Outsourcing the News

How covert consolidation is destroying newsrooms and circumventing media ownership rules

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Josh Stearns
Corie Wright

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Introduction

In its recent report, *Information Needs of Communities*, the Federal Communications Commission highlighted a number of troubling trends in local TV news. The report uncovered shocking statistics about the number of stations that no longer broadcast any local news, the growing trend of pay-for-play news that lets advertisers disguise propaganda as journalism, and the increasing number of television stations that have "outsourced" their local news to a competitor.

In the report, the FCC discusses new forms of newsroom collaboration among broadcast stations that range from sharing equipment and footage to handing over their newscasts to another station. According to the report, "Nearly one-third of TV stations say they are running news produced by another station."[1] In most cases these partnerships are established through agreements that appear to circumvent the FCC's media ownership rules, while producing exactly the sorts of results those rules are meant to prevent: a decrease in competition, diversity and localism—the longstanding concept that broadcasters using public airwaves have a duty to serve their local communities.

Alarmingly, the scope of this problem is far greater than the FCC report acknowledges. The FCC cites data from the Communications Workers of America and Media Council Hawai'i, identifying "at least 25 television markets in the U.S. where stations have entered into 'shared services agreements' (SSAs), in which one station effectively takes over the news operation of a second."[2] However, by broadening the scope of inquiry to include other similar agreements that also result in less competition, diversity and localism, the numbers increase significantly.

The FCC Future of Media report quotes a Radio Television Digital News Association study that stated, "More than 60 percent of stations say they are involved in some sort of cooperative newsgathering or coverage agreement with another TV station or medium."[3] Free Press has identified almost 80 television markets where these types of deals are in place. In total, these deals involve more than 200 stations. Paired with the fact that, as noted in the FCC report, 21 percent of commercial TV stations air no local news at all,[4] it becomes clear that the American broadcasting system has abandoned its vital public service responsibilities, while prioritizing revenues over increased investment in news.[5]

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1 Steven Waldman, et al., The Information Needs of Communities: The changing media landscape in a broadband age, rel. June 9, 2011, at 96. Available at http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf (hereafter, "Future of Media Report" or "FCC Report").

2 *Id.*

3 *Id.* at 97.

4 *Id.* at 100.

5 *See* id. at 114 ("Instead of using the money saved by new technologies and production efficiencies…to increase the pool of reporters who could cover their communities and more effectively monitor institutions and government agencies, many stations have opted to let those dollars simply flow to the bottom line.").

What's at Stake?

Addressing the effects that these agreements have on local television news production is especially important right now. Local news outlets help shape the public agenda for communities in profound ways. The public overwhelmingly depends on local television to uncover local stories.[6] Local television is an important journalistic player, accounting for about a third of all original news content, even in large cities.[7] Additionally, almost three-fourths of the public has a favorable attitude toward local television and more than four in five Americans believe that losing local television news would be an important loss.[8] The recent Future of Media report bears this out:

> Today, the most popular source for local news is television. On "a typical day," 78 percent of Americans say they get news from their local TV news station—more than from newspapers, the Internet, or the radio. Fifty percent of all Americans watch local TV news "regularly." Viewership rates have been declining over the years—along with consumption rates for all other non-Internet news sources—but they still remain higher than those for any other single news source. In addition, evidence is growing that, after a slow start, local TV stations are becoming important sources for news online. In fact, local TV news sites rank among the most popular news websites (those with at least a half a million monthly unique visitors), along with newspaper sites.[9]

Given both the popularity of and the public's dependence on local television, the emergence and growth of broadcast sharing arrangements raises two critical and interrelated questions.

First, what impact do these arrangements have on service to local communities? In its report, the FCC acknowledges that in spite of promises made by broadcasters when these deals are struck, "enhanced service to local communities is not always the result."[10] The report points to ABC stations which have for the most part refused to take part in these covert consolidation deals. Rebecca Campbell, president of the ABC-owned Television Station Group, is quoted in the report describing ABC's abstention from these deals: "Our crews are our ambassadors. The minute you take that away, you lose that voice.... The money savings should be in technology not the voices."[11]

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[6] Pew Research Center for the People and the Press, "Press Accuracy Rating Hits Two Decade Low," September 13, 2009. Available at http://people-press.org/report/543/ (hereafter, "Pew Report").

[7] Project for Excellence in Journalism, "How News Happens," January 11, 2010. Available at http://www.journalism.org/analysis_report/how_news_happens.

[8] Pew Report.

[9] Future of Media Report at 76.

[10] *Id.* at 98.

[11] *Id.*

Second, what impact do these arrangements have on FCC enforcement of media ownership limits? The FCC's media ownership rules are designed to preserve competition and diversity by preventing local media markets from being "cornered" by a few owners and interests. But many broadcasters appear to be using these agreements to get around these rules. When they are unable to formally consolidate station ownership, these deals allow stations to consolidate their core local news operations while leaving different logos on the corporate letterhead. This question of nominally observing the ownership rules while flouting their intent is particularly important as the agency conducts the long-delayed 2010 quadrennial review of its media ownership rules this summer. The FCC must address covert consolidation efforts in this upcoming review.

Collaboration Versus Consolidation

Many of the same technological changes and economic pressures that have driven the development of collaborative journalism are also driving further media consolidation. Those involved in collaborations and consolidations each argue that the arrangements allow news outlets to reduce overhead costs and provide quality journalism to the community by pooling resources during tough economic times. We are not opposed to journalists and journalism organizations collaborating, but we do recognize a clear difference between collaboration and consolidation.

Consider, for example, these two statements, both from testimony at the Federal Trade Commission's workshop on the future of journalism:

> "You all call it partnering, we call it mergers or acquisitions or other things along those lines." Barbara Wall, Gannett Newspaper Vice President
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> "What we need are deep partnerships—not mergers. There must be independent newsrooms." Vivian Schiller, former CEO of National Public Radio[12]

For the purposes of this paper, we accept as a central premise Schiller's assertion that mergers and consolidations—unlike partnerships or collaborations—reduce the number of independent voices and viewpoints in the news.

Whether an arrangement results in collaboration or consolidation is determined not by its name, but by its effect. Ultimately, a collaboration is a partnership among separate and independent entities that work together to produce more and better journalism, while consolidation results in the co-opting of a once independent news organization by another news organization.

[12] View entire transcript of the Federal Trade Commission's workshop titled, "How will journalism survive the Internet Age?" Available at http://www.ftc.gov/opp/workshops/news/index.shtml.

Consolidation is inherently in opposition to a diverse and independent press, and inhibits competition, diversity and localism.[13] Consolidation in the media reduces the number of diverse viewpoints in the public sphere, concentrates power and magnifies the effects of media capture by powerful interests, and provides no protection against media companies acting in self-interest as opposed to the public interest.[14] Independent newsrooms, on the other hand, have been shown to decrease the concentration of power, increase the number of diverse voices in the public sphere, and act in the public interest.[15]

Covert Consolidation: A Whole that Is Less Than the Sum of Its Parts

Media ownership regulations limit how many stations one company can own in a given media market. The purpose of such limitations is to prevent monopolization of debate on matters of public interest, and to preserve competition and diversity among local media outlets. Nevertheless, an increasing number of commercial television stations have entered into news and operations sharing agreements that more closely resemble outright media consolidation than journalistic collaboration.

When we think of consolidation, we tend to think of mergers such as Comcast/NBC, AOL/Time Warner or Disney/ABC. However, increasingly we are witnessing a more covert and insidious form of consolidation at the local level through joint ventures and news sharing. In many communities the end result is a TV dial where most of the news is essentially a duplicate of what is on another channel. Imagine if a major metropolitan area had just one TV news crew and all the local stations aired the same newscast every night, slapping their own logo in the corner of the TV screen. For many people, they don't have to imagine this—it's real. The corrosive effects that local television news sharing and consolidation are having on editorial independence and journalistic integrity should alarm the public, regulators, and industry professionals.

The covert consolidation spreading across the country takes a few different forms, and the agreements typically are labeled as one or more of the following: a Local News Service Agreement, Shared Services Agreement, Joint Sale Agreement, Local Marketing Agreement, or Options Agreement.[16] Each of these is a contractual agreement between two or more stations and owners (and sometimes other media outlets). They vary in terms of the amount of sharing between stations, but the result of each is the same: the viewer sees the same or similar news on two—or more—different channels.

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[13] The Case Against Media Consolidation: Evidence on Concentration, Localism and Diversity (Mark Cooper, ed., 2007).

[14] *See generally* C. Edwin Baker, Viewpoint Diversity and Media Ownership, 61 Fed. Comm. L.J. 651 (2009).

[15] David Scott, Robert Gobetz, & Mike Chanslor, "Chain versus independent television station ownership: Toward an investment model of commitment to local news quality," Communication Studies, January–March 2008, vol. 59(1).

[16] These do not represent an exhaustive list of the types pf agreements that result in stations sharing content or operations, but they are among the most common.

Local News Service Agreement – When Working Together Works Against the Public

One of the most common forms of joint news partnerships pervading television news stations across the country is a Local News Service agreements (LNS). An LNS is an agreement among stations that allows multiple independent stations to pool and share journalists, editors, equipment, and content. These agreements come in all shapes and sizes, but in this report we are most concerned with those that result in shared content appearing on a number of stations. These agreements often lead to competing newscasts sharing the same content.[17]

Local News Services Agreements (sometimes also referred to as local news sharing arrangements) began in earnest in 2008. Fox and NBC stations in Philadelphia were among the first to enter into an LNS. Initially, the Philadelphia LNS mainly covered routine press conferences. "By pooling resources to provide video coverage of general market events, we can ensure our stations are covering the news of the day," John Wallace, head of NBC Local Media said.[18] "At the same time, we can focus our efforts on the type of specialized reporting that defines our brands and differentiates our stations within their communities."[19] However, this partnership has grown substantially in its coverage and scope, and an increasing amount of local news on these two stations originates from one room and one staff.[20] The Philadelphia LNS model has been replicated in Chicago, Washington, D.C., Philadelphia, Los Angeles, and New York.

The problem with an LNS agreement among commercial stations is that even though it may enable cost-cutting, there is no guarantee that these savings will be reinvested in news production. In fact, the Philadelphia case shows that money saved through the creation of these partnerships is rarely used to fund in-depth public affairs coverage or investigative reporting. Instead, the companies have every incentive to turn those profits back around to shareholders.[21] "Content-gathering cooperatives, while offering tempting efficiencies, may ultimately be a slippery slope to a commodity position," according to Steve Ridge, President of Frank N. Magid Associates, a market research firm specializing in local television broadcasting. "Unique content that differentiates is the key to future success, if not survival."[22]

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[17] Michael Malone, "Swim at your Own Risk; Stations involved in content pools may save money: But they could also jeopardize ratings—and revenue," BROADCASTING & CABLE, June 22, 2009.

[18] Michele Greppi, "Fox, NBC Stations Form Local News Service," *TVWeek*, November 13, 2008. Available at http://www.tvweek.com/news/2008/11/fox_nbc_stations_form_local_ne.php.

[19] *Id*.

[20] P.J. Bednarski, "Philly Stations Like Share And Share Alike," *TVNewsCheck*., April 21, 2010. Available at http://www.tvnewscheck.com/articles/2010/04/21/daily.1/.

[21] See Joint Comments of New America Foundation, Free Press, Media Access Project et al., GN Docket No. 10-25 at 57-69 (filed with the FCC May 7, 2010).

[22] Malone, *supra* note 17.

The Poynter Institute has identified six specific pitfalls to LNSs.[23]

1. Stations that don't have journalists on the ground may miss out on important sources or angles of a story.
2. The product coming out of a video pool may be devalued by the newsroom, because traditionally only routine or b-roll video was collected this way.
3. Pseudo-events and public relations stunts can take on false importance when one camera crew's video and just one perspective ends up being re-used across multiple stations, creating an echo chamber and a misleading impression of real significance.
4. The deep context is traded for the quick shot, ignoring the "why and how" of an occurrence.
5. Journalists inevitably lose their jobs. Fewer are needed when one person and a camera covers a few beats for multiple stations.
6. Not all stations in a market necessarily take part in a pool—which is a good thing in terms of not diluting a non-participating station's coverage, but actually could make the sharing stations lose viewers in the long run.

The FCC's Future of Media report similarly identifies why simply sharing footage can erode the depth and substance of local TV news, finding, "Increasingly, cooperative news services are not only sharing footage from official events but also interviews, so stories on three different stations might feature the same newsmaker interview."[24] What is more, the report's authors note that "when a pool sends only a camera person, not a reporter, it is less likely to get the story behind the story—or an angle other than the one officials choose to show the public."[25] To this end, the Communications Workers of America and Media Council Hawai'i argue that LNSs are likely to "undermine the public interest goals of promoting a diversity of views, ensuring competition, and providing programming that meets the needs of local communities."[26]

Joint Ventures – Covert Consolidation that Erodes Local News

Local news services, while potentially inhibiting quality news production, are not as extreme as joint ventures that result in the dismantling of an entire station's news operation. In general, these types of intensive joint ventures take one or more of the following contractual forms: Joint Sales Agreements (JSAs), Shared Services Agreements (SSAs), Local Marketing Agreements (LMAs), and Option Agreements (OAs).

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[23] Jill Geiser, Six hazards of TV news pooling and how to avoid diluting your coverage, The Poynter Institute, Jun. 2, 2009. Available at http://www.poynter.org/how-tos/leadership-management/what-great-bosses-know/96014/six-hazards-of-tv-news-pooling-and-how-to-avoid-diluting-your-coverage/.

[24] Future of Media Report at 98.

[25] *Id.*

[26] Joint Comments of Communications Workers of America and Media Council Hawai'i, GN Docket No. 10-25 at ii (filed at the FCC May 7, 2010) ("CWA/Media Council Hawai'i Comments").

A JSA is an agreement "with a licensee of a brokered station that authorizes a broker to sell some or all of the advertising time for the brokered station in return for a fee or percentage of revenues paid to the licensee."[27] LMAs, also historically known as time brokerage agreements, involve the "sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements in it."[28] SSAs take these agreements one step further, often encompassing both JSAs and LMAs, but then combining newsroom assets and personnel, and sharing facilities and administrative functions for the stations. These partnerships may affect (among other things): the newsroom, the advertising sales department, operations staff, production equipment, and facilities. Finally, OAs allow the brokering station the option to buy the brokered station in the future, and often accompany other agreements such as LMAs or SSAs. OAs may provide the clearest evidence of stations' ultimate intent when entering into a content sharing arrangement, which is to merge outright.

These arrangements can be used individually, but often are used in conjunction with one another to surrender major portions of the editorial and/or business operations of one station a competitor to manage. Taken together, the effect is often the same as an outright merger. In comments submitted to the FCC, the Communications Workers of America and Media Council Hawai'i wrote, "SSAs directly reduce the diversity of local voices in a community by replacing independent newscasts on the brokered station with those of the brokering station."[29] Free Press's own research shows that more than 50 joint ventures between local television stations currently exist in markets across United States.

Unsurprisingly, participating broadcasters are quick to tout what they see as the benefits of these arrangements. However, more often than not this economy of scale results in the immediate and complete liquidation of one station's staff, which obviously eliminates a station's ability to produce original content.[30] Some media companies recognize the ways in which these deals prioritize profits over the public interest. Wary of the potential public backlash from these deals, one media executive was quoted as saying, "Just do the [sic] things… Don't send out a press release about it."[31]

In a general sense, joint ventures similar to these types of local marketing agreements, joint sales agreements, and shared services agreements have existed since before the advent of the 1934 Communications Act.[32] The FCC's tolerance for such arrangements has waxed and waned over the years. In 1972, the Commission expressed concern that

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[27] Rule and Policies Concerning the Attribution of Joint Sales Agreements in Local Television Markets, Notice of Proposed Rulemaking, 19 FCC Rcd 15238, ¶1 (2004).

[28] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097, ¶ 45 (2001).

[29] See CWA/Media Council Hawai'i Comments at ii.

[30] See discussion and examples, infra at page 9

[31] Malone, *supra* note 17.

[32] Michael E. Lewyn, When Is Time Brokerage a Transfer of Control? The FCC's Regulation of Local Marketing Agreements and the Need for Rulemaking, 6 *Fordham Intell. Prop. Media & Ent*. L.J. 1, 9-10 (1995).

"extensive time brokering might constitute an improper delegation of program control by the licensee to the broker(s), and hence conflict with the public interest."[33] However, in 1980, the Commission determined that time brokerage "could foster healthy program competition and enhance diversity of programming by encouraging independently produced programming."[34]

The agency's 1989 *Reexamination of Cross-Interest Policy* statement then opened the door to significantly more joint ventures. In that policy statement, the FCC concluded that "[t]he substantial increase in media outlets, and the corresponding increase in diversity and competition[…] reduces the need to prohibit time brokerage arrangements to protect the public interest."[35] Almost immediately after that decision, the development of joint ventures in their current form took place in earnest. For example, in 1991, Sinclair Broadcasting entered into a local marketing agreement with Eddie Edwards in an effort to circumvent FCC ownership rules. Edwards, an employee of Sinclair, bought a local Pittsburgh television station with a loan from Sinclair Broadcasting. Edwards and Sinclair Broadcasting then entered into an LMA, under which Sinclair essentially took control of Edwards's station.[36] This transaction is a gross example of the sham these deals can make of the rules when the regulator shows no interest in enforcing them.

But in 1999, the FCC—appropriately leery of deals like the one struck by Sinclair and Edwards—declared that any amount of time brokerage over 15 percent of a station's total broadcast hours per week would result in the brokering station having an "attributable interest" in the brokered station.[37] Attributable interests are those "interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees."[38] Unfortunately, few stations allocate more than 15 percent of their broadcast hours to news, and so companies can completely outsource news programming without crossing this threshold and violating this rule.

For this reason, the rule has done little to ameliorate the impact these deals have on local news. Companies entering into joint ventures often exploit the FCC's 15-percent cap on time brokerage to take over a competing news station's local news broadcast. As the National Association of Broadcast Employees and Technicians ("NABET," the broadcast arm of the Communication Workers of America) has pointed out, in many cases "locally-

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[33] Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming, Policy Statement, 82 FCC 2d 107, ¶1 (1980) ("1980 Policy Statement") (discussing the FCC's 1972 Order Concerning the Filing of Agreements Involving the Sale of Broadcast Time for Resale, 33 FCC 2d 654 (1972)).

[34] *1980 Policy Statement* at ¶ 2.

[35] Reexamination of the Commission's Cross–Interest Policy, Policy Statement, 4 FCC Rcd 2208, ¶ 37 (1989).

[36] William Kunz, Culture conglomerates: Consolidation in the motion picture and television industries (2007).

[37] Review of the Commission's Regulations Governing Attribution of Broadcaster and Cable/MDS Interests, Report and Order, 14 FCC Rcd 12559, ¶ 83 (1999).

[38] Id at ¶ 1.

produced news represents less than 15 percent of the daily programming content."[39] "In practice, the 15-percent threshold for LMA attribution has allowed the brokering station to provide all of the local news aired on the brokered station," wrote the Communications Workers of America and Media Council Hawai'i in comments submitted to the FCC.[40] In an interview with Free Press, Chris Conybeare of Media Council Hawai'i, agreed: "If you take over the news operation and the rest of your programming is … network programming, you don't reach that 15% measure, but what you have done is completely weakened the whole issue of localism, local production, and local news."

The FCC's track record in this area is less than consistent, but with the new findings in the FCC's Future of Media report, paired with Free Press's new research on the scope of these deals, the time has come to address the problem of covert consolidation head-on.

Case Studies in Covert Consolidation

While it is helpful to understand the nature and history of the types of deals and agreements discussed above, mere descriptions of these arrangements do not do justice to their effect on local communities. To this end, we present a few profiles of covert consolidation and the impact it has had on the local news ecosystem in a few media markets.

Swapping Stations - Barrington Broadcasting and Granite Broadcasting

Syracuse and Peoria are separated by many miles, but if you turn on the TV to watch the evening news, you might be surprised by how close they are in some respects. In March 2009, Granite Broadcasting and Barrington Broadcasting entered into a joint venture in Syracuse, whereby Barrington Broadcasting's station, WSTM, took over production of local news at Granite Broadcasting's station, WTVH. Under this shared services and joint sales agreement, WTVH laid off at least 40 employees and started broadcasting out of WSTM's studio.[41] "They came in and said basically, 'We're closed. You're all out of work,'" Bill Murray a local member of the Communications Workers of America said in an interview with Free Press researchers. "They emptied the building, and the newscasts are identical at this point. It's the same people. It's the same crew. It's the same reporters. It has to be, because Granite has literally no news employees." In Peoria, the two companies swapped roles, and Granite began producing all the news for the local Barrington station, with similar results.

[39] Letter from Barbara A. Kreisman, FCC Media Bureau (Video Division) Re Chelsey Broadcasting Company of Youngstown LLC, 22 FCC Rcd 13905 (2007).

[40] CWA/Media Council Hawai'i Comments at 7.

[41] John Lammers, "Syracuse's Channel 5 shuts down its newsroom," *The Post Standard*, March 2, 2009. Available at http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html.

Steve Tarter, a local newspaper journalist in Peoria, said the agreement has had a detrimental impact on the local television industry in Peoria. When Granite's WEEK took over the operations of Barrington's WHOI, the local newspaper estimated that upwards of 40 people were laid off.[42] "In fact, the [news production] has really been reduced," Tarter said. "The weekend news is virtually the same. [WHOI] does not have a recognizable presence anymore."[43]

Despite the concerns raised about these deals, broadcasting companies often laud the agreements as vital to the public interest. When Granite and Barrington swapped control of newsroom and station operations, both companies' executives said the agreement would revitalize the local news in those cities. "Together, our companies and stations will focus the combined resources of these great stations on becoming even better community citizens and at the same time providing measurable benefits for our viewers and advertisers," Granite Broadcasting's Don Cornwell said. "This arrangement provides opportunities for substantial operating efficiencies by allowing us to use existing infrastructure to expand the breadth of local news and services provided to the viewers of Central NY, while enhancing the revenue and profitability of both stations."[44]

What does this expanded "breadth of local news and services" look like to the viewers in Central New York? Viewers can now change from the Granite station broadcast to the Barrington station broadcast, and the exact same feed is rolling—only the logo in the corner of the screen changes. "With these kind of local operations where you don't have a different news image, you don't have a different voice, you don't have diverse opinions, because it's all one news crew and one anchor and one reporter," Carrie Biggs-Adams of the NABET-CWA said in an interview with Free Press.

Hawaii's Largest Newsroom – Raycom Media

While the scope of these agreements varies from city to city and company to company, pink slips for journalists are a common denominator. In Honolulu, Raycom Media laid off more than 60 people upon entering into a shared services agreement with MCG Capital. Now all operations for the top three stations in Hawaii are based out of the same building. "[Raycom] now has one newsroom that they call Hawaii News Now, and they claim that they have the largest newsroom in Hawaii and will provide much better service… in the public interest," Chris Conybeare of Media Council Hawai'i said in an interview with Free Press researchers. "Well, in fact there are fewer camera people at this consolidated newsroom than there were at the KGMB newsroom prior to this."

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[42] Steve Tarter, "WEEK-TV taking over WHOI operations," pjstar.com, March 2, 2009. Available at http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-over-operations-of-WHOI-TV.

[43] *Id.*

[44] "Central New York television stations join forces," CNYcentral.com March 2, 2009. Available at http://www.cnycentral.com/news/news_story.aspx?id=267378.

While the original stations remain on the air, they do so only as a brand and not as a newsroom. Some broadcasters, in comments filed with the FCC, have even admitted as much. Nexstar Broadcasting told the FCC that they often share the same content, but "the look and presentation of the two stations' newscasts frequently are very different."[45] While many of these agreements involve just two stations, some agreements involve as many as four. When the owner of a brokering station already controls two stations in a market under FCC rules that permit such dual ownership, and the brokering station enters into a joint venture or news service agreement with another station or two, one company can in effect control three or four broadcast stations in a single market. Free Press research shows that agreements involving more than two stations have occurred in Honolulu, Albuquerque, and Youngstown, Ohio, among others.

The Honolulu agreement is especially egregious. In a flurry of backroom deals, Raycom Media gained effective control over three stations – two of which are ranked among the top four stations in the market. On the ground, all appearances suggest that the stations have become a single entity. Beyond sharing a building, the three stations share a website, called "Hawaii News Now."[46]

Despite the fact that Raycom Media does not own the license for station KFVE, community leaders are quick to point out that for all intents and purposes, Raycom Media now controls that MCG Capital station. KFVE relies on Raycom Media for its building, its production, and its sales staff among other things. "So essentially a lot of people lost their jobs… they simulcast some of the newscasts, and the My TV station also runs repackaged identical stories," Chris Conybeare said in an interview with Free Press.

At the time of the merger, Raycom Media and MCG Capital stated publicly that no money would change hands in the deal. However, Media Council Hawai'i obtained a copy of the original agreement and discovered that in fact, Raycom Media gave a $22 million dollar note to MCG Capital. After the call signs were swapped, Raycom Media and MCG Capital entered into a variety of agreements that resulted in MCG Capital selling the majority of its assets to Raycom Media for $22 million. While MCG Capital did not technically sell its license to Raycom Media, Raycom receives over 90 percent of the cash flow from the three stations.[47]

Raycom Media has used a recent Emmy nomination for station excellence as proof that it is serving the public interest. However, the nomination itself points to the ways this conglomerate is circumventing FCC duopoly rule. The National Academy of the Arts and

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[45] Comments of Nexstar Broadcasting, Inc., MB Docket No. 09-182 at 7 (filed with the FCC July 12, 2010) ("Nexstar Comments").

[46] The consolidation of each station's website into a central hub is common with these types of agreements. For example, after Barrington Broadcasting entered into an agreement with Granite Broadcasting, it closed down the independent sites and opened "Central New York Central." The website is shared by the CBS, NBC, and CW affiliates.

[47] Rick Daysog, "Watchdog asks FCC to revoke licenses of KGMB, KHNL, K5 TV stations," *Honolulu Advertiser*, May 20, 2010. Available at http://the.honoluluadvertiser.com/article/2010/May/20/br/hawaii100520040.html

Sciences for Northern California and San Francisco lists the stations as one entity: "KGMB9/KHNL8/KFVE5."[48] Media Council Hawai'i asserts that Emmy nominations are no reason to allow media consolidation. "They spend a lot of time arguing the public interest argument, but the real question is did they violate the current FCC ownership rule," Conybeare said. "So arguments about we won Emmys or 'we did a wonderful show' are not germane."

In what could be a precedent-setting case, Media Council Hawai'i is asking the FCC to revoke the broadcast licenses of both Raycom Media and MCG Capital. In an interview with Free Press, Adrienne Biddings, an attorney with the Georgetown Law Center Institute for Public Representation and counsel for Media Council Hawai'i said the agreement between Raycom Media and MCG Capital violates the spirit and the letter of the FCC's media ownership laws. "Raycom has basically taken control of three stations in the market and we urge the FCC to act on its ownership rules and revoke their broadcast licenses," Biddings said. The FCC currently has all of the necessary information in the complaint against Raycom Media and MCG Capital. Media Council Hawai'i has been awaiting a decision for more than a year.

Bait and Switch: Nexstar Broadcasting

While the details of many of these deals differ in scope, history suggests that many deals, once in place, lead to a rapid deterioration in local news. Take, for example, Nexstar Broadcasting's agreement with Mission Broadcasting in Scranton, Pennsylvania. In the agreement, Nexstar's WBRE began to produce newscasts of Mission's WYOU in the same studio. While Nexstar initially aired both newscasts, it later took WYOU's newscast off of the air. It fired the staff at WYOU and left just two people on staff (the legal minimum for any station). When it canceled WYOU's newscast, a Mission executive told Broadcasting & Cable that in spite of ending all WYOU local news production in Scranton, Mission remained committed to providing local news.[49] Currently, Mission's WYOU is broadcasting "Judge Joe Brown" and "Access Hollywood" in the place of the original local news broadcast.[50]

While the recent FCC Future of Media report suggests that some local TV stations are becoming "major online sources of news,"[51] broadcasters like Nexstar see the web as a dumping ground. Not one of the 13 local television stations currently Nexstar's control has an independent website.[52] The consolidation of each station's website into a central hub is common with these types of agreements. For example, after Barrington

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[48] 39th Annual Northern California Area Emmy Awards 2009-2010, May 17, 2010. Available at http://emmysf.tv/pdf/Emmy10winpr.pdf.

[49] Michael Malone, "WYOU's Disbanded News Operation May Be The First of Many," *Broadcasting & Cable*, April 13, 2009.

[50] Andrew M. Seder**,** **"**WYOU ceasing news broadcasts**."** *The Times Leader*. April 3, 2009. Available: at http://www.timesleader.com/news/WYOU_ceasing_news_broadcasts.html**.**

[51] Future of Media Report at 78.

[52] Free Press research.

Broadcasting entered into an agreement with Granite Broadcasting, it closed down the independent sites and opened "Central New York Central." The website is shared by the CBS, NBC, and CW affiliates. The same is true in Hawaii.

The Economics of Covert Consolidation

Without clear action, these agreements will continue to spread and worsen. Many broadcasters have opposed any FCC oversight or further regulation of shared services agreements, joint sales agreements, or local marketing agreements. Broadcasters assert that in difficult economic times, these types of agreements allow stations to stay on the air. In its comments to the FCC, Nexstar wrote:

Nexstar further believes that if it were not for the combined news operations (through shared services agreements) in several of its markets, local news programming on at least one of the stations in these markets also would be discontinued due to the high costs required to provide local news programming.[53]

This rationale is repeated across many broadcasters' comments to the FCC. "[While] some have questioned the wisdom of one company operating [multiple] TV stations," Raycom Media president Paul McTear said. "The important point here is that the same local stations will continue to serve the community in which they operate."[54]

On closer inspection, however, it becomes clear that any station that remains on the air as a result of such an agreement is, in many cases, merely operating on autopilot when it comes to local news. While broadcasters argue that these newscasts contribute to the overall volume of local news in a market, "more news" is literally just "more of same news." In other words, much of the resulting news product is merely a re-run of content produced by another station and does not increase product diversity in terms of viewpoints, substance or coverage of different issues.

Ironically, despite broadcast executives supposed concern for preserving stations, these agreements often result in their virtual shuttering – the very outcome broadcasters argue the deals are designed to avoid. For example, in Salt Lake City, an agreement between Newport Television and High Plains Broadcasting resulted in more than 24 layoffs. In Scranton, the agreement between Nexstar Broadcasting and Mission Broadcasting resulted in 14 layoffs. In Honolulu, the number of layoffs topped 60. In Augusta, Georgia, an agreement between Media General and Shurz Communication resulted in more than 40 layoffs.

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[53] Nexstar Comments at 25.

[54] Paul McTear, Editorial : "Shared TV services strengthen stations," *Honolulu Star Bulletin*, August 23, 2009.

All of these examples demonstrate the emptiness of the rationale that covert consolidation saves stations from going out of business, because the end result is a practical transfer of control and an effective closing of the station. "Tell me how a station that is getting their local news from someone else is serving the public in that community," Biggs-Adams said. "It can't be their public affairs programming because they don't have any."

Evidence has repeatedly shown that concentration does not create any increase, but rather reduces the quantity and diversity in content.[55] Additionally, the FCC already has policies in place that allow a bona fide failing or failed station to seek a waiver of the local ownership rules to prevent it from going under.[56] Yet despite the availability of such waivers, by and large, broadcasters have not sought them out. Instead they have opted to enter into shared services agreements which they claim they FCC has no authority to oversee.

Indeed, while it may be convenient to plead poverty in public, the recent FCC Future of Media report makes quite clear that many local TV stations remain highly profitable.

According to survey data compiled by the National Association of Broadcasters, a local TV station in 2009 with average net revenues and cash flow would have a cash flow margin of nearly 23 percent of revenues. And local TV news had a strong year in 2010. While the rest of the economy was struggling, local TV stations' revenue rose. Ad spending on local TV in the first three quarters of 2010 was up 27 percent from the same period in 2009, according to a TVB analysis of Kantar Media data. Total local TV 2010 ad revenue was up 17 percent from 2009, reported BIA/Kelsey.[57]

But the FCC Future of Media report also finds that instead of using "the additional money that poured into local TV stations from the historic levels of political advertising in the 2010 election season[ ] to increase the pool of reporters who could cover their communities and more effectively monitor institutions and government agencies, many stations have opted to let those dollars simply flow to the bottom line."[58] Given this evidence, broadcasters' arguments that consolidation – covert or otherwise – is necessary to provide communities with the news and information programming are unpersuasive. In any event, it is not the Commission's job to protect industry profit margins. Rather, it must promulgate and enforce rules designed to promote competition, diversity, and localism so that the public interest, convenience and necessity are served.

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[55] See Cooper (2007), *supra* note 13.

[56] Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, Report and Order, 14 FCC Rcd 12903, ¶ 8 (1999) (finding that a waiver of the local TV ownership rule may be in the public interest "where one station is a 'failed station,' as supported by a showing that the station either has been off the air for at least four months immediately preceding the application for waiver, or is currently involved in involuntary bankruptcy or insolvency proceedings . . . [and] where one of the merging stations is a 'failing' station, as supported by a showing that the station has had a low audience share and has been financially struggling during the previous several years, and that the merger will result in demonstrable public interest benefits.).

[57] Future of Media Report at 74

[58] Id. at 114.

Growing Opposition to Covert Consolidation

The FCC's Future of Media report shined a spotlight on these agreements just as the agency turns its attention to its Quadrennial Review of Media Ownership Rules. Comments filed in that proceeding demonstrate that there is substantial opposition to these agreements. A diverse range of companies and organizations oppose the agreements, including, Time Warner Cable; the United Church of Christ, Office of Communication, Inc.; Hubbard Broadcasting; Communications Workers of America; American Cable Association; and Free Press, among others.

Stakeholders on both sides of the issue agree that the agency ought to provide guidance on the legality of these deals. Hubbard Broadcasting, for example, wrote that it "would support any equitable determination by the Commission, rather than ad hoc actions lacking the full record and findings of a rulemaking proceeding."[59] A major concern among all groups opposed to covert consolidation is the potential that these agreements have to impede the FCC's ability to enforce its media ownership rules. "The ability of the ownership limits to promote diversity of local news and information is significantly eroded if contractual arrangements can be used as end-runs around the rules," Free Press wrote in its comments. Similarly, the Office of Communication of the United Church of Christ (UCC) wrote, "[i]t 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 remain[]."[60]

The American Cable Association (ACA) has likewise raised concerns about Shared Services Agreements and Local Marketing Agreements, but for different reasons. The ACA argued that because these agreements lead to the practical consolidation of control of multiple stations in the hands of a single company, they unfairly advantage broadcasters' by giving them the ability to jointly negotiate cable carriage. With this increased bargaining power, the broadcasters can charge smaller cable providers more for carrying their broadcast channels, ultimately raising cable rates for consumers.[61]

In order to stem the tide of covert consolidation, the FCC must reexamine its current rules. Covert consolidation is perhaps the biggest loophole in the FCC's media ownership laws, and the agency's lack of action on current citizen complaints in this area raises real concerns about the FCC's commitment to holding broadcasters accountable. As the agency looks to complete its review of media ownership rules, it must address the impact covert consolidation is having on the local news ecosystem across the country.

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[59] Comments of Hubbard Broadcasting, Inc, MB Docket No. 09-182 at 4 (filed with the FCC July 12, 2010).

[60] Comments of Office of Communications, of United Church of Christ Inc, et al., MB Docket No. 09-182 at 8 (filed with the FCC July 12, 2010).

[61] Comments of American Cable Association, MB Docket No. 09-18, at 2 (filed with the FCC July 12, 2010).

For more information on covert consolidation visit:
www.savethenews.org/changethechannels or www.freepress.net.

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