

April 26, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Dear Chairman Pai:

Your *ad hoc* approach to media ownership must end. The time has come for the Federal Communications Commission (FCC) to stop making further changes to the nation's broadcast landscape until the agency has conducted and completed a holistic look at the state of broadcasting and the media and waited for a ruling from the U.S. Court of Appeals for the D.C. Circuit, which is currently deliberating on the legality of your previous media ownership actions. Until this has occurred, the FCC should not adopt any additional changes to its media ownership rules, it should not implement any changes adopted over the last several months and it should not approve any pending transfers of control of broadcast licenses as part of proposed mergers or acquisitions. Failure to do so threatens the heart of localism, diversity and competitive fairness in local broadcasting.

We have noted with growing concern your pattern of eliminating the longstanding rules the FCC has maintained to limit local television and radio ownership concentration. As you well know, last September, 24 Senators (including many of the signers of this letter) called on you to stop your actions to eliminate broadcast ownership limits without first conducting a comprehensive review of the state of media ownership in the country. Yet in the months since that letter, you have relentlessly continued the dismantling of these rules with apparent disregard for the collective negative effect of your actions on the nation's media landscape.

The FCC's limits on broadcast ownership have a long history, both in statute and in the FCC's rules, and have enjoyed bipartisan support. Those rules are based upon the bedrock principles of localism and diversity, and they also create a level playing field among broadcast companies. And at their core, these rules reinforce the fact that broadcasters are ultimately the stewards of the public airwaves and should have close ties to the communities that they serve.

The FCC – under your leadership – has engaged in a systematic process of eliminating many of the individual rules designed to further this public interest obligation and keep broadcasters tied to their local community. Your efforts began with the reinstatement of the UHF discount and the elimination of FCC review of joint sales and shared services agreements. Both of these moves raised grave concerns among many groups, and in the case of your reinstatement of the UHF discount, gave rise to ongoing litigation about the propriety and legality of your action.

But those changes are not the only ones that cause us to question your commitment to robust localism and diversity. Eliminating the main studio rule gives large TV station ownership groups carte blanche to centralize their operations and eliminate the home base that a broadcaster has always maintained in every local market it serves. When combined with the troubling trend by some broadcasters of using corporately-developed national news content as a substitute for local journalism, your recent actions risk making the “local” in local broadcasting a thing of the past.

Additionally, late last year, the FCC paved the way for additional consolidation within local markets by loosening the local market ownership limits. No longer are the rules for owning multiple stations in a market clear; rather, permissive consolidation is permitted by the FCC based on its assessment of the impact a particular deal would have on a market. The first test of this new approach to local market consolidation lies in the pending merger between Sinclair Broadcast Group and Tribune Media. Many believe that your rush to alter the local ownership rules was designed to ease the final restrictions on this merger, clearing a path to approval with minimal divestitures, even in light of questions about how Sinclair operates its local stations and complies with its public interest obligations. These suggestions raise concerns about whether the FCC will objectively apply this new permissive standard to Sinclair and what sort of treatment other (potentially less favored) broadcasters may receive in the future.

Finally, in December, you opened an inquiry into whether and how the FCC should alter the national TV station ownership cap. We believe that the legality of any attempt by the FCC to change this statutory cap is in serious doubt (given that the FCC was directed by Congress to adopt the current cap) and we do not find the arguments presented thus far by proponents of raising the cap very persuasive. Moreover, you opened this examination in the midst of your consideration of the Sinclair transaction, which originally proposed to give one company beneficial ownership of stations reaching well over 70 percent of households in the United States (and even in proposed revised form, would reach over 50 percent of households). Although this could be an unfortunate coincidence, these actions raise troubling questions as to whether an ultimate decision has been preordained on this issue. If the agency were to grant the Sinclair transaction first, it could mean that either (1) you have concluded that the cap should be raised to no less than the final ownership percentage given to Sinclair; or (2) you have concluded that Sinclair should benefit from a different – and presumably more liberal – ownership cap than one that applies to others in the same market.

It is time for the FCC to comply with Congress’ directive contained in Section 202(h) of the Telecommunications Act of 1996 and conduct a thorough, fact-based and impartial review of the current state of broadcast ownership and the media marketplace. The rapid technological and practical changes in the broadcast space in the past several years suggest that the FCC must build a new and thorough record about the state of broadcasting and media today. Only once that review is complete can policymakers at the FCC and in Congress, and the public at large, fully comprehend what changes to the media ownership rules are justified. And any such review should examine the factual and legal basis for any media ownership action you have taken since assuming the chairmanship of the FCC, as serious concerns have been raised that those actions were not properly grounded in fact or law.

In addition, the FCC should not grant any proposed broadcast license transfers that could exceed the current 39 percent national ownership cap, as applied in the absence of the agency's UHF discount. As noted above, serious questions have been raised about the legality of your reinstatement of that discount and the U.S. Court of Appeals for the D.C. Circuit just heard oral argument in that case (with at least one judge expressing serious doubts about the propriety of the discount). To grant license transfers in excess of the cap in reliance on a questionable rule change would fly in the face of reasoned decision making and could severely upend competitive balance in the broadcast TV market if the court reverses your action.

Until the FCC completes a more comprehensive look the state of broadcasting and the court renders its decision, the agency should cease all rulemaking activity related to media ownership, including its questionable review of changes to the national ownership cap. The FCC also should pause consideration of all pending broadcast mergers, given that granting those mergers could give companies competitive advantages in the market once any new rules are adopted. These steps are necessary in the public interest to ensure fairness in the market and to remove any cloud of uncertainty over the agency's decision making in these matters.

Sincerely,



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United States Senator



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United States Senator



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