Federal Communications Commission
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Office of the Director

August 29, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to the Questions for the Record submitted for William T. Lake regarding his appearance before the Subcommittee on June 11, 2014, at the hearing entitled "Media Ownership in the 21st Century."

If you have further questions, please feel free to contact me at (202) 418-0095.

Sincerely,

Sara W. Morris

Enclosure

cc (with enclosure): The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce

Responses of William T. Lake to
Additional Questions for the Record
June 11, 2014, Hearing on "Media Ownership in the 21st Century"

The Honorable Greg Walden

1. **The GAO issued a study concluding that the FCC did not have sufficient information on broadcaster sharing agreements to assess how they impact its policy goals and media ownership rules. (GAO 14-558) Would you agree that the FCC's actions on JSAs were premature? If not, how do you explain how the FCC's actions on JSAs benefit the public interest, when the FCC has little to no information on the impact of JSAs and other sharing agreements?**

   RESPONSE: The FCC's action on JSAs was not premature. Joint Sales Agreements have been defined by the Commission and held attributable in the radio context for over a decade. These agreements, and the potential they hold to give a broker the ability and incentive to unduly influence the programming decisions and core operation of the brokered station, are well known to the Commission. Further, as the GAO notes itself on page 23 of its report, the Commission has reviewed, and continues to review, JSAs on a case-by-case basis in the context of assignments and transfers of licenses. Over the years, we have observed that station owners were using JSAs to circumvent the Commission's long-standing local ownership rules. Failure to attribute TV JSAs between in-market competitors would undermine the Commission's cornerstone goals—outlined in the statute and in our rules—to promote competition, diversity, and localism. Our conclusion to attribute TV JSAs was actually bolstered by the findings of the GAO, where its report noted that station owners "write agreements to avoid the attribution rules." *See* GAO Report at 24.

   With respect to sharing agreements, the GAO report correctly notes that similar information about the scope and prevalence of such agreements is not available currently, as it is for JSAs. The *Further Notice of Proposed Rule Making* in the 2014 Quadrennial Media Ownership Review proceeding proposes to define sharing agreements for the first time and to require the disclosure of such agreements. The Commission's recent proposals are designed to enable collection and analysis of the data that the GAO report suggests is lacking. In any case, sharing agreements continue to be reviewed if they are part of a license transfer or assignment application, and the Commission takes into consideration the overall impact of the proposed agreements when determining whether the license transfer would be in the public interest.

The Honorable Anna Eshoo

1. **Ms. Mago stated in her testimony that the FCC's refusal to act on pending transactions involving sharing or financial arrangements has forced the parties to completely restructure their deals, which in turn will lead to reduced news coverage and fewer stations. How do you respond?**

   RESPONSE: The Commission has an obligation to ensure that any proposed transaction is in the public interest. The staff must carefully scrutinize all of the proposed arrangements – whether it is a Joint Sales Agreement (JSA), Shared Services Agreement (SSA), and/or other financial agreements (or all three) – to ensure there is no undue influence or control by one licensee over another.

At the end of March, there were forty-one transactions pending before the Commission, seventeen of which have been processed. Parties in eight of those transactions were notified of their need to amend the applications to show financial independence. Two deals were restructured (Sinclair-Allbritton and Gray-Hoak), two deals have waiver requests pending (Nexstar-Comcorp and Nexstar-Milton Grant), and one (Quincy-Granite) is evaluating its options.

The Commission is aware of one situation where an applicant chose to surrender TV station licenses in order to facilitate a larger merger. The impact on consumers, however, is expected to be minimal as the programming previously carried by those stations will be multicast on other stations owned by the licensee in the market.

Although it has been commonly mischaracterized, the Commission's action regarding JSAs did not prohibit those agreements entirely – it set a limit on the total amount of advertising time that one station can sell on behalf of a competing station in the same market, if the stations are not allowed to be co-owned under our local TV ownership rule. Further, stations are not prohibited from entering into other types of sharing agreements where stations may take advantage of efficiencies that may promote news coverage.

The Honorable Henry Waxman

1. **The FCC's Quadrennial Review assesses rules one-by-one in considering whether a given rule needs to be altered given changes in media ecosystem. What efforts will the FCC make, however, in ensuring that changing or undoing one rule does not alter the effects of another?**

   RESPONSE: The Quadrennial Ownership Review requires the Commission to determine whether the broadcast ownership rules remain "necessary in the public interest as the result of competition" and to repeal or modify any regulation it determines is no longer in the public interest. To determine whether a particular rule is in the public interest, the Commission considers whether the rule furthers its established goals of localism, competition, and diversity. Multiple rules may serve these goals, which would be taken into consideration. For example, in the current *Further Notice of Proposed Rulemaking*, the Commission has sought comment on whether it should repeal the current radio-television cross-ownership rule and rely solely on the limitations set forth in the local Radio rule and the local TV ownership rule, respectively, to promote viewpoint diversity in those markets. The Commission has explicitly sought comment on whether the media-specific local rules themselves would be sufficient to preserve the Commission's goals, or if retention of the cross-ownership rule is necessary.

2. **When the FCC last reported its broadcast ownership data, much of it was incomplete. For example, nearly 1 in 6 Class A television stations, 2 out of 5 LPTV stations, and 1 in 6 AM and FM commercial radio stations did not report ownership data. The large quantity of missing data makes it very difficult to assess the state of minority and female ownership in the broadcast industry. Is the FCC making efforts to improve its ownership data collection so we can make better judgments about whether revisions should be made to existing media ownership rules?**

   RESPONSE: It is an on-going process to revise and update the Commission's collection of data related to broadcast ownership. We recognize that it is important to gather accurate and usable data. We substantially revised Form 323 in 2009 in order to facilitate long-term study and to address other concerns. The Commission just released its 2014 Report on Ownership of Broadcast Stations, which summarizes the data from the most recent Form 323 filings made in 2013. As you note, a key component of the process is the accurate and timely filing of the data by licensees. We work closely with the industry to remind them of filing deadlines, provide assistance with the Form, and grant extensions of time when necessary. Before we release our report summarizing the data, we follow up with stations, both those that failed to file a Form 323 and those that may have filed incorrectly, to ensure that the data are as complete and accurate as possible. We continue to refine and consider further revisions to this process to improve the accuracy and reliability of the data that we collect.

3. **The FCC's Form 395-B, which once required broadcast stations to report on employment diversity, has remained dormant for a number of years as the FCC has attempted to respond to a number of legal and statutory challenges. In the past, Form 395 data has allowed the public to hold broadcasters accountable when their employment practices failed to reflect the diversity of their communities of license. Where is the FCC in the process of reinstating that form and using the data that it provides to identify employment trends within the industry?**

   RESPONSE: On April 15, 2014, the Commission published a notice in the Federal Register soliciting comment on Form 395-B. Specifically, the notice is part of the Paperwork Reduction Act routine renewal process. It asks whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. Comments on this Paperwork Reduction Act notice were due in June. This comment process is a necessary component to reinstating the form, but we note that it does not resolve the legal and statutory challenges that you reference in your question. We are still evaluating the best course of action to overcome those obstacles.

4. **When the Commission evaluates the local radio ownership rule in the context of its media ownership review, how, if at all, does the market definition used by the Commission differ from that used by the Department of Justice in its antitrust review of broadcast radio station mergers?**

   RESPONSE: Historically, when evaluating the local radio ownership rule in the context of the media ownership reviews, the Commission has focused on broadcast radio stations in their local markets. As noted in the 2014 Quadrennial Review Further Notice of Proposed Rulemaking—which proposes to retain this market definition—this approach is consistent with current Department of Justice antitrust review of broadcast radio station mergers, which also focuses on broadcast radio stations in their local markets.

5. **We hear a lot about how stations with JSAs are concerned that the new attribution rules will adversely impact their ability to continue to provide news or receive the efficiencies from sharing agreements- or even require the station to go dark. Commissioners Ajit Pai and Michael O'Rielly raised just such allegation in a joint press release on June 24, 2014. Are these fears accurate?**

   RESPONSE: The JSA attribution rule applies only to agreements for the sale of 15 percent or more of the weekly advertising time on behalf of a competing station in the same market. Other shared service agreements—including local news service agreements—are not impacted by the rule. The Commission is seeking comment on a proposed definition for other types of sharing agreements, as well as whether disclosure of such agreements should be required. If a party believes a particular JSA should not result in an attributable interest, or believes that the public interest is better served by allowing the party to hold a duopoly in a particular market, it may apply for a waiver of the applicable rule.

   The Commission is aware of one situation where an applicant chose to surrender TV station licenses in order to facilitate a larger merger that was pending at the time the TV JSA attribution rule was adopted. The impact on consumers, however, is expected to be minimal as the programming previously carried by those stations will be multicast on other stations owned by the licensee in the market. Additionally, the situation referred to in the June 24 statement failed to note that Minority Media and Telecommunications Counsel (MMTC) has been engaged as a broker by the current licensee to seek new buyers for the stations that have gone temporarily dark. On August 27, 2014, the current licensee referenced by that statement announced that they were able to find buyers for all six of the previous stations that would otherwise have gone dark. We view this as a positive outcome that increases competition and diversity of ownership and programming while keeping stations on the air.

6. **What types of stations do you normally find are part of JSAs?**

   RESPONSE: Increasingly, we have seen one station—the broker—sell 100 percent of the advertising time of the brokered station, as well as provide almost all of the services to the supposedly independently owned station. Often the station receiving the services has only two employees, the absolute minimum permitted under existing Commission precedent. This produces stations that are independent in name only; accordingly, we adopted the television JSA attribution rule to appropriately consider the stations commonly owned for purposes of our media ownership rules.