



Hearing on “Media Ownership in the 21st Century”

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

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**Statement of Jane Mago
National Association of Broadcasters**

Summary

1. The broadcast ownership rules should be designed to permit broadcasters to compete effectively in the current media marketplace. A healthy, vibrant broadcast industry serves the public interest in localism and diversity.
2. The FCC has failed to fulfill its obligation to determine whether the current broadcast ownership rules are “necessary in the public interest as a result of competition” and repeal or modify regulations that are no longer in the public interest. Congress should require that the FCC complete its review in a timely manner.
3. Consideration of the broadcast ownership rules should be based on real evidence, not unsupported opinion. Congress should examine how the FCC’s administration of the broadcast ownership rules has affected investment and opportunity in broadcasting.

Good morning and thank you very much for this opportunity to speak to you today. My name is Jane Mago. I am Executive Vice President and General Counsel of the National Association of Broadcasters. NAB represents free and local radio and television broadcasters who serve communities large and small across this country.

In my remarks today, I will focus on three main points. First, the broadcast ownership rules do not best serve the public interest. It takes a competitive, healthy broadcast industry to promote localism and diversity. Second, the Federal Communications Commission has failed to fulfill its obligation to review and update the broadcast ownership rules in light of current competitive conditions. Congress should require that the FCC complete its quadrennial review of the ownership restrictions in a timely manner. Third, consideration of the broadcast ownership rules should be based on real evidence, not unsupported opinion. To that end, Congress should examine how the FCC's administration of the ownership rules has affected investment and opportunity in broadcasting.

The current broadcast ownership rules are out of touch with the reality of the media marketplace. They distort competition. 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. The rules have also created a market imbalance that is causing many broadcast stations to struggle to maintain their economic vibrancy and strong presence in local communities.

The television duopoly rule, for example, which prohibits common ownership of two television stations in many markets, assumes that television broadcasters only compete against other television broadcasters. That is demonstrably false. One only need look at the ever growing cable “interconnects,” which sell local advertising for placement across hundreds of cable programs, to understand that there is direct and real competition between broadcast and cable channels. Similarly, the shift of local advertising to Internet-based services is real competition for television broadcasting – and this competition only grows as broadband expands.

Cable operators alone earned over \$1.7 billion in local ad revenues in the Top 10 markets in 2012 – that’s the equivalent of having more than three additional broadcast TV stations in each of those markets. And while the FCC has effectively prohibited even two broadcast TV stations from engaging in the joint sale of advertising, large cable operators, along with satellite TV companies and the telcos, have joined forces to create a single interconnected platform for local and national TV advertisers.

A broadcaster in a small California market (Chico, DMA #132) estimates that the cable interconnect there takes “some \$3 to \$4 million in local advertising” that formerly would have been likely to go to local TV stations. Understandably, local broadcasters find it increasingly difficult to compete in a marketplace so skewed by disparate regulation.

As to growing competition from online and mobile sources, BIA projects that online ad revenues will rise from \$26.5 billion to \$44.5 billion from 2013-2017, while location targeted mobile ad revenues will increase from \$2.9 billion to \$10.8 billion over the same period. Looking at local ad revenue specifically, SNL Kagan found that Internet advertising grew at 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. This massive increase in competition is directly relevant to consideration of broadcast ownership restrictions, yet the FCC continues to insist that cable and online video do not provide “meaningful” competition for ad dollars.

The newspaper broadcast cross ownership rule is another rule based on assumptions of a media landscape that no longer exists. That rule, which prevents combinations of local newspapers and either radio or television stations, was adopted in 1975 – a time before Craigslist wiped

out classified ad revenues for newspapers; a time before 24-hour news channels and Twitter feeds redefined the concept of breaking news; and a time before hundreds of daily newspapers ceased operation because they could not afford to continue.

The FCC itself has previously determined that the prohibition against newspaper/broadcast cross-ownership “is not necessary to advance its localism and competition goals.” And, it has recognized that the rule is “overly broad” as related to its alleged goal of promoting viewpoint diversity, particularly with regard to radio. Yet, this outdated rule is still on the books.

I will not speak about each of the broadcast ownership rules here, but want to stress my larger point that the public interest is best served by broadcast ownership rules that permit radio and television stations to compete effectively. 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.

To maintain the ability to provide quality local service, the broadcast ownership rules must permit reasonable combinations of station ownership.

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 supported and sustained by economics that make sense in today's world. To compete and serve our communities successfully, broadcasters must have a somewhat level playing field with the new and varied competitors that are not subject to restrictions on local ownership.

In light of current competitive realities, the Commission must do what is required by law, and take a serious look at its rules and update them.

That leads to my second point. Congress understood the need for the broadcast ownership rules to keep pace with market changes. You wisely directed the FCC in Section 202(h) of the Telecommunications Act of 1996 ("1996 Act") to take a fresh look at these ownership rules on a regular basis – now every four years – and repeal or modify the rules to serve the public interest. But, the FCC has not followed your direction. Rather than complete the comprehensive review contemplated by Section 202(h), the Commission's most recent ownership order simply rolled its 2010 quadrennial review into a 2014 review that it does not expect to complete until at least mid-2016. Parties on both sides of the debate have challenged this failure to obey the law.

NAB appealed this most recent FCC decision not only because the agency failed to fulfill its obligation to review the rules, but also because it acted to impose a new restriction that effectively prevents any joint sales agreements (JSAs) among local television stations – whether or not those arrangements have produced tangible public interest benefits. This decision also requires broadcasters to “unwind” long-standing JSAs, many of which the FCC had approved as being in the public interest during its review of station sales. In our view, imposing new restrictions while refusing to update the underlying ownership rule is unlawful.

It is time for Congress to step in and reaffirm that the quadrennial obligation to repeal or modify rules no longer in the public interest must be completed in a timely manner. In this context, specific direction that the agency must make decisions and issue a final order every four years is needed. Rolling the 2010 review into a new 2014 cycle to be completed perhaps in 2016, creates uncertainty for broadcasters, chills investment, dries up access to capital and thus diminishes opportunity in broadcasting.

Now I come to my third point, that consideration of the broadcast ownership rules must not only be timely, but it must also be based on real evidence, not unsupported opinion and speculation of harm. I noted above evidence that NAB previously provided to the FCC showing the tangible

competition that broadcasters face for advertising dollars – the dollars that enable them to provide quality local service. Broadcasters, particularly television broadcasters, have responded to competition by seeking out efficiencies where they can share operations and services that allow them to invest in better service. NAB documented many benefits to the public of such operations. In our submissions to the FCC, for example, we documented many JSAs and shared service agreements (SSAs) that resulted in the creation of local news on stations that could not previously offer local news due to lack of resources; the expansion of existing local news programming and operations; increases in foreign language programming; growth in other local programming including sports and community affairs; and extensive technical and equipment upgrades, such as high definition capabilities and enhanced weather radar facilities.

Unfortunately, the response to these efforts have been complaints that sharing agreements are “shams” to get around the ownership rules – the same rules that the Commission has failed to update or even timely review. For its part, the FCC recently concluded it did not have enough information to decide what to do about station sharing arrangements, yet nonetheless announced that it would closely scrutinize any proposed television station sales that included sharing and/or financial connections.

NAB has challenged in court these FCC “processing guidelines” because in actuality they result in the Commission refusing to act on any transaction that proposes shared resources or financial connections with another television station in the same market – despite the fact that such arrangements are allowed under the current rules. In fact, in two deals within the past weeks, the FCC’s refusal to act forced the parties to completely restructure their deals – with an end result that there will be less service and fewer outlets in the affected markets. The FCC should not hold up commerce in the broadcast industry.

I am not here to get into the specifics of pending deals. Rather my point is that Congress should insist that there be greater transparency in the review of broadcast transactions and decision-making based on real market conditions. To this end, NAB proposes that Congress should examine how the FCC’s administration of the broadcast ownership rules has affected investment and opportunity in broadcasting. In particular, the inquiry should focus on the difficulties that broadcast outlets have today in obtaining investment capital, and whether those difficulties are related to asymmetric regulation of broadcast outlets in comparison to their competitors. Anecdotal evidence suggests that investment capital flows more freely to the lesser regulated media space. For example, the FCC’s

recent decision effectively prohibiting JSAs and requiring the unwinding of existing JSAs caused notable drops in the stock prices of a number of publicly traded TV broadcast companies.

During this time of intense consolidation in other sectors of the communications industry, insisting upon a wall around the broadcast ownership rules is having very real, negative consequences on local media. The evidence is clear. The decline of daily newspapers is undeniable. Regulatory policies that starve local media of capital investment are a proven failure. They serve no one – not current broadcasters, not possible new entrants, and most importantly, not the American people.

In sum, NAB is asking for your help to ensure timely and fair revision of the broadcast ownership rules. Maintaining the status quo, creating new restrictions or even just kicking the can down the road is a clear disservice to the American people.