Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2018 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	)	MB Docket No. 18-349

Reply Comments of
WTA – Advocates for Rural Broadband

WTA – Advocates for Rural Broadband ("WTA")[1] hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking seeking comment on the Commission's Quadrennial Review of local-media-ownership rules.[2] Of special concern to WTA, the Commission seeks input on whether or not a relaxing of the duopoly rule's top four prohibition is in the public interest. A revised rule would allow a company to own two broadcast stations among the top 4 in the same market. It is WTA's position that broadcast consolidation has played a large part in the ever-increasing rise in retransmission consent prices and further consolidation in the marketplace will only exacerbate the problem. High retransmission consent prices have led to higher bills for consumers and have had a disparate impact on rural communities as many rural local exchange carriers ("RLECs") that offer video have been forced to exit the video marketplace. In fact, WTA members that remain in the video marketplace at

[1] *WTA - Advocates for Rural Broadband* is a national trade association represents more than 340 rural telecommunications providers offering voice, broadband, and video-related services in rural America. Its members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.
[2] 2018 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, Notice of Proposed Rulemaking, MB Docket No. 18-349, rel. Dec. 13, 2018.

best break even and frequently lose money on their video services because of growing content costs.

Across the board, MVPDs of all sizes have faced content costs that are growing at rates significantly higher than estimated inflation measures.[3] The reality is that WTA members participate in "negotiations in name only" where broadcasters simply demand pricing and other requirements with no willingness to compromise. For example, WTA members have also been forced to accept contractual tying and tiering arrangements that mandate carriage of content that their customers have little interest in, and that hamper or prevent them from offering local content that their customers actually want and need. Undoubtedly, as the Commission previously noted, increased consolidation will only increase the bargaining power of broadcasters and worsen the precarious status of small providers.

INCREASING RETRANSMISSION CONSENT RATES REPRESENT A SIGNFICANT CONSUMER HARM IN RURAL AMERICA AS RLECs EXITING THE VIDEO MARKETPLACE REDUCES COMPETITION AND LEAVES RURAL CONSUMERS WITH FEW OPTIONS FOR VIDEO

As the American Television Alliance stated in its initial comments, the Commission "has repeatedly recognized that consumer price increases constitute a public-interest harm."[4] For example, it noted in 2014 that the "harms from joint negotiation [in terms of increased retransmission consent fees] outstrip any efficiency benefits identified and that such negotiation

[3] Gil Ehrenkranz, What to Expect This Retrans Season, Multichannel, March 27, 2018, https://www.multichannel.com/blog/what-expect-retrans-season-414297. "If recent election cycles are any guide, broadcast stations can look forward to average license fee increases of more than 1,000% over the inflation rate."
[4] Comments of the American Television Alliance, MB Docket No. 18-349, filed on April 29, 2019, at 6.

on balance hurts consumers."[5] ATVA correctly asserts that common ownership of two stations is effectively the same as a joint negotiation by two stations.[6] Further, the Commission noted in its 2014 analysis that "joint negotiation by top-four stations in the same market increased retransmission consent prices by 20 percent (or, in some cases, as high as 43 percent)."[7] Conversely, the Commission approved the AT&T and DirectTV merger in part because it found that the merger would increase competition and lower consumer prices.[8]

The Commission's findings are in line with the actions of the Department of Justice, which opposed the Nexstar - Media General merger on the grounds that it would lead to an increase in retransmission consent fees passed on to consumers. The Department of Justice approved the merger only after the parties entered a consent decree requiring divestiture.[9] Several analysts have supported this view,[10] and it is also validated by the actions of broadcasters, which have moved desired programming to multicast stations or to LPTV stations.[11]

WTA members can attest that retransmission consent fees are increasing at unsustainable levels. Of note, one WTA member saw per subscriber retrans fees for the top four stations increase from $1.91 per month in 2010 to $21.35 in 2019, which is approximately a 1,000%

---

[5] Id. at 6-7.
[6] Id.
[7] Id. at 9.
[8] Id. at 8.
[9] Id. at 10.
[10] Id. at 11. "Paul Gallant of Cowen Washington Research Group, for example, has described the relaxation of the Commission's ownership rules as having "the potential for an improved retrans trajectory from dual ownership of two must-have TV stations." Similarly, David Wilkerson and Jonathan Guilford from Acuris have explained that owning a top-four duopoly "add[s] to [a broadcaster's] negotiating strength with pay-TV operators who must pay fees to retransmit the stations' signals." And SNL Kagan has noted that "station groups in smaller markets with multiple Big Four broadcast affiliations could attract even higher rates" than other stations."
[11] Id. at 12.

increase over ten years. Another saw an increase from $1.20 in 2009 to $16.68 in 2020. WTA members do not profit from video and many lose money by offering the service because they are unwilling to pass increased costs to customers. In the end, WTA members have to seriously consider how much cost they are willing to absorb as an operating loss or pass onto the consumer. Unfortunately, these analyses frequently lead to WTA members ending their video service. In fact, in 2017, five (5) WTA members terminated their video service with at least two (2) additional members ending their service in the past year.

When an RLEC stops offering video, it is a significant detriment to its customers. The old broadcaster adage that their signals are always "free over-the-air" does not apply to rural America.[12] The 2009 digital transition greatly reduced the propagation of broadcast signals so that many rural households are now reliant on an MVPD to access the local programming that broadcasters must offer as a public service. If a customer's RLEC shuts down their video offering, he or she must seek other alternatives, usually a satellite or an over-the-top service, which may be burdensome if the customer is content with their existing service.

As noted before, the Commission views consumer price increases to be a public-interest harm. There is also wide consensus that increased consolidation will only exacerbate the problem of increasing retransmission consent fees. Ever-increasing retransmission consent fees represent a real harm to consumers because those increases are typically passed along to consumers resulting in higher bills. The harm could be even worse if the RLEC the consumer subscribes to decides that it there is no longer a business case in continuing to offer video. This leaves the consumer with fewer choices as a result of less competition. It further has the potential to leave

[12] John Eggerton, NAB on Retrans: There's 'Snow' Problem, Broadcasting Cable, March 16, 2018, https://www.broadcastingcable.com/news/nab-retrans-theres-snow-problem-127924.

some consumers, particularly low-income consumers, without any television service at all. If the Commission allows top-four stations to be commonly owned, WTA expects more of its members to be forced to end their video offerings.

CONCLUSION

Increases in retransmission consent fees and the correlating increases in consumer bills are a public interest harm with a unique, negative impact on consumers in rural America due to consumers' inability to receive signals over-the-air. This is a harm that will only worsen with further broadcaster consolidation. The Commission should act accordingly and not relax the duopoly rule's top-four prohibition.

Respectfully submitted,

WTA – Advocates for Rural Broadband

By: /s/ Derrick B. Owens
Derrick B. Owens
Senior Vice President of Government & Industry Affairs
400 Seventh Street, NW, Suite 406
Washington, DC 20004
(202) 548-0202

By: /s/ Bill Durdach
Bill Durdach
Director of Government Affairs
400 Seventh Street, NW, Suite 406
Washington, DC 20004
(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW, Suite 300
Washington, DC 20037
(202) 659-0830

May 29, 2019