

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
2010 Quadrennial Review – Review of the ) MB Dkt 09-182  
Commission’s Broadcast ownership Rules and )  
Other Rules Adopted Pursuant to Section 202 )  
of the Telecommunications Act of 1996 )  
)

**COMMENTS OF FREE PRESS**

July 12, 2010

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## SUMMARY

Free Press respectfully submits these comments in response to the Notice of Inquiry (NOI) issued in the Federal Communications Commission's 2010 Quadrennial Review of its media ownership rules. This proceeding marks the fourth periodic media ownership review undertaken by the Commission since the passage of the Telecommunications Act of 1996.

Because of the repetitive nature of these proceedings Free Press has addressed many of the questions presented by the NOI in previous filings. The data and policy analyses contained in these filings demonstrate that media consolidation adversely impacts the quantity and quality of local news and information from competing sources and diverse owners. Because of their relevance to the present proceeding, we have appended these previous filings so they may be considered as part of the 2010 review

As with past media ownership reviews, we expect industry to reassert claims that media ownership limits are no longer necessary because of increased competition from "new media," such as the Internet, or to repeat the same unsupported assertions that consolidation will enable industry to improve or maintain the provision of news and information in light of economic hardship. As Free Press has demonstrated in previous filings, and reiterates here, these arguments have never borne out, and are contradicted by technological and economic realities. Because the vast majority of Americans still receive the lions' share of their local news from traditional media outlets – specifically, local newspapers and broadcast television – the FCC's rules remain a critical component to ensuring that these primary news sources do not become consolidated in the hands of a few companies. Furthermore, the so-called efficiencies of consolidation have not materialized. Instead, the cost of consolidating has placed a number of companies that might otherwise be profitable in dire straits, resulting in the slashing of news

room and journalists' jobs. As a consequence, the Commission should look skeptically at self-serving industry claims that further consolidation will promote the provision of local news and information.

In its review, the Commission should also look critically and closely the emergence of “virtual consolidation” through reliance on Shared Services and Local News Sharing agreements. These contractual agreements enable broadcast stations and other media to share – or in egregious cases, completely merge – news rooms, equipment, advertising, and staff. As reliance on these joint ventures increases, we are anxious that local news competition is being reduced and that the quality and quantity of independently reported and produced local news will continue to decline. At a minimum, the lack of oversight or governing standards over such arrangements increases the potential that these agreements will be abused to the detriment of the public's access to local news and information provided by diverse and competing sources. Because the media ownership limits provide a vital function in supporting the diversity of news sources, it is likewise critical that FCC prevent backdoor circumvention of its rules through use of contractual arrangements. We strongly urged the Commission to examine the nature and impact of these arrangements as part of the 2010 review. In particular, we ask the Commission to assess whether certain types of joint ventures have the effect of violating the FCC's multiple ownership limits.

Finally, as it embarks on the 2010 Review, we urge the Commission to resist industry overtures to further relax the multiple ownership limits, and to instead maintain or tighten current ownership limits to best promote the public interest goals of diversity, localism, competition, and efficient use of the spectrum. Companies that have made poor business decisions should not be rewarded with permission to engage in even more media consolidation that would further injure

competition and diversity among local media outlets. It is not the Commission's job to protect industry profit margins. It is the role of the Commission to promulgate and enforce rules and regulations designed to promote competition, diversity, and localism so that the public interest, convenience, and necessity are served.

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**COMMENTS OF FREE PRESS**

Free Press respectfully submits these comments in response to the Federal Communications Commission (FCC or Commission) Notice of Inquiry in the above referenced docket, which was released on May 25, 2010.<sup>1</sup> Free Press is a nonpartisan, nonprofit organization working to reform the media by promoting diverse and independent media ownership, strong public media, quality journalism, and universal access to communications. Free Press has participated extensively in Commission proceedings, including previous iterations of the Commission’s review of its broadcast media ownership rules.

The 2010 NOI marks the fourth periodic media ownership review undertaken by the Commission since the passage of the Telecommunication Act of 1996. Initially, Congress required the Commission to review its ownership rules every two years.<sup>2</sup> That was later amended to provide for a quadrennial review of the rules.<sup>3</sup>

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<sup>1</sup> *2010 Quadrennial 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 Dkt No. 09-182, FCC 10-92 (May 25, 2010) (*2010 NOI*).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111–12 (1996).

<sup>3</sup> 2004 Consolidated Appropriations Act, Pub. L. No. 108-199, 118 Stat. 3 *et seq* (2004). This legislation also capped the FCC’s national television ownership limit at 39% (down from the

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To say that the Commission's periodic media ownership reviews are contentious proceedings would be an understatement. All but one of these reviews has resulted in an FCC order relaxing one or more of the Commission's multiple ownership rules.<sup>4</sup> The Commission's orders adopted pursuant to these proceedings have been subject to extensive litigation, much of which has yet to be conclusively resolved by the courts.<sup>5</sup> Currently, litigation arising from the

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45% cap the FCC adopted in the 2002 Review) and excluded the statutorily mandated 39% cap from the Commission's future periodic ownership reviews.

<sup>4</sup> In the first biennial review, which commenced in 1998, the FCC relaxed the dual network rule and initiated a proceeding with respect to the newspaper/broadcast cross-ownership rule. It retained the local radio ownership rule and the national TV ownership rule. *Cross-Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Waiver Policy, Order and Notice of Proposed Rule Making*, 16 FCC Rcd 17283 (2001). Prior to completing the 1998 Biennial Review, the Commission substantially relaxed the local TV ownership and radio/TV cross-ownership rules in a separate local television ownership proceeding. *Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules*, 14 FCC Rcd 12903 (1999). Because the 1998 proceeding was not completed until 2000 (when the FCC was scheduled to begin its second biennial review), the 2000 Biennial Review recommended possible revisions to the media ownership rules, but, essentially retained the existing limits. *2000 Biennial Regulatory Review, Report*, 16 FCC Rcd 1207 (2001).

<sup>5</sup> Following the 2000 Biennial Review broadcasters appealed the FCC's decision to retain the national television station ownership rule and the cable/broadcast cross ownership rule. *Fox Television Stations Inc. v. FCC, (Fox I)*, 280 F.3d 1027 (D.C. Cir. 2002), *modified on reh'g, Fox II*, 293 F.3d 537 (D.C. Cir. 2002). They also challenged the local television station ownership rule. *Sinclair Broadcast Group v. FCC*, 284 F.3d 148 (D.C. Cir. 2002). These challenges were both heard by the U.S. Court of Appeals for the D.C. Circuit which remanded the national television ownership rules, *Fox I*, 280 F.3d at 1033, and local television ownership rule, *Sinclair*, 284 F.3d at 152, and vacated the cable/broadcast cross ownership rule. *Fox I*, 280 F.3d at 1033. The remanded national and local television ownership caps were merged into the FCC's 2002 Biennial Review, pursuant to which the Commission released an order relaxing virtually of its multiple ownership rules. Both consumer and industry groups appealed and the challenges were heard by the U.S. Court of Appeal for the Third Circuit. Concluding that the FCC had not provided reasoned analysis sufficient to support the new limits, the Third Circuit remanded the 2002 Biennial Review rules back to the FCC for further consideration. *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). The FCC folded the remanded rules into the 2006 Quadrennial Review initiated in the summer of 2006. *2006 Quadrennial Regulatory Review, Further Notice of Proposed Rulemaking*, 21 FCC Rcd. 8834 (2006). One year later, the FCC issued a separate Notice of Proposed Rulemaking requesting comment on proposals to encourage ownership of broadcast outlets by socially and economically disadvantaged business, including

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2006 Quadrennial Ownership Review Order continues in the U.S. Court of Appeals for the Third Circuit.<sup>6</sup> Many members of industry petitioned for review of the 2006 Order, arguing that it did not go far enough in relaxing the Commission's multiple ownership limits. Conversely, a number of nonprofit and public interest groups, including Free Press, have argued that, given the negative effects of consolidation, the Commission should have strengthened or maintained existing limits. It is unclear how the timing of the pending litigation could impact the Commission's current review process.

Because of the recurring nature of this proceeding, the Commission previously has asked – and parties have previously answered – many of the same or similar questions presented in the 2010 NOI.<sup>7</sup> In these past reviews Free Press has submitted multiple filings containing extensive data and policy analyses demonstrating that media consolidation adversely impacts the quantity and quality of local news and information from competing sources and diverse owners. We believe these analyses will aid the Commission in its current review. Because the Commission has not consolidated the dockets of the previous proceedings with the instant one, out of an

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those owned by women and minorities. *2006 Quadrennial Regulatory Review*, Second Further Notice of Proposed Rulemaking, 22 FCC Rcd. 14215 (2007). In December 2007, the FCC adopted a Report and Order and Order on Reconsideration, which concluded its 2006 Quadrennial Review and 2002 Biennial Review on remand. That order relaxed the previous ban on newspaper-broadcast cross ownership and retained all the other rules. *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008). Petitions for Review and a Petition for Reconsideration of that order were filed by consumer and industry groups. The Commission has not acted on reconsideration and litigation is currently pending in the U.S. Court of Appeals for the Third Circuit. *Prometheus Radio Project et al. v. FCC*, No. 08-3078 *et al.*

<sup>6</sup> *Id.*

<sup>7</sup> Additionally, the Commission's recent proceeding on the Future of Media has also touched upon many of these same issues. *FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, Public Notice, DA 10-100, GN Dkt. No. 10-25 (rel. Jan. 21, 2010).

abundance of caution we have appended our previous filings so that these analyses can be considered as part of the 2010 review.<sup>8</sup>

We recognize that, as with past media ownership reviews, the Commission will be confronted with renewed industry pressure to relax one or more of its media ownership rules. In arguing for the relaxation or repeal of such limits, industry members generally advance one or more of the following arguments: (1) The media ownership limits are outmoded in light of competition from new media; (2) if the FCC relaxes or eliminates its media ownership limits, owners can take advantage of “efficiencies” and funnel more resources into the provision of local news and information, or alternatively, (3) consolidation is required to preserve local news output in light of economic difficulties.

The Commission should look skeptically upon these types of self-serving arguments. As Free Press has demonstrated in previous filings, and reiterates here, these arguments have never borne out, and are contradicted by technological and economic realities. Free Press urges the Commission to resist industry overtures to further relax the multiple ownership limits, and to instead maintain or even tighten current ownership limits to best promote the public interest goals of diversity, localism, competition, and efficient use of the spectrum.

**I. Local Media Limits are Critical to Ensuring Access to Diverse Sources of Local News, Both Off- and On-Line**

The FCC’s media ownership rules guarantee a baseline of diversity among those local media sources to which the public consistently turns for local news and information. Study after study demonstrates that traditional news outlets such as newspapers and local television stations remain the primary producers and providers of local news content. In a recent survey by the Pew

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<sup>8</sup> See Appendices.

Center, 64 percent and 41 percent of respondents reported they rely on television and newspapers, respectively, for local news.<sup>9</sup> Only 17 percent reported relying on the internet for such information.<sup>10</sup>

What is more, even when people turn to the Internet for news, by and large, they are reading stories produced by traditional newspaper and television sources that have been repackaged and re-purposed online. For example, another study by Pew reviewed the number of news outlets available in the city of Baltimore. Researchers determined that while more than fifty-three different outlets were available in that market, 95 percent of the content originated from only a handful of sources: the local newspaper, broadcast TV, and radio stations.<sup>11</sup>

Thus, even though the FCC rules were developed to foster diverse media in a time pre-internet, the rules have had the added benefit of guaranteeing some level of diversity among the most popular news sources available online. Because the vast majority of Americans still receive the lions' share of their local news from traditional media outlets – specifically, local newspapers and broadcast television – the FCC's rules remain a critical component of ensuring that these primary news sources do not become consolidated in the hands of a few companies.

**A. The Commission Should Reject Unsupported Industry Assertions that Consolidation Results in “Efficiencies” that Benefit the Public**

Industry has consistently argued that common ownership may improve programming because consolidation will lead to “efficiencies.” They further suggest that the cost-savings

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<sup>9</sup> PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS, SURVEY REPORT: PRESS ACCURACY RATING HITS TWO DECADE LOW (Sept. 13, 2009), *available at* <http://people-press.org/report/543/>.

<sup>10</sup> *Id.*

<sup>11</sup> PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY (Jan 11, 2010), *available at* [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens).

enabled by those efficiencies will be reinvested in better local programming. Unfortunately, the so-called efficiencies of consolidation have not materialized.

Instead, evidence suggests that consolidation does not increase the provision of local news programming. Research by Free Press, Consumers Union, and Consumer Federation of America shows that television duopolies do not exhibit statistically significant increases in either market share or hours of news,<sup>12</sup> and that markets with commonly owned TV/newspaper combinations provide less news.<sup>13</sup> Furthermore, a 2009 study by Dr. Danilo Yanich found that independently owned television stations broadcast more local content during their newscasts than those stations that part of a duopoly.<sup>14</sup>

Consolidation generally does not result in the reinvestment of profits into local news for two reasons: There is little economic incentive to produce such programming, and there are no cognizable public interest requirements to do so. Given pressures from Wall Street, broadcasters and newspapers are more likely to take cost savings as dividends. Even assuming broadcasters and newspapers reinvest any savings into programming, there is no guarantee that they will invest those savings in *local* programming. Local programming is expensive to produce and may generate less advertising revenue, so there is little incentive to provide it over cheaper, more-advertiser-friendly fare.

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<sup>12</sup> Reply Comments of Consumers Union, Consumer Federation of American and Free Press, filed, MB Docket No. 06-121 (Jan. 16, 2007), at 95.

<sup>13</sup> Further Comments of Consumers Union, Consumer Federation of American and Free Press, MB Docket No. 06-121 (filed Oct. 22, 2007), at 98.

<sup>14</sup> Danilo Yanich, Paper presented at the annual meeting of the International Communication Association: Ownership Matters: Localism, Local Television News, and the FCC, (May 20, 2009).

**B. Consolidation Will Not Save the Media Industry, or Result in More Local News and Information for the Public**

Media, like many businesses reliant on ad revenues, have taken a beating in the current economic downturn. Newspapers' ad revenues declined by 16.6 percent in 2008, and were down 28 percent in 2009.<sup>15</sup> In 2009, local TV advertising revenues were estimated to have fallen by 22 percent from the year before.<sup>16</sup> However, there are signs that broadcast revenues are on the upturn, and some industry economic reports have suggested that broadcasters will "make up that lost ground by 2012 and generate \$75.7 billion from advertising in 2014."<sup>17</sup>

However, even if the industry were not showing signs of recovery consolidation will still not provide the cure for all that ails the media industry. Consolidation does not appear to promote increased news production in more bullish times, thus, it is unclear how it would improve circumstances in bear markets. Nevertheless, some industry members now suggest that consolidation is required to preserve existing levels of news production. To the contrary, consolidation appears to be part of the problem – not part of the solution.

Consolidation seems to exacerbate the problem of declining news output by loading companies with additional debt. As advertising revenues decline, media companies have turned to consolidation in an effort to maintain the high profit margins they have garnered historically.

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<sup>15</sup> *Id.*

<sup>16</sup> PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF NEWS MEDIA: LOCAL TV, available at [http://www.stateofthemedial.org/2010/local\\_tv\\_summary\\_essay.php](http://www.stateofthemedial.org/2010/local_tv_summary_essay.php)

<sup>17</sup> David Lieberman, "Outlook for television providers is decidedly sunny: Broadcast TV providers expected to make up lost ground by 2012," *USA Today*, June 15, 2010, available at [http://www.usatoday.com/printedition/money/20100615/tvoutlook15\\_st.art.htm](http://www.usatoday.com/printedition/money/20100615/tvoutlook15_st.art.htm). See also, Michael Malone, "Local Broadcasters Bullish at SNL Kagan Conference," *Broadcasting and Cable*, June 16, 2010, available at [http://www.broadcastingcable.com/article/453826-Local\\_Broadcasters\\_Bullish\\_at\\_SNL\\_Kagan\\_Conference.php?rssid=20065](http://www.broadcastingcable.com/article/453826-Local_Broadcasters_Bullish_at_SNL_Kagan_Conference.php?rssid=20065); Michael Malone, "BIA/Kelsey" Station to Get \$17 Bil in 2010," *Broadcasting and Cable*, April 29, 2010, available at [http://www.broadcastingcable.com/article/452030-BIA\\_Kelsey\\_Stations\\_To\\_Get\\_17\\_Bil\\_in\\_2010.php?rssid=20065](http://www.broadcastingcable.com/article/452030-BIA_Kelsey_Stations_To_Get_17_Bil_in_2010.php?rssid=20065)

The short-term benefit of mergers is an increase in revenue and market share. The long-term consequence is a substantial debt load. For example, Tribune Co., the owner of the *Los Angeles Times*, *Chicago Tribune*, *The Baltimore Sun*, and twenty-three TV stations, filed for bankruptcy protection in December 2008 because of the \$13 billion debt load resulting from 2007 leveraged buy-out by real estate mogul Sam Zell.<sup>18</sup> Even so, Tribune's papers still managed to eke out a slim 5.4 percent operating profit.<sup>19</sup> The radio group owner Citadel Broadcasting recently filed for Chapter 11 bankruptcy protection because the debt from its \$2.7 billion purchase of ABC Radio from Walt Disney Co. in 2007 is nearly double that of the company's total assets.<sup>20</sup>

Some media companies nearing bankruptcy actually have profitable newsrooms — often with double-digit profit margins. McClatchy's newspapers earned a 21 percent profit margin in 2008. Yet the company still cut its work force by nearly a third, as it struggled to finance the \$2 billion it owes from acquiring Knight Ridder in 2006.<sup>21</sup> Gannett's newspapers enjoyed an 18 percent profit margin in 2008, with some papers earning as much as 42.5 percent.<sup>22</sup> Nevertheless,

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<sup>18</sup> Michael Liedtke, "Tribune Co.'s bankruptcy reorganization plan still faces opposition from unhappy lenders," *Associated Press*, April 12, 2010, available at <http://blog.taragana.com/business/2010/04/12/tribune-cos-bankruptcy-reorganization-plan-still-faces-opposition-from-unhappy-lenders-49701/>.

<sup>19</sup> Nat Ives, "It's Not Newspapers in Peril; It's Their Owners," *Ad Age*, Feb. 23, 2009

<sup>20</sup> Associated Press, "Citadel Broadcasting - WGOC, WJCW, WKOS, WQUT and WXSM - files for Chapter 11 bankruptcy protection" (Dec. 20, 2009), available at <http://www.timesnews.net/article.php?id=9019211>

<sup>21</sup> Nat Ives, "It's Not Newspapers in Peril; It's Their Owners," *Ad Age*, Feb. 23, 2009. See also, Craig Aaron and Joseph Torres, "Consolidation won't save the media," *The Guardian*, Mar. 26, 2009, available at <http://www.guardian.co.uk/commentisfree/cifamerica/2009/mar/26/pelosi-media-consolidation>.

<sup>22</sup> Gannett Blog, <http://gannettblog.blogspot.com/2008/11/documents-reveal-double-digit-profit.html> (Nov. 28, 2008, 15:25 EST).

Gannett slashed 3,000 jobs and forced employees to take a weeklong furlough (though Gannett's top executives still received six-figure bonuses).<sup>23</sup>

Ironically, the cost of consolidating has placed a number of companies that might otherwise be modestly profitable in dire straits. Unfortunately, because the merged companies are bent on protecting profit margins, the first casualties of the "urge to merge" tend to be jobs and journalism.

Companies that have made poor business decisions should not be rewarded with permission to engage in even more media consolidation that would further injure competition and diversity among local media outlets. It is not the Commission's job to protect industry profit margins. It is the role of the Commission to promulgate and enforce rules and regulations designed to promote competition, diversity, and localism so that the public interest, convenience, and necessity are served. However, the evidence overwhelmingly suggests that allowing further media consolidation will not further these core goals.

**C. The Commission Should Consider the Impact of "Virtual" Consolidation on the Provision of News from Diverse and Competing Sources**

While outright media consolidation adversely impacts competition and diversity, media companies are also cutting costs and shedding journalism jobs through "virtual consolidation." Virtual consolidation can be accomplished via contractual arrangements such as Shared Service Agreements (SSAs) and Local News Sharing (LNS) arrangements where local broadcasters "pool" equipment, staff, and stories. As reliance on these joint ventures increases, we are

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<sup>23</sup> Richard Perez-Pena, "Gannett to Cut 10% of Workers as Its Profit Slips," *New York Times* Oct. 28, 2008; Richard Perez-Pena, "Gannett to Furlough Workers for Week," *New York Times*, Jan. 15, 2009; Randy Turner, "Gannett Executives Receive Nearly \$2 Million In Bonuses, Golden Parachute, Amid Layoffs And Foldings," Mar. 18, 2009, *available at* [http://www.huffingtonpost.com/randy-turner/gannett-executives-receiv\\_b\\_176435.html](http://www.huffingtonpost.com/randy-turner/gannett-executives-receiv_b_176435.html)

anxious that local news competition is being reduced and that the quality and quantity of independently reported and produced local news will continue to decline.<sup>24</sup> We strongly urged the Commission to examine the nature and impact of these arrangements as part of the 2010 review. In particular, we ask the Commission to assess whether certain types of joint ventures have the effect of circumventing the FCC's multiple ownership limits.

It is important to note that the local television joint ventures listed above can vary significantly in scope. While, some arrangements may be more problematic than others, we believe that all have the potential to negatively impact diverse and independent reporting and, consequently, merit supervision and assessment by the FCC. For example, broadcasters engaged in "local news sharing services" tend to "pool" equipment and video footage of "routine happenings" like press conferences, but claim to maintain independent editorial discretion.<sup>25</sup> However, the FCC and the public know very little about how these local news services work. Without standards and agency and public oversight, these types of agreements could open the door to abuse and adversely affect local competition.

Also of concern is the increasing use of "shared services agreements" (SSAs). Broadcasters that enter into SSAs combine advertising sales departments, newsroom staff and operations, and appear to be generating the same (or virtually the same) news coverage for all partner stations. Essentially, these types of agreements pose the same threats as traditional consolidation. But, because they do not technically result in a transfer of license, the agreements

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<sup>24</sup> Hilary Atkin, "As Local Sharing Progresses, New Concerns Emerge," *TVWeek*, Aug. 5, 2009, [http://www.tvweek.com/news/2009/08/as\\_local\\_sharing\\_progresses\\_ne.php](http://www.tvweek.com/news/2009/08/as_local_sharing_progresses_ne.php).

<sup>25</sup> See, e.g., P.J. Bednarski, "Philly Stations Like Share And Share Alike," *TVNewsCheck*, Apr. 21, 2010, available at <http://www.tvnewscheck.com/articles/2010/04/21/daily.1/?print>.

appear to circumvent disclosure and attribution requirements triggered under the FCC's multiple ownership rules.

Stations participating in joint ventures such as LNS and SSAs suggest that the efficiencies and cost-savings generated by sharing news and operations allows cash-strapped television stations to invest more resources covering other news stories, and increasing the provision of news over all.<sup>26</sup> But it is not clear whether stations participating in these ventures are actually producing more news or whether they are simply airing more of the *same* news. For example, the Radio and Television News Directors Association reports that 200 local broadcasters now run local news programs or segments produced by another television station.<sup>27</sup> This means that while these newscasts may contribute to the overall volume of local news in a market, the increase in quantity is misleading because some of the news product is merely a "re-run" of content produced by competing stations and does not increase product diversity in terms of viewpoints or coverage of different issues.

Additionally, these joint ventures appear to encourage and facilitate layoffs of news production staff. In a number of cases, "extra" employees are being terminated and newsrooms are being shuttered because broadcasters can instead rely on partner stations to produce and share newscasts. For example, TV stations owned by Granite and Barrington Broadcasting in Peoria, IL, have combined news operations, even though they ostensibly maintain separate ownership status. A parallel joint venture between Granite and Barrington is also in place in Syracuse, NY. In each of these markets, one of the stations has shuttered its newsroom, laid off employees, and now relies on news produced by the other station to supply its newscasts, rather than producing

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<sup>26</sup> PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF NEWS MEDIA: LOCAL TV, *available at* [http://www.stateofthedia.org/2010/local\\_tv\\_summary\\_essay.php](http://www.stateofthedia.org/2010/local_tv_summary_essay.php).

<sup>27</sup> *Id.*

its own.<sup>28</sup> Thus, rather than encouraging competition and news production, this arrangement has resulted in re-run newscasts and what effectively amounts to a non-compete agreement between Barrington and Granite in the Syracuse and Peoria markets.

Similarly, in Honolulu, the local NBC, CBS, and MyNetwork stations have created a virtual “tri-oply” by entering into a shared services agreement. The agreement merges the news resources of the three stations into one consolidated joint operation which will provide news coverage for all three channels, and has resulted in the layoff of close to 70 employees.<sup>29</sup> This arrangement is also the subject of a pending complaint at the FCC. Critics point out that TV executives have made no pretense that the stations will maintain their editorial independence. Instead the three channels will air the same news, reported on by the same staff, but branded with different network affiliations.<sup>30</sup> Because it is cheaper for two of the stations to repeat the newscast of the other, they have no independent incentive to produce additional or competing news. Thus, even though on paper, the stations purport to maintain separate ownership status, in

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<sup>28</sup> See, e.g., Steve Tarter, “WEEK-TV taking over WHOI operations” *Peoria Journal Star*, Mar. 3, 2009, available at <http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-over-operations-of-WHOI-TV> (reporting that Barrington Broadcasting-owned WHOI-TV would shutter its newsroom and lay off as many of 30 of its employees under the new sharing agreement with Granite Broadcasting); John Lammers, “Syracuse’s Channel 5 shuts down its newsroom” *Syracuse.Com*, Mar. 2, 2009, available at [http://www.syracuse.com/news/index.ssf/2009/03/the\\_staff\\_of\\_wtvh\\_laid.html](http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html) (reporting that Granite Broadcasting-owned channel 5 was closing its newsroom and laying-off employees as a result of its news sharing agreement with Barrington Broadcasting).

<sup>29</sup> “KHNL/KFVE, KGMB Merger To Cut 68 Jobs,” *KITV.Com*, Aug. 19, 2009, available at <http://www.kitv.com/money/20450266/detail.html>.

<sup>30</sup> *Id.* (quoting University of Hawaii journalism professor, Gerald Kato, “You’ll have a lot of news, but it’ll be the same news put out by the same news operation and I think that does a disservice to the public here.”); Erika Engle, “TV Stations’ pact draws fire,” *Honolulu Star Bulletin*, Aug. 19, 2009, available at [http://www.starbulletin.com/business/20090819\\_TV\\_stations\\_pact\\_draws\\_fire.html](http://www.starbulletin.com/business/20090819_TV_stations_pact_draws_fire.html).

fact, they have ceased to compete on the most fundamental and distinguishing service provided by local broadcasters – the production of local news and information.

We are not insensitive to economic hurdles currently faced by local broadcasters. Nevertheless, we are concerned that certain agreements are designed to circumvent the FCC's rules. Nominally, the stations retain separate ownership status. But, as a practical matter, the arrangements have all the indicia of common ownership that in many cases would be prohibited by the local broadcast television ownership rules. Moreover, it seems as though these agreements may be having a detrimental effect on competition and the provision of local news. In any event, the lack of oversight or governing standards over such arrangements increases the potential that these agreements will be abused to the detriment of the public's access to local news and information provided by diverse and competing sources.

Because the FCC rules provide a vital function in supporting the diversity of news sources, it is likewise critical that FCC prevent backdoor circumvention of its rules through use of contractual arrangements that contain all the indicia of ownership. Accordingly, the FCC must maintain – and enforce – its media ownership limits. We encourage the FCC to review joint ventures such as local news sharing and shared services agreements to ensure that agreements are not being used to circumvent federal rules.

### **Conclusion**

As the Commission begins its 2010 Review and prepares its subsequent Notice of Proposed Rulemaking, Free Press urges the Commission to view critically the unsupported claims of media consolidation's efficiencies that industry has historically advanced in these proceedings. The FCC's media ownership rules, when effectively enforced, ensure that the public is served by diverse and competing media sources. As such the FCC should tighten the

media ownership rules, or at a minimum, maintain existing limits. Free Press also encourages the Commission to examine joint ventures between local media which may circumvent the letter or the goals of the media ownership rules.

#### **APPENDICES**

Appendix I: *Comments of Free Press, Consumer Federation of America and Consumers Union* ("Free Press et al.") (October 23, 2006).

Appendix II: *Reply Comments of Free Press et al.* (January 16, 2007).

Appendix III: *Comments of Free Press et al.* (October 1, 2007).

Appendix IV: *Further Comments of Free Press et al.* (October 22, 2007).

Appendix V: *Further Reply Comments of Free Press et al.* (November 1, 2007).

Appendix VI: *Ex Parte of Free Press et al.* (November 14, 2007).

Appendix VII: *Further Comments of Free Press et al.* (December 11, 2007).

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Respectfully Submitted,

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