

In the  
Supreme Court of the United States

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FEDERAL COMMUNICATIONS COMMISSION, ET AL.,  
*Petitioners,*

v.

PROMETHEUS RADIO PROJECT, ET AL.,  
*Respondents.*

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NATIONAL ASSOCIATION OF BROADCASTERS, ET AL.,  
*Petitioners,*

v.

PROMETHEUS RADIO PROJECT, ET AL.,  
*Respondents.*

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On Writs of Certiorari to the  
United States Court of Appeals for the Third Circuit

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**BRIEF OF AMICI CURIAE OF SUE WILSON,  
MEDIA ACTION CENTER IN SUPPORT OF RESPONDENTS**

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## STATEMENT OF INTEREST<sup>1</sup>

Sue Wilson is the Director of the citizens' volunteer group Media Action Center (MAC), whose mission is "Putting the Public Back into Broadcasters' Public Interest Obligations." She is a former investigative broadcast journalist whose career began while the Fairness Doctrine was still in effect. Her work at local TV and radio stations operated by CBS, PBS, FOX and NPR has earned APTRA, RTNDA, PRNDI and EMMY awards of excellence. In 2005, Wilson effectively became a broadcast media watchdog and has engaged in several interactions with the Federal Communications Commission over the years, notably one which resulted in Sacramento Entercom radio station KDND giving up its broadcast license over the 2007 water drinking stunt which killed a mother of three children. She has written extensively about FCC issues for the Sacramento Bee and McClatchy News, Huffington Post, Alternet, Bradblog and other publications; stories are archived at [SueWilsonReports.com](http://SueWilsonReports.com).

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. The following persons made a monetary contribution to this brief: Melodie Bryant, Bill Bucolo, James Burns, Roseanne Chamberlain, Steven Chiamonte, Elizabeth Clarke, Jeff Cohen, Derek Cressman, Nancy Dickson, Daniel Fields, JoAnn Fuller, Deborah Grady, Mark Histed, Sandra Holcomb, Harold Jenssen, Merle Kaufman, Jeanie Keltner, Leonard Lyons, Anthony Manfredi, John McGrath, Deirdre Mueller, Kindra Muntz, Jarrett Pillsbury, Adam Rackoff, John Reeves, Tomi Ryan, Urs Schuler, Jen Senko, Jane Slater, Roger Smith, James Squires, Debbie Stack, Roland Swirsky, Allen Wolfenden, and Lance Young.

This brief is written from the point of view of the public whose interest, as owners of the publicly owned airwaves, is legally bound to be served by broadcasters.

This brief provides the Court current data on the number of and locations where TV Station Groups control two Top Four (Network affiliate) stations, and in some cases one or two additional stations, providing a solid baseline upon which to ask questions and make decisions about the impact of such FCC rulemaking on our very Democracy. It also provides current statistics on the economic health of the local TV industry and on minority employment within the industry.



## SUMMARY OF ARGUMENT

In the saga of *Prometheus v. FCC*, The 3rd Circuit has steadfastly ruled in favor of protecting the Public Interest.

In 2016,<sup>2</sup> it reaffirmed that the “top-four’ component of the local television rule (which, to repeat, bans mergers between two or more of the four largest stations in a given market) should be retained,” saying, “The basic logic of the top-four rule, as we recognized in 2004, is that while consolidation may offer efficiency gains in general, mergers between the largest stations in a market pose a unique threat to competition.” *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 416 (3rd Circuit, 2004). The Court further concluded: “. . . however, that the Commission has not shown yet that it adequately considered the effect its actions since

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<sup>2</sup> *Prometheus Radio Project v. FCC*, 824 F.3d 33 (3d Cir. 2016)

Prometheus III will have on diversity in broadcast media ownership.”

But the Federal Communications Commission circumvented the Court with its November 2017 Order on Reconsideration and Notice of Proposed Rulemaking, 32 F.C.C.R. 9802 (2017) which, said the 3rd Circuit in 2019, “made sweeping changes to the ownership rules. It eliminated altogether the newspaper/broadcast and television/radio cross-ownership rules,” and retained the “rule against mergers between two of the top four stations in a given market—albeit now subject to a discretionary waiver provision.”<sup>3</sup>

The 3rd Circuit has been correct all along.

Our argument asserts and demonstrates that the Commission flouts the Public Interest by granting Top Four waivers in dozens of communities large and small throughout the United States, many with high minority populations, resulting in decreased opportunities for neither women nor minorities to own and operate local television stations in their own communities. This becomes especially important as our independent research shows that in most of the local markets where “Top Four” waivers have been granted, stations appear to merely duplicate local news coverage across the dual stations they control in those markets, threatening competition not only of minority station ownership, but of content of local news, the lifeblood of our communities.

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<sup>3</sup> *Prometheus Radio Project v. Federal Communications Commission*, No. 17-1107 (3d Cir. 2019)



## ARGUMENT

### I. MEDIA ACTION CENTER SURVEY OF LOCAL MARKET NETWORK AFFILIATE DUOPOLIES AND CONTENT

The beauty of broadcasting is it is local. Every radio and TV station in the United States is individually licensed within a local community, with the mandate from Congress those stations “serve the public interest, convenience and necessity.”<sup>4</sup>

Even national TV networks are based in local communities. While NBC, CBS, ABC and FOX hold a limited number of local broadcast licenses across the country, the larger part of their networks is comprised of local affiliates licensed within communities. The networks provide the affiliates with national news coverage, but it is up to the local stations to provide local news.

It is critical to realize that unlike other businesses, broadcasting uniquely does not enjoy a free market. There are only so many physical frequencies in the air over which to broadcast. For this reason, if one broadcast station group is allowed to license two or more stations in the same town, it robs someone else of the opportunity to compete, both in business and in the information which provides the foundation for democracy.<sup>5</sup>

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<sup>4</sup> 47 U.S.C. § 309

<sup>5</sup> *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).



The 3rd Circuit Court of Appeals, in *Prometheus Radio Project v. FCC*, 824 F.3d 33 (3d Cir. 2016) said the Federal Communications “did not adequately consider the effect its sweeping rule changes will have on ownership of broadcast media by women and racial minorities.”<sup>6</sup>

Media Action Center (MAC) conducted its own investigation. MAC offers argument and analysis showing the Top-Four rule is adversely impacting minority populations. MAC wanted to know how many local markets (Designated Market Areas or “DMAs”) already have one station group owning more than one Top Four (network affiliate) station. If so, in which markets, what size of markets, the minority population of those markets, and whether those stations offer the same or different local news on their two separate network affiliates.

MAC researched this question to establish whether local news operations operated by the same Station Groups often provide very similar, if not identical, news coverage on multiple TV stations in a single local market, and whether these combinations are adding anything to local news coverage in these communities.

## 1. Current FCC Rules

“According to the current rule, an entity may own up to two television stations in the same market if: (1) the digital noise limited service contours (NLSCs) of the stations do not overlap; or (2) at least one of the stations is not ranked among the top-four stations in the market and at least eight independently owned

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<sup>6</sup> *Prometheus Radio Project v. Federal Communications Commission*, No. 17-1107 (3d Cir. 2019).

television stations would remain in the market following the combination.”<sup>7</sup>

At times, the FCC allows one broadcaster to provide management services for another broadcaster’s station in a deal called a Shared Service Agreement (SSA), or manage sales for another broadcaster’s station in a deal called a Joint Sales Agreement (JSA).<sup>8</sup>

## 2. Methodology

Media Action Center volunteers researched the top ten largest TV Station groups in the country as defined by total revenue to provide such data.<sup>9</sup> The data we produced provides a snapshot for the Court’s consideration. Volunteers reviewed TV Station websites, copyright information and local news reports to identify patterns. MAC also reviewed Designated Market Area data for each station; all data was gleaned from Katz Radio Group per Nielsen research.<sup>10</sup> URLs for the Data Tables for every station group collectively are found at the Media Action Center website.<sup>11</sup> URLs are also individually provided in the findings of each broadcast station group, with hyperlinks for easy access for the

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<sup>7</sup> 47 C.F.R. § 73.3555, <https://docs.fcc.gov/public/attachments/DOC-347796A2.pdf>

<sup>8</sup> <https://www.commlawblog.com/2012/03/articles/broadcast/ssas-and-jsas-some-unwritten-rules/>

<sup>9</sup> <https://tvnewscheck.com/article/249937/nexstar-remains-firmly-atop-station-groups/>

<sup>10</sup> Katz Radio Group, *Market Survey Area Overview* (2020), <http://krgspec.com/>

<sup>11</sup> <https://www.mediaactioncenter.net/2020/12/top-broadcasters-controlling-two-local.html>

Court to independently review the findings. The research is not peer reviewed but does offer baseline information to illustrate the current state of local news in the communities studied.

### 3. Case Studies

A review of the top ten station groups reveals five have existing Top Four Network Duopolies, defined as one broadcast company operating two network affiliate TV stations in the local market. We have examined the local news content of those duopolies for those five station groups. The accumulated data is important for the Court to understand why the Third Circuit decisions should be affirmed.

#### NEXSTAR

*See* Nexstar Top Four Network Affiliate Duopoly Data Table: <https://drive.google.com/file/d/1o7KjXrH2576Mm1vu6kW63hPvu41NKlZZ>

Nexstar, the largest station group, appears to own or control two Network affiliates in 31 markets. In five of those markets, Nexstar owns or controls one or two stations *in addition* to its Top Four duopoly.

In the Little Rock/ Pine Bluff AR DMA, Nexstar controls four TV stations: KARK NBC, KLRT FOX, KARZ, and KASN. All are listed on the Nexstar Media Group website.<sup>12</sup> KARK's website and KLRT's website (<https://www.kark.com/news/local-news/> and <https://www.fox16.com/news/local-news/>) demonstrate the local news stories presented on the two network

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<sup>12</sup> <https://www.nexstar.tv/stations/>

affiliate websites are substantially the same. Screenshots are provided in Appendix 2.

Does that mean that Nexstar is producing one set of local news and merely duplicating it on two stations? Absent research comparing the on air product of KARK NBC and KLRT FOX, it is impossible to definitively know, but it should be known and considered.

Little Rock is the 59th largest DMA in the country, with a DMA population of 1,259,100 and a minority population of 30%.<sup>13</sup> There are nine full power stations in Little Rock, but only six or seven are commercial stations.<sup>14</sup>

Nexstar also owns or controls two Network affiliate stations with a third station in Fort Smith, AR; in Davenport IL; Tyler, TX; and Wichita Falls, TX. Each of the Top Four duopoly stations in all of these markets share exactly the same website and address, as detailed in the Nexstar Data Table.

In 27 local markets, it appears Nexstar network affiliate stations are sharing the same local news content on both or all its stations. Two are not sharing the same news.

Nexstar stations in Hardin/ Billings MT and Peoria/ Bloomington IL provide no local news.

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<sup>13</sup> All DMA and Minority Data Is from Katz Radio Group Per Nielsen. Minority Data Is Defined as Black and Hispanic Population. *See* <http://krgspec.com/>

<sup>14</sup> <https://www.stationindex.com/tv/markets/Little+Rock-Pine+Bluff>

**SINCLAIR**<sup>15</sup>

*See* Sinclair Top Four Network Affiliate Duopoly Data Table: [https://drive.google.com/file/d/1VSJiPmv8sgqbT\\_LJ-fiQmt1tGT0LkQVG](https://drive.google.com/file/d/1VSJiPmv8sgqbT_LJ-fiQmt1tGT0LkQVG)

Sinclair Broadcasting appears to own or control two network affiliates in 23 markets. In six of those markets, Sinclair owns or controls one or two stations in addition to its Top Four network duopoly.

In the Columbus OH DMA, Sinclair controls three TV stations: WSYX ABC, (<https://abc6onyourside.com/news/local>) WTTE FOX, (<https://myfox28columbus.com/news/local>) and WWHO CW (<http://cwcolumbus.com/news/local/more>.) All are listed on the Sinclair website

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<sup>15</sup> During the proposed Sinclair/ Tribune merger, the FCC issued a Hearing Designation Order to determine the veracity of information Sinclair provided to the agency over the true ownership of Sinclair Broadcasting and its sidecars Cunningham and Deerfield. *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al., Hearing Designation Order*, 33 FCC Rcd 6830, para. 2 (2018) (*HDO*). Sinclair subsequently withdrew its merger application, and the FCC resolved the dispute with a Consent Decree. *In re Sinclair Broad. Grp.*, 2020 FCC LEXIS 1914 (F.C.C. May 22, 2020). In Administrative Law Judge Jane Halprin’s written dismissal, she wrote, “That is not to say that Sinclair’s alleged misconduct is nullified or excused by the cancellation of its proposed deal with Tribune. Certainly, the behavior of a multiple station owner before the Commission ‘may be so fundamental to a licensee’s operation that it is relevant to its qualifications to hold any station license.’ *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCD(TV) et al.*, FCC 19M-01 Order, 2019 FCC LEXIS 4045 (ALJ 2019).

under station DMA information.<sup>16</sup> MAC finds that Sinclair is providing substantially the same local news on all three stations. Screenshots are provided in Appendix 2.

Columbus, the state capital of Ohio, is the 33rd largest DMA in the country, with a DMA population of 2,239,900 and a minority population of 22%. There are seven full power stations in Columbus, but only five or six are commercial stations.<sup>17</sup>

The Court should consider why the FCC is allowing one company to simply duplicate news content in three of six local TV stations in a State Capital where not only local, but state news content is needed by the populace and the democracy. Has the industry watchdog merely become a lapdog?

Sinclair also owns or controls Top Four Duopolies with a third station in Mobile AL/Pensacola FL; Champaign, IL; Flint MI; Reno NV; and San Antonio/Kerrville TX. The four separate stations owned and controlled by Sinclair in Mobile/Pensacola do not appear have the same local news. The other four named markets do appear to be sharing local news content between the stations, sometimes sharing the same website URLs, other times having identical websites under different URLs.

In the 23 local markets, it appears that 17 Sinclair network affiliate stations are sharing the same local news content on both or all its stations. Two are similar; four are not sharing the same news.

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<sup>16</sup> <https://sbgi.net/tv-channels/>

<sup>17</sup> *See*: <https://www.stationindex.com/tv/markets/Columbus,+OH>

## GRAY TV

*See Gray TV Top Four Network Affiliate Duopoly Data Table: [https://drive.google.com/file/d/1snw-ROVs0x\\_CaJwJ5HmAqAdasgXhgInQ](https://drive.google.com/file/d/1snw-ROVs0x_CaJwJ5HmAqAdasgXhgInQ)*

Gray TV appears to own or control Top Four network affiliate duopolies in 11 markets.

In Sioux Falls, SD, MAC sees a pattern common across all station groups' websites, which is its two separate Network affiliate stations KSFY ABC and KDLT NBC FOX share the same website, <https://www.dakotanewsnw.com/>. We note the ABC and NBC logos are both visible on the site. KSFY and KDLT apparently share the same news product.<sup>18</sup> A screenshot is provided in Appendix 2.

Sioux Falls is the 117th largest DMA in the country, with a DMA population of 600,400 and a minority population of 9.64%.

MAC finds that of the 11 local Gray TV markets, it appears the news presented on three Gray station websites are not the same, one is uncertain, and one is similar. In the remaining six markets, it appears the news content is the same across Gray Network TV stations.

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<sup>18</sup> The FCC granted this license to Gray after the 3rd Circuit issued its decision vacating the rules which make the transaction permissible. *Consent to Assign Certain Licenses from Red River Broadcast Co, LLC to Gray Television Licensee, LLC*, 34 FCC Rcd. 8590 (2019). See <https://docs.fcc.gov/public/attachments/DA-19-943A1.pdf>

## SCRIPPS

*See Scripps Top Four Network Affiliate Duopoly Data Table: [https://drive.google.com/file/d/1k7kNDzjN3OGzm69zQsuZEGXTBMPG\\_VkI](https://drive.google.com/file/d/1k7kNDzjN3OGzm69zQsuZEGXTBMPG_VkI)*

Scripps appears to have Top Four network affiliate duopolies in 3 markets.

In Boise, ID, where there are reportedly seven full power TV stations<sup>19</sup>, Scripps holds licenses to KIVI ABC, <https://www.kivitv.com> and KNIN FOX fox9now.revrocket.us. KIVI does present news content; KNIN appears to produce none.

Boise is the 99th largest DMA in the country, with a DMA population of 745,900 and a minority population of 14.4%.

MAC finds in the other two Scripps owned Network duopolies, their stations appear to provide the same news content across both stations.

## TEGNA

*See Tegna Top Four Network Affiliate Duopoly Data Table: [https://drive.google.com/file/d/1YQfTwJFAwhIa93xx1jnazB7O\\_FbhgsHv](https://drive.google.com/file/d/1YQfTwJFAwhIa93xx1jnazB7O_FbhgsHv)*

Tegna appears to have Top Four network affiliate duopolies in 2 local markets.

In one local market, stations do not appear to be sharing news content. In the other market, they do.

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<sup>19</sup> <https://www.stationindex.com/tv/markets/Boise>



## II. LOCAL NEWS, REVENUES, AND RELATIONSHIP TO COMMUNITY NEEDS

We live in an unprecedented era with a nation divided by two sets of entirely different information presented by both as fact. The Public Interest is not served where one TV Station Group controls 3 or 4 separate TV stations in a single town. That presents the specter of all the information provided in one community (local radio, television and newspaper) consolidated into a single hand. This would be a fundamental challenge to our democracy.

In this era where it is so easy to get national news from the internet, it is worth noting that according to Pew Research, the majority of Americans turn to local TV news to stay informed. For those who seek for local information online, especially in smaller markets, they turn to local TV websites even more than they do local newspapers.<sup>20</sup>

It may come as a surprise that viewership of local Over the Air (OTA) broadcasting via antennas is increasing by leaps and bounds. Horowitz Research found in April 2019 one in three US TV viewers receives local television in that manner, and that 40% of those viewers are age 18-34.<sup>21</sup>

This should come as no big shock when we realize local TV stations are the number one source for local news. 38% regularly tune in or log on to local TV news,

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<sup>20</sup> <https://niemanreports.org/articles/reinventing-local-tv-news/>

<sup>21</sup> <https://www.tvtechnology.com/news/new-research-reveals-resurgence-in-ota-antenna-viewing>

more than those who get local news from local radio and local newspapers combined. <sup>22</sup>

The National Association for Broadcasters told the Supreme Court in its Amicus Brief<sup>23</sup>, “Even in smaller markets, broadcasters spend upwards of \$1 million annually to produce local news programming; in larger markets, that figure can be as high as \$15 million.” Also, “Since 2016, TEGNA has spent an average of more than \$245 million a year on the production of news and other local content (including related digital operations).”

In reality, TV Station groups have been posting record earnings over the past few years, even during the pandemic.<sup>24</sup> BIA/Kelsey reported that local television station revenue reached \$28.4 billion in 2016, and was projected to rise to nearly \$33 Billion by 2020.<sup>25</sup> Tegna enjoyed “third quarter 2020 results that included total revenue of \$738 million, up 34% year-over-year, driven by record 2020 political advertising revenue, continued strength of subscription revenue and stronger than expected advertising and marketing services revenue despite the impact of

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<sup>22</sup> <https://www.journalism.org/2019/03/26/nearly-as-many-americans-prefer-to-get-their-local-news-online-as-prefer-the-tv-set/>

<sup>23</sup> *See* [https://www.supremecourt.gov/DocketPDF/19/19-1231/161570/20201123150647329\\_19-1231.19-1241%20Amici%20Curiae%20Brief.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1231/161570/20201123150647329_19-1231.19-1241%20Amici%20Curiae%20Brief.pdf)

<sup>24</sup> <https://www.businesswire.com/news/home/20201105005174/en/Nexstar-Media-Group-Reports-Record-Third-Quarter-Net-Revenue-of-1118.2-Million>

<sup>25</sup> <http://www.biakelsey.com/biakelsey-reports-local-television-station-revenue-reached-28-4-b-2016-retransmission-fees-air-digital-revenues-contribute-strong-year/>

COVID-19 on the advertising market this year, as well as the impact of acquisitions.”<sup>26</sup>

Political ad revenue is the primary driver of profits in television. Gray Television reported record earnings in the 2018 cycle.<sup>27</sup> Gray now reports the 2020 campaign season netted them \$400 million dollars in political ad sales.<sup>28</sup> Likewise, Tegna reported record 3rd quarter political ad sales in 2020, as did Nexstar.<sup>29</sup> <sup>30</sup> Sinclair reported political revenues “were \$109 million in the third quarter versus \$6 million in the third quarter of 2019 due to 2020 being a presidential election year.”<sup>31</sup> Scripps reported the same trend. “Scripps’ 2020 Local Media political advertising revenue totaled about \$265 million through Election Day, far exceeding original expectations of \$196 million. Political action committee spending accounted for 50% of this total; presidential

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<sup>26</sup><https://tvnewscheck.com/article/255652/teгна-reports-34-3q-revenue/>

<sup>27</sup> <https://www.gray.tv/uploads/documents/pressreleases/PressReleaseQ218EarningsRelease.pdf>

<sup>28</sup> <https://apnews.com/press-release/globenewswire-mobile/technology-business-north-america-television-georgia-673850f0bee4a4806f4271a4e0c1be3e>

<sup>29</sup> *See Quarterly Report, Tegna Reports 34% 3Q Revenue Increase* (Nov 2020), *supra* at 24

<sup>30</sup> <https://www.nexstar.tv/dallas-morning-news-political-ads-fuel-record-quarterly-revenue-for-nexstar-the-irving-based-tv-station-operator/>

<sup>31</sup> [https://sbgi.net/wp-content/uploads/2020/11/3Q20-Earnings-PR\\_FINAL.pdf](https://sbgi.net/wp-content/uploads/2020/11/3Q20-Earnings-PR_FINAL.pdf)

candidate spending was about 16%.”<sup>32</sup> The latter is important because broadcasters are required to charge candidates their lowest rates, while they may charge PAC groups whatever the market will bear.

There is a direct relationship between political ad revenues and local news. As per the National Institutes of Health, in 2016, “About half of all political ads for the presidential and down-ballot races were aired on local newscasts—that was about twice as many as were aired on all other news programs on networks combined, and twice as many as were aired on all entertainment and sports programs combined.”<sup>33</sup>

According to the NAB brief,<sup>34</sup> “The Commission cited the benefits of consolidation when it approved Gray Television’s request to acquire NBC-affiliated KDLT-TV in Sioux Falls, South Dakota, despite its ownership of ABC-affiliated KSFY-TV in the same market. Applying the Reconsideration Order’s now-vacated rule assessing top-four duopolies on a case-by-case basis, the Commission concluded that Gray’s ownership of these same-market stations would ‘produce definite, verifiable, and transaction-specific public interest benefits,’ including the addition of ‘at least 28 hours per week of local news programming’ across both stations, which is ‘more local news programming than either station currently airs in an average week.’”

However, Media Action Center found that it appears KDLT and KSFY shares news content across

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<sup>32</sup> <https://scripps.com/press-releases/scripps-reports-third-quarter-2020-results/>

<sup>33</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7595048/>

<sup>34</sup> *Supra* at 23.

both stations. This isn't adding more news content, it's simply putting the same news on at different times on two stations.

The NAB also writes,<sup>35</sup> “Whatever data reflecting media ownership by women and minorities might be available, and however that data might be analyzed as the Commission reassesses its local media ownership rules every four years, the rules in place today—attributable to the Third Circuit’s repeated second-guessing of the Commission’s expert assessment of the competitive landscape—inevitably disserve female and minority ownership, because local stations cannot provide successful career opportunities—to women, minorities, or anyone else—if their businesses can no longer remain healthy and economically viable. All local broadcasters, including women and minorities, remain at a competitive disadvantage in today’s evolving marketplace.”

According to the Radio Television News Directors Association, RTNDA, 2020 Research: Newsroom diversity (Sep 2020), the Bureau of Labor Statistics reports that about 63% of the U.S. workforce overall is white and 37% people of color. But only 26.6% of the local TV workforce in 2020 are people of color; only 17.4% of local TV news directors are minorities.<sup>36</sup>

The MAC Survey reveals Nexstar is operating 9 Top Four duopolies in local markets where minorities are 37% or more of the population. In every instance, it appears those duopolies are providing the same news content on both their network affiliate stations.

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<sup>35</sup> *Supra* at 23.

<sup>36</sup> RTNDA, 2020 Research: Newsroom diversity (Sep 2020), [https://www.rtdna.org/article/2020\\_research\\_newsroom\\_diversity](https://www.rtdna.org/article/2020_research_newsroom_diversity)

Sinclair has 3 Top Four duopolies where minorities are 37% of more of the population; it appears all three are providing the same news content on both their network affiliate stations. Gray TV also has 3; only one appears to have the same local news on their two stations.

People of color are disadvantaged in areas where they have the majority of the population when the FCC allows just one owner to duplicate local news on two or more TV stations. When the FCC allows one company to operate two or more network stations it really means people of color—and women—are denied the opportunity of having even one.



## CONCLUSION

The decisions made about local TV license ownership will impact our democracy forever.

The Court should consider what could happen if in a single town, just one purveyor of news controlled the local TV stations and the local newspaper. What could possibly go wrong?

The Court should further consider everything the Federal Communications Commission ignored or refused to consider in its rulemaking. Democracy and our citizenry deserve more diverse views and local input on our airwaves, not less, more ownership access by women and minorities, not less. The consolidation rules the FCC has been crafting in consultation with corporations for years denies all Americans of what is our birthright—free speech for all, not just some—on

the publicly owned airwaves which serve the We the People.

For the foregoing reasons, the decision of the United States Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

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*COUNSEL FOR AMICI CURIAE*

DECEMBER 23, 2020

**APPENDIX 1**  
**LIST OF AMICI CURIAE**

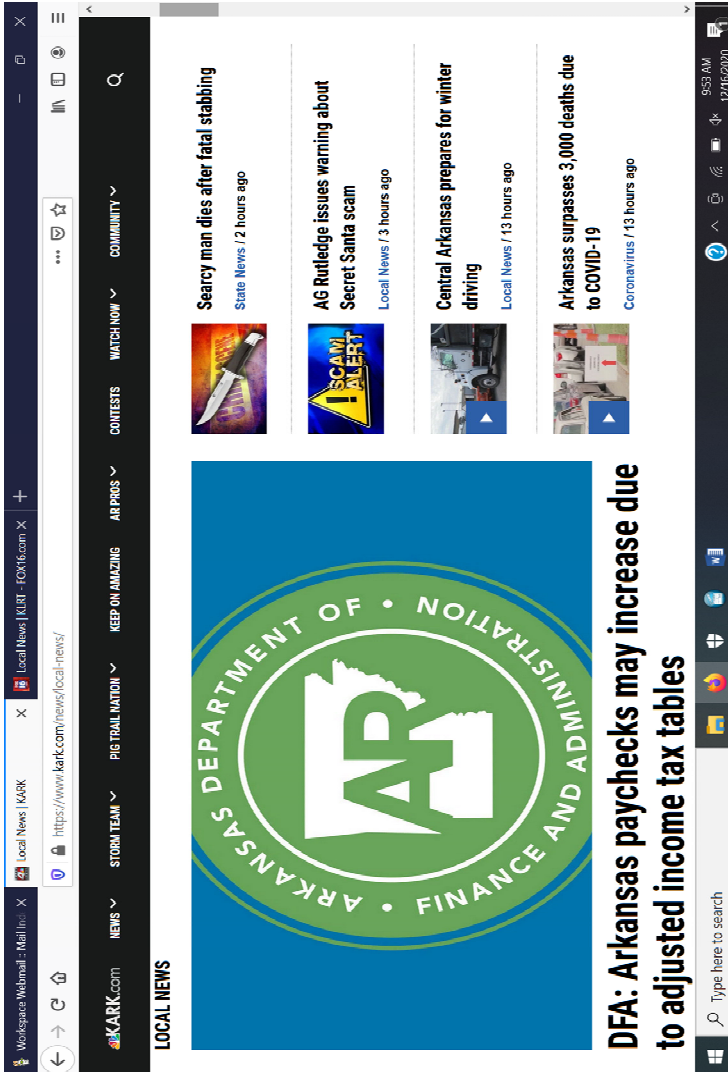
- Dave Walker, Lois Hart, inaugural CNN News anchors, KCRA TV news anchors (retired)
- Deirdre Mueller, Juris Doctor
- Harry Cowan, Researcher
- James Burns, Researcher
- James Squires, Technical advisor
- Jen Senko, Director,  
documentary *The Brainwashing of My Dad*
- Richard D. Faulkner, J.D., LL.M.,  
F.C.I.Arb., Dip.Intnl.Com.Arb, Dallas TX.
- Sue Wilson, B.A., Media Action Center Director,  
Journalist, Director documentary Broadcast Blues,  
Former Adjunct Professor San Joaquin Delta College



## APPENDIX 2

### PHOTOGRAPHIC EVIDENCE OF STATION GROUPS DUPLICATING NEWS CONTENT ACROSS MULTIPLE LOCAL STATIONS

#### EXHIBIT 2-1. NEXSTAR KARK NBC



## EXHIBIT 2-2. NEXSTAR KLRT FOX

The screenshot displays the FOX16 Local News website. The top navigation bar includes links for NEWS, STORM TEAM, SPORTS, KEEP ON AMAZING, AR PROS, CONTESTS, THE CW ARKANSAS, COMMUNITY, and a JOB ALERT. The main content area features a large article titled "DFA: Arkansas paychecks may increase due to adjusted income tax tables" with a background image of the Arkansas Department of Finance and Administration logo. To the right, a sidebar titled "LOCAL NEWS" lists several stories: "Searcy man dies after fatal stabbing" (State News / 2 hours ago), "AG Rutledge issues warning about Secret Santa scam" (Local News / 3 hours ago), "Arkansas native Jim Ranger wins second place on season 19 of The Voice" (Local News / 14 hours ago), and "Central Arkansas prepares for winter driving" (Local News / 14 hours ago). The bottom of the page shows a search bar and system status information.

Workspace Weimail: Mail In: X Local News | KZAK X Local News | KLRT - FOX16.com X

https://www.fox16.com/news/local-news/

FOX16

LOCAL NEWS

**DFA: Arkansas paychecks may increase due to adjusted income tax tables**

**Searcy man dies after fatal stabbing**  
State News / 2 hours ago

**AG Rutledge issues warning about Secret Santa scam**  
Local News / 3 hours ago

**Arkansas native Jim Ranger wins second place on season 19 of The Voice**  
Local News / 14 hours ago

**Central Arkansas prepares for winter driving**  
Local News / 14 hours ago

Arkansas Department of Finance and Administration

9:54 AM  
12/16/2020


## EXHIBIT 2-3. SINCLAIR WSYX ABC

Columbus News, Weather, Sports | 28 Columbus News, Weather, Sports | <https://abc6onyourside.com>

59%

SEE MORE

**LOCAL NEWS**

**SENATE won't override DaWine veto on SB 371, as House doesn't muster enough votes**  

 SENATE won't override DaWine veto on SB 371, as House doesn't muster enough votes estimated

**UPDATES** Dr. Birx urges Ohioans to remain vigilant as COVID-19 vaccines begin to be distributed


**UPDATES** BC investigating deadly shooting at a restaurant; arrested Black man in north Columbus


**UPDATES** Family prepares for funeral weeks after shooting death of Casey Gooden Jr.


**UPDATES** UPS asking for patience heading into the holidays


**UPDATES** Ohio Department of Health to receive next shipment of vaccines on Christmas Eve


**UPDATES** Police search for man accused of robbing northeast Columbus convenience store


**Man killed by Columbus Police following call about suspicious car**  

 Man killed by Columbus Police following call about suspicious car

**Remains believed to be missing husband's after husband accepts plea deal**  

 Remains believed to be missing husband's after husband accepts plea deal

**Man charged with murder following deadly altercation in Newark**  

 Man charged with murder following deadly altercation in Newark

**Deadly crash leads to power outage in Dublin early Tuesday**  

 Deadly crash leads to power outage in Dublin early Tuesday

**Man killed in west Columbus crash Monday afternoon**  

 Man killed in west Columbus crash Monday afternoon

**Police search for man accused of robbing northeast Columbus convenience store**  

 Police search for man accused of robbing northeast Columbus convenience store

Ad closed by CTRBO | Report this ad | Ad chosen by

Type here to search

3:59 PM 12/22/2020

**EXHIBIT 2-4. SINCLAIR WTTE FOX**

FOX 28  
Columbus News, Weather, Sports & More  
https://myfox28columbus.com

WEATHER COSMOTRICS GOOD DAY COLUMBUS CHIME IN WATCH  
NEWS  
100 Senate won't override Democrats veto on \$831.1B as House doesn't muster enough votes distributed (3)

LOCAL NEWS  
100 Some Central Ohio churches adjust Christmas Eve services because of pandemic (2)  
100 Family prepares for funeral weeks after shooting death of 6-year-old boy (3)  
100 Protesters send Ohio Senator President coal this Christmas over alleged school funding cuts (3)  
100 Men killed in west Columbus crash Monday afternoon (3)  
100 Deadly crash leads to power outage in Dublin early Tuesday (3)  
100 Man charged with murder following deadly altercation in Newark (3)  
100 Calica afloat to drama Sponsored by: Seawater Systems (3)

SEE MORE >

UPDATE: USPS asking for patience heading into the holidays (3)  
Police search for more suspects of robbing northeast Columbus convenience store (3)  
Men killed in west Columbus crash Monday afternoon (3)


Ad closed by critico Report Fraud Ad choice

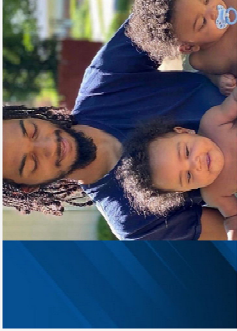
## EXHIBIT 2-5. SINCLAIR WWHO CW STATION


Columbus Local | News, Weather | X


cvrcolumbus.com/news/local


**LOCAL**


**Family prepares for funeral, weeks after shooting death of Casey Goodson Jr.** 



**NEW** USPS asking for patience heading into the holidays 



**NEW** Ohio Department of Health to receive next shipment of vaccines on Christmas Eve 



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ADVERTISEMENT

Type here to search

4:01 PM 12/22/2020

## EXHIBIT 2-6. GRAY TV SIOUX FALLS ABC AND NBC AFFILIATES ON SAME WEBSITE

The screenshot displays the ABC 12 DAKOTA NEWS NOW website. The top navigation bar includes links for Home, Weather, Sports, Submit It, Avera Medical Minute, Local Guide, and Livestream. A weather widget in the top right corner shows 34° in Sioux Falls, SD. The main headline reads: "South Dakota reports 564 new COVID-19 cases, 21 related deaths Saturday". Below the headline is a video player with a "WATCH NOW" button and a "Continue" button. The video player also displays the text "Start watching now with MediaPlayer10." and a "Type here to search" input field. The page is viewed on a mobile device, as indicated by the Windows taskbar at the bottom.