBC Universal merger, they are only able to offer a few comments in response to the many of questions presented in the NOI. The first part of the comments addresses some of the policy goals identified in the NOI. The second part addresses specific rule changes, and will refer the Commission to prior filings that address many of the same questions.

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<sup>1</sup> *2010 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, MB Docket No. 09-182, FCC 10-92 (May 25, 2010) (“*2010 NOI*”).

## I. POLICY GOALS

While *UCC et al.* generally agree that the purpose of the ownership limits is to promote diversity, competition and localism, they have concerns about the way the questions have been posed or not posed in the NOI.

### A. Of the Groups Affected by the Ownership Rules, the Impact on the Public Must Be Paramount

The NOI identifies four groups that are affected by the ownership rules: “(1) consumers of media or “end users,” i.e. viewers, listeners, and readers: (2) advertisers; (3) creators of content; and (4) platform owners, i.e., media distributors, including broadcasters, newspapers, and cable systems.”<sup>2</sup> In other section, the NOI asks how the ownership rules affect these four groups.<sup>3</sup> The NOI also seeks comment on how to address conflicts or tensions between its goals.<sup>4</sup>

*UCC et al.* is concerned that this conceptual framework misconceives the FCC’s statutory role, which is to ensure that broadcast licensees serve the *public* interest. While in some sense all four groups are part of the public, and indeed, the groups may well overlap, the Commission’s primary concern must be the listening and viewing public. Moreover, *UCC et al.* are concerned that the NOI suggests that the interests of the listening and viewing public are those of consumers or “end users.” The primary interest of listeners and viewers are not as mere consumers, but as participants in a democratic society. As participants in a democracy, they need information to be active and productive members of their communities and to be informed voters. They need to have access to a diversity of viewpoints as well as be able to express their

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<sup>2</sup> *Id.* at 12 ¶¶28.

<sup>3</sup> *See, e.g., id.* at 13-15 ¶¶33-43.

<sup>4</sup> *Id.* at 24 ¶¶76-77.

own views. They need to have programming that responds to their needs and reflects the wide diversity in American thought, culture and the arts. As the Supreme Court found in *Red Lion*,

It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.<sup>5</sup>

The Commission’s concern about the effects of the ownership rules on advertisers, content creators, and platform owners, must be secondary to those of the public. For example, although ownership rules may affect the profitability of broadcast stations, profitability should not be a concern of the FCC unless it can be demonstrated that a lack of profits (or losses) harms the public. Moreover, advertisers, content producers, and platform owners all have financial interests affected by FCC regulation, and consequently, will have both the incentive and the ability to participate fully in FCC proceedings. In contrast, the public lacks the economic incentive and ability to participate as fully. The Commission should bear this imbalance in mind when making determinations about what is in the public interest.

**B. The FCC Should Act on Pending Proceedings Concerning Public Interest Obligations of DTV, Enhanced Disclosure, and Localism Before or at the Same Time it Considers Structural Regulation**

*UCC et al.* are troubled that the NOI specifically excludes consideration of “public interest obligations of broadcasters and how to enhance localism through behavioral rules.”<sup>6</sup>

*UCC et al.* find it difficult to understand how the FCC can make rational decisions about structural rules without addressing behavioral rules as well. For example, some have argued that increasing the number of diverse station owners increases the quantity and responsiveness of

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<sup>5</sup> *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390 (1969) (citations omitted).

<sup>6</sup> *2010 NOI* at 18 n.101.

local news by increasing the number of people who decide about what news to cover and how to cover it. Others argue that increased consolidation leads to more news or more responsive news because the combined stations have greater resources. But in the absence of any quantifiable requirement to provide local news, public affairs or local programming, there is no necessary connection at all between ownership structure and programming.

The NOI notes that an important measure of whether licensees are meeting their local program requirements is the quantity of local news.<sup>7</sup> It also asks whether it should evaluate the quantity of programming responsive to local needs and interests.<sup>8</sup> However, until the FCC improves its data collection processes, neither the Commission nor the public has an effective means of determining which stations offer local news and public affairs programming, how much they offer, how much is being simulcast or repurposed, and how responsive the programming is to local issues.

This unfortunate situation could have been avoided if the FCC had not dragged its feet in several related rulemaking proceedings. In 1999, the FCC began a proceeding to determine the public interest obligations of television broadcast stations once they converted from analog to digital.<sup>9</sup> Last year, the transition to digital was largely completed. Yet, the rulemaking to determine public interest obligations has not been. The Commission did adopt an order in late 2007 that requires television broadcasters to provide information to the public and the FCC about their public interest programming.<sup>10</sup> Unfortunately, the Commission has never taken the steps needed to put these disclosure requirements, or some modified version of them, into effect. As a

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<sup>7</sup> *Id.* at 18 ¶54.

<sup>8</sup> *Id.* at ¶55.

<sup>9</sup> *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999).

<sup>10</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2008).

result, neither the Commission nor the public have the data needed to answer many questions asked in the NOI. The Commission has never addressed comments regarding substantive public interest obligations for digital television stations except in connection with children's television. Nor has it completed the localism proceeding, which was launched in 2003, to address public concerns that had been raised in the 2002 Biennial ownership proceeding about the lack of community responsive programming.<sup>11</sup>

*UCC et al.* respectfully suggest that the Commission must either complete the enhanced disclosure, public interest obligations and localism proceedings before or at the same time as the 2010 Quadrennial review. Structural and behavioral rules are interrelated and must be coordinated to ensure that the public interest is served. Likewise, without access to data to determine whether the rules are effective, the FCC cannot ensure that broadcasters are serving the public interest.

**C. The Commission Should not Develop Long Term Policy Based on the Current Economic Conditions of the Industry**

The NOI seems to assume that the current financial condition of the broadcast and newspaper industries is dire and requires that the FCC take action.<sup>12</sup> *UCC et al.* urge the FCC to critically examine both of these assumptions.

Every US industry, including the media, has been affected by the declining economy. But the Commission should not make long-term policy considerations based on the current financial conditions of the media marketplace. The downturn in the broadcast industry over the last four

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<sup>11</sup> *Broadcast Localism*, Report and Notice of Proposed Rulemaking, 23 FCC Rcd 1324 (2008); *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12431 ¶14 (2004).

<sup>12</sup> *See, e.g., 2010 NOI* at 17 ¶51.

years, namely advertising revenues, is cyclical and *not* necessarily a sectoral aspect of the industry.

Research has shown that “when the economy [is] either in a recession or in a low growth phase that growth in volume of TV advertising decline[s].”<sup>13</sup> As predicted, as the economy has turned in the last twelve months, the broadcast industry has also started to recover and profits are up. Sinclair, Gannett and Media General all saw their profits increase in the first quarter of 2010.<sup>14</sup> It is expected that TV ad revenue, including online, will reach \$19.8 billion in 2010 up from \$17.3 billion in 2009.<sup>15</sup> Overall, TV stocks are up 22.67% for the first quarter.<sup>16</sup> Radio has also seen an increase. It is projected that radio station ad revenue will recover to \$17.1 billion in 2010, the highest annual increase since 2003, and will reach \$19.8 billion by 2016.<sup>17</sup>

Even though profits may not be where they were five or ten years ago, it is not the FCC’s responsibility to prop up the broadcast industry. If the financial condition of a station is so poor that it is unable to serve the public, consolidation is not the solution. Rather, the public interest is better served by giving new entrants a chance to become broadcasters. Alternatively, if broadcasting is no longer viable because the public no longer finds the services that broadcasters

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<sup>13</sup> Agata Kaczananowska, IBIS World, INDUSTRY REPORT 5132 – TELEVISION BROADCASTING IN THE US, 32, (May 2010).

<sup>14</sup> Lorraine Mirabella, *Sinclair Broadcast Turns Profit in First Quarter*, THE BALTIMORE SUN, May 5, 2010, <http://www.baltimoresun.com/business/bs-bz-sinclair-earnings-20100505,0,6757221.story>; Andrew Vanacore, *Gannett’s 1Q Profit Jumps 51 Percent as Newspaper Ad Declines Ease, Broadcast Revenue Rebounds*, BUSINESS NEWS, Apr. 16, 2010, <http://blog.taragana.com/business/2010/04/16/gannetts-1q-profit-jumps-51-percent-as-newspaper-ad-declines-ease-broadcast-revenue-rebounds-51121/>; Press Release, Media General, Media General Reports First-Quarter 2010 Results (Apr. 21, 2010) *available at* [http://www.mediageneral.com/press/2010/april21\\_10\\_earnings.html](http://www.mediageneral.com/press/2010/april21_10_earnings.html).

<sup>15</sup> Kaitlin Knoll, *TV, radio ad revenues poised for rebound*, THE HOLLYWOOD REPORTER, June 14, 2010, *available at*

[http://www.hollywoodreporter.com/hr/content\\_display/news/e3i9b6b41a3894c84cf4ea9162d20377f25](http://www.hollywoodreporter.com/hr/content_display/news/e3i9b6b41a3894c84cf4ea9162d20377f25).

<sup>16</sup> Jack Messmer, *Broadcasting Stocks Gained Again in Q1*, RADIO BUSINESS REPORT, Apr. 15, 2010, [http://www.rbr.com/features/intel\\_briefs/23372.html](http://www.rbr.com/features/intel_briefs/23372.html).

<sup>17</sup>Knoll, *supra* note 15.

offer important, the public interest may be better served by using that spectrum for other purposes.

*UCC et al.* recognize that some newspapers have faced financial difficulties. However, the newspaper industry has also rebounded in the last year. By the end of 2009, most newspapers were at least moderately profitable.<sup>18</sup> But more importantly, the Commission has no regulatory jurisdiction over newspapers and it is not the Commission's role to save the newspaper industry.

## II. COMMENTS ON SPECIFIC RULES

The NOI asks a number of questions concerning ways to improve the existing ownership rules. *UCC et al.* will summarize several proposals to improve the effectiveness of the broadcast ownership limits.

### A. **With Respect to the Local TV Rule, the FCC Should Take Account of Digital Multicasting, Assess the Effectiveness of the Failed/Failing Station Rule, and Examine Whether Existing Sharing Arrangements Violate or Undermine the Rule**

While the NOI appropriately asks what changes should be made to the local TV rule because the Grade B contour no longer exists in the digital world, it fails to ask the more fundamental question: what is the impact of the transition to digital television and especially multicasting on the local tv ownership limits?

*UCC et al.* believe that now the transition to digital television is complete, the Commission should return to a single-license restriction on local television ownership. Digital television enables licensees to broadcast multiple program streams using a single license, thus obviating the need to acquire a second or third license to provide additional programming to the

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<sup>18</sup> The State of the News Media 2010, PEW PROJECT FOR EXCELLENCE IN JOURNALISM, Newspapers-Profits, Debt, Stock Performance and Bankruptcies, Mar. 15, 2010, *available at* [http://www.stateofthemedial.org/2010/newspapers\\_economics.php](http://www.stateofthemedial.org/2010/newspapers_economics.php).

public.<sup>19</sup> A single-license restriction would promote diversity of viewpoints, improve local service, increase competition, and give licensees the incentive to use their digital spectrum more efficiently.

The NOI also asks whether it should make changes to the failed/failing station waiver standard.<sup>20</sup> It is impossible to answer this question without assessing whether the failed/failing station waiver has worked as intended, i.e. to provide opportunities for new entrants, including minorities and women, and limit same market acquisitions to only situations where separate ownership is not possible.<sup>21</sup>

Another question concerning the local television rules that the NOI fails to ask is whether the purpose of the local television limits are being undermined by various types of “sharing” arrangements between local television broadcasters. As described in comments in the Future of Media proceedings, it appears that Shared Services Agreements are being used to evade either the restriction on mergers of two top-four stations or prohibitions on mergers where fewer than eight independent voices remains.<sup>22</sup> Local News Services, which currently exist among many network owned stations in major markets also undermine the purpose of the top-four restriction, which is to promote competition in the provision of local news.<sup>23</sup>

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<sup>19</sup> See Common Cause, Benton Foundation, Consumers Action, et al., Petition for Reconsideration, MB Dkt. 06-121 at 11-12, filed Mar. 24, 2008; Comments of United Church of Christ, MB Dkt. 06-121, at 45-47, filed Oct. 23, 2006.

<sup>20</sup> 2010 NOI at 26 ¶83.

<sup>21</sup> *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12936 ¶¶73-74 (1999).

<sup>22</sup> Comments of Communications Workers of America and Media Council Hawaii, GN Dkt. 10-25 at 3-5, filed May 7, 2010.

<sup>23</sup> *Id.* at 11-17.

**B. The Commission Should Lower the Numerical Limits in the Local Radio Rule.**

The Commission should lower the maximum number of radio stations a single company can own in each market. Lowering the limits will foster diversity of viewpoints available to the public and improve local service.<sup>24</sup> It is also one of the best ways to foster minority and female ownership. Lowering the limits and requiring divestiture within a reasonable time will increase opportunities for minorities and women to acquire broadcast stations without the need to resort to any race or gender based preferences.<sup>25</sup>

**C. The Commission Should Close Loopholes in the NBCO Rule and Require Better Public Notice When Waivers are Requested**

The Commission should close the loopholes in the current newspaper-broadcast cross-ownership rule. The “Four Factors” and “Local News” test are vague and unreliable.<sup>26</sup> The exceptions to the NBCO Rule should promptly be eliminated, and the Commission should only grant waivers when the proposed merger meets the positive presumption and that presumption has not been rebutted. The Commission should require that applicants provide enhanced public notice of license transfers and waiver requests, so that the public served by the station has ample opportunity to participate in these decisions.<sup>27</sup>

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<sup>24</sup> See Common Cause, Benton Foundation, Consumers Action, et al., Petition for Reconsideration, MB Dkt. 06-121 at 15, 21, filed Mar. 24, 2008; Comments of United Church of Christ, Comment, MB Dkt. 06-121, filed Oct. 23, 2006.

<sup>25</sup> See Common Cause, Benton Foundation, Consumers Action, et al., Petition for Reconsideration, MB Dkt. 06-121 at 18, filed Mar. 24, 2008; Comments of UCC et al., MB Dkt. 06-121 at 5-7, filed Oct. 1, 2007; Comments of United Church of Christ, MB Dkt. 06-121 at 25-28, filed Oct. 23, 2006.

<sup>26</sup> See Common Cause, Benton Foundation, Consumers Action, et al., Petition for Reconsideration, MB Dkt. 06-121 at 3-4, filed Mar. 24, 2008; Comments of UCC, NOW, Media Alliance, Common Cause, Benton Foundation, Consumers Action, MB Dkt. 06-121 at 10-12, filed Dec. 11, 2007.

<sup>27</sup> See Prometheus Radio Project, Common Cause & Media Alliance, Notice of Ex Parte, MB Dkt. 06-121 at 2 (May 17, 2010); Comments of Office of Communication for United Church of Christ, MB Dkt. 09-182 at 8-10, filed Nov. 20, 2009; Common Cause, Benton Foundation, Consumers Action, et al., Petition

#### D. The Commission Should Eliminate the “UHF Discount”

The NOI asks whether the Commission has the authority to evaluate the 39% national television ownership rule.<sup>28</sup> While the Commission lacks authority to alter the numerical limit in the context of a quadrennial review, it retains the authority to eliminate the UHF discount, and it should do so.

Before the digital transition, UHF stations had a weaker signal, reached smaller audiences, and were generally known for lower quality programming.<sup>29</sup> When adopted in 1985, the UHF discount made sense and helped make UHF television successful. Because the transition to digital eliminated the distinction between VHF and UHF television stations, UHF channels can now provide high-quality programming to audiences that are as large as those reached by VHF stations. Thus, there is no longer any need to provide incentives or economic support for UHF owners.<sup>30</sup>

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for Reconsideration, MB Dkt. 06-121 at 5, filed Mar. 24, 2008; Comments of United Church of Christ, MB Dkt. 06-121, at 80-83 filed Oct. 23, 2006.

<sup>28</sup> 2010 NOI at 7 ¶17.

<sup>29</sup> *Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 FCC.2d 74, \*12, ¶ 43 (1985) (“Due to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF.”) (quoting *Comparability for UHF Television: Final Report*, September 1980, at 2.). See generally Cecilia Rothenberger, Comment, *The UHF Discount: Shortchanging the Public Interest*, 53 AM. U. L. REV. 689, 698–701 (2004).

<sup>30</sup> For this reason, all other UHF-aiding regulations have already been repealed by Congress and the FCC. See generally Rothenberger, *supra* note 29, at 711–15. For instance, in 1988, the Commission eliminated the UHF Impact Policy, which since 1960, had protected UHF stations by allowing UHF stations to stop the FCC from granting a license to a new VHF station upon a showing that the VHF station would cause economic harm to the UHF station. *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, Report and Order, 3 FCC Rcd 638, ¶¶ 1, 26–31, 47 (1988). In 1995, the Commission repealed the Secondary Affiliations rule, which since 1971 had encouraged greater access to network programming for UHF stations by requiring networks to offer affiliation to UHF stations before VHF. *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 10 FCC Rcd 4538, ¶¶ 1, 12–26 (1995). Another example is the Prime Time Access Rule, which the Commission created in 1970 to promote the growth of independent (usually UHF) stations; the Commission eliminated the rule in 1995. *Review of the Prime Time Access Rule, Section 3.658(k) of the Commission's Rules*, MM Docket No. 94-123, 11 FCC Rcd 546, ¶¶ 77–80.

Continuing to discount the audience reach of UHF stations by 50% when in fact there is no difference in audience reach is not rational. It could also have the unintended effect of allowing large group owners to acquire more stations in excess of the 39% limit. This result would clearly contradict Congress' intent in passing the Consolidated Appropriations Act of 2004 which lowered the 45% audience reach limit to 39%.<sup>31</sup>

The Commission has previously recognized that the digital transition would render the UHF discount largely unnecessary. In the *2002 Biennial Review*, the FCC found that the digital transition would “largely eliminate the technical basis for the UHF discount [by] substantially equaliz[ing]” VHF and UHF.<sup>32</sup> The NAB also commented that the “failure to [alter or eliminate the UHF discount] ... would equally violate Congress' intent to leave national ownership levels as they are [in 2004 at 39%].”<sup>33</sup> *Broadcasting & Cable* has also recognized the need to review the UHF discount. Its list of the largest station groups for 2010, unlike its lists in prior years, did not consider the UHF discount in calculating station ranks. *Broadcasting & Cable* explained that the “decision to change our ranking system is in line with industry trends. When last June's digital transition was complete, the majority of U.S. TV stations had moved to UHF channels, which are better suited to broadcasting digital television at lower power levels.”<sup>34</sup> It further observed:

That change calls into question current TV industry regulations. The law of the land . . . continues to take the UHF discount into account. However, the transition and related technology have rendered the discount moot, and without the discount

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<sup>31</sup> Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

<sup>32</sup> *2002 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13847 ¶ 591.

<sup>33</sup> Comments of the National Association of Broadcasters, MB Dkt No. 02-277, filed Mar. 19, 2004, at 2.

<sup>34</sup> Paige Albiniak, *B&C's Top 25 Station Groups 2010: Size Still Matters; Despite Fractured Media Landscape, Big Station Groups Get a Leg Up on Retrans, Syndication, and Talent Deals*, *Broadcasting & Cable*, Apr. 12, 2010.

two station groups, ION and Univision, exceed the limit. At this point, neither the FCC nor Congress is looking at this issue.<sup>35</sup>

Since the digital transition has occurred, many station owners have—with the FCC’s consent—moved their formerly-VHF stations to UHF portions of the spectrum. For example, NBC relocated eight VHF stations to UHF between April 2008 and February 2010, and during this same time period, also acquired two additional UHF stations. As a result, twenty-six of NBC’s twenty-eight stations are now UHF, and its national audience reach is 36.63%. But if its national audience reach is calculated using the UHF Discount, it would “fall” to 19.39%. This would arguably allow NBC to buy even more stations. When Congress set the limit at 39%, it did not expect that the major networks and group owners would be able to expand even further.

Nor is NBC the only major owner that has converted VHF stations to UHF. CBS relocated eleven stations between April 2008 and February 2010. While its twenty-eight owned and operated stations slightly exceed the 39% maximum, its audience reach, if calculated using the UHF discount, would only be 23.68%. Similarly, Fox, which owns and operates twenty-eight stations, nineteen of which are UHF, relocated five stations from VHF to UHF between April 2008 and February 2010. Fox’s actual national audience reach is currently 38.723%. But after relocating five stations from VHF to UHF, Fox’s audience reach as calculated with the UHF discount is 23.039%. Tribune Company, which owns and operates twenty-three stations, twenty-one of which are UHF, relocated five stations from VHF to UHF between April 2008 and February 2010. Tribune’s actual national audience reach is 35.479%, but is only 21.806% if calculated using the UHF discount.<sup>36</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> The calculations discussed are derived largely from two sources. First, *Broadcasting & Cable*’s list of station owners from 2008 was used in order to determine whether each station was VHF or UHF as of April 2008. Robert Marich, *The Top 25 M&A Forecast: TV Station Business Has Cooled, But There Are Warm Spots*, BROADCASTING & CABLE (Apr. 12, 2008). The FCC databases were then used to

To avoid allowing the largest broadcasters to become even larger in violation of the limits set by Congress, the Commission should promptly eliminate the UHF discount, whether in this Quadrennial Review or in a separate rulemaking. Nothing in the Consolidated Appropriations Act of 2004 changed the FCC's existing authority to modify or eliminate the UHF discount. Indeed, this issue was fully briefed in comments filed with the Commission in 2004, but the Commission never issued its opinion.<sup>37</sup> As *UCC et al.* explained in comments filed at that time, the plain language of the Appropriations Act did not refer to the UHF discount or to the method of calculating the national audience reach limitation. The inclusion of statutory language that merely referred to FCC rules did not limit FCC authority to review or change those rules. At most, the language in Section 629(3) of the Appropriations Act might be found ambiguous, in which case the Commission will be afforded a great deal of deference in interpreting the statute. *UCC et al.* believe that the only reasonable interpretation is that the FCC's authority to modify or eliminate the UHF discount continues. Stripping the agency of that authority would be illogical and at direct odds with the purpose of the Appropriations Act, the 1996 Telecommunications Act, and Supreme Court standards of statutory interpretation.<sup>38</sup>

## CONCLUSION

As the Commission begins its 2010 Quadrennial Review of broadcast ownership limits, it should keep foremost in mind that the rules are intended to ensure that the general listening and viewing public have access to diverse and competing sources of local news so that they can be

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determine whether (as of February 2010) the station was VHF or UHF, followed by using *Broadcasting & Cable's* 2008 list of audience reach numbers in order to calculate how any changes in VHF/UHF status have impacted station owners' FCC-calculated audience reach.

<sup>37</sup> *Additional Comment Sought on UHF Discount*, MB Docket No. 02-277, 69 Fed. Reg. 9215, 9215-17 (Feb. 27, 2004).

<sup>38</sup> Reply Comment of the Office of Communication of the United Church of Christ et al, MB Docket No. 02-277, filed Mar. 29, 2004; Comment of the Office of Communication of the United Church of Christ et al, MB Docket No. 02-277, filed Mar. 19, 2004.

active participants in our democratic system. To accomplish this goal, the FCC must also complete pending proceedings on the public interest obligations of digital television stations, enhanced disclosure, and localism. Rule changes should not be based on short term economic difficulties.

In revising the local television rule, the FCC should take account of digital multicasting and sharing arrangements. It should lower the numerical limits for radio station ownership and close loopholes in the NBCO Rule. It should also eliminate the UHF Discount because it is no longer necessary, and retaining it could result in greater national consolidation contrary to Congressional intent.

Respectfully Submitted,

/s/

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