United States Government Accountability Office

Report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate

June 2014

MEDIA OWNERSHIP

FCC Should Review the Effects of Broadcaster Agreements on Its Media Policy Goals

GAO-14-558

GAO Highlights

Highlights of GAO-14-558, a report to the Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate

Why GAO Did This Study

Local television stations play an important role in educating, entertaining, and informing the citizens they serve. FCC limits the number of television stations an entity can own or control to advance its media policy goals of competition, localism, and diversity. Competing television stations are entering into agreements to share or outsource services, and some policymakers are concerned about the effects of these agreements on competition and programming.

GAO was asked to review issues related to broadcaster agreements. This report examines (1) the uses and prevalence of broadcaster agreements; (2) stakeholders' views on the effects of broadcaster agreements; and (3) the extent, if at all, that FCC has regulated these agreements.

To address these objectives, GAO reviewed relevant FCC proceedings; conducted a literature review; interviewed officials from FCC, industry, and consumer associations; and conducted nongeneralizable case studies in 6 markets (3 with agreements and 3 without) selected from small and medium-sized markets.

What GAO Recommends

FCC should determine whether it needs to collect additional data to understand the prevalence and context of broadcast agreements and whether broadcaster agreements affect its media policy goals of competition, localism, and diversity. FCC agreed with the recommendation and noted that it has taken initial steps to address the recommendation, including proposing disclosure of sharing agreements.

View GAO-14-558. For more information, contact Mark L. Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

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What GAO Found

Local television stations use broadcaster agreements to share services with one another, but data are limited on the prevalence of these agreements. Stations use agreements to share or outsource a range of services, such as selling advertising time and producing local news. Agreements are referred to by a variety of names and two—joint sales agreements and local marketing agreements—have regulatory definitions; other types of agreements have commonly been referred to as shared service agreements or local news service agreements. Stations may participate in more than one type of agreement. Federal Communications Commission (FCC) officials and industry representatives could not identify a central data source that tracks all broadcaster agreements. Station owners and financial analysts said that agreements are more prevalent in small markets because they have lower advertising revenues than large markets. Further, FCC officials and stakeholders said that agreements are becoming more prevalent, and stakeholders stated that economic factors, including declining advertising revenues, drive the use of agreements.

Stakeholders expressed mixed views on the effects of broadcaster agreements. Consumer groups raised concerns that agreements in which stations share news resources can lead to duplicative content in local newscasts. Station owners counter that the agreements are needed to allow some stations to continue providing news and allow other stations that previously did not provide news to begin doing so. In addition, some agreements include provisions that allow stations to jointly negotiate for their signals to be carried by cable and satellite providers. Cable and satellite providers argue that these agreements increase stations' negotiating leverage and thereby contribute to higher prices for cable and satellite service. In contrast, station owners counter that these concerns are overstated. Comprehensive data are not available to evaluate this issue, because the negotiations are subject to nondisclosure agreements, and there is no data source identifying which stations participate in agreements.

FCC evaluates broadcaster agreements that occur in the context of a merger or acquisition, but it has not collected data or completed a review to understand the use and effects of broadcaster agreements. FCC's recent regulatory approach has been to evaluate broadcaster agreements that occur as part of a merger or acquisition and to propose specific remedies as needed. To promote its media policy goals of competition, localism, and diversity, FCC established media ownership rules that limit the number of stations an entity can own or control in a local market. Station owners and consumer groups said that broadcaster agreements are used in situations where common ownership of stations is prohibited by FCC's media ownership rules. FCC has stated that it is unable to determine the extent to which broadcaster agreements affect its policy goals and media ownership rules. Specifically, FCC does not collect data and has not completed a review on the prevalence of agreements, how they are used, or their effects on its policy goals and media ownership rules. Yet federal standards for internal control note the importance of agencies' having information that may affect their goals. Without data and a fact-based analysis of how agreements are used, FCC cannot ensure that its current and future policies on broadcaster agreements serve the public interest.

Contents

Abbreviations

DMA	designated market area
DOJ	Department of Justice
FCC	Federal Communications Commission
JSA	joint sales agreement
LMA	local marketing agreement
LNS	local news service agreement
MVPD	multichannel video programming distributor
RTDNA	Radio Television Digital News Association
SSA	shared service agreement

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
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June 27, 2014

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science, and Transportation
United States Senate

Dear Mr. Chairman:

Local television stations play an important role in educating, entertaining, and informing the citizens they serve. Congress and the Federal Communications Commission (FCC) have recognized the importance of this role by allowing local television stations to use the public airwaves to broadcast their signals, and by giving stations specific rights with respect to carriage of their broadcast signals on cable, satellite, and other subscription video services. In return, Congress and FCC have established certain obligations for local television stations, such as requiring that stations operate in the public interest. The laws and regulations outlining how local television stations should serve the public interest have evolved over time and become less prescriptive. However, three long-standing policy goals have guided FCC's regulation of stations: competition, localism, and diversity. To advance these policy goals, Congress empowered FCC, and FCC has implemented broadcast ownership rules that limit the number of stations an entity can own or control locally and nationally. Since these rules were established, the media landscape has evolved, resulting in the proliferation of cable networks and Internet outlets, to provide citizens a broader array of content than was once the case. This increase in media competition has presented economic challenges for local television stations. In some cases, stations have entered into broadcaster agreements that allow them to share resources with other stations or contract out certain services. However, some policymakers and public interest groups have expressed concerns that such agreements allow competing stations to collaborate, avoid FCC's media ownership limits, and could negatively affect FCC's policy goals of competition, localism, and diversity.

You asked us to review issues related to the use of broadcaster agreements. This report reviews (1) what is known about the uses and prevalence of broadcaster agreements; (2) stakeholders' views on the effects of broadcaster agreements on programming and the subscription video industry; and (3) the extent, if at all, that FCC has regulated these agreements.

To address these objectives, we conducted a literature review that included relevant FCC regulations and rulemakings, prior GAO reports, academic studies, industry and advocacy reports, and media articles. We verified information from the literature review through interviews with FCC and Department of Justice (DOJ) officials. We also interviewed a variety of stakeholders that included: representatives of broadcast networks; local television station owners; cable, satellite, and other subscription video service providers; trade associations; labor groups; consumer groups; financial analysts; and other individuals with knowledge of the broadcast industry. We selected local television station owners and subscription video service providers that filed comments in FCC's 2010 media ownership proceeding and that varied in the number of stations they owned or the number of subscribers they served, respectively; we selected other stakeholders by reviewing prior GAO reports, academic studies, and comments filed in FCC media-ownership and related proceedings, and through recommendations from other interviewees.

To assess how broadcaster agreements are used in the television industry, we conducted nongeneralizable case studies of six markets (three in which local stations used broadcaster agreements and three in which they did not) to understand how agreements were used in specific markets and obtain the perspective of the various station owners in those markets; we selected the case study markets from small and medium-sized markets.[1] To assess what is known about the prevalence of broadcaster agreements, we interviewed stakeholders about the comprehensiveness of data collected by FCC, private-sector, public-interest, and academic sources on the number of broadcaster agreements nationwide. In addition, we acquired data from BIA/Kelsey, a market-research firm, to assess the prevalence of certain types of agreements, the stations involved in the agreements, and the size of the markets served by the stations. We tested the reliability of BIA's data by reviewing stakeholder opinions on the reliability and accuracy of the data, reviewing existing information about the data, and obtaining information

[1]The three markets that we selected that had a broadcaster agreement were Casper-Riverton, Wyoming; Topeka, Kansas; and Paducah, Kentucky. The three markets we selected that did not have a broadcaster agreement were Mankato, Minnesota; Columbia-Jefferson City, Missouri; and Madison, Wisconsin. During interviews with station owners in the Madison, Wisconsin, market, we learned of a broadcaster agreement in that market. However, as our case studies were selected as illustrative examples only, the presence of such an agreement does not pose a methodological limitation to our review.

from BIA officials about how they collect the data; we found the data sufficiently reliable for our purposes.

To determine stakeholders' views on the effects of broadcaster agreements on programming and the subscription video industry, we reviewed FCC dockets and interviewed representatives of broadcast networks; local television station owners; cable, satellite, and other subscription video service providers; trade associations; labor groups; consumer groups; financial analysts; and other individuals with knowledge of the broadcast industry to collect their arguments and any supporting studies and data on the effects of broadcaster agreements. To determine the extent to which FCC has regulated broadcaster agreements, we reviewed relevant FCC dockets and rulings and interviewed FCC officials. See appendix I for more information about our scope and methodology.

We conducted this performance audit from July 2013 to June 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

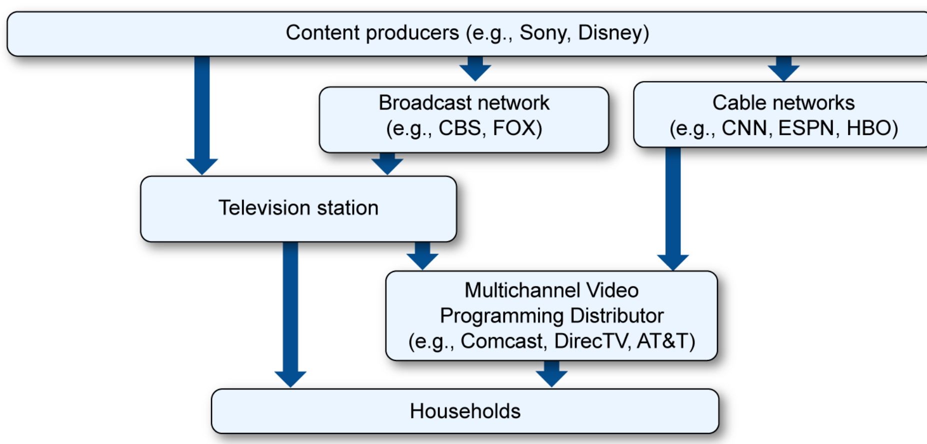
Background

Television Broadcast Industry

Typically, households receive television programming through over-the-air broadcasts or a subscription video service. Broadcast television provides free over-the-air programming to the public through local television stations; according to FCC, almost 10 percent of households exclusively rely on over-the-air television. In contrast, consumers pay fees to video providers, including cable operators, satellite providers, or telecommunications companies—collectively referred to as multichannel video programming distributors (MVPD)—for subscription video service that includes local television stations as well as cable networks, such as CNN and ESPN. Television broadcast stations are licensed by FCC and are permitted to transmit a video broadcast signal on a specific radio frequency in a particular area and at a particular strength.

Television stations produce, acquire, and distribute programming. Some stations are owned by or affiliated with one of the four major broadcast networks (ABC, CBS, FOX, and NBC). If a local station is owned and operated by a network, it is referred to as an “owned and operated” station; if it is independently owned but affiliated with the network, it is referred to as an affiliate station. Owned and operated and affiliated stations carry network programming and network-inserted advertisements during specific time periods. For example, a station that is affiliated with FOX has an agreement with the network that allows it to show FOX programs at particular times of the day. Aside from the network-furnished programming, including prime time shows, afternoon soap operas, national news programs, and sports, local stations fill in the rest of the week’s programming time with local programming (such as local news) and syndicated programming.[2] In addition, there are independent stations that are neither owned by nor affiliated with a broadcast network. Figure 1 illustrates how television programming is distributed, including broadcast and cable network programming.

Figure 1: Television-Programming Distribution Flow



Source: GAO. | GAO-14-558

[2]Syndicated programming is non-network programming or post-network programming (including reruns, game shows, and daytime talk shows) that is licensed directly to individual television stations. *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* ¶ 187, 28 FCC Rcd. 10587-88 (July 22, 2013) (Annual Report).

Local commercial television stations earn the majority of their revenue by selling advertising time.[3] In particular, advertising aired during local news represents a substantial portion of a local commercial station's revenue. According to the 2013 Radio Television Digital News Association (RTDNA)/Hofstra University survey of 1,377 television stations, news represented an average of about 49 percent of station revenue, with that percentage increasing as market size decreased.[4] The survey also found that of the stations surveyed, a total of 717 stations provided their own local news programming, and 235 stations received and aired news produced by another station. Many stations also receive compensation from MVPDs, known as retransmission consent, which is discussed later in this section.

Local broadcast television remains an important source of news for Americans; however, consumers are also getting their news from cable news networks, such as CNN, as well as online via computers and mobile devices. According to the Pew Research Center's analysis of 2013 Nielsen data, over the course of a month, 71 percent of U.S. adults watched local television news, 65 percent watched network news, and 38 percent watched cable news.[5] However, the audience for local news has declined since 2007, with viewership down 3 percent for morning newscasts, 12 percent for early evening newscasts, and 17 percent for late night newscasts.[6] In addition, more Americans are also getting their news online via desktop and laptop computers or a mobile device. For example, according to another Pew Research Center report, in 2013, 82

[3]In contrast, local noncommercial educational stations, such as PBS affiliates, are owned and operated by a public agency or nonprofit private foundation, corporation, or association; these stations generally meet their operating expenses with contributions from viewers and public-interest foundations, and may receive some government support. 47 U.S.C. § 397; *see*, also, 47 U.S.C. § 338(k)(6).

[4]2013 RTDNA/Hofstra University Survey. RTDNA is a professional organization serving the electronic news profession. RTDNA members include local and network news executives, news directors, producers, reporters, digital news professionals, educators, and students. The RTDNA/Hofstra University Survey is an annual survey of operating television stations.

[5]Kenneth Olmstead et al., "How Americans Get TV News at Home," *Pew Research Journalism Project* (Oct. 11, 2013), accessed Apr. 25, 2014, http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/.

[6]Katerina Eva Matsa, "Local TV Audiences Bounce Back," *Pew Research Center* (Jan. 28, 2014), accessed Apr. 25, 2014, http://www.pewresearch.org/fact-tank/2014/01/28/local-tv-audiences-bounce-back/.

percent of Americans said they used a desktop or laptop computer to access news, whereas 54 percent said they accessed it on a mobile device (cell phone or tablet).[7]

Regulatory Environment

FCC assigns licenses for television stations to use the airwaves expressly on the condition that licensees serve the public interest and are responsive to the needs of the local community. Section 310 of the Communications Act of 1934[8] outlines the limitations on holding and transferring broadcast licenses. For example, section 310(d) requires prior Commission approval before a license is assigned or transferred; when FCC is reviewing an application for a license assignment or transfer, it must determine whether the public interest, convenience, and necessity will be served by granting the application.[9] Toward this end, FCC has established three policy goals:[10]

- *Competition.* FCC seeks to create a marketplace in which broadcast programming meets the needs of consumers and has stated that competition drives stations to invest in better local programming. When reviewing competition in local television markets, FCC considers competition for viewers and advertisers.[11]
- *Localism.* FCC seeks to ensure that each station meets the needs and issues of the community that it is licensed to serve with the programming that it offers.
- *Diversity.* FCC seeks to maintain and enhance diversity based on the idea that diverse ownership among media outlets increases the number of viewpoints in broadcast content compared to what would otherwise be the case in a more concentrated ownership structure.[12]

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[7]Pew Research Center, "Key Indicators in Media & News," *State of the News Media 2014* (Mar. 26, 2014), accessed Apr. 24, 2014, http://www.journalism.org/2014/03/26/state-of-the-news-media-2014-key-indicators-in-media-and-news/.

[8]Communications Act of June 19, 1934, § 310, as amended, codified at 47 U.S.C. § 310 (the Communications Act).

[9]47 U.S.C. §310(d).

[10]*In the Matter of 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules*, ¶ 14, FCC 14-28, 2014 WL 1466887, at p. 7 (Apr. 15, 2014) (2014 Quadrennial Review FNPRM and Report and Order).

[11]*2014 Quadrennial Review FNPRM and Report and Order*, ¶ 22, at p. 11.

[12]*2014 Quadrennial Review FNPRM and Report and Order,* ¶ 14, at p. 7.

To advance these policy goals, Congress empowered FCC, and FCC has implemented rules that limit the number of stations an entity can own or control locally and nationally.

- *Local television ownership limit.*[13] Under the local television ownership limit, a single entity can own two television stations in the same designated market area (DMA)[14] if (1) at least one of the stations is not ranked among the top-four stations in terms of audience share and (2) at least eight independently owned and operating full-power commercial or noncommercial television stations would remain in the DMA.[15] An existing licensee of a failed, failing, or unbuilt television station may seek a waiver of the rule.[16]
- *National television ownership cap.*[17] Subject to compliance with other ownership rules, a single entity can own any number of television stations nationwide as long as the stations collectively reach no more than 39 percent of national television households.
- *Cross-ownership limits*. FCC has also established rules limiting cross-ownership of media outlets, such as a newspaper and television station or a radio and television station in the same market.[18] For

[13]47 C.F.R. § 73.3555(d).

[14]To measure television viewing, Nielsen Media Research divided the country into 210 local television markets, also referred to as designated market areas (DMA). Each DMA consists of all the counties whose largest viewing share is given to stations of the same market area.

[15]Alternatively, a single entity can own multiple television stations in the same market if the stations' signal contours (coverage areas) do not overlap. 47 C.F.R. § 73.3555(b)(1).

[16]A "failed" station is one that has been dark for at least 4 months or is involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings. Under the standard for "failing" stations, a waiver is presumed to be in the public interest if the applicant satisfies each of the following criteria: (1) one of the merging stations has had an all-day audience share of 4 percent or lower, (2) the financial condition of one of the merging stations is poor, and (3) the merger will produce public interest benefits. Under the standard for "unbuilt" stations, a waiver is presumed to be in the public interest if an applicant meets each of the following criteria: (1) the combination will result in the construction of an authorized but as yet unbuilt station and (2) the permittee has made reasonable efforts to construct the licensed facility and has been unable to do so. (47 C.F.R. § 73.3555 Note 7 and *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting,* ¶ 86, 14 FCC Rcd. 12903, 12941 (1999) (Local TV Ownership Report and Order).

[17]*See* 1996 Act, § 202(c), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99.

[18]47 C.F.R. § 73.3555(c) and (d).

example, the newspaper/broadcast cross-ownership rule prohibits ownership of a daily newspaper and television stations that serve the same market.

FCC developed attribution rules to determine what interests should be counted when applying these media ownership limits.[19] FCC's attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence such that the holders have a realistic potential to affect the programming decisions or other core operating functions of licensees.[20] If an entity, such as a station ownership group, is found to have an attributable interest in a station, that station would be included when determining whether the entity has exceeded FCC's ownership limits.

FCC has several carriage and programming rules that are designed to support the provision of local content by local television stations. These rules set forth the conditions under which MVPDs carry stations' content. Some key rules that affect carriage and programming include:

- *Must carry and carry-one carry-all*.[21] The must carry and carry-one carry-all rules address the right of television broadcast stations to have their signals carried by MVPDs serving their markets. Stations that select must-carry or carry-one carry-all status must be carried by the MVPDs serving the station's market, but receive no compensation from the MVPDs.
- *Retransmission consent*.[22] Retransmission consent refers to permission allowing an MVPD to retransmit a station's signal when the station chooses not to elect carriage through the must carry or carry-one carry-all rules. By opting for retransmission consent,

[19] 47 C.F.R. § 73.3555, Notes.

[20] *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests,* ¶ 40, 14 FCC Rcd. 12559, 12580 (1999) (Report and Order).

[21] The must carry rule enables each commercial and noncommercial television broadcast station to require cable operators in its local market to carry its signal. 47 U.S.C. § 534(a); 47 C.F.R. § 76.56. Under the carry-one carry-all provision, any satellite operator that chooses to serve a particular local area (by carrying an in-market local station) must also carry upon request the signal of all television broadcast stations located within the same local market. 47 U.S.C. § 338; 47 C.F.R. § 76.66.

[22] 47 U.S.C. § 325(b); 47 C.F.R. § 76.64.

stations give up the guarantee of carriage in exchange for the right to negotiate for the terms of carriage, including potential compensation. Retransmission rights are negotiated directly between a station and the MVPD. We have previously found that after the 1992 Act was enacted, negotiations for retransmission consent generally involved "in kind" compensation to local broadcasters, such as carriage of new, affiliated cable networks.[23] However, in recent years, financial compensation has become more common and retransmission fees received by local stations have increased.

By statute, FCC is required to review its media ownership rules every 4 years—the quadrennial review—and determine whether any such rules remain necessary in the public interest.[24]

Television Stations Are Increasingly Sharing Services through a Variety of Broadcaster Agreements, but Data on the Prevalence of These Agreements Are Limited

Television Stations Can Share a Variety of Services through Broadcaster Agreements

Television stations can enter into agreements with other stations to share or provide a variety of services. The agreements between stations can involve either two or more stations sharing a resource or one station providing a service to another station. Common services that can be shared or provided between stations include:

[23]GAO, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Washington, D.C.: Oct. 24, 2003).

[24]1996 Act, § 202(h), 110 Stat. 56, 111-112, as amended by the Consolidated Appropriations Act, 2004, § 629, 118 Stat., 99.

- *News resources.* Stations can enter into an agreement to share news-gathering resources, such as helicopters, reporters, cameramen, video footage, and graphics. For example, in 2009, three television stations in Phoenix, Arizona, entered into an agreement to share one news helicopter for aerial footage of news stories and traffic reporting.
- *Production and delivery of programming.* Two stations can enter into an agreement wherein one station produces another station's local news. For example, in West Palm Beach, Florida, E.W. Scripps Company station WPTV-TV (an NBC affiliate) produces newscasts for Raycom-owned WFLX (a FOX affiliate) at 7:00 to 9:00 a.m., 4:00 to 4:30 p.m., and 10:00 to 11:00 p.m.
- *Program acquisition.* Stations can enter into an agreement wherein the licensee or owner of one station can negotiate another station's affiliation agreement with a broadcast network. For example, one station group owner told us that it negotiated the renewal of affiliation agreements at the request of the station owners that it has agreements with.
- *Joint retransmission consent negotiations*. A station owner can contract out its retransmission consent negotiations with MVPDs to another station owner, meaning that the retransmission consent fees are handled during one negotiation, despite the fact that the stations are not owned by the same company. As discussed later in this report, in March 2014, FCC prohibited such arrangements if they involve two or more separately owned top-four stations (based on audience share) in the same market.
- *Advertising sales*. A licensee or owner of a station can authorize another station to sell its advertising time.
- *Station engineering.* One station can provide technical support for another station. For example, one station can monitor, maintain, repair, and install another station's technical equipment and ensure the quality of the other station's on-air technical performance.
- *Office services.* One station can provide back office services for another station, such as providing office space, accounting services, and other general administrative services.

We identified four common types of agreements that may include combinations of the services described above. In some cases, FCC has established regulatory definitions for these agreements; in other cases, it is a common industry term that may be used to characterize an agreement, but there is no regulatory definition. The services provided by or shared between stations fall under the following common types of broadcaster agreements:

- *Joint sales agreement (JSA).*[25] A JSA is an agreement in which one station is allowed to sell the advertising time for another station in exchange for a percentage of the advertising revenues, a flat fee, or some other consideration. For example, stations WEEK-TV and WHOI-TV in Peoria, Illinois, entered into a JSA agreement in 2009. According to the agreement, WEEK-TV sells advertising time and provides other services for WHOI-TV in exchange for a monthly commission equal to 30 percent of the total amount of net advertising revenue that WEEK-TV sells for WHOI-TV.
- *Local marketing agreement (LMA).*[26] Also referred to as time brokerage agreements, LMAs allow one or more parties other than the station's owner to purchase blocks of time and then provide programming and sell advertising in that block of time. For example, in Austin, Texas, KXAN (an NBC affiliate) entered into an LMA with KNVA, an affiliate of The CW Network. Under the agreement, KXAN provides news, sports, informational, and entertainment programming to KNVA. According to the agreement, KXAN's owner (LIN Media LLC) has the sole right to sell advertising time to be placed in all programming broadcasted on KNVA and also retains all advertising revenues from the advertising sales.[27] In exchange, KXAN's owner pays KNVA's owner an annual fee for the duration of the agreement.
- *Local news service agreement (LNS).* LNSs are agreements in which multiple stations in a local market share news-gathering resources. LNSs can include sharing photographers, news helicopters, or satellite trucks to cover a news event. For example, stations can rely on one camera crew shared by all participating stations to get footage of a press conference rather than covering it individually.
- *Shared service agreement (SSA).* SSA is a broad term that can include a variety of services. SSAs can include arrangements wherein one station produces another station's news content and also

[25]See 47 C.F.R. § 73.3555 Note 2k.

[26]See 47 C.F.R. 73.3555 Note 2j.

[27]This agreement was created prior to a 1999 FCC order that made LMAs attributable if an entity programs more than 15 percent of another in-market station's weekly programming hours. *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, ¶ 55, 14 FCC Rcd. 12585.

provides operational, administrative, and programming support.[28] For example, according to Nexstar Broadcasting Group, Inc.'s comments filed with FCC in 2012, Mission Broadcasting Inc. paid Nexstar approximately $7.2 million for producing more than 7,400 hours of local news on 12 of its stations, and also for engineering, accounting, and other back office administrative assistance provided under the parties' SSAs.

The various services provided by and shared between stations mentioned above fall under the four common types of broadcaster agreements (see table 1). Stations may have several agreements in place, such as an SSA and JSA, or a single agreement that includes components typical of different types of agreements. For example, according to a March 5, 2012, filing from the Coalition to Preserve Local TV Broadcasting, Fort Wayne, Indiana, stations WISE-TV and WPTA (TV) operated under a JSA and SSA agreement; WISE-TV provides news programming, sales, and other back office services for WPTA (TV) and both stations transmit from the same tower. Stakeholders told us that some companies have relationships through which one company enters into a series of broadcaster agreements to allow another company to provide the services for most of its stations. For example, as mentioned above, Mission Broadcasting, Inc. typically enters into broadcaster agreements with Nexstar Broadcasting Group, Inc.

[28]In 2014, as part of a proposal to require the disclosure of SSAs, FCC requested comment on defining an SSA as any agreement or series of agreements, whether written or oral, in which (1) a station, or any individual or entity with an attributable interest in the station, provides any station-related services, including, but not limited to, administrative, technical, sales, or programming support, to a station that is not under common ownership (as defined by the Commission's attribution rules); or (2) stations that are not under common ownership (as defined by the Commission's attribution rules), or any individuals or entities with an attributable interest in those stations, collaborate to provide or enable the provision of station-related services, including, but not limited to, administrative, technical, sales, or programming support, to one or more of the collaborating stations. FCC concluded that this broad definition would include LNSs. *2014 Quadrennial Review FNPRM and Report and Order*, ¶¶ 330, 331, at p. 153.

Table 1: Common Types of Services Provided under Different Broadcaster Agreements

	Agreements			
Services	**Joint sales agreement**	**Local marketing agreement**	**Local news service agreement**	**Shared service agreement**
Sharing of news resources (e.g., cameras, helicopter)			X	X
Program production		X	X	X
Program acquisition		X		X
Advertising sales	X	X		
Station engineering				X
Office (e.g., accounting)				X

Source: GAO analysis based on interviews with stakeholders and document reviews. | GAO-14-558.

Note: While the regulatory definition of a joint sales agreement focuses on the sale of advertising, these agreements have been written to include the provision of other services, such as programming or technical services.

While Data Are Limited on the Number and Nature of Broadcaster Agreements, Stakeholders Report That Agreements Are Becoming More Prevalent

Data Limitations

FCC officials and industry representatives were unable to identify a central data source that tracks all broadcaster agreements. According to FCC officials, the Commission does not track or have a central data source on the number of agreements, the stations involved, or services provided through the agreements. Stations are required to disclose and file certain types of agreements with FCC, but not all agreements. In particular, FCC regulations require stations to file JSAs and LMAs in their public inspection files to provide the local community with information on stations' programming and operations.[29] In addition, if one station uses an LMA to provide more than 15 percent of the programming hours for another same-market station, FCC requires the stations involved to file

[29]Broadcast stations are required to maintain a "public file" that contains information about each station's operations and service. A station's public inspection file includes a variety of information, including political time sold or given away, data on ownership of each station, and active applications each station has filed with the Commission. 47 C.F.R. § 73.3526.

that agreement with the Commission.[30] In April 2014, FCC released an order requiring that stations file copies of JSAs with the Commission if the JSA involves one entity's selling more than 15 percent of another same-market station's weekly advertising time.[31] There are no similar filing requirements for SSA and LNS agreements. However, in April 2014, FCC requested comments on whether it should require stations to disclose SSAs.[32] Station owners must submit copies of all their agreements when they file an application for a license assignment or transfer, which typically occurs with a merger or acquisition, and they must describe any agreements or contracts in their biennial ownership reports submitted to FCC; however, this would not include SSAs or LNSs.

Some stakeholders have attempted to track the number and nature of these agreements; however, these studies have limitations and do not cover all the types of agreements. For example, BIA/Kelsey surveys station personnel and reviews press releases to collect data on the number of JSA and LMA agreements, but it does not track SSA or LNS agreements.[33] In addition, other stakeholders have reported on the number of DMAs in which stations have an agreement, but the findings of such reports have varied as the studies used different methodologies. For example, some studies identified agreements by searching publicly available documents while others contacted stations or MVPDs directly.

Prevalence of Agreements

Based on the JSA and LMA data available from BIA/Kelsey and from our interviews with industry representatives, broadcaster agreements appear to be less prevalent in large markets. In particular, while 4 percent of stations in the largest 25 DMAs participated in a JSA or LMA, or both, in

[30]47 C.F.R. § 73.3613.

[31]*2014 Quadrennial Review FNPRM and Report and Order*, App. 2, ¶¶ 2, at p. 182-183.

[32]*2014 FNPRM and Report and Order,* ¶ 328, at p. 152.

[33]According to our analyses of BIA/Kelsey data, as of February 6, 2014, 71 of 210 DMAs had at least one full-power commercial main or satellite station participating in a JSA or LMA agreement. Data on SSA and LNS agreements were not available. BIA/Kelsey defines a satellite station as a full power commercial station that rebroadcasts the same programming as a station in the same market or an adjacent market. The station may have staff on site due to the production of local news broadcasts. The remainder of the programming comes from the parent (primary) station.

February 2014, 20 percent of the stations in DMAs ranked 101 through 150 based on size participated in these agreements (see table 2 below).[34]

Table 2: Percentage of Full-Power Commercial and Satellite Stations with a Joint Sales Agreement (JSA) or Local Marketing Agreement (LMA), or Both, by Designated Market Area (DMA), as of February 6, 2014

DMAs (ranked from largest to smallest)	Percentage of full-power commercial stations with a JSA or LMA, or both
1–25	4%
26–50	12%
51–100	16%
101–150	20%
151–210	12%

Source: GAO analysis of BIA/Kelsey data. | GAO-14-558.

Note: The data do not include shared service agreements or local news service agreements and multicast channels (multiple channels aired by a single broadcast station). Satellite stations, as defined by BIA/Kelsey, are full power commercial stations that rebroadcast the same programming as a main station in the same market or an adjacent market, but may also have staff on site for the production of local news broadcasts.

Broadcasters and financial analysts told us that one factor contributing to the greater use of agreements in small to medium markets is that stations in these markets receive less advertising revenue than stations in large markets. The Pew Research Center's analysis of BIA/Kelsey data shows that in 2011, stations in the largest 25 local television markets had average revenues substantially greater than stations in smaller markets.[35] In particular, stations in the largest 25 DMAs received, on average, advertising revenues of $57 million per year, while stations in DMAs ranked 151 through 210 according to size received $3 million (see table 3). However, the costs of broadcasting (cameras, vehicles, bandwidth, monitors, and other production infrastructure) can be similar across small

[34]DMAs are ranked in order of size, with the largest market (DMA 1) being New York City. Stations in large markets may still enter into agreements, particularly LNS agreements. For example, NBC and FOX entered into agreements to share camera crews in some markets, including Chicago, Dallas, Los Angeles, New York, Philadelphia, and Washington.

[35]Pew Research Center, "All Market Sizes Lost Revenue on Average in 2011," *The State of the News Media 2013* accessed May 2, 2014, http://stateofthemedia.org/2013/local-tv-audience-declines-as-revenue-bounces-back/local-tv-by-the-numbers/24-all-markets-sizes-lost-revenue-on-average-in-2011/.

and large markets. Thus, broadcasters in small- and medium-sized markets are more likely to enter into agreements to share or reduce costs.

Table 3: Average Local Television Stations' Revenue by Designated Market Area (DMA) in 2011

DMAs (ranked from largest to smallest)	Average local television stations' revenue (dollars in millions)
1–25	$57
26–50	$21
51–100	$11
101–150	$6
151–210	$3

Source: Pew Research Center 2013 State of the Media Report's analysis of BIA/Kelsey data. | GAO-14-558.

Note: Advertising comprises the bulk of a station's revenue.

Stakeholders also noted that stations in small and medium markets may be more likely to enter into agreements because FCC's ownership rules disproportionately affect stations in these markets. Specifically, as mentioned previously, FCC rules allow a single entity to own two television stations in the same DMA if at least one of the stations is not ranked among the top four stations in terms of audience share and at least eight independently owned and operating full-power television stations would remain in the DMA. Small markets are less likely to have enough stations to meet these requirements. For example, the smallest market with 9 or more stations, which could support a merger, is the Spokane, Washington, market.[36] Thus, stations in smaller markets may use broadcaster agreements to gain operating efficiencies that they cannot obtain through common ownership.

[36]Our analysis was based on BIA/Kelsey data on the number of stations and the corresponding parent company in each market. For the purposes of our analysis of the number of independent stations in a market, we did not include stations based in Mexico that also transmit into U.S. DMAs. In addition, there are markets larger than Spokane, Washington—such as Baltimore, Maryland—that do not have enough independently owned stations to support a merger.

According to FCC and industry representatives, agreements are being used more often in recent years. Station owners and financial analysts noted that factors driving the use of agreements include declining advertising revenues and an increase in station acquisitions and mergers, as described below.

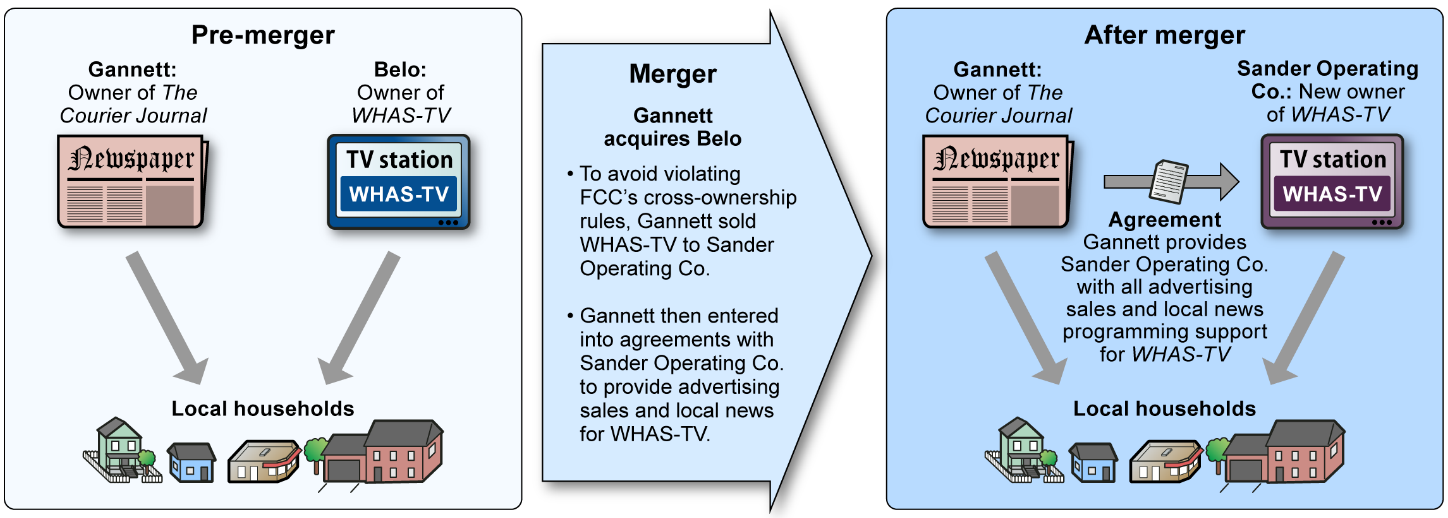
- *Advertising revenues.* The average advertising revenue for stations fell during the 2007-2009 recession, and has not returned to pre-recession levels. Station owners stated that this was part of a long-term trend of declines in advertising revenues for local television stations and attributed it to increasing competition in recent years for viewers and advertisers from cable and non-traditional media outlets, such as Facebook. The average over-the-air local television station's advertising revenue has decreased 10 percent from 2004 to 2012.[37] According to industry representatives, some stations are entering into agreements to help reduce operating costs to offset the dilution of advertising revenue. However, some consumer groups have argued that the recent decline in advertising revenues is the result of the recession and that advertising revenue has been on the rise since the recession ended in 2009. Specifically, between 2009 and 2012, average over-the-air advertising revenues have increased 28 percent. Consumer groups have also noted that other factors have improved station value, such as increased political advertising and a growth in retransmission consent fees. FCC sought comment on issues related to stations' competition for audience share and advertising revenue in 2014.[38]
- *Station acquisitions and mergers.* In some instances, agreements are components of a larger transaction, such as an acquisition or merger. According to the Pew Research Center, in 2013, there were a large number of mergers and acquisitions in the television broadcast industry; the number of acquisitions of full-powered local stations increased from 95 acquisitions representing $1.9 billion in 2012 to 290 acquisitions representing $8.8 billion in 2013. During a merger or acquisition, stations may enter into agreements that allow them to share services and gain efficiencies while still avoiding violating FCC's ownership rules that limit the number of media outlets an entity can

[37]The estimates are based on the Pew Research Center's Journalism Project. The estimates are for over-the-air advertising revenue, do not include digital or mobile advertising revenue, and are based on Pew's analysis of BIA/Kelsey data.

[38]*2014 Quadrennial Review FNPRM and Report and Order,* ¶¶ 20, 24, at pp. 9-10, 11-12.

own or control locally and nationwide. For example, as depicted in figure 2, when Gannett acquired Belo's television stations in 2013, it entered into broadcaster agreements for stations that were located in markets where Gannett already owned newspapers or stations and was thus prohibited from taking ownership of those stations through the merger. In one of the affected markets, Louisville, Kentucky, Gannett owns *The Courier Journal*, a newspaper; to avoid violating FCC's cross-ownership rules, Gannett sold the newly acquired Belo station, WHAS-TV, in Louisville, to Sander Operating Co. and entered into agreements so that Gannett would handle all ad sales and provide local news for the station.

Figure 2: Example of a Merger-Generated Shared Service Agreement



Source: GAO analysis of Federal Communications Commission document. | GAO-14-558

Stakeholders Have Mixed Views on the Effects of Broadcaster Agreements on Television Programming and the Subscription Video Industry

Programming

In filings with FCC and interviews with us, consumer groups and labor representatives raised concerns that some broadcaster agreements negatively affect local news programming. In particular, these groups stated that agreements in which news resources are shared or outsourced can lead to duplicative content in local newscasts. In reports created or commissioned by consumer and labor groups, researchers have identified stations involved in broadcaster agreements using the same reporter, anchor, scripts, video, or graphics. The extent to which such resources are shared varies with each agreement, but one case highlighted by consumer and labor groups is an SSA between three stations in Honolulu, Hawaii, that resulted in consolidated news operations and the stations' airing identical coverage of a local election. Consumer groups have also filed comments with FCC stating that the use of broadcaster agreements leads to less diversity in programming and may negatively affect minority ownership by allowing companies to circumvent media ownership restrictions. For example, in comments filed with FCC, a consortium of consumer groups stated that SSAs may reduce opportunities for minority and women entrants to acquire stations by allowing struggling stations to avoid the requirements for a failed station waiver.[39]

[39]Under 47 C.F.R. § 73.3555 (note 7), a failing station can get a waiver of the local television limit to sell to an in-market broadcaster if it can show that the in-market broadcaster is the only entity willing and able to operate the station. This requirement was crafted in order to allow opportunities for new entrants, including minorities and women, to purchase broadcast stations.

Station owners counter that these agreements do not necessarily lead to duplicative local news programming and can, in fact, better serve residents by providing news at different times. Station owners and a trade association representative explained that even if two stations in the same market are jointly owned or controlled, the local news on each station will differ, because each station needs to draw viewers from different audiences. For example, one station owner told us that providing the exact same newscast on two different stations can lead to a cannibalization of both stations' audience ratings, advertising revenues, and profits, so it is in the stations' self-interest to maintain separate identities and target different audiences. Station owners also noted that agreements can be used to air news at different times of day. For example, some station owners told us that a local FOX–affiliated station may enter into an agreement to have a newscast produced by the local ABC-, CBS-, or NBC-affiliated station, meaning that the FOX station can air news at 10:00 p.m., while the other station airs its news at 11:00 p.m.[40]

In addition, broadcasters, station owners, and the financial analysts we interviewed told us that agreements can result in economic efficiencies that are needed in certain cases to allow a station to continue providing any news at all. They added that the agreements have also provided localism and diversity benefits by allowing some stations that previously did not provide news to begin doing so, or to add additional local programming. For example, in Wichita Falls, Texas, Nexstar's NBC station provides services that allowed the FOX station, which previously did not air local news, to air a 9:00 p.m. newscast. Similarly, a trade association told us that a JSA and SSA between stations owned by Schurz Communications Inc. and Entravision Holdings LLC resulted in the launch of Spanish-language news on a station in Derby, Kansas, making it the first and only Spanish-language local television news operation in the state. In our six case-study markets, some station owners who had not entered into agreements stated that this was because their station was strong economically and did not need an agreement.

[40]The FOX network airs 2 hours of network programming in the evening whereas ABC, CBS, and NBC air 3 hours. Thus, FOX affiliates can air their local news an hour earlier than ABC, CBS, and NBC affiliates.

Subscription Video Industry

MVPDs voiced concerns about the impact of broadcaster agreements on the subscription video industry. In some cases, stations involved in broadcaster agreements enter into joint negotiations with MVPDs regarding the retransmission consent fee the MVPDs will pay to carry the stations. We heard of two ways in which joint retransmission negotiations may occur:

- Two or more separately owned stations located in the same market enter into an agreement in which they are represented by one negotiator who negotiates the retransmission consent fees for the separately owned stations at once.
- In the case of large station groups, the company may represent all of its stations, as well as all of the stations it operates via broadcaster agreements, during the negotiations.

MVPDs opposed the use of joint negotiations by separately owned broadcast stations, particularly when the negotiations included multiple top-four stations (typically ABC, CBS, FOX, and NBC) in one market. MVPDs noted that the increased risk of losing more than one of the top-four stations in a given market gives the negotiating stations more leverage over the MVPDs. MVPDs said that the increased leverage can lead to higher retransmission consent fees that could be passed on to consumers.

Station owners and two of three financial analysts we interviewed counter that MVPDs overstated the extent to which joint negotiation of retransmission consent affects the final retransmission consent fee, and identified other factors affecting retransmission consent negotiations.[41] For example, we were told that in cases in which a broadcaster or station group owns multiple stations, the MVPD and station owner negotiate the retransmission consent terms for all of the owner's stations across multiple geographic markets. Station owners and MVPDs both noted that in such a negotiation, the amount of leverage each party—the station owner and MVPD—has depends on the overlap in the stations' audience size and the number of MVPD subscribers. For example, one MVPD stated that if a station group owns stations in 70 percent of the MVPD's service area, then the station group has more leverage because a

[41]The third analyst stated that there is disagreement among station owners regarding the extent to which the number of stations involved affects leverage in retransmission consent negotiations. He added that some station owners believe that leverage depends on the strength of a station's programming.

programming blackout would affect a large percentage of the MVPD's subscribers than would be the case if the station group only covered 10 percent of the MVPD's service area.

Comprehensive data are not available to evaluate the effect of broadcaster agreements on retransmission consent fees, but FCC recently took action to prohibit separately owned top-four stations in the same market from engaging in joint retransmission consent negotiations. Broadcasters and MVPDs have each submitted economic studies to FCC supporting their positions, and a few individual MVPDs provided data to FCC on how joint retransmission consent negotiations affected their retransmission consent fees. However, comprehensive data on the extent to which these agreements affect retransmission consent fees are not available, because retransmission consent fee negotiations are subject to non-disclosure agreements. Moreover, even if the retransmission consent fees were publicly available, as we noted earlier, it is not always known when stations are involved in a broadcaster agreement. On March 31, 2014, FCC adopted an order prohibiting separately owned, top-four stations in the same market from entering into joint retransmission consent negotiations with one another, or otherwise collaborating during retransmission consent negotiations.[42] In the order, FCC concluded that joint negotiation by same market, separately owned top-four stations eliminates price rivalry between and among stations that otherwise would compete directly for carriage on MVPD systems and the associated retransmission consent revenues. FCC added that joint negotiation gives such stations both the incentive and the ability to impose on MVPDs higher fees for retransmission consent than they otherwise could impose if the stations conducted negotiations for carriage of their signals independently.

DOJ took action in 1996 when three companies, each owning a network affiliate in Corpus Christi, Texas, agreed not to enter into a retransmission consent agreement with any cable operator until the operator had reached an agreement with all three companies. In the complaint, DOJ stated that the effect of this combination was to increase the price of retransmission consent and to restrain competition among the defendants

[42] *In the Matter of Amendment of the Commission's Rules Related to Retransmission Consent*, ¶¶ 1, 27, FCC-14-29, at pp. 2, 10-12, 2014 WL 1284562 (March 31, 2014) (Report and Order and FNPRM).

in the sale of retransmission rights.[43] DOJ officials told us that in this case, the companies were not involved in any other agreements, such as SSAs, and if they had been, DOJ would have evaluated whether there were efficiencies derived from the agreements that would have balanced against the anticompetitive effects.

FCC Has Not Completed a Review of the Use and Impacts of Broadcaster Agreements

FCC Evaluates Individual Broadcaster Agreements as Part of Its Review of Mergers and Acquisitions

FCC's recent regulatory approach has been to evaluate broadcaster agreements that occur as part of a merger or acquisition, and propose specific remedies as needed for individual cases.[44] When merging or acquiring stations, companies must obtain FCC approval to transfer the station licenses. As previously noted, companies may enter into broadcaster agreements during the course of a merger or acquisition if the newly acquired stations present ownership combinations that violate FCC's ownership rules. For example, in July 2013, FCC began a proceeding to review Tribune Broadcasting Company II's acquisition of 17 stations owned by Local TV Holdings. Since Tribune already owned newspapers in two of the markets served by Local TV's stations and would thus be prohibited under existing FCC rules from acquiring the stations, the acquisition included a provision transferring the licenses of those two stations to Dreamcatcher Broadcasting. The paperwork filed with FCC explained that Tribune would then enter into SSAs to provide technical, back-office, promotional (website), retransmission consent, and programming services to the Dreamcatcher stations. In the order

[43] *United States v. Texas Television, Inc.*, No. C-96-64, Competitive Impact Statement at p. 2 (S.D. Tex. 1996).

[44] FCC's Media Bureau will also review agreements if they are challenged by an outside party. For example, *see In the Matter of KHNL/KGMB License Subsidiary*, 26 FCC Rcd. 16087 (MB. 2011) (Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture).

approving the acquisition and corresponding agreements, the Media Bureau noted that the provisions of the arrangements were similar to agreements that it had approved in the past, and the agreements did not implicate its attribution rules, which are discussed below.[45]

FCC's review of agreements that occur as part of a merger or acquisition involves determining if the agreements constitute (1) an attributable interest that should be counted under an entity's ownership cap and (2) an unauthorized transfer of control of the station. In addition, as previously noted, when reviewing an application for a license assignment or transfer, FCC must consider whether the transaction serves the public interest, as required by the Communications Act.[46]

Attributable Interests

FCC reviews sharing agreements to determine if they constitute an attributable interest that should be counted under a licensee's ownership cap. As mentioned earlier, the broadcast attribution rules define which financial or other interests in a licensee that must be counted in applying the broadcast ownership limits. FCC's attribution rules and corresponding notes provide guidance to identify interests that create sufficient degrees of influence in other licensees' stations.[47] For example, when an entity programs more than 15 percent of a same-market station's weekly programming hours or sells more than 15 percent of a same-market station's weekly advertising time, it is deemed to have an attributable interest. Station owners told us, therefore, that they write agreements to avoid implicating the attribution rules.

Transfer of Control

Some broadcaster agreements have been challenged by consumer groups, competing stations, and MVPDs on the grounds that they either raise attribution issues or amount to an unauthorized transfer of control, given the functions that a station may cede to another station. For example, consumer groups have stated that agreements in which one company provides the studio, production facilities, tower, and local news for another company's station, while also controlling the sale of advertisements and entering into agreements such as securing the

[45] *In the Matter of the Applications of Local TV Holdings, LLC*, ¶ 17, 28 FCC Rcd. 16850, at p. 5 (MB. 2013) (Memorandum Opinion and Order).

[46] 47 U.S.C. §310(d).

[47] 47 C.F.R. § 73.3555, Notes.

station's debt or receiving a percentage of the station's profits, result in the station owner ceding control of the station to another party.

FCC has previously stated that its analysis of transfer of control "transcends formulas" and must be determined on a case-by-case basis.[48] FCC evaluates the following factors when determining who controls a station:

- *Programming*: Licensees must maintain ultimate control over their station's programming. Licensees may accomplish this by including contractual language providing that the licensee retains the ultimate authority over the selection and procurement of programming.
- *Personnel*: FCC requires licensees to have at least one managerial and one nonmanagerial employee at their stations, thus maintaining a "meaningful staff presence" as required by the Commission's main studio rule.[49] As long as the licensee meets this requirement and retains ultimate control of station operations pertaining to personnel responsibilities, the station providing services can place its employees at the station receiving the services. For example, FCC officials told us that if another station's employees are performing work related to functions the licensee of the station receiving services should control, then the employees should report to the licensee's managers.
- *Finances*: Payment for services rendered in broadcaster agreements may factor into a case-by-case determination of financial control. FCC officials noted that ultimate authority for all aspects of a station's financial operations must rest with the licensee, and FCC's analysis of control may consider payments for services. For example, FCC has previously approved agreements in which the licensee of the station receiving services retained 70 percent of cash flow resulting from operation of the licensee's station. FCC has also approved previous agreements where a flat fee for services rendered, as part of a shared-service agreement, was combined with a split of advertising revenue.

FCC has previously held that participation in an agreement does not necessarily establish a transfer of control, even if the agreement constitutes an attributable interest that should be counted under the

[48] *In re Application of Fox Television Stations, Inc.,* ¶ 154, 10 FCC Rcd. 8452, 8514 (1995) (Memorandum Opinion and Order).

[49] 47 C.F.R. § 73.1125(a).

ownership cap.[50] The licensee can delegate responsibility over a station as long as the licensee sets basic policy and retains ultimate control over the station. While there are some provisions codified in regulation, stakeholders told us that they typically use previously approved agreements as precedence on how to structure agreements so that they will garner FCC approval. However, in March 2014, the Media Bureau issued a notice stating that it would closely scrutinize applications for the assignment or transfer of a license that propose that two or more stations in the same market will (1) enter into an arrangement to share facilities, employees, or services or to jointly acquire programming or sell advertising and (2) enter into certain financial agreements, such as loan guarantees or options to purchase the station.[51] In explaining this notice, the Media Bureau cited concerns that such arrangements may weaken the economic incentive of licensees to control programming for their stations.

FCC Has Not Completed a Review of the Use and Impacts of Broadcaster Agreements

Station owners and consumer groups both told us that the media ownership rules have influenced the development of broadcaster agreements. Station owners told us that by limiting the number of stations an entity can own in a local market, the media ownership rules have led companies to enter into broadcaster agreements as a means of realizing economic efficiencies that they are unable to achieve through acquisitions. Consumer groups have raised concerns that the use of such agreements constitutes an "end-run" around the media ownership rules because they amount to common ownership of two stations in the same market. While both groups recognize the relationship between the media ownership rules and broadcaster agreements, each group proposes differing solutions. For example, station owners note that the agreements are not as efficient as joint ownership and state that the media ownership rules should be relaxed due to the increasing competition that broadcast stations face from new media, such as Internet-delivered programming. Conversely, consumer groups want the agreements made attributable

[50]See, e.g., *In re Application of WGPR,*10 FCC Rcd. 8140 (1995) (Memorandum Opinion and Order), vacated and remanded on other grounds, *Serafyn v. FCC*, 149 F3d 1213 (DC Cir., 1998). *In the Matter of Shareholders of Hispanic Broadcasting Corp.,* ¶ 20, 18 FCC Rcd. 18834, 18843 (2003) (Memorandum Opinion and Order).

[51]*Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, DA 14-330 2014 WL 988647 (MB, March 12, 2014) (Public Notice).

due to concerns that they increase media consolidation and reduce viewpoint diversity.

Similarly, in February 2014, DOJ filed comments with FCC noting that there has been a pronounced trend in broadcaster agreements that allow one station to control another station that is nominally owned by a separate entity, often called a "sidecar." DOJ stated that its investigations have revealed that these "sidecars" often exercise little or no competitive independence from the station providing services and that the extent of cooperation and integration with "sidecars" is so extensive that some television-station ownership groups even consolidate the financials of affiliated "sidecars" in their securities filings.[52]

FCC has stated that it is unable to determine the extent to which broadcaster agreements affect its media ownership rules and policy goals of competition, localism, and diversity. In 2014, FCC noted that public interest groups had raised meaningful concerns about the impact of agreements on its policy goals, but also stated that broadcast stakeholders had provided evidence that agreements may produce public interest benefits. FCC concluded that it lacked information about the scope and prevalence of broadcaster agreements and, thus, could not conduct a thorough analysis of the impact of the agreements on its rules and policy goals. Yet federal standards for internal control, which provide the overall framework for identifying and addressing major performance and management challenges, note the importance of obtaining information from external stakeholders that may have a significant impact on an agency achieving its goals.[53]

To some extent, this uncertainty exists because FCC has not collected data or completed a review to understand how broadcaster agreements are being used and the potential impacts with respect to its media ownership rules and the corresponding policy goals of competition, localism, and diversity. Specifically, FCC has not collected comprehensive data to determine the number of agreements, the services provided through the agreements, and other relevant data to

[52]For example, Sinclair Broadcast Group consolidates the financial data from several companies, including Cunningham Broadcasting Company and Deerfield Media.

[53]GAO, *Standards for Internal Control in the Federal Government,* GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

provide useful context, such as the market and station characteristics associated with the use of agreements. FCC has instead relied on comments from stakeholders on these issues and its experience reviewing individual transactions. As part of its 2010 Quadrennial Review of its ownership rules, FCC requested comment on making LNSs and SSAs attributable, and on how to determine the impact of such agreements on its policy goals of competition, localism, and diversity,[54] but it has not completed the review. FCC continued its assessment of these issues in its 2014 Quadrennial Review. Specifically, FCC's notice for its 2014 Quadrennial Review stated that it needed additional information to assess whether additional regulation of agreements is warranted, and solicited comments on requiring the disclosure of SSAs, tentatively defining the term in a manner that would include LNS agreements.[55] In the 2014 notice, the Chairman indicated that he instructed the Media Bureau to complete the review by June 30, 2016.

The lack of comprehensive data and the long delays in completing FCC's review makes it difficult to objectively determine the effect of the agreements on FCC's policy goals of competition, localism, diversity. Broadcasters, station owners, and consumer groups have provided counterarguments about the effect of broadcaster agreements on FCC's media ownership rules and its policy goals of competition, localism, and diversity. FCC has also recognized the benefits and potential harms associated with these agreements and has approved a number of agreements that occurred as part of a merger or acquisition. However, without conducting a fact-based analysis of how agreements are being used, FCC cannot ensure its current and future policies on broadcaster agreements serve the public interest.

Conclusions

Congress and FCC have long recognized the valuable role that local television stations play in informing citizens, and have adopted rules and regulations to ensure that broadcasters are serving the public interest. FCC seeks to achieve competition, localism, and diversity through its media ownership rules; however, restrictions on local television station

[54] *In the Matter of 2010 Quadrennial Regulatory* Review, ¶¶ 194-208, 26 FCC Rcd. 17489, 17564-17570 (2011) (NPRM).

[55] *2014 Quadrennial Review FNPRM and Report and Order,* ¶¶ 325 328-331 339, at p. 101-107.

ownership have remained largely unchanged since 1999. Meanwhile, the media marketplace is rapidly evolving and offering consumers a variety of platforms for receiving information and programming, including a number of Internet-based sources. This has led to increased competition between broadcast stations and other media platforms for viewers, content, and advertising. In addition, broadcaster agreements appear to be increasing and evolving with respect to the types of services provided. While few disagree that broadcaster agreements have evolved partly in response to FCC's restrictions on media ownership, broadcast stations and consumer groups offer varying perspectives on whether the agreements positively or negatively affect FCC's policy goals of competition, localism, and diversity.

FCC has recognized both sides of the issue, noting that broadcaster agreements can provide important public interest benefits, such as helping a struggling station improve its operations and adding local news programming in a market, but these agreements can also create relationships that would be viewed as joint ownership under FCC's existing regulations. FCC has also recognized that in certain circumstances, its policy goals of competition, localism, and diversity may conflict, such as in cases where preventing consolidation leads to less economically healthy stations that cannot invest in local news. Given the complexity of regulating an evolving industry, FCC would benefit from improved data on and analysis of the extent to which broadcaster agreements affect its media ownership rules and its media policy goals of competition, localism, and diversity. However, FCC has not completed a study of and lacks basic data on broadcaster agreements. This lack of analysis and information could undermine FCC's efforts to ensure its media ownership regulations achieve their intended goals.

Recommendation for Executive Action

FCC should determine whether it needs to collect additional data to understand the prevalence and context of broadcaster agreements. FCC should also evaluate whether broadcaster agreements affect its media policy goals of competition, localism, and diversity.

Agency Comments

We provided a draft of this report to FCC for review and comment. In written comments, reproduced in appendix II, FCC agreed with our recommendation. FCC also noted that it has taken initial steps to address the recommendation. In particular, FCC noted that in the 2014 Quadrennial Review, it proposed defining a category of sharing agreements and requiring their disclosure.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Chairman of the Federal Communications Commission and the appropriate congressional committees. In addition, this report will be available at no charge on GAO's website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,

Mark Goldstein
Director, Physical Infrastructure

Appendix I: Objectives, Scope, and Methodology

The objectives of this report were to examine (1) the uses and prevalence of broadcaster agreements in the television industry; (2) stakeholders' views on the effects of broadcaster agreements on programming and the subscription video industry; and (3) the extent, if at all, that the Federal Communications Commission (FCC) has regulated these agreements.

To assess how broadcaster agreements are used in the television industry, we first identified the different types of broadcaster agreements through a literature search and review of prior GAO reports, academic studies, industry and advocacy reports, and media articles. We also reviewed the descriptions and definitions of broadcaster agreements provided in FCC regulations and rulemakings. We obtained specific examples of agreements from filings submitted to FCC by broadcasters, station owners, and public-interest groups, as well as descriptions of agreements reported by station owners in press releases, and U.S. Securities and Exchange Commission 10-K and 10-Q filings. We verified information from the literature review through interviews with FCC and Department of Justice (DOJ) officials. We also interviewed a variety of stakeholders, including representatives of broadcast networks, television broadcast station owners, multichannel video programming distributors (MVPDs),[1] trade associations, labor groups, consumer groups, financial analysts, and other individuals with knowledge of the broadcast industry. We selected local television station owners and MVPDs that filed comments in FCC's media ownership proceeding and that varied in the number of stations they owned or the number of subscribers they served, respectively; we selected other stakeholders by reviewing prior GAO reports, academic studies, and comments filed in FCC media ownership proceedings, and through recommendations from other interviewees.

We conducted case studies to understand how agreements were used in specific markets and obtain the perspective of station owners in those markets. We conducted case studies of six designated market areas (DMAs), three markets with stations using broadcaster agreements and three markets in which the stations did not use broadcaster agreements. To select the case study DMAs, we used a stratified random sample. We obtained the 2013–2014 list of DMAs from Nielsen Media Research's website. We eliminated the top 25 DMA markets because stakeholders

[1]MVPD refers to cable operators, satellite providers, and telecommunications companies that provide subscription video services to consumers.

told us that broadcaster agreements are less common in those markets and likely to have less impact in those markets. We divided the remaining markets into three separate groups based on market size. We randomly ordered the markets within each stratum and selected the first DMA listed in each of the three stratums to conduct the case study. If there was a broadcaster agreement in the selected market, we then matched it with a similarly-sized market without an agreement, and if a chosen market did not have a broadcaster agreement, we looked for a similarly-sized market with an agreement. To determine whether stations in a market participated in a broadcaster agreement, we used the *Warren Television and Cable Factbook*, FCC's website, stations' public inspection files, and a BIA/Kelsey database to identify full-power commercial and non-commercial stations within each DMA. We then used the above-mentioned sources, press releases, news articles, a Georgetown University study, a University of Delaware study, and data from MVPDs, to identify whether any broadcaster agreements exist within the three selected markets.

After the 6 case study markets were selected, we contacted and interviewed station owners to learn more about the specific broadcaster agreements being used in the selected DMA. In addition, we contacted cable companies in the DMAs we identified having agreements to learn more about how or if the broadcaster agreements within their respective DMAs affected the retransmission consent fee negotiations. In the DMAs we identified as not having an agreement, we contacted and interviewed owners of the top-four stations in the market. We defined a broadcaster agreement as any instance where two or more independently owned stations within the same DMA have entered into any of the following agreements: time brokerage agreement/local marketing agreement, shared service agreement, joint sales agreement, and local news service agreement. We did not include instances where a station entered into a broadcaster agreement with another separately-owned out-of-market station because we focused on FCC's local ownership rules, which limit the number of stations a company can own within a market. In addition, we did not include low power or translator stations, but we did include satellite stations. The three DMAs that we selected that had a broadcaster agreement were Casper-Riverton, Wyoming, Topeka, Kansas, and Paducah, Kentucky.[2] The three DMAs we selected that did

[2]One station owner party to broadcast agreements in the Casper-Riverton DMA declined our request for an interview.

not have a broadcaster agreement were Mankato, Minnesota, Columbia-Jefferson City, Missouri, and Madison, Wisconsin.[3]

To assess what is known about the prevalence of broadcaster agreements, we interviewed stakeholders about the comprehensiveness of data collected by FCC, private-sector, public-interest, and academic sources on the number of broadcaster agreements nationwide. In addition, we acquired data from BIA/Kelsey, a market-research firm, to assess the prevalence of certain types of agreements, the stations involved in the agreements, and the size of the market served by the stations. We analyzed BIA/Kelsey data on television markets, stations, and agreements. We tested the reliability of BIA's data by reviewing stakeholder opinions on the reliability and accuracy of the data, reviewing existing information about the data, and obtaining information from BIA officials about how they collect the data. We found the data sufficiently reliable for our purposes. We also examined FCC regulations and interviewed FCC officials to understand the extent to which broadcasters are required to disclose broadcaster agreements and the methods for doing so.

To determine stakeholders' views on the effects of broadcaster agreements on programming and the subscription video industry, we reviewed FCC dockets and interviewed representatives of broadcast networks; local television station owners; cable, satellite, and other subscription video service providers; trade associations; labor groups; consumer groups; financial analysts; and other individuals with knowledge of the broadcast industry to obtain their views and identify any supporting studies and data on the effects of broadcaster agreements. We also conducted literature reviews to identify any relevant studies on the effects of broadcaster agreements.

To determine the extent to which FCC has regulated broadcaster agreements, we reviewed relevant FCC dockets and rulings and interviewed FCC officials. In addition, we interviewed the previously mentioned stakeholders to gain their perspective on the extent to which broadcaster agreements affect FCC's policy goals.

[3]During interviews with the station owners in the Madison, Wisconsin, market, we learned of a local news service agreement in that market. However, as our case studies were selected as illustrative examples only, the presence of such an agreement does not pose a methodological limitation to our review.

We conducted this performance audit from July 2013 to June 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusion based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Federal Communications Commission

Federal Communications Commission
Washington, D.C. 20554

June 13, 2014

Mr. Michael Clements
Assistant Director
Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Mr. Clements:

Thank you for the opportunity to respond to the Government Accountability Office (GAO) Draft Report entitled *FCC Should Review the Effects of Broadcaster Agreements on Its Media Policy Goals,* GAO-14-558, which reviews issues related to broadcaster agreements between local television stations.

Given the increasing use of sharing agreements by broadcast licensees, we agree with the GAO recommendation of seeking additional data, especially that which would allow the Commission to study the impact of such agreements on the policy goals of competition, localism and diversity. As is noted in the Draft Report, the Commission has already taken its initial steps in such an endeavor. In the 2014 Quadrennial Review of media ownership rules, the Commission proposed defining a category of sharing agreements and requiring their disclosure. The Commission made this proposal as a means to enable a better understanding of the terms, operation, and prevalence of sharing agreements. Disclosure would allow the Commission, and the public, to review these agreements and to better understand the impact of such arrangements on the Commission's rules and policy goals. The comment period for the 2014 Quadrennial Review runs until July 7, 2014. Reply Comments must be submitted no later than August 4, 2014.

While the record for the 2014 Quadrennial Review is being developed, the Commission will continue to consider broadcaster agreements, in appropriate cases, in deciding whether approval of particular proposed transactions will serve the public interest.

Thank you for the opportunity to respond to the Draft Report's recommendations. The agency has begun to implement several of them and will continue to look for opportunities to do so where appropriate. We look forward to working with you in the future.

Sincerely,

William T. Lake
Chief, Media Bureau

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Mark L. Goldstein, (202) 512-2834 or goldsteinm@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Michael Clements, Assistant Director; Amy Abramowitz; Richard Bulman; Crystal Huggins; Bert Japikse; Sara Ann Moessbauer; Josh Ormond; Amy Rosewarne; and Rebecca Rygg made key contributions to this report.

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