

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)	
)	
Amendment of Section 73.3555(e) of the)	WC Docket No. 13-236
Commission's Rules, National Television)	
Multiple Ownership Rule)	

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

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Introduction

Writers Guild of America, West, Inc. (WGAW) is pleased to submit the following comments in response to the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking (NPRM), "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule," released on September 26, 2013, WC Docket No. 13-236.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media, including news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA").

Rules that limit media consolidation are fundamental to protecting the FCC's public interest standard and are necessary to promote competition, localism and diversity. WGAW has long been an advocate for such rules. More than two decades ago we wrote in support of the Commission's Financial Interest and Syndication (Fin-Syn) rules;

"There are moments of greatness on network television in the United States, moments when television so captures the spirit of a particular story, that our country, big and diverse as it is, together recognizes a truth, feels a common inspiration, experiences an appropriate challenge to the status quo or shares a laugh, a smile or a tear. Those moments are perhaps the best of what television can and should be."¹

¹ See Comments of The Writers Guild of America, West, Inc., *In the Matter of Evaluation of the Syndication and Financial Interest Rules*, MM Docket 90-162, August 10, 1990.

Unfortunately, 20 years of deregulation has led to massive consolidation between networks, studios and multichannel video programming distributors (MVPDs), making it increasingly difficult for those stories to reach the public. Today, corporate interests drive network programming decisions, with networks airing almost exclusively programming created in-house. In this landscape, we welcome the Commission's proposal to eliminate the 50% discount applied to UHF stations when calculating audience reach for the purposes of media ownership limits. As the Commission notes in the NPRM, this rule was adopted at a time when UHF was technically inferior. The digital television (DTV) transition has rendered the discount obsolete as UHF stations can now reach 100% of households in a designated market area (DMA). Continuing to allow the discount provides an unfair advantage to UHF station owners and allows station owners to exceed media ownership limits. WGAW strongly supports Commission action to eliminate the discount.

The UHF Discount No Longer Serves Its Intended Purpose

The Commission's national station ownership cap limits an owner's national reach to 39% of television households. The cap was adopted to promote competition, diversity and localism by limiting the number of stations a single entity could own. At the time the Commission acknowledged that UHF station signals had limited receptivity compared to VHF stations. To adjust for the relative disadvantage to UHF stations, the Commission adopted a 50% discount for UHF stations when calculating audience reach. The transition to digital television eliminated the technical deficiencies of UHF stations. As the Commission notes in the NPRM,

UHF spectrum has superior propagation characteristics compared to VHF in digital transmission.² This change eliminates the need for an audience discount.

Ending the UHF Discount is Necessary to Prevent Further Station Consolidation

In addition to the absence of a technical justification for the discount, market developments suggest that the proposed rule change is needed to prevent further concentration of station ownership. The NPRM asks whether the discount serves other market functions by encouraging new market entrants and supporting competition.³ The WGAW believes that rather than supporting competition, the discount is enabling consolidation. In 2012 there were a number of transactions that increased the local station holdings of the larger group owners. Sinclair, the largest owner of television stations, has doubled the number of stations it owns in the last three years, from 58 to 108 stations.⁴ Once Sinclair receives final approval for all pending transactions it will own and operate 149 television stations. Using the UHF discount, Sinclair only reaches 21.9% of television households. However, without the UHF discount Sinclair would reach 38.2% of television households and another station owner, Fox, would reach 37.28%. By retiring the discount, the FCC would be able to limit these two companies from acquiring additional stations.⁵

Despite competition from online video distributors and cable networks, broadcast television continues to be an attractive business. The broadcast networks not only maintain higher ratings and advertising rates than cable competitors, they are also experiencing an influx

²See Notice of Proposed Rulemaking, *Amendment of Section 73.3555 (e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket 13-236, ¶16 and ¶17 (hereinafter NPRM).

³ NPRM ¶19.

⁴ Sarah Barry James, "Gannet/Belo: Tipping the scale in broadcasters' favor," SNL Kagan, 6/14/2013, <http://www.snl.com/InteractiveX/article.aspx?CDID=A-18021776-13865&KPLT=4>.

⁵ Doug Halonen, "FCC Proposes Elimination of UHF Discount," TVNewsCheck, 9/26/2013, <http://www.tvnewscheck.com/article/70763/fcc-proposes-elimination-of-uhf-discount>.

of new revenue in the form of retransmission fees. Local stations and the broadcast networks have leveraged the popularity of their content to negotiate retransmission fees, with retransmission revenues doubling from \$1.1 billion in 2010 to \$2 billion in 2012. By 2014 retransmission revenue is projected to reach \$3.2 billion.

Broadcast Retransmission Revenue Projections (\$ in mil)⁶					
Network	2010	2011	2012	2013	2014
ABC	\$ 183	\$ 224	\$ 304	\$ 460	\$ 572
CBS	\$ 262	\$ 351	\$ 532	\$ 698	\$ 877
FOX	\$ 319	\$ 413	\$ 552	\$ 730	\$ 886
NBC	\$ 109	\$ 142	\$ 305	\$ 451	\$ 579
UVN	\$ 264	\$ 325	\$ 340	\$ 358	\$ 367
Total	\$ 1,137	\$ 1,454	\$ 2,033	\$ 2,697	\$ 3,281
Year-over-Year Growth	50%	28%	40%	33%	22%

Growth in retransmission revenue is driving consolidation in the station industry. The scale offered by owning stations that reach a large segment of the television audience allows group owners to negotiate more favorable terms from distributors. Executives at both CBS and Fox broadcast networks have been increasingly vocal about negotiating greater reverse retransmission fees from their affiliates. With the UHF discount in place, there is an incentive for Fox or other networks to acquire additional local stations if they are dissatisfied with the reverse retransmission fees received from affiliates.

⁶ Robin Flynn, “Boosting retrans projections as TV station owners succeed in pushing rates,” SNL Kagan, 11/22/2011, <http://www2.snl.com/InteractiveX/article.aspx?ID=13724792> .

We are concerned with the Commission’s proposal to grandfather in station groups that would exceed the audience reach limit without the UHF discount. Without the discount, ION Media stations collectively reach 64.8% of television households; Trinity Broadcast reaches 40.1%; and Univision reaches 44.1%. Allowing these station groups to exceed the media ownership limits does not serve the public interest.

The Effect of Relaxing Ownership Restrictions

WGAW members have experienced firsthand the detrimental impact of media deregulation on both a national and local level. Independent programming has been all but eliminated from broadcast television as a result of relaxed content ownership rules. In 1989, 76% of the Fall lineup was independently produced. In the years following the repeal of Fin-Syn independently produced series dropped to 28% of the Fall lineup in 1999 and a mere 8% of the Fall lineup in 2012.

WGAW Analysis of Independent Production for Broadcast Television 1989-2012							
	1989	1999	2008	2009	2010	2011	2012
Independently Produced Series	76%	28%	22%	13%	13%	12%	8%
Media Conglomerate-Produced Series	24%	72%	78%	87%	87%	88%	92%

The Commission’s 1999 decision to allow duopoly ownership of television stations in local markets significantly undermined diversity in local news content by enabling resource sharing agreements (RSAs) among previously competing newsrooms. RSAs have led to

widespread content reuse among commonly owned stations.⁷ WGAW members who work in the KCBS and KCAL newsrooms in Los Angeles, which have operated as a duopoly since 2002, report that stories are often repurposed between the two stations. Duopoly ownership in local markets reduces competition for viewers, news staff and coverage of news stories. This has allowed the stations to make cutbacks in staffing, which diminishes the quality of the news content that the stations air. The UHF discount enables further consolidation in the local news market by allowing owners to acquire stations beyond the current cap of 39% of television households. To the extent that these transactions lead to duopolies or to foreign ownership of local stations, the quality of local news will suffer.

Conclusion

As a result of the digital television transition, UHF stations reach 100% of television households in a local market. It is appropriate for the Commission to take action to ensure that regulations reflect market realities. Eliminating the UHF discount is consistent with the public interest goals of competition, localism and diversity because it will make the 39% of television households ownership limit a meaningful standard. Our experience since the repeal of Fin-Syn and the changes to the Duopoly Rule demonstrates that media companies will take advantage of existing rules to control as much of the industry as they can, to the detriment of competition, independence and diversity. We urge the Commission to eliminate the UHF discount because it will prevent further concentration of our nation's airwaves in too few hands.

⁷ See comments of The Writers Guild of America, West, Inc., *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership In the Broadcasting Services*, MB 09-182 and MB 07-294, March 5, 2012.