SECTION III
EXHIBIT 18

AMENDED AND RESTATED

Request for Waiver of Local Television Ownership (Duopoly) Rule (Repealed-But-Currently-Effective Eight-Voices Restriction)

This Amended and Restated Request for Wavier constitutes a complete amendment and restatement of, and fully supersedes, the request for waiver originally filed with the instant application on October 3, 2017.

Subsequent to the original filing of the instant application, on November 16, 2017, the Commission adopted an Order on Reconsideration ending the 2010/2014 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (the "Order on Reconsideration").[1] The Order on Reconsideration modified the Commission's local television ownership rule, and in particular, eliminated the requirement that at least eight independently owned television stations must remain in the market after combining ownership of two stations in the market (known as the "Eight-Voices Test," and also referred to herein as the "Eight-Voices Restriction").[2]

The Commission's elimination of the Eight-Voices Restriction becomes effective thirty (30) days after publication of the Order on Reconsideration in the *Federal Register*.[3] At this time, the Order on Reconsideration has not yet been published in the *Federal Register*, and it is anticipated that certain parties may seek a court order to stay the effectiveness of the Order on Reconsideration and its respective rule modifications.

As discussed below, the proposed acquisition of WCWG(TV), Lexington, North Carolina, by Hearst Properties Inc. ("Hearst") from Greensboro TV, LLC ("GTV") requires waiver of the Commission's local ownership rule in Section 47 CFR § 73.3555(b)(1)(ii) only to the extent the Eight-Voices Restriction remains in effect. Once the elimination of the Eight-Voices Restriction becomes effective, the proposed transaction will comply with the local ownership rule and no waiver is necessary.

For the reasons set forth herein, Hearst and GTV respectfully continue to request a permanent waiver of the Eight-Voices Restriction to the extent it remains in effect.

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[1] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order on Reconsideration and Notice of Proposed Rulemaking, FCC 17-156 (Adopted Nov. 16, 2017, Released Nov. 20. 2017) (the "*Order on Reconsideration*").

[2] *See* 47 CFR § 73.3555(b)(1)(ii).

[3] *Order on Reconsideration*, ¶ 156.

Alternatively, Hearst and GTV respectfully request an interim/temporary waiver of the Eight-Voices Restriction pending the effectiveness of the Order on Reconsideration and the elimination of the rule. Under the Commission's policy, such an interim/temporary waiver is appropriate in situations where, like here, there is a pending proceeding that contemplates a change to the applicable ownership rule in a manner that would provide relief to the party seeking the waiver, and the public interest would be served by a grant of the waiver.[4]

In connection with such interim/temporary waiver here:

(1) in the event the elimination of the Eight-Voices Restriction becomes final, whether upon conclusion of any further proceeding relating to the Order on Reconsideration or otherwise, the waiver would no longer be necessary; and

(2) in the event a further proceeding relating to the Order on Reconsideration concludes in a manner that retains the Eight-Voices Restriction, Hearst and GTV respectfully request a period of six (6) months from the finality of such proceeding for Hearst to divest its attributable interest in WCWG(TV) or to take other action necessary to come into compliance with the applicable rule.[5]

<u>Background</u>

Hearst is the licensee of WXII-TV, Winston-Salem, North Carolina. WCWG(TV) and WXII-TV are both located in the Greensboro-High Point-Winston Salem, North Carolina, Designated Market Area (the "<u>Greensboro Market</u>"). WXII-TV is affiliated with NBC, and WCWG(TV) is affiliated with The CW Network.

WCWG(TV) is a "license relinquishment station" in connection with the broadcast television spectrum incentive auction.[6] In accordance with the FCC's channel sharing rules,[7] GTV and Hearst entered into an agreement for WCWG(TV) to continue to operate by sharing the rights to WXII-TV's frequency channel,[8] and on July 31, 2017, WCWG(TV) and WXII-TV commenced channel sharing operations using the same transmission facility—with WCWG(TV) as "sharee" and WXII-TV as "sharer." On August 3, 2017, the Commission granted modified licenses for WCWG(TV) and WXII-TV to reflect the channel sharing arrangement.[9]

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[4] *See Applications of Stockholders of Renaissance Communications Corporation*, Order, DA 98-456 (1998); *see also 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report, FCC 00-191, ¶ 96 (2000); Letter to Joel Rosenbloom from Chief, Mass Media Bureau concerning ABC/Capital Cities-Disney Company merger (October 24, 1996).

[5] *Id.*

[6] *See Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, DA 17-314, Appendix A, at 2 (April 13, 2017) (the "*Auction Closing PN*").

[7] *See* 47 CFR §§ 1.2200-1.2209 and 73.3700.

[8] In connection with the channel sharing agreement, the parties also entered into the agreements described and provided in Section II, Exhibit 5, of the instant application.

[9] *See* FCC LMS File No. 0000029094 (WCWG(TV) Sharing License); FCC LMS File No. 0000029093 (WXII-TV Sharing License).

Because WCWG(TV) and WXII-TV are located in the same television market and share the same transmission facility (and thereby share the same digital noise limited service contour), Hearst's proposed common ownership of WCWG(TV) and WXII-TV would be permissible under the Commission's currently-effective local television ownership rule (or the "duopoly rule") if:

(a) "at least one of the stations is not ranked among the top four stations" in the Greensboro Market (the "Top-Four Restriction"); and

(b) "at least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger" in the Greensboro Market.[10]

Based on the most recent all-day (9 a.m.-midnight) audience share, as measured by The Nielsen Company and as specified under the Top-Four Restriction, WCWG(TV) is ranked seventh (7th) in the Greensboro Market.[11] Accordingly, the proposed combination is permissible under the Top-Four Restriction of the duopoly rule. However, as further described below, the Greensboro Market would not have eight independently owned and operating television stations following the proposed combination, and therefore the proposed combination does not satisfy the repealed-but-currently-effective Eight-Voices Restriction.

As described below, notwithstanding the lack of eight independently owned and operating television stations in the Greensboro Market, the proposed transaction would not undermine—but rather would further—the policies served by the Commission's local television ownership rule.

Accordingly, Hearst and GTV respectfully request a permanent waiver, or in the alternative an interim/temporary waiver, of the repealed-but-currently-effective Eight-Voices Restriction to permit Hearst's common ownership of WCWG(TV) and WXII-TV.

Request for Waiver

In accordance with Section 1.3 of the Commission's Rules, there is "good cause" for the Commission to waive a rule when "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[12] In particular, waiver of a rule is appropriate and would serve the public interest where the application of the rule to a particular set of circumstances would not "undermine the policy, served by the rule."[13]

As recently recognized by the Commission, the Eight-Voice Restriction "is no longer necessary in the public interest."[14] However, to the extent the Eight-Voice Restriction remains in effect, Hearst and GTV respectfully submit that special circumstances warrant waiver here.

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[10] 47 CFR § 73.3555(b).

[11] The Nielsen Company, TV Households Shares, Monday-Sunday 9:00 am-12:00 am, July 27, 2017 through August 23, 2017.

[12] *See* 47 CFR § 1.3; *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[13] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[14] *Order on Reconsideration*, ¶ 73.

I. The Public Interest Objectives of the Eight-Voices Restriction Were to Promote Diversity and Competition

The Commission has stated that the ultimate objectives of the Commission's ownership rules "are to promote diversity and to foster economic competition, while minimizing any adverse effects [the Commission's] pursuit of these goals has on the efficient organization of the industry."[15]

The Top-Four Restriction is aimed at fostering competition,[16] while the Eight-Voices Restriction was aimed at promoting diversity. In particular, the Commission has stated that the Eight-Voices Restriction was intended to provide "a clear benchmark for ensuring a minimum amount of diversity in a market" and "strikes what [the Commission] believe[s] to be an appropriate balance between permitting stations to take advantage of the efficiencies of television duopolies while at the same time ensuring a robust level of diversity."[17] The Commission has also noted that the Eight-Voices Restriction was intended to encourage increased local news and public interest programming by helping "to ensure robust competition among local television stations."[18]

Hearst and GTV wholeheartedly agree that diversity and competition among media outlets in a community are significant and laudable goals that further the public interest. However, where a particular combination—such as the one proposed here—does not undermine these goals, but rather <u>advances</u> these goals, the combination should be permitted notwithstanding the Eight-Voices Restriction.

II. The Proposed Combination Would Not Result in Any Reduction to Diversity and Competition in the Greensboro Market Compared to That Authorized Following the Television Spectrum Auction

Hearst and GTV submit that broadcast television stations, together with cable, satellite providers, and other multichannel video programming distributors ("<u>MVPDs</u>"), "over-the-top" services and other Internet, online, and mobile video services, as well as radio and newspapers, all contribute to and create robust diversity and competition within today's media marketplace, as discussed below,[19] yet the Eight-Voices Restriction considers television stations only.

At its core, the Eight-Voices Restriction was intended to prevent a proposed combination from causing a <u>reduction</u> below a certain level in the number of independently owned and operating television stations in a market. That, however, is not the case with the instant transaction. Here, it is the implementation of the broadcast television spectrum incentive auction as mandated by Congress under the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 126 Stat. 156 (2012) (the "<u>Spectrum Act</u>"), not the proposed combination of

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[15] *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, FCC 99-209, ¶ 15 (August 6, 1999) (the "*1999 Ownership R&O*").

[16] *1999 Ownership R&O*, ¶ 66 (The Top-Four Restriction is "designed to ensure that the largest stations in the market do not combine and create potential competition concerns.").

[17] *1999 Ownership R&O*, ¶ 67.

[18] *2014 Quadrennial Regulatory Review*, Second Report and Order, FCC 16-107, ¶ 57 (August 25, 2016) (the "*2014 Quadrennial Second R&O*").

[19] *See infra* Section IV.

WCWG(TV) and WXII-TV, that is the cause of the reduction of television stations in the Greensboro Market.

a. Current Pre-Auction Television Band Voices in the Greensboro Market

Pending the completion of the transition to the post-auction television band plan, the Greensboro Market currently has the following eight independently owned and operating television stations[20]:

Voice #	Owner *(Licensee)*	Call Sign(s)	Network
1	Hearst Television *(Hearst Properties Inc.)*	WXII-TV	NBC
2	TEGNA *(WFMY Television, LLC)*	WFMY-TV	CBS
3	Tribune Media Co. *(WGHP License, LLC)*	WGHP(TV)	FOX
4	Sinclair Broad. Group *(WXLV Licensee, LLC / WUPN Licensee, LLC)*[21]	WXLV-TV WMYV(TV)	ABC MY
5	Lockwood Broad. *(Greensboro TV, LLC)*	WCWG(TV)	CW
6	ION Media Networks *(ION Media Greensboro License, Inc.)*	WGPX-TV	ION
7	TCT Ministries Inc. *(Radiant Life Ministries, Inc.)*	WLXI(TV)	Religious
8	University of North Carolina *(University of NC)*	WUNL-TV	PBS

b. Post-Auction Television Band Voices in the Greensboro Market

In connection with the broadcast television spectrum incentive auction, the Commission authorized the relinquishment of the licenses of two television stations in the Greensboro Market—WCWG(TV) and WLXI(TV).[22] The Commission required these stations to relinquish their spectrum usage rights and cease broadcasting by no later than January 23, 2018.[23]

These license relinquishments are in furtherance of Congress's determination, pursuant to the Spectrum Act, that the public interest would be better served by incentivizing broadcasters to cease operations in order to make more frequency spectrum available for mobile broadband use. Indeed, the Commission has stated that the public interest benefits associated with broadcast license relinquishments—and therefore the reduction of the number of broadcast stations in any given market—include "easing congestion on the Nation's airwaves, expediting the development of new, more robust wireless services and applications, and spurring job creation and economic

[20] *See Greensboro-High Point-Winston Salem, NC Market Overview*, BIA Advisory Services, LLC, September 25, 2017.

[21] In FCC File No. BTCCDT-20170626AEG, Sinclair has proposed to acquire Tribune and indicated that unless the ownership rules are changed to permit Sinclair to own WGHP(TV), the station would be divested to an appropriate buyer.

[22] *See Auction Closing PN*, Appendix A, at 2.

[23] *See Incentive Auction Task Force and Media and Wireless Telecommunications Bureaus Announce the Commission is Ready to Pay Reverse Auction Winning Bids*, Public Notice, DA 17-702, Attachment, at 2–3 (July 20, 2017) (the "*Ready to Pay PN*").

growth."[24] That is, Congress and the Commission determined that the public interest is better served by "unleash[ing] the full transformative potential of broadband Internet"[25] than by maintaining the current number of broadcast television voices in a particular market.[26]

Accordingly, the Commission has already approved—at the direction of Congress and in furtherance of the public interest—the reduction of the number of independently owned and operating television stations in the Greensboro Market from a total of eight television voices to a total of six television voices as follows[27]:

Voice #	Owner *(Licensee)*	Call Sign(s)	Network
1	Hearst Television *(Hearst Properties Inc.)*	WXII-TV	NBC
2	TEGNA *(WFMY Television, LLC)*	WFMY-TV	CBS
3	Tribune Media Co. *(WGHP License, LLC)*	WGHP(TV)	FOX
4	Sinclair Broad. Group *(WXLV Licensee, LLC / WUPN Licensee, LLC)*	WXLV-TV WMYV(TV)	ABC MY
5	ION Media Networks *(ION Media Greensboro License, Inc.)*	WGPX-TV	ION
6	University of North Carolina *(University of NC)*	WUNL-TV	PBS

c. Post-Combination Voices in the Greensboro Market

The proposed combination of WCWG(TV) and WXII-TV would result in no further reduction in the number of television voices in the Greensboro Market than already authorized by the Commission in connection with the spectrum auction. That is, Hearst's common ownership of WCWG(TV) and WXII-TV would result in seven[28] independently owned and operating television voices in the Greensboro Market as follows:

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[24] *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC 14-50, ¶ 1 (June 2, 2014).

[25] *2014 Quadrennial Second R&O*, ¶ 2.

[26] The Commission has noted that the auction may have a "dramatic impact on the television landscape in many local markets" and that the Commission will "soon commence [its] evaluation of the broadcast marketplace post-auction" and "expect[s] that these issues will feature prominently in future media ownership reviews." *Id.*

[27] While the Eight-Voices Restriction only considers television stations, it should be noted that despite the reduction in television stations, such reduction will result in more spectrum for mobile broadband usage and therefore facilitate the growth and introduction of potentially unlimited new Internet/mobile media "voices" to the Greensboro Market. *See infra* Section IV.

[28] WLXI(TV) did indicate that it may enter into a channel sharing agreement, *see Ready to Pay PN*, Attachment, at 3, but at the time the instant application was originally filed, WLXI(TV) had not filed a channel sharing construction permit application with the Commission. WLXI(TV) subsequently filed a construction permit application proposing to channel share with WUNC-TV, Chapel Hill, NC, on November 29, 2017, in FCC LMS File No. 0000035594, which the Commission granted on December 6, 2017. WLXI(TV) will presumably remain assigned to the Greensboro Market even though its channel sharing partner's sharer station is assigned to the Raleigh-Durham, North Carolina, Designated Market Area.

Voice #	Owner *(Licensee)*	Call Sign(s)	Network
1	Hearst Television *(Hearst Properties Inc.)*	WXII-TV WCWG(TV)	NBC CW
2	TEGNA *(WFMY Television, LLC)*	WFMY-TV	CBS
3	Tribune Media Co. *(WGHP License, LLC)*	WGHP(TV)	FOX
4	Sinclair Broad. Group *(WXLV Licensee, LLC / WUPN Licensee, LLC)*	WXLV-TV WMYV(TV)	ABC MY
5	ION Media Networks *(ION Media Greensboro License, Inc.)*	WGPX-TV	ION
6	TCT Ministries Inc. *(Radiant Life Ministries, Inc.)*	WLXI(TV)	Religious
7	University of North Carolina *(University of NC)*	WUNL-TV	PBS

In enacting the Spectrum Act, Congress decided as a policy matter that the public interest favored removing broadcast voices from their various local markets and making the vacated spectrum available for wireless broadband. In carrying out Congress's directive, the Commission then determined in the course of the spectrum auction that the public interest favored removing two television voices from the Greensboro Market. As such, the appropriate number of minimum voices required to serve the public interest in the Greensboro Market was decided when the Commission accepted two bids to go off-air—that number is <u>six</u>. Here, the proposed combination would not undermine the public interest[29] and would simply maintain the status quo in terms of approved television voices for the Greensboro Market.

Indeed, the proposed combination would actually advance the public interest and promote diversity and competition by facilitating the preservation of a television station in the Greensboro Market. Absent the arrangement with Hearst, and in accordance with the Spectrum Act, the Commission required WCWG(TV) to go off the air. Thus, the proposed combination would save a station in the Greensboro Market that would otherwise cease to exist.

The Commission has long recognized that some service, even if it is not from another independent voice in the market, is better than no service at all. The Commission has noted that "[a] station that is off the air . . . can contribute little, if anything, to any type of diversity in a local

[29] Indeed, the Commission routinely grants waivers of the duopoly rule where the proposed common ownership is found to pose minimal harm to the Commission's diversity and competition goals and benefits the public interest in other ways, for example, by making increased news and public affairs coverage possible. *See, e.g.*, *Consent to Transfer Control of Licenses by Shareholders of Media General, Inc. and Shareholders of LIN Media, LLC to Post-Merger Shareholders of Media General, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 14798 (2014) (granting continuation of failing station waivers in Green Bay-Appleton and Hartford-New Haven DMAs); *Consent to Transfer Control of License Subsidiaries of Media General, Inc. from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, DA 17-23 (Jan. 11, 2017) (granting continuation of failing station waivers in Greenville-Spartanburg and Hartford-New Haven DMAs). Notably, a failing station waiver in the assignment or transfer of control context that permits continued common ownership has precisely the same impact on the voice count as what is proposed here—no reduction in the overall number of television voices in the market.

market," and that permitting another local station to acquire a station that otherwise would be off the air serves the public interest because such acquisition "will result in additional programming, perhaps an increase in diversity in the market, and more advertising time available for sale in larger quantities."[30] "[T]he benefits to the public of preventing a station from going dark . . . cannot harm and may help diversity and competition, regardless of the number of broadcast and other voices in the local market."[31]

Because Hearst's common ownership of WCWG(TV) and WXII-TV would not result in any further reduction in the number of independently owned and operating television stations than has already been accepted and approved by the Commission, and would preserve a television station that the Commission has otherwise required to go off the air, the proposed transaction is in furtherance of the public interest. Considering these facts of the television voice marketplace in the Greensboro Market, waiver of the repealed-but-currently-effective Eight-Voices Restriction is appropriate here.

III. The Proposed Combination Would Permit Enhanced Operations That Would Further Promote Diversity and Competition, as well as Increase Localism, in the Greensboro Market

Hearst's parent company, Hearst Television Inc. ("Hearst Television"), owns and operates 32 full-power local television stations in 26 markets throughout the country. Hearst Television is recognized as an industry leader and has been honored with numerous awards for distinguished journalism, industry innovation, and community service.

In particular, Hearst Television is committed to the provision of news and other public interest programming and localism in each of its television markets. Among numerous examples:

- In 2017, Hearst Television launched a year-long multi-platform news and investigative series titled "State of Addiction" which provides reports and analysis focused on opioid addiction and its impact in the communities served by Hearst Television's stations. Components of "State of Addiction" include local televised specials, interactive Facebook Live sessions to connect viewers with advocates and counselors, online and social platform resources for audiences to seek information and advice, ongoing PSAs, investigative reports, and other efforts such as pill-collection initiatives in Hearst Television markets. In addition, on September 12, 2017, Hearst Television televised a group-wide primetime special featuring insights on the opioid problem gathered throughout the country in connection with Hearst Television's national political and public affairs program "Matter of Fact."

- Hearst Television excels in its commitment to political coverage. For example, in 2000, Hearst Television became the first of the largest television station groups to announce that it would provide a minimum of five minutes airtime nightly to election coverage in the 30 days leading up to elections on each of its stations, which Hearst Television later increased to 10 minutes in 2006 and 12 minutes in

[30] *1999 Ownership R&O*, ¶ 73.

[31] *Id.* at ¶ 77.

2012 (and Hearst Television presently continues this commitment of 12 minutes). Hearst Television stations also host town hall discussions and debates, broadcast candidate profiles, and produce political advertising "fact check" reports and other political investigative stories. Since 2010, Hearst Television stations, collectively, have hosted 256 candidate debates and aired nearly 1,000 hours of political interviews and news coverage.

- Hearst Television provides critical news coverage of emergency weather events, such as Hearst Television's recent coverage of Hurricane Irma on its television stations in West Palm Beach and Orlando.

- In addition to reporting on hurricanes and other life-threatening emergencies, Hearst Television helps provide relief to its communities in need after such events. For example, following Hurricane Harvey, Hearst Television stations raised $4.1 million for relief efforts; following Hurricane Katrina in 2005, Hearst Television's station in New Orleans helped raise more than $1.3 million; and in 2001, Hearst Television's stations collectively helped raise more than $22 million for September 11th relief efforts.

- In 2015, Hearst Television's dedication to the history and fabric of the communities it serves was illustrated in Omaha where, in lieu of building a new television studio for its station KETV, the company elected to restore a decades-old rotting and crumbling train station to preserve the train station's historic landmark status for the community while at the same time revitalizing the building by making it KETV's new home. Hearst Television's decision to preserve this historic landmark has resulted in $130 million in community building and restoration projects in the surrounding "10th Street" area of Omaha.

Hearst Television proposes to extend its deep commitment to the local community to WCWG(TV). Hearst's dedication to the public interest, as well as the operational efficiencies resulting from the proposed combination, would permit Hearst to expand and add local news programming, weather and emergency programming, political programming, high school sports coverage, and other community affairs and outreach programming on WCWG(TV). The proposed combination would also enable Hearst to provide other new and diverse syndicated and other programming in the Greensboro Market targeted to WCWG(TV)'s audience.

Indeed, as an affiliate of The CW Network, WCWG(TV) serves a different target audience demographic than WXII-TV. A 2017 local market study prepared by Marshall Marketing found that 36 percent of WXII-TV's viewers are between the ages of 18-44. Conversely, 52 percent of the WCWG(TV) audience is in that age group. The study also found that WCWG(TV)'s viewers are 42 percent women and 58 percent men, while WXII-TV's viewers are divided evenly between women and men. And, while 50 percent of WXII-TV's viewers earn more than $50,000 a year, 46 percent of the WCWG audience fall into the category that earns less than $30,000. This lower-earning segment is the category that benefits greatly from a more robust offering of free, over-the-air breaking news and weather information. Accordingly, increased programming and community engagement would bring new Hearst Television programming and community outreach to a different, underserved segment of the Greensboro Market.

The Greensboro Market has proven to be hungry for news programming. According to a 2017 Nielsen Research study, the Greensboro Market remains in the top 10 of consumption of local news in "set meter" markets.[32] That study also finds it to be among the top 10 in viewers consuming a preponderance of live TV[33]—a correlation that points to a desire by viewers for live, local news in the marketplace.

Hearst Television's commitment to the promotion of diversity and localism with WCWG(TV) is already playing out in the Greensboro Market on a limited basis in connection with Hearst's channel sharing arrangement with WCWG(TV). Since implementing the channel share at the end of July 2017, and in accordance with the FCC's attribution limitations, Hearst is now producing new and original local news programming on WCWG(TV) for sixteen hours each week. These WCWG(TV) newscasts are separately produced and use different talent than the newscasts broadcast on WXII-TV. Prior to this sharing arrangement with Hearst, WCWG(TV) did not offer any local news. The current arrangement, however, of course, is limited to no more than fifteen percent of the weekly broadcast time on WCWG(TV).[34]

Removal of the fifteen percent programming limitation by permitting common ownership of WCWG(TV) and WXII-TV would only magnify Hearst's commitment and WCWG(TV)'s service to the community.[35] Following the proposed acquisition, if it is permitted, Hearst Television plans these programming changes:

- The company is evaluating adding both original weekend morning news and expansion into early evening weekend news for WCWG(TV). The latter would provide the market with a new 6:00 p.m. local newscast on WCWG(TV) when WXII-TV is preempted due to NBC network sports.

- Hearst Television will provide breaking news and emergency information to WCWG(TV) viewers during breaking news events, severe weather, and emergencies. The company is currently constrained from doing so.

- WCWG(TV) political coverage would also be expanded. For example, WCWG(TV) would become a member of the North Carolina Association of Broadcasters through Hearst Television's membership, allowing it to participate in the broadcast of state-wide debates between gubernatorial and senatorial candidates. WCWG(TV) would participate in the production and programming of local congressional debates, and fully integrate the "Commitment" program across its programming. "Commitment" is the Hearst Television pledge to provide 12 minutes daily of candidate-centered political discourse in the 30 days prior to the primary and the general elections.

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[32] The Nielsen Local Watch Report, Television Trends in Our Cities, Q1 2017, at 11.

[33] *Id.* at 23.

[34] 47 CFR § 73.3555, Note 2(j)(2).

[35] Perversely, the application of the Eight-Voice Restriction here actually prevents Hearst from providing additional news and public interest programming in the market that GTV is not in a position to provide.

- Hearst Television will replace certain paid programming currently aired on WCWG(TV) with higher quality syndicated programming and local sports.

If the proposed acquisition is permitted, Hearst Television plans to fully integrate WCWG(TV) into the fabric of the community, as it has done with WXII-TV, by creating signature partnerships and events to serve the market. Currently, there are no locally produced specials broadcast on WCWG(TV) highlighting community initiatives and no ability to fundraise on-air for local nonprofits. Through the channel sharing arrangement, WCWG(TV) has signed on as the media sponsor for The Ronald McDonald House of Winston-Salem, an organization that supports the families of critically ill children being treated at Wake Forest Baptist Brenner Children's Hospital. This is the region's only facility focused exclusively on children's health. If Hearst Television is allowed to acquire the station and program more time on WCWG(TV), it can run on-air fundraising campaigns for local nonprofits, like The Ronald McDonald House, on WCWG(TV), whereas WCWG(TV) currently lacks the programming inventory and resources to do so. With Hearst Television's expanded news, local programming resources, and production, as well as high-profile talent, WCWG(TV) would be able to add to a growing community footprint.

The public interest benefits flowing from enhanced local programming and community engagement resulting from the efficiencies of combined operations have long been recognized by the Commission.[36] It is axiomatic that increased inventory available for programming directly contributes to more varieties of programming, and therefore diversity of programming, in a market. Enhanced local programming and community engagement would also promote localism—another cornerstone public interest goal—and further competition by strengthening WCWG(TV)'s position in the Greensboro Market, particularly within WCWG(TV)'s underserved demographic market.

Indeed, as recently recognized by the Commission, the Eight-Voices Restriction "denies the public interest benefits produced by common ownership without any evidence of countervailing benefits to competition."[37] In deciding to repeal the Eight-Voice Restriction, the Commission stated that:

> Our action in repealing the Eight-Voices Test will enable local television broadcasters to realize [the efficiencies of common ownership] and better serve their local markets. In particular, the record suggests that local news programming is typically one of the largest operational costs for broadcasters; accordingly, stations may find that common ownership enables them to provide more high-

[36] *See, e.g., 2014 Quadrennial Second R&O*, ¶ 38 ("The data demonstrate that . . . duopolies . . . have created tangible public interest benefits for viewers in local television markets that offset any potential harms that are associated with common ownership. Such benefits include substantial operating efficiencies, which potentially allow a local broadcast station to invest more resources in news or other public interest programming that meets the needs of its local community.").

[37] *Order on Reconsideration*, ¶ 77.

> quality local programming, especially in revenue-scarce small and mid-sized markets.[38]

Accordingly, Hearst's common ownership of WCWG(TV) and WXII-TV would further the public interest. Waiver of the repealed-but-currently-effective Eight-Voices Restriction is therefore warranted under these circumstances.

IV. The Eight-Voices Restriction is Antiquated and Unnecessary to Promote Diversity and Competition in the Greensboro Market

While, for the reasons mentioned above, waiver of the Eight-Voices Restriction in the instant case would not undermine—but would rather promote—diversity, localism, and competition in the Greensboro Market, a waiver of the Eight-Voices Restriction is also appropriate because the restriction is antiquated and ignores the multitude of non-television station voices that provide a wide range of diversity and competition in today's modern media marketplace.

As the Commission has recognized, there has been a tremendous growth in video programming distributors providing alternatives to local television stations in recent years. Most video programming consumers now have access to at least three or four competing MVPDs,[39] with each having packages with 200–300 or more channels of video programming.[40] Many MVPDs also now operate their own local or regional news channels.[41] MVPDs compete against broadcasters not only in programming, including local programming, but also in local advertising.[42]

Even more significant in the video programming market is the recent explosion of online video distributors ("OVDs").[43] OVDs offer both linear-streaming programming and video-on-demand programming over the Internet and include services such as Netflix, Amazon Prime Video, Apple, Google/YouTube, Sony PlayStation Vue, Hulu, HBO NOW, Sling TV, DIRECTV NOW, and online services provided by cable networks and major professional sports leagues.[44] OVDs

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[38] *Id.*

[39] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, DA 17-71, ¶ 3 (Jan. 17, 2017) (the "*2017 Video Programming Market Report*").

[40] *Id.* at ¶ 44, Table III.A.3.

[41] *Id.* at Appendix C, Table C-1.

[42] *See, e.g.*, *2017 Video Programming Market Report*, ¶¶ 70, 75, 104. "Stations compete for advertising revenue with other stations in their respective markets; advertisers may also place advertisements with other media including newspapers, radio stations, magazines, outdoor advertising, transit advertising, direct mail, local cable systems, DBS systems, and online websites, as well as telephone and/or wireless companies." *Id.* at ¶ 104. "Local advertisers may choose to advertise using local broadcast television or radio stations, newspapers, regional cable networks, geographically targeted websites, or other local media." *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventeenth Report, DA 16-510, ¶ 121 (May 6, 2016).

[43] *2017 Video Programming Market Report*, ¶ 8.

[44] *Id.* at ¶ 132.

make a wide variety of programming available to consumers, including multiple channels of linear video programming and extensive libraries with thousands of movies and television shows.[45] And increasingly, OVDs are providing exclusive and original content.[46] Consumers of OVD services often access multiple OVDs,[47] and online video programming now accounts for over 70 percent of North American Internet traffic in the peak evening hours.[48]

Indeed, in connection with deciding to repeal the Eight-Voices Restriction, the Commission noted that:

> Consumers are increasingly accessing video programming delivered via MVPDs, the Internet, and mobile devices. Moreover, the online video distributor (OVD) industry—which includes entities such as Netflix and Hulu—continues to grow and evolve. In addition to providing on-demand access to vast content libraries, many OVDs are now offering original programming and/or live television offerings similar to traditional MVPD offerings.[49]

Local television programming is in direct competition with the programming provided by MVPDs and OVDs. As noted by then-Commissioner Pai, especially with the rise of OVDs, "the market is now more competitive than ever."[50] In particular, the heightened competition brought by OVDs and other digital media providers is reflected in the long-term declines in local television advertising revenues and an explosive growth in digital advertising. In fact, the Commission's most recent Video Programming Market Report found that local digital advertising revenue exceeds local television advertising revenue by nearly double.[51] And it is not just video programmers with whom local television stations compete. Television stations continue to compete with traditional terrestrial radio broadcasters, online and satellite radio stations, newspapers, magazines, outdoor advertising, transit advertising, direct mail, and other media.[52]

These trends are pronounced in the Greensboro Market. The Greensboro Market offers many different sources for viewing and advertising. Spectrum Cable, in particular, provides a 24/7 local news channel in the Greensboro Market, which serves as an independently owned and operating "voice" that competes directly with the local news provided by broadcast television

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[45] *Id.* at ¶¶ 154, 159.

[46] *Id.* at ¶¶ 160-161.

[47] *Id.* at ¶ 157.

[48] *Id.* at ¶ 151.

[49] *Order on Reconsideration*, ¶ 72.

[50] *2014 Quadrennial Second R&O*, Dissenting Statement of Commissioner Ajit Pai, at 182.

[51] *2017 Video Programming Market Report*, ¶ 121, Table III.B.5 (The 2015 percentage of gross revenue for broadcast television stations was 16.1% and it was 31% for digital (Internet/mobile)).

[52] *Id.* at ¶ 104.

stations in the market.[53] In addition to Spectrum Cable, other non-broadcast video programming "voices" in the Greensboro Market include Cox Cable, Morris Broadband, Zito Media, LexCom, Citizens Cable, ACTV, AT&T/DIRECTV, and DISH. OVD "voices" available in the Greensboro Market include DISH Sling, DIRECTV NOW, Amazon, Hulu, YouTube/Google, Netflix, Sony PlayStation Vue, HBO GO, CBS All Access, and many other independent video programmers available on multimedia devices such as Apple TV and Roku. Among these services, more than 300 channels of video programming are available in the Greensboro Market today.[54]

In particular, OVD viewing has significantly increased in the Greensboro Market. Between February 2016 and February 2017, smart television penetration increased by more than 43 percent[55] and the average daily time viewers spend watching multimedia devices increased by more than 33 percent.[56] During the same period, time spent watching live and time-shifted television decreased.[57]

The migration of viewers from television to broadband media in the Greensboro Market is also reflected by an astounding increase in digital media advertising in the market. As shown below, during the five year period from 2012 through 2016, the digital media advertising[58] market share in the Greensboro Market increased by over 127 percent (from 11.5% to 24.6%), while the broadcast television advertising market share decreased by more than 15 percent (from 13% to 11.2%), with digital media advertising now having more than double the local advertising market share than broadcast television.

[53] *See Spectrum News Triad*, http://spectrumlocalnews.com/nc/triad (last visited Sept. 29, 2017).

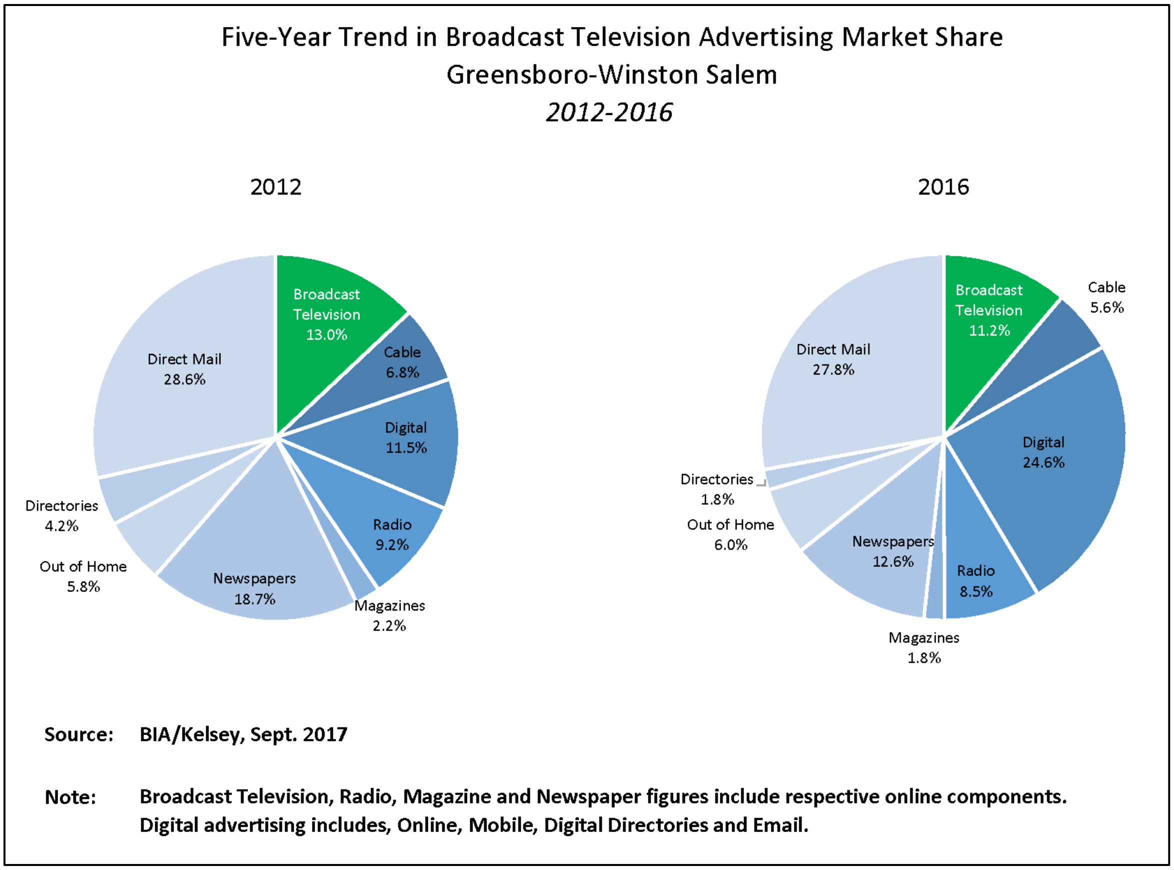
[54] This is a conservative estimate based on the availability of at least 325 channels through DirecTV in Greensboro-High Point-Winston Salem zip codes. On weekends the seasonable numbers are 340 channels due to NFL and NBA packages. Not included are the thousands of On Demand titles that are available for individual purchase and not included in premium channel packages.

[55] The Nielsen Local Watch Report, Television Trends in Our Cities, Q1 2017, at 30 (Smart TV penetration increased from 16% to 23%).

[56] *Id.* at 27 (Average daily time spent on multimedia devices increased from 0:15 to 0:20).

[57] *Id.* (Average daily time spent watching live TV decreased from 5:16 to 5:01 and average daily time spent watching time-shifted TV decreased from 0:54 to 0:39).

[58] Digital media includes online advertising, mobile device advertising, digital directories (including Google search and Facebook advertising), and e-mail advertising.



Indeed, the digital media competition in the Greensboro Market is robust. According to Comscore data from July 2017, there were 1,062,000 unique website visitors in that month to the top 12 websites in the market. The websites of WGHP and WXII-TV are among the top 12 (numbers 8 and 10, respectively) with 20.3 percent of the total unique visitors between them. These are the only websites affiliated with television stations that make the list. Yahoo News, CBS News (network), Weather Channel, CNN, Fox News (network), NBC News (network), Huffington Post, ABC News (network), the Winston-Salem Journal newspaper, and Google News round out the rest of the top 12. According to Comscore, nearly 80 percent of the total unique visitors are visiting websites not affiliated with local broadcast stations. Clearly, other national outlets and one local newspaper outlet are able to deliver impressions and compete quite effectively with local television stations.

Digital media programming and competition has particularly proliferated with the growth in Internet mobile broadband services in recent years. This growth will only further compound as additional mobile broadband spectrum becomes available, especially in the Greensboro Market with the new mobile broadband spectrum made available following the relinquishment of WCWG(TV)'s and WLXI(TV)'s frequencies in connection with the spectrum auction.[59]

Accordingly, today's media marketplace is, and will continue to be, significantly different than it was in 1999 when the Commission adopted the Eight-Voices Restriction. The Eight-Voices

[59] *See supra* Section II.

Restriction is a relic of a long-gone era. Indeed, as early as 2002, the United States Court of Appeals for the D.C. Circuit held that the Commission did not adequately justify the exclusion of non-broadcast media from the Eight-Voices Restriction.[60] Nonetheless, until just recently, the Commission had continued to retain the rule.[61]

Given the wide variety of video programming services available to consumers in the Greensboro Market, the breadth of programming diversity and increased competition to broadcast television stations simply cannot be ignored. Adhering to the repealed-but-currently-effective Eight-Voices Restriction in light of the market realities is simply unnecessary to serve the underlying goals of the duopoly rule in the Greensboro Market. A diverse and competitive local market will remain post-combination.

Moreover, as the Commission recognized in deciding to repeal the Eight-Voices Restriction, the rule lacks any economic or other reasonable foundation.[62] Many television markets have fewer than eight independently owned and operating full-power television stations, and there has been no showing that such markets suffer from a lack of diversity or that there is any meaningful competitive difference in those markets compared to markets with eight or more voices.[63] In fact, a recent study demonstrates that reducing the voice count in a market with fewer than eight voices actually leads to a more competitive market, not a less competitive one.[64] The study also notes that in many cases, the Eight-Voices Restriction would prevent transactions that would not even create a presumption of market power under conventional antitrust standards.[65] That study concludes that the Eight-Voices Restriction "imposes an economically arbitrary threshold, fails to advance the Commission's stated objective of promoting competition, and proscribes transactions that would likely be deemed procompetitive under conventional competition analysis."[66] Indeed, as then-Commissioner Pai stated, the study's "findings are <u>fatal to the eight-voices test</u>."[67]

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[60] *See Sinclair Broad. Grp. v. FCC*, 284 F.3d 148, 165 (D.C. Cir. 2002) (holding that "the Commission has failed to demonstrate that its exclusion of non-broadcast media from the eight voices exception is 'necessary in the public interest'").

[61] *2014 Quadrennial Second R&O*, ¶ 58.

[62] *Order on Reconsideration*, ¶ 77.

[63] *2014 Quadrennial Second R&O*, Petition for Reconsideration of the National Association of Broadcasters, MM Docket No. 14-50, at 6 (Dec. 1, 2016); *2014 Quadrennial Second R&O*, Dissenting Statement of Commissioner Ajit Pai, at 185.

[64] Kevin W. Caves and Hal J. Singer, Economists Incorporated, An Economic Analysis of the FCC's Eight Voices Rule, at 26-28 (July 19, 2016), attached to NAB *Ex Parte* Letter from R. Kaplan and J. Timmerman, MB Docket Nos. 14-50, 09-182 (July 19, 2106) (the "*Caves/Singer Study*").

[65] *See Caves/Singer Study*, at 14–15.

[66] *Id.* at 4.

[67] *2014 Quadrennial Second R&O*, Dissenting Statement of Commissioner Ajit Pai, at 189 (emphasis added).

The repealed-but-currently-effective Eight-Voices Restriction is unnecessary and, when applied to the facts of this case, offers no benefit to the diverse, competitive video marketplace. Accordingly, waiver of the rule is appropriate here.

Conclusion

Hearst and GTV respectfully submit that the instant request satisfies the Commission's waiver standard. The Commission's public interest objectives of the Eight-Voices Restriction were to promote diversity and competition. Hearst's proposed combination of WCWG(TV) and WXII-TV would not result in any reduction to diversity or competition in the Greensboro Market compared to that already authorized by the Commission. Rather, the proposed combination would permit enhanced operations that would actually further promote diversity, competition, and localism in the Greensboro Market. Accordingly, the proposed transaction would not undermine the policy intended to have been served by the Eight-Voices Restriction.

In deciding to repeal the Eight-Voice Restriction, the Commission agreed and stated that the Eight-Voice Restriction "lacks any economic support, is inconsistent with the realities of the television market, and prevents combinations that would likely produce significant public interest economic benefits."[68]

For the foregoing reasons, Hearst and GTV respectfully request that the Commission permanently waive the repealed-but-currently-effective Eight-Voices Restriction and approve Hearst's common ownership of WCWG(TV) and WXII-TV.

In the alternative Hearst and GTV respectfully request that the Commission grant an interim/temporary waiver of the Eight-Voices Restriction pending the finality of the repeal of the rule and, in the event a further proceeding relating to the Order on Reconsideration concludes in a manner that retains the Eight-Voices Restriction, for a period of six (6) months from the finality of such proceeding for Hearst to divest its attributable interest in WCWG(TV) or to take other action necessary to come into compliance with the applicable rule.

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[68] *Order on Reconsideration*, ¶ 77.