Before the
Federal Trade Commission
Washington, D.C. 20554

COMMENTS

of

THE AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

News Media Workshop – Comment, Project No. P091200

I. INTRODUCTION AND SUMMARY

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA"). AFTRA is a national labor organization with a membership of over 70,000 professional employees working in the news and broadcast, entertainment, advertising and sound recordings industries. On behalf of its members, AFTRA submits these comments in response to the Federal Trade Commission's request for information on the state of journalism in the age of the internet.

2. AFTRA's membership includes news reporters, anchors, sportscasters, talk show hosts, announcers, disc jockeys, producers, writers and other on-air and off-air broadcast employees who work at networks and in stations in markets of varying size throughout the United States. AFTRA's membership also includes actors, singers and other performers on entertainment programming and commercials, which are broadcast on over-the-air television and radio in the United States.

3. Entities that employ AFTRA broadcast members include the network news divisions of major broadcast networks. In addition to working for the networks, AFTRA members also work at the networks' owned and operated stations, as well as local radio and television stations owned by over 40 independent and group owners, including Spanish-language news stations. AFTRA maintains several hundred collective bargaining agreements with these employers nationwide.

4. The issues raised by the Federal Trade Commission are integrally-related to the Federal Communications Commission's regulations governing media ownership. Over the past several decades, AFTRA has previously filed comments at the Federal

Communications Commission in their biennial review of regulations governing broadcast media ownership. At the Federal Communications Commission, AFTRA has filed in the matters of MM Docket Nos. 98-35, 98-37, 91-221 and 94-322, relating to the national television ownership rule, the local radio ownership rule, and the effects of consolidation in the broadcast industry since the passage of the Telecommunications Act of 1996 (the "Telecom Act"). Additionally, AFTRA filed comments in conjunction with the Writers Guild of America, East in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317 and 00-244, in the FCC's review of these regulations.

5. AFTRA has a uniquely "inside" view of the need to protect standards of journalism in broadcasting, because AFTRA represents those professionals who work in the newsrooms that have been and will continue to be hurt by consolidation of media ownership, anti-competitive business practices, and cost-cutting measures in newsrooms in which AFTRA members work.

6. Based on the first hand experience of its members as well as the available empirical data, AFTRA submits that consolidation of media ownership has led media companies to behave in anti-competitive ways, to the detriment of diversity and localism in the news and information available to the general public, with the resulting effect of eroding support for quality of journalism. AFTRA submits that support for public interest standards in commercial broadcasting, and support for public broadcasting, is essential to create a media landscape that promotes democratic principles and an informed electorate.

II. MEANINGFUL MEDIA OWNERSHIP REGULATIONS ARE CRITICAL TO PRESERVE THE PUBLIC ACCESS TO DIVERSE EDITORIAL PERSPECTIVES IN NEWS.

7. It is well-settled that the promotion of viewpoint diversity, localism and competition in our nation's media landscape are all proper components of the public interest.[1] The media is the lifeblood of American democracy and culture, and a media marketplace that delivers the "widest possible dissemination of information from diverse and antagonistic sources" should serve local communities.[2] Furthermore, as the courts have also confirmed, ownership limits are a rational and constitutional method of ensuring editorial and viewpoint diversity.[3]

8. Courts have also validated the emphasis on preserving local program content in crafting regulations governing media ownership. "Local program service is a vital part of community life. A [broadcast] station should be ready, able and willing to serve the needs of the local community."[4]

9. The experience of employees working in digital media--whether in the radio broadcasting, or television journalism--tells a striking story: without <u>source</u> diversity, owners of media seek to achieve economies of scale by recycling, re-using and re-purposing existing content (and the viewpoints contained therein) across all commonly-owned platforms and distribution mechanisms. Source diversity, meaning independent ownership of media outlets, is critical to maintain viewpoint diversity. Any assessment that there is an "abundance of diversity", by virtue of the proliferation of new media platforms, ignores the critical need for source diversity in order to foster viewpoint

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[1] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042 (D.C. Cir. 2002); Sinclair Broadcasting Group v. FCC, 284 F.3d 148, 160 (D.C. Cir. 2002).

[2] *Turner Broadcasting System, Inc v. FCC*, 51 U.S. 622, 663-64. (1994)

[3] *Metro Broadcasting, Inc. v. FCC*, 547 571 n. 16 (1990), *overruled on other grounds, Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995); NCCB, 436 U.S. at 796-97.

[4] *NBC v. United States*, 319 U.S. 190, 203 (1943), *quoted in Prometheus*, 373 F3d at 149.

diversity. Simply put, without meaningful regulations governing media ownership, companies that are essential sources of news and information behave in anti-competitive ways, and deprive the public of access to diverse and competing editorial perspectives in journalism.

10. All available evidence indicates that new and emerging technologies represent limited market shares, and that they cannot be viewed as distinct voices in the marketplace, because they are largely owned and controlled by the same large media conglomerates that control radio, television and newspapers.

11. A local cable news network or Internet site is not a different voice when it is, in fact, owned and its content is provided by the local newspaper or TV station. In Chicago, where Tribune Company owns a local cable news station, CLTV, that cable station shares resources with other Tribune-owned properties. The CLTV website, for example links to a broad range of "partners"—the Chicago Tribune Newspaper, the Chicago Cubs major league baseball team, the Metromix (a local dining and entertainment listing) website, the Red Eye newspaper, WGN Radio, and broadcast television station WGN. CLTV has "synergized" its content, providing video content to Metromix, and branding certain of its content as "Metromix on CLTV." The Chicago Tribune, WGN-TV and Metromix share a restaurant critic. WGN-TV has negotiated with AFTRA to permit certain of its on-air journalists to re-purpose their stories for the Chicago Tribune newspaper. And the video content that is available on the CLTV and WGN-TV websites is identical to content that has already been broadcast over-the-air or on cable in Chicago.

12. In the Pacific Northwest, Belo owns a number of over-the-air broadcast stations, as well as a regional cable news network, NWCN. Belo re-uses material from its over-the-air broadcast stations on its regional cable network. News stories from KING-TV and KONG-TV in Seattle, KGW-TV in Portland, KREM-TV and KSKN-TV in Spokane, and KTVB-TV in Boise appear on NWCN's cable broadcasts and on the NWCN website, in substantially the same form that they were broadcast over-the-air on their originating stations.

13. Even to the extent that new and emerging technologies provide consumers with additional methods of viewing and listening to new content, that content remains available to consumers through other channels. Where companies own newspapers, Internet sites, broadcast stations and cable networks, the content on those commonly-owned platforms is identical. Where companies have the opportunity to distribute content through new delivery mechanisms (such as through digital downloads), the content that they distributed is recycled, reformatted and re-purposed from another distribution platform. Simply put, new and emerging technologies do not provide source or viewpoint diversity to consumers.

14. When media owners acquire additional properties in a local marketplace, they seek to reduce operating expenses by combining existing news operations, or finding scalable programming to use across their multiple platforms. By achieving economies of scale or "synergies" between their commonly owned ventures, local communities are deprived of diverse sources of news and entertainment. As we illustrated, *supra*, in the discussion of news media, media conglomerates reuse, recycle and repurpose the same editorial content to be broadcast on all of their radio and television stations, to print in

their newspapers and to post on their Internet websites. This content is often identical, produced by the same assignment desk, the same general manager, the same physical facility, the same news or program director, and/or the same playlist, and essentially, it represents one single uniform viewpoint.

15. Where television duopolies and triopolies have been created, local audiences are deprived of access to diverse editorial perspectives in news. In cases where one company owns multiple television stations, the same local content is broadcast on each of the stations with little, if any variation. While this may enable local stations to provide local content in a cost-efficient manner because of the synergies, it runs counter to the important goals of promoting competition and viewpoint diversity.

16. As an example, Nextar Broadcasting owns a television duopoly in Champaign/Springfield, Illinois. WCIA-TV is a CBS affiliate and WCFN is a My Network TV affiliate.[5] The local news content aired on these stations is virtually identical, with the same on-air staff. Only the branding is different. While this arrangement may be very beneficial for Nextar's bottom line, it is hardly in the public interest. Common ownership of multiple stations in the same market creates an economic disincentive for station owners to compete against themselves by putting different programming on the air. To staff a second or third station, with an independent editorial perspective, Nextar would have to build and maintain a second, very expensive news operation. Absent an affirmative obligation to serve the public interest goals of diversity and competition, it is not surprising that Nextar has abandoned that obligation in Champaign/Springfield and the other markets where it has a duopoly.

[5] This market has a second duopoly with a different owner, Sinclair.

17. Similarly, in Los Angeles, where CBS has a duopoly with KCBS and KCAL, content is shared between the two stations. In fact, on the KCBS website, CBS trumpets its "KCBS 2 – KCAL 9 News Team."[6] In markets of varying sizes, the situation is the same. When duopolies exist, media conglomerates cut costs, operate one newsroom, and provide substantially the same local content on both stations' signals.

18. Consolidation of radio station ownership is principally responsible for the disappearance of news on over-the-air broadcast radio. In Chicago, Westinghouse-owned WMAQ-AM had been an all-news radio station since 1989. It competed directly with Infinity-owned WBBM-AM, the other all-news radio station in that market, owned by Infinity. Westinghouse eventually bought CBS and its radio division, Infinity. In 2000, Infinity (currently operating as CBS Radio), determined that it no longer wished to operate two competing radio news stations, and determined to shut down WMAQ-AM in 2000. Because WMAQ-AM and WBBM-AM were the only two news radio stations at that time in Chicago, when the corporate owners of those stations killed WMAQ, they were eliminating WBBM's only competition, and leaving the third largest media market in the United States with only one all-news radio station. That situation has continued in Chicago since 2000, until recently, when WBEZ-FM, a public radio station, indicated that it would move to a 24-hour news and public affairs format.

19. Unfortunately, WBEZ's decision to contribute more news on radio to the Chicago market meant that Chicago was losing its only jazz music format station. WBEZ had been one of the few stations in the country to broadcast traditional jazz programming. Jazz is not available over-the-air in Chicago anymore. WBEZ's

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[6] Available at http://cbs2.com/bios.

programming change illustrates another unfortunate by-product of radio deregulation: the disappearance of entire formats from the radio dial. Consolidation of radio ownership has resulted in fewer and narrower radio formats, with narrower playlists. Though the Commission's inquiry focuses on the crisis facing journalism, it is worth noting that similar considerations of consolidated media ownership come into play in the entertainment arena, where television and radio broadcasters have consolidated, are increasingly competing against themselves, and often behave in anti-competitive ways to reduce costs—all at the expense of the public interest.

20. In its 1978 decision upholding the FCC's newspaper-broadcast cross-ownership rule, the Supreme Court noted that, "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[7] Though the *Prometheus* Court found a rational basis for upholding the Commission's abolition of the newspaper-broadcast cross-ownership restriction,[8] AFTRA respectfully submits that the Supreme Court's rationale in 1978 still holds true today. Examples from "grandfathered" cross-owned properties illustrate that diversity, competition and localism are not well served by cross-ownership of newspapers and broadcast stations.

21. Newspapers and television newscasts serve unique roles for the American public. Newspapers provide in-depth reporting and analysis; they are the only media whose primary focus is news, not entertainment. Television dominates in political news and political advertising, provides breaking news and conveys the immediacy and emotional impact of its visual images. As was true fifty years ago, most Americans still

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[7] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 777-79 (1978)

get their local news and information from their daily newspaper, and one of a small handful of broadcast stations.

22. Preserving the prohibition against the common ownership of newspapers and television stations in local markets is critical for maintaining diversity in the delivery of local news to the public, not only because of the uniquely important role these media outlets play in the delivery of news to the public, but also because: (i) there are already few voices in local markets for these outlets; (ii) the public does not receive diverse viewpoints through other media; (iii) media conglomerates will combine news operations to save costs; and (iv) media conglomerates will impose homogenous editorial views on commonly-owned properties.

23. The co-ownership of a local newspaper and broadcast station puts diversity at risk because of the well-documented tendencies of media conglomerates to reduce costs and promote "synergies" by combining news staff and resources at the expense of independence and diversity of viewpoint. As discussed, *infra*, the Tribune Company in Chicago seeks to achieve these economies of scale by sharing resources and duplicating content across its broadcast properties, newspapers and cable networks. Tribune's contribution to the sharp decline of diverse viewpoints is not limited to Chicago, however. Tribune has "synergized" the Los Angeles Times and broadcast station KTLA-TV, as well.[9] The newspaper-broadcast cross-ownership restriction is a critical regulatory tool that protects against the domination of American media by any single corporate interest. When media companies are permitted to own radio and

[8] 373 F.3d at 398-390.

[9] Claudia Peschiutta, "KTLA, Times Employees Acting More Like a Family" , *Los Angeles Business Journal*, (May 6, 2002) (available at http://www.findarticles.com/p/articles/mi_m5072/is_18_24/ai_91091713).

television stations in the same market, they invariably cross-assign employees among those properties, in order to further "synergize" their properties.

24. In collective bargaining negotiations around the country, AFTRA representatives have been confronted with proposals in collective bargaining negotiations where media employers seek to assign their television reporters to file stories for the radio stations they own. Furthermore, television meteorologists are asked to feed weather reports to radio stations. Just as media companies seek to eliminate independent content when they have duopolies or triopolies in television, the cross-ownership of radio and television stations provides an economic disincentive to provide truly independent editorial content.

25. When NBC purchased Telemundo in 2001, Telemundo had been operating an independent network newscast. Since then, in an ongoing drive to synergize and cut costs, Telemundo has dissolved local news bureaus in San Jose, Phoenix, Houston, San Antonio, Denver and Dallas, and replaced them with a single production center for Spanish language news in Dallas. In other markets, like New York and Los Angeles, local Telemundo operations have moved into facilities with NBC's local owned and operated stations, and NBC's commonly-owned cable networks, MSNBC and CNBC. News resources have already been shared in a number of markets, like Chicago, where WMAQ (NBC) journalists and WSNS (Telemundo) journalists already work from the same assignment desks, share footage and camera crews and have adjoining sets in the same studio.[10]

[10] "NBC U: More with Less", *Broadcasting and Cable*, October 23,2006 (available at http://www.broadcastingcable.com/article/CA6383679.html)

26. It is axiomatic, however, that the common ownership of NBC and Telemundo networks is directly responsible for the elimination of independent content, viewpoint and editorial perspective on Telemundo. The language may be different, but content is all-too-often the same.

27. Local Marketing Agreements ("LMAs"), and other contractual arrangements allow media conglomerates to operate stations, even when they do not hold the station's license. LMAs , time brokerage agreements, shared services agreements, joint sales agreements and outsourcing agreements essentially allow broadcast stations to skirt the FCC's ownership regulations, permitting companies to behave in anti-competitive ways, while depriving the public of diverse and competing sources of news.

28. Sinclair Broadcast Group, Inc. owns and/or operates 58 television stations. However, these 58 stations exist in only 35 media markets. In some of those markets, Sinclair actually owns and operates both stations where it has a duopoly. In other markets, however, Sinclair operates a second or third station under an LMA, an outsourcing agreement, or other contractual arrangement. It should not come as a surprise, then, that Sinclair, as a rule, does not provide different and independent local content on the stations that it operates under LMAs. Other broadcasters, including Nextar, discussed *supra,* also operate stations they do not (or are not permitted to) own through these contractual arrangements. Again, independent and distinct local content is not provided on each station.

29. At WILD-FM in Boston, an LMA was used to disenfranchise the African-American community of a powerful local voice in broadcast radio. For many years, WILD-FM had served listeners in Boston with community-responsive programming.

Until 2006, WILD-FM was owned and operated by Radio One. In anticipation of approval of a pending sale, Radio One transferred operation of WILD-FM to Entercom through a time brokerage agreement. Entercom laid off all of the employees, and is using the signal of WILD-FM to air a simulcast of one of the other five stations it already owns in that market.[11] An important community voice for the African-American community in Boston has been destroyed because of consolidation. At this point, even if the FCC were to deny the formal sale of WILD-FM to Entercom, the damage has already been done. The time brokerage agreement allowed Entercom to destroy the station, absent a formal sale.

30. Examples provided, *supra*, relating to Telemundo and WILD-FM illustrate the dangers of media consolidation for minority communities. Large media conglomerates own the vast majority of media outlets in this country. These media conglomerates have a proven track record of disenfranchising local minority communities. They have demonstrated a clear preference to replace independent programming of local origination with syndicated, recycled, reformatted and repurposed programming that ignores the priorties of minority communities.

III. AGGRESSIVE COST-CUTTING MEASURES ERODE STANDARDS OF PROFESSIONALISM IN JOURNALISM, AND HARMS THE PUBLIC INTEREST.

31. While the internet has increased the speed at which information can spread and allows ordinary citizens to have greater participation with the news, we need to keep our eye on maintaining the quality of news reporting and analysis in the Internet Age.

[11] Adrienne P. Samuels, "Fans Say WILD Sound Should Not Be Silenced." *Boston Globe* October 10, 2006 (available at http://www.boston.com/ae/tv/articles/2006/10/10/fans_say_wild_sound_should_not_be_silenced/)

32. The proliferation of new media platforms, such as the internet, when combined with a downturn in the economy, puts tremendous pressure on the way journalists do their jobs, meeting their employers' demands to produce more news product in a shorter period of time, with fewer resources. In addition to gathering news for news packages for traditional over-the-air broadcast, TV and Radio broadcast journalists are often expected to do additional reporting for the internet, to repackage news product for podcasts, or to assume additional duties on their employer's secondary digital channels.

33. Reporters used to be able to rely on having an editor and producer available when putting together a news story. In television newsrooms, reporters would routinely work with a videographer or cameraperson. Now, however, reporters are under increasing pressure to assume some, if not all, of the technical duties that had heretofore been assumed by technical professionals. In the most extreme cases, journalists have essentially become "one man bands"—conducting interviews, shooting video, gathering audio, editing news packages, and performing live broadcasts from the field, with minimal technical support.

34. With the assumption of new technical duties, but a limited time to get news out to the public, the quality of journalism invariably suffers. Reporters do not have the time and resources to check facts and return calls to sources so that the information in their reports is correct and complete.

35. Reporters often do not have the time to cover the stories that Americans need in order to participate meaningfully in the democratic process, or in their local communities. Media companies that employ journalists do not provide reporters with

the time and resources to provide the kind of in-depth analysis that citizens need in a democracy.

36. Mainstream media outlets are also increasingly relying on so-called "citizen journalists," disseminating news and information without verification of the accuracy, or concern for the ethical considerations. As an example, during the recent shooting at Ft. Hood, while the base was on lockdown, some mainstream media outlets picked up the Twitter feed of Tearah Moore, a soldier who was in the base, and used her mobile device to disseminate information about what was happening inside the base.[12] The inaccurate information in Moore's Twitter feed was responsible for the dissemination of inaccurate information, such as the early reports that the alleged shooter, Major Hassan, had been killed.[13]

IV. WHEN COMMERCIAL CONSIDERATIONS DOMINATE THE MEDIA LANDSCAPE, THE PUBLIC INTEREST SUFFERS.

37. Employer's advertising crisis has become the public's journalism crisis. More Americans than ever before are listening to Radio. Arbitron's RADAR 101 National Radio Listening Report finds that 235 million Americans listen to the radio, up from 210 million a year ago.[14] Yet, according to the Radio Advertising Bureau, local

[12] Jack Riley, *Tweets from Inside Ft. Hood*, Independent Minds http://jackriley.independentminds.livejournal.com/17216.html, November 6, 2009.

[13] Paul Carr, *NSFW: After Ft. Hood, Proof that 'Citizen Journalists' Can't Handle the Truth,* TechCrunch, http://www.techcrunch.com/2009/11/07/nsfw-after-fort-hood-another-%20example-of-how-citizen-journalists-cant-handle-the-truth/, November 7, 2009.

[14] FMBQ, *Arbitron: Radio Reaches over 235 Million Weekly,* http://www.fmqb.com/article.asp?id=1370551, June 15, 2009

radio revenue was down 19% in the third quarter of this year, with network radio revenue down by 11%.[15]

38. Even though circulation, viewership and listenership is up, the economics of commercial media has an affect on the type of news and information that Americans get. Ownership interests and commercial considerations affect coverage.

39. One primary example is the coverage of the Government bailout of the 'Big Three' Automakers. The advertising revenue for most local broadcast stations is directly tied to the fortunes of the automobile industry. A disproportionate share of advertising revenue for newspapers and local broadcast stations comes from local dealerships.[16] So, it should not be surprising that when an element of the Government bailout of General Motors, Ford and Chrysler included the closure of dealerships, that piece of the plan received a tremendous, and disproportionate, amount of coverage in mainstream commercial media.[17] Commercial media routinely referred to the "devastating" effects of auto dealership closures.[18] Only National Public Radio, which does not depend on advertising revenue from local dealerships, reported a different angle—namely, that the bloated dealership structure of the 'Big Three' automakers was inefficient, and that the

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[15] *Radio Rallies to Post only 16% Loss*, http://www.marketingcharts.com/radio/radio-rallies-to-post-only-16-q309-loss-11177/

[16] Alan Mutter, *Car Dealer Closings Will Crunch Local Ad Sales*, Reflections of a Newsosaur. http://newsosaur.blogspot.com/2009/05/car-dealer-closings-will-crunch-local.html, May 17, 2009.

[17] Stephanie Clifford, *The Bright Side of Auto Ad Sales? They Could Be Worse*, New York Times, June 22, 2009, http://www.nytimes.com/2009/06/23/business/media/23adco.html?_r=1

[18] WSBTV.com, *Chrysler Closing 3 Metro Atlanta Dealers,* http://www.wsbtv.com/news/19459945/detail.html, May 14, 2009

closure of dealerships would actually help a smaller number of dealerships remain profitable, increasing the profit margins on domestic cars and trucks.[19]

V. CONCLUSION.

40. Consolidation of media ownership has led media companies to behave in anti-competitive ways, to the detriment of diversity and localism in the news and information available to the general public. The inevitable result has been disastrous for the quality of journalism. AFTRA submits that support for public interest standards in commercial broadcasting, as well as increased support for public broadcasting, is essential to create a media landscape that promotes democratic principles and an informed electorate.

Respectfully submitted,

/s/

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[19] Rebecca Roberts, *Thousands of Car Dealerships Prepare to Close*, National Public Radio, All Things Considered, May 16, 2009, http://www.npr.org/templates/transcript/transcript.php?storyId=104215628