Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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TABLE OF CONTENTS

Executive Summary

In these comments, the National Association of Broadcasters ("NAB") responds to the FCC's *Notice of Inquiry* concerning its quadrennial review of the broadcast ownership rules. As observed in the *Notice*, "[d]ramatic changes in the marketplace make it highly appropriate" for the Commission to "take a fresh look" at its ownership rules to "determine whether they will serve [its] public interest goals of competition, localism, and diversity going forward." NAB believes that reform of these rules will promote the FCC's long-standing policy goals.

As all parties to the many prior ownership proceedings have recognized, broadcasting is a key part of today's communications landscape and an enduring part of American culture. Broadcasters play a vital role in their communities – they understand the needs of their audiences and work every day to provide programming and additional services to address those needs. NAB and many radio and television broadcasters have demonstrated in the FCC's pending proceedings on the future of media and broadcast localism that local stations provide valuable news, vital emergency information and alerts, and popular entertainment to the American public free of charge. To continue to do so, however, they must have the flexibility to form competitively viable ownership structures. Ownership rules that limit the ways broadcasters can compete in a digital, multichannel environment adversely affect stations' abilities to serve their diverse audiences and local communities.

As an initial matter, NAB emphasizes that the Commission has a clear duty, under both general administrative law and Section 202(h) of the 1996 Telecommunications Act, to reevaluate the broadcast ownership rules to ensure they still serve the public interest in light of competitive changes in the marketplace. Section 202(h) explicitly requires the repeal or modification of existing ownership regulations if they are no longer necessary in the public interest as the result of competition. In this regard, the Commission must recognize the continuing proliferation of media outlets accessible to American consumers and the profound competitive impact such proliferation has had on local broadcast stations and the need for continued regulation.

In light of the plain language of Section 202(h), and Congress's deregulatory intent in adopting that provision, competition should be the focus of the FCC's analysis in this quadrennial review. In a multichannel environment dominated by consolidated cable and satellite system operators and burgeoning online outlets, undue market power is not a plausible rationale for restricting ownership of local broadcasters but not their competitors. Indeed, the primary competition-related concern in today's multichannel, multiplatform marketplace is the continued ability of local broadcasters to compete effectively and to offer free, over-the-air entertainment and informational programming upon which Americans rely. NAB addresses, in detail, the audience fragmentation and increasing competition for advertising revenue experienced by broadcast stations. To best achieve the FCC's goals of a competitive media marketplace that provides high quality service and greater innovation to consumers, the Commission should structure its local ownership rules so that traditional broadcasters and newer programming distributors can all compete on an equitable playing field. A level regulatory playing field is particularly urgent, given that local broadcasters' more prominent competitors enjoy dual revenue streams of both subscriber fees and advertising revenues and are not subject to local or national ownership restrictions.

By establishing an appropriate paradigm that allows efficient combinations of broadcast outlets, the Commission can ensure that its localism and diversity goals will be met, because competitively viable local stations will have both the resources and the incentives to offer programming that meets the needs and interests of local communities. To succeed – or even survive – in the current media environment, broadcast stations must provide a differentiated product to local audiences. Market forces are increasingly driving local outlets to offer programming that appeals to niche audiences and diverse demographic groups. Radio and television stations are embracing the possibilities of digital technologies, including multicasting, to serve a variety of diverse groups in their local communities. For example, as shown in the attached study by BIA/Kelsey, local radio stations have substantially increased their service to diverse groups, such as Spanish-speaking listeners, and are now using HD Radio to offer local audiences new multicast programming streams with content ranging literally from A (adult album alternative) to V (variety).

As the Commission has stated, localism "is an expensive value," and only competitively viable local stations supported by adequate advertising revenues can serve the public interest and provide a significant local presence. The attached survey on the economics of local television news, conducted for NAB this spring, demonstrates the high cost of providing local news and emergency journalism and the very substantial resources that stations commit to these endeavors. Empirical research, numerous prior FCC decisions and the courts have all concluded that efficiencies and cost savings realized through common ownership of media outlets can enhance stations' programming and produce other localism benefits.

Moreover, existing ownership restrictions are not needed to ensure programming, viewpoint, source or outlet diversity in the 21^{st} century media marketplace. A quarter of a century ago, the Commission found that, in the "information market," cable television, other video media, and print media (including newspapers and magazines) competed with radio and television stations for consumers' time and were substitutes in the provision of information. Today, the information market is vastly broader, including satellite television and radio and the almost infinite resources of the Internet. Consumers today easily access numerous sources and platforms for entertainment, information and news, including political news. Simply put, it is untenable to maintain broadcast-only restrictions on the assumption that common ownership of stations could somehow reduce the ability of consumers to access diverse information or harm competition in the information marketplace.

Multiple studies furthermore show that ownership of media outlets does not determine the viewpoint or "slant" of those outlets and that commonly-owned outlets can and do offer diverse viewpoints. Rather than ownership, a growing body of empirical evidence and economic theory demonstrate that market forces – specifically, the preferences or ideology of the potential audience – drive the slant of newspapers and other outlets.

With regard to minority and female ownership diversity, NAB continues to believe that incentives to promote new entry and access to capital are superior to restrictive ownership rules that place all broadcasters at a competitive disadvantage versus other media.

In light of the above, NAB urges the Commission to eliminate the newspaper/broadcast and radio/television cross-ownership rules. Numerous studies conducted over the course of decades have shown that newspaper-owned broadcast outlets offer more news programming, including more local news. Especially given the financial struggles of the newspaper industry, and continued local ownership restrictions on television stations and radio stations, cross-ownership restrictions are not necessary in the public interest as the result of competition under Section 202(h).

Section 202(h) also requires substantial reform of the television duopoly rule to allow combinations in markets of all sizes, including smaller ones. As shown in the attached financial data, this rule generally prevents the efficient combination of stations in markets (Designated Market Areas 50-210) where stations experienced a 63.7 percent decline in pre-tax profits from 1998-2008 and where lower-performing stations consistently suffered actual losses during those years. Data submitted by NAB also demonstrate that mid-sized and small market stations compete for disproportionately smaller revenues than stations in large markets. A number of studies further have shown that same-market combinations improve programming generally and promote the provision of news programming specifically. The continued maintenance of the current, highly restrictive eight voices/top four duopoly rule, which counts only in-market broadcast television stations as "voices," cannot be justified, especially given the competition offered by multichannel video providers for viewers and advertisers in local markets.

Finally, NAB submits that continuing relaxation of local radio restrictions is appropriate. The current local radio limits were established nearly 15 years ago in a less competitive marketplace, before the emergence of satellite radio, online streaming, and iPods and MP3 players. According to numerous studies, common ownership of radio stations has produced greater programming diversity and has not significantly affected advertising prices. In light of the increasingly fragmented audio marketplace and the financial challenges facing local stations, especially during the recent severe recession, the Commission should continue the process of relaxing the local radio restrictions.

For all the reasons set forth in detail in NAB's comments, Section 202(h) requires reform of the broadcast ownership restrictions to reflect the vast technological and competitive changes that have already occurred and are only accelerating today. Ensuring that local broadcasters are not hampered by outmoded regulation in their efforts to serve audiences with high quality, locally-oriented entertainment, news and emergency journalism would clearly be in the public interest.

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COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the *Notice of Inquiry*[2] concerning the Federal Communication Commission's quadrennial review of its broadcast ownership rules. Pursuant to Section 202(h) of the Telecommunications Act of 1996, which requires the Commission to review its ownership rules every four years, the *Notice* initiated a comprehensive examination of these rules.

In this proceeding, the Commission has broadly requested comment on whether its media ownership rules remain necessary in the public interest as the result of competition.[3] It stressed that "[d]ramatic changes in the marketplace make it highly appropriate" for the Commission to "take a fresh look" at its ownership rules to

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[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

[2] *Notice of Inquiry*, MB Docket No. 09-182 (rel. May 25, 2010) ("*Notice*").

[3] *See Notice* at ¶ 1.

“determine whether they will serve our public interest goals of competition, localism, and diversity going forward.”[4] The Commission also inquired about a range of more specific issues, including relevant changes in technology, altered patterns of media consumption, current economic conditions, and the effects of all these developments on media outlets and their production of news and other local programming.[5]

To address these wide-ranging and complex issues, NAB first addresses the appropriate analytical framework for evaluating the ownership restrictions under Section 202(h). In light of the Commission’s statutory obligations, and the continuing proliferation of competing media outlets and content that consumers may easily access, NAB then discusses how the Commission’s competition, diversity and localism goals would best be served by allowing local broadcasters to adopt more economically viable ownership structures.

As all parties to the Commission’s many prior ownership proceedings have recognized, broadcasting is a key part of today’s communications landscape and an enduring part of American culture. Broadcasters play a vital role in their communities – they understand the needs of their audiences and work every day to provide programming and additional services to address those needs. NAB and many radio and television broadcasters have demonstrated in the Commission’s pending proceedings on the future of media and broadcast localism that local stations provide valuable news, information and entertainment to the American public free of charge. To continue to do so, however, they must have the flexibility to form competitively viable ownership structures. Broadcast ownership rules that limit the ways broadcasters can

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[4] *Id*.

[5] *See id*. at ¶¶ 5-13, 45-51, 57.

compete in a digital multichannel environment adversely affect stations' abilities to serve their diverse audiences and local communities.

NAB shows in these comments that the Commission should carefully evaluate its existing bundle of broadcast-only local ownership restrictions. Many of these restrictions are outmoded and arbitrary due to their narrow focus. They can threaten the continued ability of broadcasters to provide important programming and services to local viewers and listeners, including local news and emergency journalism.

I. Given The Proliferation Of Media Outlets And Providers, The Commission Must Reevaluate How To Fulfill Its Long-Standing Goals Of Competition, Diversity And Localism

The *Notice* (at ¶¶ 30-75) asks numerous questions about the three public interest goals that have traditionally guided the Commission's review of broadcast ownership rules – competition, diversity and localism. NAB believes that the Commission's examination of its ownership rules should be guided by the core principle that the public interest is best served by permitting broadcasters to compete effectively in today's multiplatform, multichannel digital media marketplace.

As the Commission analyzes how its three stated goals will promote the public interest, it has recognized the potential for tension between these goals.[6] For example, healthy competition for audiences and advertising dollars in the media industry overall is positive. However, imposing undue limitations on common ownership of broadcast outlets, while theoretically increasing the *number* of competing broadcasters, can also result in several adverse impacts, including: (i) impeding broadcasters' ability to compete with *other* media outlets and remain economically viable in a multiplatform

[6] *See Notice* at ¶ 76.

market; (ii) harming broadcasters' ability to invest in and develop programming that contributes to the diversity of available programming; and (iii) disserving local communities by making it more difficult or impossible for broadcasters to afford costly news and entertainment programming and other services that local audiences deem important. To avoid these pitfalls, the Commission can define the advertising and information product markets appropriately to reflect the wide array of outlets available to advertisers and consumers in the 21st century multimedia marketplace. By establishing an appropriate competitive paradigm that allows efficient combinations of broadcast outlets, the Commission can ensure that its localism and diversity goals will be met, because competitively viable local broadcast stations will have both the resources and the economic incentives to offer programming that meets the needs and interests of local communities.

A. The Public Interest Is Best Served by Rules that Promote Competition on a Level Playing Field

Radio and television broadcasters have a demonstrated record of unparalleled service to their local audiences.[7] Indeed, broadcasters today continue to provide service that meets the unique needs and interests of local communities, even as the traditional financial bases supporting news, emergency journalism and popular entertainment programming are being threatened.

In this environment, the public interest and the Commission's goals will be best served by ownership rules that allow local broadcasters to form reasonable

[7] *See* Section III.A., *infra.* *See also* Comments of NAB in GN Docket No. 10-25 (May 7, 2010 ("NAB Future of Media Comments"); Comments of NAB in MB Docket No. 04-233 (April 28, 2008); Reply Comments of NAB in MB Docket No. 04-233 (June 11, 2008).

combinations capable of competing effectively against their myriad multichannel and online competitors. As the Commission has recognized, only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest and provide a significant local presence.[8] Providing up-to-the minute local and national news, vital emergency information and highly-valued entertainment programming takes significant resources. Stations must be supported and sustained by economics that make sense in today's world. Broadcasters cannot compete successfully, and serve their communities successfully, unless they have at least a relatively level playing field with their competitors, including subscription-based multichannel video and audio providers that are not subject to local or national ownership restrictions.[9]

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[8] *See Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992) ("*FCC Radio Order*") ("The [radio] industry's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability.").

[9] Late last year the D.C. Circuit Court of Appeals vacated the cable horizontal ownership cap. *See Comcast Corp. v. FCC,* 579 F.3d 1 (D.C. Cir. 2009). In 2001, the same court vacated the vertical cable ownership limits. *Time Warner Entm't Co. v. FCC,* 240 F.3d 1126 (D.C. Cir. 2001). These cable horizontal and vertical limits were mandated by Congress in 1992. 47 U.S.C. § 533(f). However, because of court reversals, vacatur, and remands, the limits have been invalid for a longer period of time than they have actually been in effect. As a result, while the cable industry operates without ownership limits, broadcasting continues to operate under rules adopted sometime between 1975 (i.e., newspaper broadcast cross-ownership) and 1999 (i.e., local television ownership). *See also Fox TV Stations v. FCC,* 280 F.3d 1027 (D.C. Cir. 2002) (vacating the cable/broadcast station cross-ownership rule). Similarly, in 2008, the Commission approved the merger of the only two satellite radio operators into a single entity, which can now offer hundreds of channels of audio programming in every local market in the country. This continuing asymmetric regulation of marketplace competitors does not serve the public interest.

B. The Commission Is Statutorily Obligated to Assess Competition in the Media Marketplace and Revise its Rules to Reflect Competitive Changes in the Market

The analytical framework for evaluating the ownership rules is found in the Communications Act and Section 202(h) of the Telecommunications Act of 1996 and the court cases that have interpreted it. Section 202(h) requires the Commission to "determine whether any of [its ownership rules] are necessary in the public interest **as the result of competition"** and to "repeal or modify any regulation it determines to be no longer in the public interest."[10] Thus, the Commission has an explicit statutory duty to reexamine its broadcast ownership rules every four years, in light of competitive changes in the marketplace, to determine whether their retention still serves the public interest.

Congress's focus on competition in the 1996 Act also found expression in its addition of a new Section 11 to the Communications Act. This section requires the Commission to periodically review regulations applicable to the operations and activities of telecommunications providers to determine whether such regulations are "no longer necessary in the public interest **as the result of meaningful economic competition**" between such service providers, and to "repeal or modify any regulation it determines to be no longer necessary in the public interest."[11] Section 202(h) refers specifically to Section 11, directing the Commission to review its ownership rules "as part of its regulatory reform review under section 11 of the Communications Act of 1934."[12]

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[10] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-112 ("1996 Act") (emphasis added).

[11] 47 U.S.C. § 161 (emphasis added).

[12] 1996 Act, § 202(h).

Competition should, therefore, be the focus of the Commission's analysis in this quadrennial review, as Congress directed in Section 202(h) and Section 11.[13] Localism and diversity will logically flow from ensuring a competitive media marketplace because financially viable outlets will have the necessary resources, as well as significant economic incentives, to offer programming that meets the interests of local communities and diverse audiences.[14]

In making the requisite competitive analysis, it is important to recall the state of the broadcast industry in the early 1990s before some ownership restrictions were first reformed to permit more economically viable ownership structures. In 1992, for example, the Commission found that, due to "market fragmentation," many in the radio industry were "experiencing serious economic stress."[15] Stations were experiencing "sharp decrease[s]" in operating profits and margins.[16] By the early 1990s, "more than half of all stations" were losing money (especially smaller stations), and "almost 300 radio stations" had gone silent.[17] Indeed, the Commission concluded that "radio's ability

[13] As the Supreme Court has stated "time and again," one "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

[14] *See* Section II., *infra*. *See also Bechtel v. FCC*, 10 F.3d 875, 881 (D.C. Cir. 1993) (in a case about FCC regulation of the integration of ownership and management in broadcasting, the court observed that it "is essential to the survival and prosperity of firms" in the marketplace for them to "identif[y] and fill[] available market niches" and be "responsive to [their] customers"); H.R. Rep. No. 204, 104th Cong., 2d Sess. at 118 (1995) (permitting common ownership of broadcast stations will harness operating efficiencies, thereby increasing both "competition and diversity").

[15] *FCC Radio Order*, 7 FCC Rcd at 2756.

[16] *Id.* at 2759.

[17] *Id*. at 2760.

to serve the public interest" had become "substantially threatened."[18] Accordingly, the Commission believed that it was "time to allow the radio industry to adapt" to the modern information marketplace, "free of artificial constraints that prevent valuable efficiencies from being realized."[19]

Similar concerns drove Congress in the 1996 Act to require the Commission to regularly evaluate its broadcast ownership rules. The legislative history of the periodic review mandate indicates that it was intended to "preserve and to promote the competitiveness of over-the-air broadcast stations."[20] Congress found that "significant changes" in the "audio and video marketplace" called for a "substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes, and chose "to depart from the traditional notions of broadcast regulation and to rely more on competitive market forces."[21] Congress expressly noted the "explosion of video distribution technologies and subscription-based programming sources," and stated its intent to ensure the broadcast "industry's ability to compete effectively in a multichannel media market" and to "remain a vital element in the video market."[22]

In the 1996 Act, Congress also directed the Commission to eliminate a number of its ownership rules, including the national numerical caps on radio and television station ownership and the cable-broadcast network cross-ownership restriction. It further

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[18] *Id*.

[19] *Id.*

[20] H.R. Rep. No. 204, 104th Cong., 2d Sess. at 48 (1995) ("*House Report*").

[21] *House Report* at 54-55.

[22] *Id*. at 55.

directed the Commission to relax other local rules. Section 202(h) mandating periodic review of the broadcast ownership rules was an important part of the paradigm.

Especially in light of this background for Section 202(h)'s adoption, courts interpreting this section have recognized its deregulatory nature. As the D.C. Circuit Court of Appeals explained, Section 202(h) was "designed to 'continue the process of deregulation.'"[23] The Third Circuit Court of Appeals found that Section 202(h) imposes an "obligation" on the Commission that "it would not otherwise have" to "periodically . . . justify its existing regulations" and "vacate[ ] or modif[y]" those no longer in the public interest – a requirement that "makes § 202(h) 'deregulatory.'"[24] *See also Prometheus*, 373 F.3d at 394 ("acknowledg[ing] that § 202(h) was enacted in the context of deregulatory amendments").

As Congress recognized as long ago as 1996, the modern media marketplace is marked by dramatic growth in competition for viewers and listeners. There are greater numbers and different types of outlets and providers. Consumer tastes are changing, especially among younger viewers and listeners. Fundamental changes in the advertising marketplace have affected free, over-the-air broadcast stations more than subscription-based media. In this environment, local broadcast stations are clearly unable to obtain and exercise any undue market power. For this reason, and to comport with Section 202(h) and congressional intent, the traditional competition rationale for maintaining a regulatory regime applicable only to local broadcasters and

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[23] *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002), quoting *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1033 (D.C. Cir. 2002). *See also id*. at 164 (court rejected the "wait and see" approach taken by FCC in its ownership review, due to "unresolved questions" on certain issues, as inconsistent with Section 202(h)'s mandate).

[24] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 395 (3rd Cir. 2004).

not their competitors must be reexamined.[25] If anything, the primary competition-related concern in today's digital, multichannel marketplace is the continued ability of local broadcasters to compete effectively and to offer the free, over-the-air entertainment and informational programming upon which Americans rely. The Commission clearly now bears the burden of empirically demonstrating the benefits of its broadcast ownership rules to justify their retention in any form in the current competitive marketplace.[26] It cannot begin this quadrennial review with the assumption that the rules must be retained.

C. A Wide and Growing Range of Media Offerings Compete Today for Audiences and Advertisers

The *Notice* (at ¶ 32) asks several important questions about the Commission's competition analysis, including what approach it should take to determine the relevant product market. In conducting its competition analysis, the Commission should carefully study the full range of media offerings that compete with radio and television stations for both vital advertising and for the time and attention of potential viewers and listeners. Clearly, both advertisers and audiences today enjoy a vast array of choices in determining which types of media outlets to utilize for their purposes. These broad

[25] *See Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903, 12916 (1999) (stating that "ownership rules and policies have been aimed at precluding broadcasters from obtaining and exercising market power").

[26] *See, e.g., Bechtel*, 10 F.3d at 880 (court invalidated FCC criterion for licensing broadcast applicants because, after 28 "years of experience with the policy," the FCC had "no evidence to indicate that it achieve[d]" the "benefits that the Commission attribute[d] to it," and the agency could no longer rely on "unverified predictions"); *Cincinnati Bell Telephone Company v. FCC*, 69 F.3d 752, 764 (6th Cir. 1995) (court found ownership limitations in the wireless industry to be arbitrary because they were based on "generalized conclusions" and "broadly stated fears," rather than "documentary support").

markets for advertising, and for information and entertainment, must be reflected in the Commission's competition analysis and in any reformed rules the Commission may ultimately adopt.[27]

1. Advertisers Today May Select from a Wide Array of Media Outlets and Platforms

Simply put, competition exists when buyers can substitute one product for another. There can be no question that advertisers today seeking to reach consumers enjoy a wide and growing range of choices for spending their advertising dollars and can substitute one media outlet or platform for another, depending upon their relative attractiveness (e.g., price, size of audience reached, ability to target audiences, etc). Alternatives currently available for advertisers include broadcast television and radio, cable television, satellite television and radio, Internet, newspapers, magazines, direct mail, billboards, search engine marketing, social media, and mobile media, among others.

Numerous studies have found significant substitutability between various media outlets and platforms for advertising purposes, and substitution is growing today, as advertisers shift their dollars away from traditional outlets to new media platforms.[28]

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[27] We note, however, that none of the FCC's proposed studies specifically address questions about the advertising marketplace. Given the reliance of broadcast stations on ad revenues, NAB believes the Commission should in this proceeding examine the shift by advertisers from traditional media outlets to multichannel and online platforms. The retention of ownership restrictions based on an outmoded or incomplete understanding of today's broad advertising market would be arbitrary and capricious. *See* Public Notice, *Media Bureau Announces the Release of Requests for Quotation for Media Ownership Studies and Seeks Suggestions for Additional Studies in Media Ownership Proceeding*, DA 10-1084 (June 16, 2010) ("*Ownership Studies Public Notice*").

[28] *See, e.g.,* M. Frank, "Media Substitution in Advertising: A Spirited Case Study," 26 *International Journal of Industrial Organization* 308, 311 (2008) (finding that many of the

The Commission, too, has recognized in various contexts that numerous types of media outlets compete against each other for advertising revenue. For example, a report prepared for the FCC's 2002 ownership review identified a range of media (newspapers, magazines, broadcast radio and television, cable television, yellow pages, direct mail, business papers, billboards and the Internet), "many" of which "may serve as substitutes for another" depending on the target audience and the product or service being advertised.[29] Indeed, in the *Notice* in this proceeding, the Commission acknowledges a broad advertising market: "[I]ncreased penetration of the Internet, and the availability of alternative sources of news, information, and entertainment online have presented the broadcast television, radio, and newspaper industries with

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advertising media used by liquor brands are highly substitutable); A. Goldfarb and C. Tucker, "Advertising Bans and the Substitutability of Online and Offline Advertising," (May 4, 2010), *available at* http://ssrn.com/abstract=1600221 (concluding that online advertising substitutes for, rather than complements, offline advertising); A. Thierer and G. Eskelsen, Progress and Freedom Foundation, "Media Metrics: The True State of the Modern Media Marketplace," at 23 (Summer 2008) ("*PFF Report*") (discussing increasing substitution among media outlets in today's marketplace); R. Ekelund, Jr., G. Ford and J. Jackson, "Are Local TV Markets Separate Markets?," 7 *Int'l J. Econ. Bus*. 79, 91-92 (2000) (finding that, at the local level, television advertising is not a distinct antitrust market because "radio and newspaper advertising are substitutes for TV advertising").

[29] J. Levy, M. Ford-Levine and A. Levine, "Broadcast Television: Survivor in a Sea of Competition," Office of Plans and Policy Working Paper No. 37, at 9 (Sept. 2002) (finding that "television advertising is one component of a larger advertising market"). *See also Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 594 (2009) (comparing a 2.4 percent decline in broadcast television advertising revenue to an 11.4 percent increase for cable programming network ad revenue in 2005); *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd 11276 at ¶ 5 (1998) (local advertising market includes broadcast television, cable television, radio and newspapers). NAB has also demonstrated that cable television operators compete with local broadcast television stations for advertising revenues in local markets. *See* Attachment E, "Cable Share of Local TV Revenues, 2003-2008."

increased competition for audiences, *as well as advertising dollars*, the primary source of revenue for these industries."[30]

It is beyond dispute that the advertising marketplace has undergone a remarkable transformation in recent years. In the past, advertisers relied much more on traditional media, such as television, radio and newspapers, to reach large groups of consumers who had fewer options for their time and attention.[31] Advertisers then had a fairly simple task of allocating their funds across a handful of media options for disseminating their messages. Today, however, planning and buying advertising has turned into a "Rubik's Cube of twisting and turning possibilities."[32]

There are new media advertising options coming to market almost every day, leading the Project for Excellence in Journalism to report that the ad market is in "chaos."[33] According to media analyst Jack Myers, "[a]dvertisers are being pulled in multiple directions," and, consequently, advertising dollars are shifting from traditional media into search engine marketing, event marketing, cause-related marketing, conversational and word-of-mouth marketing, and social and mobile media, among others.[34]

Reflecting the breadth of today's advertising marketplace, and the array of choices that advertisers enjoy, BIA/Kelsey now estimates, and provides forecasts for,

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[30] *Notice* at ¶ 5 (emphasis added).

[31] *See PFF Report* at 21.

[32] C. Taylor and the Project for Excellence in Journalism, "The State of the News Media 2008: The Future of Advertising," *available at* www.stateofthemedia.org/2008/narrative_special_advertising.php?media=13

[33] *Id*.

[34] *PFF Report* at 22 *quoting* Jack Myers, "Why Digital Media Investments are Under-Performing and How to Improve Their Value," *Jack Myers Think Tank* (June 3, 2008).

total advertising revenues across twelve media (including broadcast and print, local cable systems, online and others) that they believe compete in local advertising markets.[35] In its most recent forecast of U.S. local advertising revenues, BIA/Kelsey projected that, from 2009 to 2014, spending on traditional media advertising in local markets will *decline* at a compounded annual rate of 1.2 percent, while spending on online/interactive advertising will *grow* at a compounded annual rate of 19.3 percent.[36] The Internet is "poised to overtake newspapers as the second-largest U.S. advertising medium by revenue behind television."[37] The fact that ad spending on traditional media is declining as advertising on online, interactive and multichannel outlets is rising demonstrates the substitutability of these various platforms for many advertisers.[38]

The Commission's competitive analysis in this proceeding must reflect the significant and growing substitutability between a wide array of media outlets and platforms, both offline and online. In the current multichannel, multiplatform

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[35] The media included as competing in local advertising markets include newspapers, radio stations, television stations, yellow pages, direct mail, out-of-home (e.g., traditional and digital billboards and commercials airing prior to movies), local cable systems, online/interactive (including search ads, display ads, classifieds and other online advertising types), Internet yellow pages, local magazines, mobile and email marketing. *See* BIA/Kelsey, "Media Ad View: Market-by-Market Local Spending Reports," *available at* www.kelseygroup.com/media-ad-view/

[36] *See* BIA/Kelsey, "BIA/Kelsey Forecasts U.S. Local Advertising Revenues to Reach $144.9B in 2014" (Feb. 22, 2010).

[37] "Internet Is Set to Overtake Newspapers in Ad Revenue," The Wall Street Journal (June 15, 2010) (noting growth in online ad business over next five years and particularly the growth of advertising across interactive media).

[38] For a highly detailed description of the shift by advertisers from "traditional" (i.e., broadcast and print) to "alternative" (i.e., online and mobile) media, *see* Veronis Suhler Stevenson ("VSS"), *Communications Industry Forecast 2009-2013* at Chapter 2, Advertising (23rd ed. 2009). VSS predicted for the period 2008-2013 that alternative ad spending would grow at a compounded annual rate of 12.3 percent, while traditional advertising would post a 3.3 percent compound annual decline.

marketplace, the Commission has no basis for restricting its competitive analysis to an advertising market limited only to broadcast stations (or even to an ad market including other traditional media such as newspapers). Indeed, it would be arbitrary and capricious for the Commission to fail to consider the profound effects that multichannel and online outlets are having in the advertising marketplace generally and as competitors for local broadcast stations specifically.

2. The Information Market Is Even Broader than the Advertising Market

A quarter of a century ago, the Commission found that the "information market" includes "not only TV and radio outlets, but cable, other video media, and numerous print media" (such as newspapers, magazines and periodicals) "as well." Report and Order, Gen. Docket No. 83-1009, 100 FCC Rcd 2d 17, 25 (1984) (finding that "these other media compete with broadcast outlets for the time that citizens devote to acquiring the information they desire" and "are substitutes in the provision of such information"). As the *Notice* acknowledges, with the addition of, *inter alia*, the Internet and television and radio satellite services, the information market is broader and more varied than ever before.[39]

Studies previously conducted for the FCC and academic work support the view that consumers utilize a range of media outlets and substitute between various media for both informational and entertainment purposes. For example, as early as 2002, a study for the FCC examined the extent to which consumers regard different types of

[39] *See, e.g., Notice* at ¶ 11 ("[o]ur review must take account of Internet's role and significance" because "it has increased the quantity of news and programming available to consumers"); ¶ 87 (noting that more people are using online and social media, including to obtain news and information).

media as substitutable for both news and entertainment, and found clear evidence of substitution between the Internet and broadcast television especially, both overall and for news specifically.[40] Academic studies have confirmed this substitutability between the Internet and traditional media as sources for news and information. One recent study concluded that the Internet displaces the use of traditional media (television, newspapers and radio), performing a "substitutive" function, rather than a "supplementary" one, for both news/information and entertainment purposes.[41]

Recent surveys have only reconfirmed the expansive and continuing growth of the Internet and online media outlets. It is beyond dispute that the Internet has fundamentally changed how Americans consume media – including news, political information, video entertainment and music – and that the Internet now substantially competes with traditional media for consumers' attention and time. A 2009 report found that the percentage of Americans who use the Internet has reached 80 percent, and Internet access through a broadband connection is the dominant form of online service

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[40] *See* Joel Waldfogel, "Consumer Substitution Among Media" at 3, 39 (Sept. 2002). A media usage survey conducted by Nielsen for the FCC in 2007 showed that consumers use cable/satellite television and the Internet to obtain many types of information, including national, international and local news, weather, opinion and commentary and sports, and regard these media as the leading sources for "breaking news" and "in-depth information" on specific news and current affairs topics. *See* Nielsen Media Research, Inc., "Federal Communications Commission Telephone Study May 7-27; May 29-31; June 1-3, 2007," at Tables 007, 012, 031, 033.

[41] P. Lee and L. Leung, "Assessing the Displacement Effects of the Internet," 25 *Telematics and Informatics* 145, 151 (2008). *See also* J. Dimmick, Y. Chen and Z. Li, "Competition Between the Internet and Traditional News Media: The Gratification-Opportunities Niche Dimension," 17 *J. Media Econ*. 19, 31 (2004) (concluding that the growing popularity of the Internet "has resulted in changes in use of traditional media," including television and newspapers, in the "daily news domain").

at home, by far.[42] The amount of time that Internet users spend online continues to grow (and now exceeds an average of 17 hours a week).[43] Another recent study found that between 2004 and 2009, the number of hours per week that Americans use the Internet increased by 117 percent, while radio use decreased by 18 percent, time spent reading newspapers declined by 17 percent, and television viewing remained constant.[44]

With respect to video in particular, the Pew Research Center reports that 70 percent of Americans in 2009 used the Internet to watch or download video, with dramatic increases since 2007.[45] This data is echoed by a 2010 survey by Edison Research and Arbitron, which finds that non-traditional television viewing is now a mainstream activity, including ordering video on-demand, watching television programming over the Internet without downloading, or downloading video from the Internet.[46] This survey also found that an estimated 70 million Americans listened to

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[42] *See* USC Annenberg School for Communication, Center for the Digital Future, "Highlights: The 2009 Digital Future Project – Year Eight," at 1-2 (April 2009). Nearly two-thirds of American adults use high-speed Internet connections to go online from home. *See* J. Horrigan, FCC, "Broadband Adoption and Use in America," OBI Working Paper Series No. 1 at 3 (Feb. 2010).

[43] *See* Center for the Digital Future, "Highlights: The 2009 Digital Future Project" at 1-2.

[44] *See* D. Kerr, "Overall Time Spent Online Remains Static," *CNet News* (July 28, 2009), *available at* http://news.cnet.com/8301-1023_3-10297935-93.html, citing Forrester Research, "Consumer Behavior Online: A 2009 Deep Dive," *available at* http://www.forrester.com/rb/research (reporting deeper "engagement" with online channels).

[45] *See* Pew Research Center, Pew Internet & American Life Project, "The State of Online Video" at 2 (June 3, 2010). Viewers watch various kinds of video online, including comedy, educational, movies or TV shows, and political videos.

[46] *See* Edison Research/Arbitron, "The Infinite Dial 2010: Digital Platforms and the Future of Radio," at 33 (April 8, 2010), *available at* http://www.arbitron.com/downloads/infinite_dial_presentation_2010_reva.pdf

online radio in the past month and that the weekly online radio audience is now approximately 43 million people. Fifty-five percent of monthly online radio listeners now say that they listen most to Internet-only audio.[47]

The Internet is also "at the center of the story of how people's relationship to news is changing."[48] Clearly, Americans do not rely on any one source for news, but substitute freely among many platforms, both online and offline. Ninety-two percent of Americans use multiple platforms to access news on a typical day, and nearly half (46 percent) obtain news from four to six media platforms on a typical day. Sixty-one percent of Americans report using the Internet on a typical day to access news, and while online, most consumers use multiple news sources (with 65 percent reporting that they do not have a single favorite website for news). One third of cell phone owners access news on their phones. Consumers also create news, with 37 percent of Internet users contributing to the creation of news, commenting about it, or disseminating it via social media sites.[49]

More than ever, consumers are using the Internet as an important source of political news. During the 2008 election, 55 percent of American adults went online to take part in, or get news and information about, the 2008 campaign.[50] And as the online political news audience has grown, the importance of the Internet relative to other

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[47] *See id.* at 18-19, 24.

[48] Pew Research Center, Internet & American Life Project, "Understanding the Participatory News Consumer: How Internet and Cell Phone Users Have Turned News into a Social Experience," at 2 (March 1, 2010) ("*Pew Participatory News Consumer Study*").

[49] *See id*. at 2-4.

[50] *See* A. Smith, Pew Internet & American Life Project, "The Internet's Role in Campaign 2008," at 3 (April 2009).

political news sources has increased. According to this Pew survey, the Internet is now on par with newspapers as a major source of campaign news for Americans overall, and is more important than newspapers as a source of election news for those under the age of 50 and for those with a broadband connection.[51] Data such as this showing that broadband users increasingly access news and political information via the Internet only further undermines the rationales for maintaining restrictions on broadcast outlets only.[52]

Obviously, consumers today can choose between – and do substitute between – a wider range of media platforms and outlets than ever before for both informational and entertainment content.[53] The broad information market that the Commission recognized in 1984 has, in the past quarter of a century, expanded even further. But the information market relevant to the Commission's inquiry is even broader than the above discussion may indicate.

Significant news reports (including those originating from non-mainstream outlets such as blogs) are quickly rebroadcast by a wide range of media from around the

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[51] *Id*. at 5-7.

[52] *See Notice* at ¶ 106 (asking how access to broadband affects FCC's ownership policy goals).

[53] NAB notes that even if the Internet were primarily regarded as a complement to traditional sources of news, information and entertainment for some consumers, the influence of the Internet in the marketplace should not be discounted. Because consumers have widely available sources of news, information and entertainment via the Internet and multichannel video and audio providers, diversity- and competition-related concerns raised by common ownership of broadcast outlets must necessarily be lessened.

country (or even the world).[54] This "means that the set of relevant information-market competitors is often much broader than traditional market definitions would suggest."[55] Notably, "small firms that are insignificant as product-market competitors can play outsized roles in the information market."[56] As a result, "traditional concentration measures such as the Herfindahl index that emphasize the relative *market shares* of firms are inappropriate as measures of information-market competition."[57]

These insights about the breadth of the information market and the significant role that even small media outlets can play have clear relevance for the Commission's analysis of competition in the information market (and of the levels of diversity in media markets). As NAB has previously explained in detail, when assessing the levels of competition and diversity in the information marketplace, it is the availability of content from multiple outlets that matters – not the fact that some content, ideas or viewpoints may be more or less popular than other content at any particular time.[58] The

[54] *See* M. Gentzkow and J. Shapiro, "Competition and Truth in the Market for News," 22 *Journal of Economic Perspectives* 133, 150 (Spring 2008) (explaining why the information market is so broad).

[55] *Id*. For example, the *Boston Globe* and the *Los Angeles Times* are information-market competitors, even though few consumers likely see them as substitutes. Both cover news and a story first reported in the *Times* can reach Boston consumers either directly (via the *Times*' website) or indirectly (e.g., through reports on other outlets such as broadcast and cable network channels or through social media).

[56] *Id*. (citing numerous examples, including modest-sized local newspapers such as the *Chattanooga Times* and the *Des Moines Register* winning Pulitzer Prizes for breaking major national or international stories, and identifying major political stories originally disseminated by nontraditional online outlets).

[57] *Id*. at 151 (emphasis in original).

[58] *See* NAB Comments in MB Docket No. 06-121 at 54 (Oct. 23, 2006), citing generally B. Owen, "Confusing Success with Access: 'Correctly' Measuring Concentration of Ownership and Control in Mass Media and Online Services," Progress and Freedom Foundation, Release 12.11 (July 2005).

Commission cannot base its analysis on the current popularity or mainstream acceptance of the content or ideas offered by various outlets, but should instead focus on the number of alternative outlets offering information and entertainment to consumers. Just because certain ideas are unpopular or certain content less appealing to consumers does not make that content any less significant from a First Amendment point of view.[59] Indeed, it would be antithetical to First Amendment values for a government agency to suggest that outlets offering less "mainstream" content should not count at all, or should be discounted substantially, in any analysis of the information marketplace. Outlets offering new or different or radical content – even if that content is not immediately popular or widely acclaimed – may ultimately be offering the content most valuable or innovative in the long term.[60] "To discount media that are available to all, but that garner small audiences because consumers prefer other content, would understate" significantly both the level of competition in the marketplace of ideas and the level of diversity in media markets.[61]

Indeed, in examining the breadth of the information marketplace, the Commission must realize that the Internet and its applications allow consumers to by-

[59] *See, e.g., NAACP v. Button*, 371 U.S. 415, 445 (1963) (Constitution protects expression without regard "to the truth, popularity, or social utility of the ideas and beliefs which are offered"); *Kingsley International Pictures Corp. v. Regents of the University of the State of New York*, 360 U.S. 684, 689 (1959) (First Amendment guarantees are "not confined to the expression of ideas that are conventional or shared by a majority," and they protect "expression which is eloquent no less than that which is unconvincing").

[60] *See Abrams v. U.S*., 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("time has upset many fighting faiths," and the "best test of truth is the power of the thought to get itself accepted in the competition of the market").

[61] B. Owen, "Regulatory Reform: The Telecommunications Act of 1996 and the FCC Media Ownership Rules," 2003 *Mich. St. DCL L. Rev*. 671, 692 (Fall 2003).

pass media outlets altogether and directly connect with other citizens, local, state and federal government officials and agencies, and candidates running for office, just to name a few. Traditional media outlets and journalists are clearly not "gatekeepers over what the public knows" or what information the public may access.[62] Moreover, social media have recently emerged as powerful tools for disseminating information and mobilizing citizens. The majority of Internet users (57 percent) now use some kind of social media and their use has accelerated the development of citizen journalism, including at the local level.[63] Online social networking sites also serve as hubs for people to share political interests and affiliations with friends.[64] In fact, "[h]alf of all Americans say they rely on the people around them to find out at least some of the news they need to know."[65] In light of the ever-increasing breadth and depth of the market for information, it is increasingly untenable to maintain broadcast-only ownership restrictions on the basis that common ownership could somehow harm competition in the information marketplace or reduce the ability of consumers to access information.

II. Diversity and Localism Will Flow Logically From A Competitive Market

To succeed – or even survive – in the current media ecosystem in which they face unprecedented competition for audiences and advertisers, local broadcast stations

[62] Pew Research Center, Project for Excellence in Journalism, "2006 State of the News Media," Overview/Introduction, *available at* www.stateofthemedia.org/2006/narrative_overview_intro.asp?media=1

[63] *See* Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media," Executive Summary, *available at* www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf

[64] Smith, "The Internet's Role in Campaign 2008" at 43.

[65] Pew Research Center Publications, "New Media, Old Media: How Blogs and Social Media Agendas Relate and Differ from Traditional Press" (May 23, 2010).

must provide a differentiated product. There are too many general entertainment and information sources now available to all consumers for local broadcasters to provide just more of the same. Market forces will drive local media outlets to offer products that appeal to local audiences, including niche audiences, which are not already being served by other outlets. *See* Section III.A.2., *infra*. But for broadcasters to contribute to localism and diversity in local markets, they must be competitively viable and have the resources to invest in new technologies, acquire and produce costly programming, and experiment with new formats and services.

A. The Commission's Diversity Goals Will Be Best Served by Rules that Allow Reasonable Common Ownership and Promote a More Competitively Viable Broadcast Industry

The *Notice* asks several significant questions about diversity in general, as well as the relationship between the broadcast ownership rules and the FCC's diversity goal.[66] Among other questions, the Commission identifies five kinds of diversity it has traditionally analyzed in connection with broadcast ownership and asks how it should measure, prioritize and effectuate the various types of diversity. NAB believes that there is currently an abundance of nearly every form of diversity mentioned—with the exception of minority and female ownership diversity. As explained below, the Commission can foster greater diversity through modification of its ownership rules.

Viewpoint Diversity. The Commission has historically connected the availability of diverse viewpoints to the number of owners within a given product/geographic

[66] *See Notice* at ¶¶ 29-30; 66-78.

market.[67] NAB and others have previously demonstrated that viewpoint diversity is not connected to diffuse ownership.[68] To the contrary, both older and more recent studies show that commonly owned media do in fact provide a meaningful diversity of viewpoints on issues of public concern, thereby calling into question the traditional presumption that separate owners necessarily provide a wider array of viewpoints.

For example, one study compared the content of six newspapers in contrasting ownership situations to determine "whether significant differences in content would be found" in "joint ownership" arrangements.[69] Although the authors anticipated that common ownership would result in a significant overlap or duplication of news and editorial content, they found "absolutely *no* duplication in opinion content" among commonly owned papers, and that the papers published separate editorials, political

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[67] *See, e.g., 2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, ¶ 20 (2003) ("*2002 Biennial Review Orde*r"), citing *Rules and Regulations Relating to Multiple Ownership*, 18 F.C.C. 288 (1953) ("[T]he fundamental purpose of this facet of the multiple ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoints…"); *Amendment of Sections 73.74, 73.240 & 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM & Television Broadcast Stations*, 50 F.C.C.2d 1046, 1079-80 (1975).

[68] *See, e.g.,* NAB Comments in MB Docket No. 06-121 at 42-48 (Oct. 23, 2006), citing S. Besen and L. Johnson, *Regulation of Media Ownership by the Federal Communications Commission: An Assessment* at 52 (Dec. 1984) (evidence to support claims that unconcentrated ownership leads to presentation of more viewpoints is "virtually nonexistent."); B. Compaine, "The Impact of Ownership on Content: Does It Matter?," 13 *Cardozo Arts & Ent. L.J*. 755, 763 (1995) (survey of literature and scholarship yields no evidence of positive correlation between ownership limits and diverse viewpoints); D. Haddock and D. Polsby, "Bright Lines, The Federal Communications Commission's Duopoly Rule, and the Diversity of Voices," 42 *Fed. Comm. L.J.* 331, 333 (1990) (arguing that rule preventing local television duopolies "may actually frustrate" FCC's diversity and competition goals).

[69] *See* Comments of NAB in MB Docket No. 06-121 at 44 (Oct. 23, 2006), citing R. Hicks and J. Featherston, "Duplication of Newspaper Content in Contrasting Ownership Situations," 55 *Journalism Q*. 549, 550 (1978).

columns, editorial cartoons and letters to the editor.[70] A more recent study examined the product differentiation and the amount of content variety available in 207 newspaper markets between 1993 and 1999, a period of "sharp increase in newspaper mergers and acquisitions."[71] Using data on topical reporting beats, this study measured the "degree of differentiation in coverage among papers in each market" in 1993 and 1999, and found that a "decrease in the number of owners in a market lead[] to an increase in separation between products," and that "the number of topical reporting beats covered per market also increase[d] with ownership concentration."[72] In light of its finding that concentration was increasing content diversity and benefiting consumers, the study concluded that "government intervention to increase the number" of "media owners within markets may be unnecessary."[73]

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[70] *See* Hicks and Featherston, "Duplication of Newspaper Content" at 551. This study also noted that "[i]n all three cities studied, readers of the two papers published get two distinct products in terms of appearance and non-duplicated content," and that the "type of ownership would seem to make little difference." *Id*. at 553. Thus, the authors concluded that it was possible "to have real competition in a local, jointly owned situation." *Id*.

[71] *See* Comments of NAB in MB Docket No. 06-121 at 44-45 (Oct. 23, 2006), citing L. George, "What's Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets," 29th TPRC Conference 2001, Report No. TPRC-2001-097 at 2 (2001). As indicators of content variety and product differentiation, the author used "newspaper-level information on the assignment of reporters and editors to approximately 150 different topical reporting beats" (*e.g.*, agriculture, technology, banking and finance, fitness and health, religion, consumer affairs, music, opinion and commentary, and, of course, foreign, local, national and regional news). *Id*. at 2, 35-36. *See also* L. George, "What's Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets," 19 *Information Economics and Policy* 285 (2007) (updating 2001 study and reaching the same conclusions).

[72] George, "What's Fit to Print" at 2-3.

[73] George, "What's Fit to Print" at 28, 33. Certainly commonly-owned newspapers routinely endorse different political candidates. *See* Comments of Media General, MB Docket No. 06-121, Appendix 6 (Oct. 23, 2006) (examining the 2004 Presidential editorial endorsements of newspapers owned by Gannett, Tribune, Cox, New York

Another very recent empirical study, which examined in detail editorial viewpoint over the course of major newspaper mergers and acquisitions, similarly did not support what the authors termed the "convergence hypothesis" (i.e., the assumption that common ownership automatically reduces substantive viewpoint diversity). Instead, the data revealed complex patterns of stability, convergence and divergence of viewpoints following the newspaper mergers examined, thus challenging "one of the basic empirical assumptions of federal media ownership regulations."[74]

With regard to newspaper/broadcast combinations specifically, a series of studies by Professor David Pritchard examining diversity of information and viewpoints expressed by commonly owned newspapers and broadcast outlets show that there is no correlation between the diversity of viewpoints presented and common ownership.[75]

Times Company and Media General, and documenting that newspapers owned by the same companies endorsed different candidates).

[74] D. Ho and K. Quinn, "Viewpoint Diversity and Media Consolidation: An Empirical Study," 61 *Stanford Law Review* 781, 786, 860 (2009).

[75] *See* Comments of NAB in MB Docket No. 06-121 at 44-46 (Oct. 23, 2006), citing D. Pritchard, "A Tale of Three Cities: 'Diverse and Antagonistic' Information in Situations of Local Newspaper/Broadcast Cross-Ownership," 54 *Fed. Comm. L.J*. 31 (2001) (study of Presidential campaign coverage in 2000 "found substantial diversity in the news and commentary offered by each of the three newspaper/broadcast combinations" under consideration and found "no evidence of ownership influence on, or control of, news coverage" by the cross-owned media properties in the three markets); D. Pritchard, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign" (Sept. 2002) (FCC-commissioned study of Presidential campaign coverage by ten newspaper/broadcast combinations found that common ownership of a newspaper and a television station in a community did "not result in a predictable pattern of news coverage and commentary on important political events between the commonly-owned outlets."). *See also* D. Pritchard, "One Owner, One Voice? Testing a Central Premise of Newspaper-Broadcast Cross-Ownership Policy," 13 *Comm. L. & Pol'y* 1, 22 (2008) (study reviewing media slant during the 2004 presidential campaign found "it [is] difficult, if not impossible, to distinguish between cross-owned and similar non-cross-owned media outlets . . . merely by looking at the slant of their coverage . . .").

Similarly, a study conducted for the Commission in 2007 examined the partisan slant of television news coverage, concluding that "there is little consistent and significant difference in the partisan slant of [newspaper] cross-owned stations and other major network-affiliated stations in the same market."[76] The results of these studies show that outlets in cross-owned combinations consistently offer different "slants" on political news coverage from the other.[77]

The fact that diverse viewpoints are routinely expressed by commonly owned media outlets is unsurprising, given the growing body of empirical evidence and economic theory demonstrating that the "slant" or viewpoint of media outlets is actually determined by *consumer* preferences and ideologies, not the owners' ideology. An empirical study published this year examining the political slant of newspapers across the country concluded that there was "little" or "no evidence that the variation in slant

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[76] FCC, 2007 Ownership Study No. 6, J. Milyo, "The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News," at 29 (Sept. 2007) ("*Milyo Cross-Ownership Study*"). This study also found that the political orientation of a cross-owned station (as measured by editorial endorsements and campaign contributions made by persons associated with the cross-owner) also was not significantly related to political slant.

[77] *See* D. Pritchard, "A Tale of Three Cities: 'Diverse and Antagonistic' Information in Situations of Local Newspaper/Broadcast Cross-Ownership," 54 *Fed. Comm. L.J*. 31, 49 (2001) (slant of campaign coverage aired by each company's broadcast stations "tended to differ from the slant of news published by the company's newspaper."); D. Pritchard, "Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign" (Sept. 2002) (in five of the newspaper-broadcast combinations examined, "the overall slant of the coverage broadcast by a company's television station was noticeably different from the overall slant of the coverage provided by the same company's newspaper, and often contradicted the newspaper's endorsement of a candidate."); D. Pritchard, "One Owner, One Voice? Testing a Central Premise of Newspaper-Broadcast Cross-Ownership Policy," 13 *Comm. L. & Pol'y* 1, 21 (2008) (comparison of slant in cross-owned outlets revealed "stark differences in slant" in two of the three media combinations reviewed).

has an owner-specific component."[78] Instead, "[v]ariation in slant across newspapers is strongly related to the political makeup of their potential readers."[79] This strong "fit between a newspaper's slant and the ideology of potential readers" implies "an economic incentive for newspapers to tailor their slant to the ideological predispositions of consumers."[80] In other words, competition in the media marketplace "gives firms incentives to produce the products that consumers want,"[81] including news programming with particular content or a particular viewpoint.

This conclusion that competitive market forces—specifically, consumer demand—drives the slant of media outlet news coverage is supported by other empirical and economic studies.[82] The FCC's own study in 2007 found evidence that the partisan slant of local television news in each market was associated "with the average partisan voting preferences in the local market."[83]

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[78] M. Gentzkow and J. Shapiro, "What Drives Media Slant? Evidence from U.S. Daily Newspapers," 78 *Econometrica* 35, 38, 64 (Jan. 2010) (*"Gentzkow/Shapiro Media Slant Review*"). This study found "no evidence that slant is related to owner ideology, as proxied by political donations." *Id*. at 58.

[79] *Gentzkow/Shapiro Media Slant Review* at 37. The relationship between slant and consumer ideology remained when the authors compared different newspapers with the same owner or different newspapers in the same state. *Id*.

[80] *Gentzkow/Shapiro Media Slant Review* at 64.

[81] Gentzkow and Shapiro, "Competition and Truth in the Market for News" at 147.

[82] *See* Pritchard, "One Owner, One Voice?" at 23-24 ("growing body of research demonstrates that news content responds to an economic logic which incorporates audiences preferences" and other economic factors, such as the costs of producing various kinds of news and the value of certain audience segments to advertisers, while "[m]edia cross-ownership and other forms of media consolidation such as chain newspaper or television ownership seem to have little, if any influence").

[83] *Milyo Cross-Ownership Study* at 29. *See also id.* at 28 ("partisan slant in local television news coverage is determined at least in part by market forces, rather than newspaper cross-ownership.").

Recent economic models of the market for news support these empirical results, concluding that competition results in newspapers "catering" to the biases of their readers and that diversity in media coverage *arises from readers*.[84] Specifically, if there is ["r]eader heterogeneity," then media outlets will cater to the varied beliefs and viewpoints of potential readers and "diversity in media coverage will arise endogenously." But when potential readers are "homogeneous" in their beliefs, then one should "not expect to see diversity of media reports."[85] This model, then, contrary to the Commission's long-standing assumptions about the primacy of ownership, points to the "absolutely central role that heterogeneity of reader beliefs" plays in determining the diversity and even the accuracy of media coverage.[86]

An article published this year applies these insights to the question of diversity and television station ownership.[87] Because viewers have demonstrated preferences for news and public affairs programming that reflect their own beliefs,[88] this study treats point of view as a tool for station owners to use to attract viewers and increase profits in a competitive market. Thus, to determine which market structures will produce more diversity of viewpoints, the author uses a series of econometric models to examine how

[84] S. Mullainathan and A. Shleifer, "The Market for News," 95 *The American Economic Review* 1031 (Sept. 2005).

[85] *Id*. at 1042.

[86] *Id.*

[87] *See* M. Spitzer, "Television Mergers and Diversity in Small Markets," *Journal of Competition Law and Economics* 1 (2010).

[88] *See id*. at 2-3, citing J. Chan and W. Suen, "A Spatial Theory of News Consumption and Electoral Competition," 75 *Review of Economic Studies* 699, 700 (2008). Other studies have shown that both U.S. consumers and those in other countries rate the quality of news outlets whose slant matches their own to be higher on a number of dimensions. *See* Gentzkow and Shapiro, "Competition and Truth in the Market for News" at 145-46 (discussing two studies specifically).

profit-maximizing broadcasters will choose their points of view under different types of industry structures, concluding that allowing jointly owned television stations in small markets will produce diversity in local news and public affairs programming.[89] Taken together, these varied empirical and theoretical studies indicate that "ownership diversity may not be a critical precondition for ideological diversity in the media," which clearly has "broad implications for the regulation of ownership in the media."[90]

In light of the lack of evidence of a correlation between viewpoints presented and the ownership of media outlets, considerable and growing evidence that consumer demand drives the viewpoints of media outlets, and clear evidence that commonly-owned outlets do in fact offer diverse viewpoints, NAB submits that the goal of promoting viewpoint diversity can no longer remain the basis for retaining broadcast-only local ownership restrictions. This conclusion is only buttressed by the enormous complexities and First Amendment implications of attempting to base ownership restrictions on measurements of viewpoint diversity.[91] NAB anticipates that attempting to identify metrics for the presentation of differing views or comparing levels of viewpoint diversity for purposes of prophylactic ownership rules or individual media transactions would raise First Amendment concerns. Creating ownership rules based on an analysis of viewpoint diversity could place the FCC in the position of *de facto* favoring certain

[89] Spitzer, "Television Mergers and Diversity in Small Markets" at 2-3, 50.

[90] Gentzkow and Shapiro, "What Drives Media Slant?" at 64. The Commission should consider this scholarly literature as it pursues its own studies on viewpoint diversity and how (or whether?) it is impacted by "local market structure" and/or by "owner incentives." *See Ownership Studies Pubic Notice*, Study No. 8 & Study No. 9.

[91] *See Notice* at ¶ 71 (seeking comment on how viewpoint diversity can be measured and related First Amendment issues). The inability of both the FCC and scholars to clearly conceptualize, let alone measure, viewpoint diversity is discussed in detail in Ho and Quinn, "Viewpoint Diversity and Media Consolidation."

content and views over others. Attempting to satisfy standards resulting from this analysis might also interfere with a licensee's editorial judgment about what content best serves viewers and listeners within its community of license.[92]

Rather than attempting to quantify the number and type of viewpoints presented by media outlets, the Commission should rely upon rules designed to promote competition to ensure that the needs of viewers and listeners are being met. A competitively viable broadcast outlet will produce, acquire, package and air content that is desired by its viewers/listeners, including audiences interested in unique perspectives that may not already be available via other outlets in a market.[93] Put simply, stations have business incentives to satisfy viewpoint "niches," which are as strong as the incentives to create niche programming.

Program/Format Diversity. In the *Notice* (at ¶ 69), the Commission seeks comment on optimal ways to promote program diversity, as well as the relationship of its broadcast ownership rules to program diversity. As NAB and other broadcasters have explained in previous filings, both theoretical and empirical analyses show that a single owner of multiple stations in the same market has a greater economic incentive and ability to offer a wider variety of programming content. Such increased diversity

[92] *See, e.g., FCC v. League of Women Voters of California*, 468 U.S. 364, 378 (1984) ("broadcasters are entitled under the First Amendment to exercise the widest possible journalistic freedom consistent with their public duties").

[93] *See* Joint Declaration of L. Froeb, P. Srinagesh and M. Williams at 1, attached to Comments of Hearst-Argyle Television, Inc. in MB Docket No. 06-121 (Oct. 23, 2006) ("media mergers are more likely to increase diversity and increase consumer welfare" because commonly owned stations have "an incentive to move the merging products further away from one another to avoid cannibalizing each other's sales (or audience), so . . . products are more differential, resulting in greater diversity.").

provides further support for significant reform of the Commission's multiple and cross-ownership rules.[94]

Researchers not only have concluded that "[t]here is *no* evidence" that the Commission's ownership limits increase diversity,[95] but also have found that the rules may be "*ineffective* in producing diversity"[96] and that *common ownership* has *increased* program diversity.[97] One study, for example, found that radio programming diversity increased the most in markets with the highest levels of group ownership.[98] Others studies examining different media sectors have similarly concluded that "increased concentration caused an increase in available programming variety,"[99] and that a

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[94] *See, e.g.,* NAB Comments in MB Docket No. 06-121 at 36-38 (Oct. 23, 2006).

[95] B. Compaine, "The Impact of Ownership on Content: Does It Matter?," 13 *Cardozo Arts & Ent. L.J*. 755, 763 (1995) (emphasis added). *Accord* B. Compaine, New Millennium Research Council, "The Media Monopoly Myth: How New Competition Is Expanding our Sources of Information and Entertainment," 6-9 (2005), *available at:* http://www.newmillenniumresearch.org/archive/Final_Compaine_Paper_050205.pdf.

[96] M. Einstein, "The Financial Interest and Syndication Rules and Changes in Program Diversity," 17 *J. Media Econ*. 1, 16 (2004) (emphasis added); *Id.* (analysis of television industry found that "consolidation" was "not having an effect on the diversity of content").

[97] *See, e.g.,* Comments of NAB in MB Docket No. 06-121 at 40 (Oct. 23, 2006), citing Comments of NAB, MM Docket No. 99-25 (Aug. 2, 1999) at Attachment B, "Format Availability After Consolidation"; Comments of Clear Channel, MM Docket No. 01-317 (Mar. 27, 2002) at Exhibit 3, Statement of Professor Jerry A. Hausman at 2-3, 11-14; Comments of NAB, MM Docket No. 01-317 (Mar. 27, 2002) at Attachment A, BIA Financial Network, "Has Format Diversity Continued to Increase?" ("*Format Diversity*"); Bear Stearns Equity Research, "Format Diversity: More from Less?" (Nov. 2002). *See also* Comments of Freedom of Expression Foundation in MB Docket No. 06-121 at 13 (Oct. 23, 2006) (diversity of radio formats has increased because owners of multiple outlets can take risks and offer greater variety).

[98] *See Format Diversity* at 13-15.

[99] Comments of NAB in MB Docket No. 06-121 at 40 (Oct. 23, 2006), quoting S. Berry & J. Waldfogel, "Mergers, Station Entry, and Programming Variety in Radio Broadcasting," 25 (Nat'l Bureau of Econ. Research, Working Paper No. 7080, 1999); *accord* S. Berry &

"decrease in the number of owners in a market leads to an increase in separation between products."[100] Indeed, a 2001 newspaper study concluded that ownership "concentration appears to increase total content variety," thereby "benefit[ing] readers."[101]

NAB and others also have documented the rise in available programming diversity on various broadcast outlets. For example, during the *2006 Quadrennial Review* proceeding, NAB submitted a study that analyzed the number of general and specific types of programming offered by radio stations over time.[102] The study showed that between 1996 and 2006, the number of general and specific types of programming offered by stations in the average Arbitron market increased by 16 percent and 36.4 percent, respectively,[103] resulting in high levels of program diversity across markets of various sizes.[104] Based on this data, NAB concluded that increased common ownership of radio stations following relaxation of the radio ownership rules resulted in increased

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J. Waldfogel, "Do Mergers Increase Product Variety? Evidence from Radio Broadcasting," 116 *Q. J. Econ*. 1009 (Aug. 2001).

[100] *See* George, *What's Fit to Print* at 2.

[101] George, *What's Fit to Print* at 28. *See also* L. George, "What's Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets," 19 *Information Economics and Policy* 285 (2007) (updating 2001 study and reaching the same conclusions).

[102] *See* Attachment G to NAB Comments in MB Docket No. 06-121, BIA Financial Network, "Over-the-Air Radio Service to Diverse Audiences" (Oct. 23, 2006) ("*2006 Radio Diversity Study*").

[103] *See 2006 Radio Diversity Study* at 5, 7.

[104] At that time, in the ten largest Arbitron markets, radio stations aired, on average, 45.4 specific programming formats per market. *2006 Radio Diversity Study* at 7. Even in smaller markets with fewer numbers of over-the-air stations, listeners received a wide range of radio programming. For instance, on average in Arbitron markets 51-100, local stations at that time aired 23.3 different types of programming formats. *Id.*

program diversity.[105] A more recent NAB study in the *Future of Media* proceeding analyzed increases in local radio service to diverse audiences from 2000 to 2010. As described in Section III.A.2., this study shows increasing service by local radio stations to diverse groups, including minorities and those with niche interests.

Given the explosion of programming diversity and clear evidence of the incentives of single owners to diversify programming content, the Commission should conclude that its program diversity goals will be best served by further reform of increasingly outmoded ownership limits.

Source Diversity. During the *2002 Biennial Review,* the Commission concluded that because of "dramatic changes in the television market," it could find "no basis in the record to conclude that government regulation is necessary to promote source diversity."[106] In the past, source diversity was the subject of two rules – the Financial Interest and Syndication ("fin-syn") and the primetime access ("PTAR") rules, which restricted vertical relationships between program producers and broadcast television networks[107] and which were eliminated fifteen years ago.[108]

[105] *See* NAB Comments in MB Docket No. 06-121 at 38-41 (Oct. 23, 2006). *See also* Comments of Clear Channel in MB Docket No. 06-121 (Oct. 23, 2006), Exhibit 2, Statement of Professor Jerry A. Hausman, at 2-4, 10 (Table 1) ("*Statement of Professor Hausman*"). Professor Hausman's study found a positive correlation between common ownership and program diversity throughout the years 1993 to 2006. During the period from 1993 to 2001, when transaction volume was the heaviest, the average number of programming formats in a market increased by more than 45 percent—from 11.5 in 1993 to 16.7 in 2001. *Statement of Professor Hausman* at 4, 10. Professor Hausman found that approximately 25 percent of the increase in format diversity during this period was "*directly attribut[able]* to increased levels of common ownership." Comments of Clear Channel at 18-21 (emphasis added).

[106] *2002 Biennial Review Order* at ¶ 44.

[107] The Fin-Syn rules prohibited any of the three major broadcast television networks at that time (ABC, CBS, and NBC) from obtaining a financial interest in independently-produced programming and from syndicating any program domestically. PTAR

Fin-syn and PTAR-type rules are not at issue in this proceeding addressing broadcast ownership restrictions. In any event, the conclusions reached during the *2002 Biennial Review* apply with far greater force today because of the exponential growth of vehicles for content distribution over the past eight years—all of which provide ample opportunities for programming from any source to reach audiences. Multicasting on free over-the-air television and radio stations,[109] rising capacity on MVPD platforms,[110] and the ability to distribute audio, video or other content via one's own

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prohibited Big Three affiliates in the 50 largest markets from offering more than three hours of prime time network programming Monday through Saturday. *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 23 F.C.C.2d 382, 394 (1970).

[108] *See Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7th Cir. 1992) (remanding the Commission's decision to retain modified financial interest and syndication rules); *In re Review of the Syndication and Financial Interest Rules,* 10 FCC Rcd 12165 (1995) (eliminating the fin-syn rules).

[109] Today, viewers enjoy the primary signals of 1,392 commercial television broadcast stations and approximately 1,400 multicast television streams. *See* FCC, Broadcast Station Totals as of December 31, 2009, available at: http://www.fcc.gov/mb/audio/totals/bt091231.html; NAB Comments in GN Docket No. 10-25 at 29 (May 7, 2010). Similarly, as of April 2010, there were 2,056 HD radio stations broadcasting across the country, providing 1,127 additional program streams to local audiences. *See* NAB Comments in GN Docket No. 10-25 (May 7, 2010) at Attachment A. In 2002, multicast television stations were only accessible for the minority of Americans who owned digital sets or in the rare instance that their MVPD carried any multicast streams. HD radio service was the subject of a pending FCC rulemaking proceeding and was not available to the public.

[110] The Commission's most recent survey shows that by January 1, 2008, 90 percent of cable subscribers were served by a system with capacity greater than 750 MHz and only 10 percent were served by systems with capacity below 750 MHz. *See Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, 24 FCC Rcd 259 ¶ 48 (2009). Only a few years earlier, the July 1, 2002 survey showed that 73.4 percent of cable subscribers were served by a system with capacity greater than 750 MHz, 20.8 percent were served by a system operating between 330 and 749 MHz, and another 5.8 were served by systems with capacity below 330 MHz. *See Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, 18 FCC Rcd 13284 ¶ 37 (2003). Rising cable capacity also is reflected in the fast-growing number of available national and regional

Internet website or other websites[111] makes regulation to ensure diverse sources of content needless.

Outlet Diversity. The *Notice* (at ¶ 74) discusses the fact that many of its ownership rules have been stated in terms of outlet diversity—the number of independently owned media outlets or "voices" in a market. As explained in Section I.C., it is critical for the Commission to consider the full range of outlets available to consumers when evaluating the media marketplace from either a competition or diversity standpoint. When evaluating the number of separately owned outlets or "voices" for purposes of its multiple and cross-ownership rules, the Commission must consider the "voices" of all media that contribute to competition and diversity in a given geographic area,[112] not only the voices within a single service.[113] To do otherwise will

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programming networks—the FCC's most recent count found 565 national programming networks and 101 regional networks, up from 283 national networks and 75 regional networks just a few years earlier. *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, ¶¶ 20-21 (2009) ("*13th Annual Video Competition Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixth Annual Report, 15 FCC Rcd 978 ¶ 16 (2000).

[111] *See* Section I.C.2, *supra*.

[112] As NAB has previously explained, the Commission's geographic market definitions and ownership limits also should reflect the fact that viewers and listeners frequently have access to, and do in fact access, out-of-market outlets, including radio and television stations. *See, e.g.,* NAB Comments in MB Docket No. 06-121 at 11-12 (Oct. 23, 2006), Attachment C, BIA Financial Network, "A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance."

[113] At their most restrictive, the FCC's "voice" tests count only one type of voice out of the myriad outlets available in local markets. *See* 47 C.F.R. § 73.3555(b)(2002) (only in-market broadcast television "voices" count toward the applicable eight-voice threshold); *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002)(remanding local television ownership rule on grounds that the FCC failed to explain why media other than broadcast television did not contribute to competition and diversity, and were not treated as "voices," for purposes of the local television ownership rule); *Prometheus Radio Project v. FCC*, 373 F.3d 372, 414 (3rd Cir. 2004)

lead to the adoption of arbitrary rules establishing thresholds so high that efficient combinations are impossible in markets where more than adequate levels of diversity among various types of outlets and platforms would remain, even if more common ownership was permitted. Such overly-restrictive voice tests are ultimately harmful to diversity and localism because a station in financial distress (or dark) does not have a significant local presence or, indeed, even a local "voice" at all.

Ownership of Media Outlets by Women, Minorities, and Small Businesses. NAB has long supported both industry-based initiatives and legislative/regulatory changes to ensure that ownership of communications properties better reflects the demographics of the audiences and other consumers of communications services. For over ten years, the NAB Education Foundation ("NABEF") and the Broadcast Education Association ("BEA") have sponsored a variety of programs to provide professionals and students with access to employment in the broadcasting industry, as well as the tools that they need to excel in broadcast management and ownership.[114] NABEF's flagship program, the Broadcast Leadership Training program, offers MBA-style executive training for station managers and others who aspire to own stations or advance to senior management.[115] To date, 28 graduates of the program have purchased stations and many others have been promoted within their companies or are in various stages of station acquisition.

("[w]e agree with the Commission's conclusion that broadcast media are not the only media outlets contributing to viewpoint diversity in local markets").

[114] *See* Attachment D, "NABEF and BEA Education and Professional Development Programs."

[115] *See* Attachment D.

In terms of legislative and regulatory change, NAB is a longtime advocate of the reinstitution of the tax certificate policy, which previously provided tax incentives to those who sold broadcast properties to minority owners.[116] NAB has advocated a wide range of proposals before the Commission that could promote diversity in broadcast ownership. For example, NAB has urged the FCC to adopt incentive-based rule changes that would stimulate investment in new entrant broadcast properties, including structural rule waivers for broadcasters that establish incubator programs.[117] NAB has supported the adoption of a proposal to allow a radio licensee to change its community of license subject to an obligation to finance the development of a low power FM station in the community being vacated.[118] NAB also has supported proposals of the Minority Media & Telecommunications Council ("MMTC") and others that would waive limits on the transfer of grandfathered clusters where the purchasing party agrees to transfer the acquired properties to qualified small businesses within one year.[119] More recently, NAB supported several proposals to modify rules governing radio operations advanced in a petition for rulemaking filed by MMTC.[120] While many of these proposed rule

[116] In recent years, for example, NAB has supported tax incentive bills introduced by Representatives Rush and Rangel, as well as Senator Menendez. NAB also has urged the FCC to advocate reinstatement of the tax certificate program. *See, e.g.* NAB Comments in MB Docket No. 06-121 at 3-4 (Oct. 1, 2007).

[117] *See* NAB Comments in MB Docket No. 07-294 at 4-5 (Jul. 30, 2008) (NAB "supports proposals that provide incentives for established players in the media marketplace to invest in new broadcast properties and companies. Incubator proposals . . . could, if enacted properly, provide a significant boost to new entrants.").

[118] *Id.* at 5-6.

[119] NAB Comments in MB Docket No. 06-121 at 7-8 (Oct. 1, 2007).

[120] *See* Petition for Rulemaking of MMTC, Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, RM-11565, MB Docket No. 09-52 (July

changes are technical in nature and are not specific to ownership, they would reduce entry barriers and promote efficiencies for existing broadcast stations owned by minorities, women and small entities.[121] NAB continues to support the adoption of the above-referenced proposals and urges the Commission to move forward on them in connection with this or other proceedings expeditiously.

Revisions to specific multiple and cross ownership rules in the instant proceeding also should reflect the fact that access to capital represents the most significant barrier to increasing ownership diversity. Overly restrictive ownership limits that reduce economic incentives to invest in broadcasting affect the ability of all existing and aspiring broadcasters to raise capital, but the impact is felt even more strongly by new entrants, small businesses, women and minorities.[122] The Commission should be skeptical of unproven assumptions about the relationship between relaxation of ownership limits and a reduction in the number of minority-owned broadcast stations. NAB has refuted certain of these claims in previous proceedings,[123] and has cited

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19, 2009); FCC, *Public Notice*, Report No. 2899 (Sept. 23, 2009) (establishing comment and reply comment deadlines).

[121] *See* Comments of NAB in MB Docket No. 09-52 (Oct. 23, 2009) (supporting MMTC proposals to remove the nighttime coverage rules from Section 73.24(i); modify the principal community coverage rules for commercial stations; replace the minimum efficiency standard for AM stations with a "minimum radiation" standard; allow FM applicants to specify Class C, C0, C1, C2 and C3 facilities in Zones 1 and 1A; remove non-viable FM allotments; relax the limit of four contingent applications; relax the main studio rule; conduct tutorials on the radio engineering rules; and appoint a public engineer).

[122] *See, e.g.,* Opposition of the National Association of Broadcasters to Petition for Reconsideration in MB Docket No. 06-121 at 23-24 (May 6, 2008).

[123] *See, e.g.,* Opposition of the National Association of Broadcasters to Petition for Reconsideration in MB Docket No. 06-121 at 22-23 (May 6, 2008), citing "Consumers Union, et al. Has Not Demonstrated a Link Between Market Concentration and Minority/Female Station Ownership," Jim Tozzi/Center for Regulatory Effectiveness,

evidence of *increases* in the number of stations owned by minorities and women following earlier reforms of the local broadcast ownership restrictions.[124] Revisions to the rules that allow for more efficient and competitively viable broadcast operations will help attract capital to the broadcast industry, to the benefit of both incumbents and newer entrants.

B. Commonly Owned Outlets Can More Effectively and Efficiently Offer a Broader Range of Content and Services to Meet the Needs and Interests of Local Communities

As observed in the *Notice*, "[l]ocalism is an expensive value," but one that is considered "vitally important" and which "should be preserved and enhanced."[125] Although offering content that meets the needs and interests of local communities is what distinguishes broadcasting from other services and undergirds the American system of broadcasting, the expense of providing locally-oriented service is well-

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Reply Comments in MB Docket No. 06-121 at 4 (Oct. 24, 2007) (discussing errors in Consumers Union *et al* study); B.D. McCullough, Peer-Review Report on "The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006" by Hammond, *et al*. (study purporting to show reductions in minority and female ownership after duopoly rule changes was deemed "fatally flawed" in peer review process).

[124] *See* Opposition of the National Association of Broadcasters to Petition for Reconsideration in MB Docket No. 06-121 at 22-23 (May 6, 2008), citing National Telecommunications and Information Administration, "Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States," at 38 (Dec. 2000); Kofi A. Ofori, "Radio Local Market Consolidation & Minority Ownership," at 10-12, Attached as Appendix One to Comments of MMTC in MM Docket Nos. 01-317 and 00-244 (March 27, 2002) (showing increase in the number of minority owned and controlled radio stations since 1997); "Consumers Union, et al. Has Not Demonstrated a Link Between Market Concentration and Minority/Female Station Ownership," Jim Tozzi/Center for Regulatory Effectiveness, Reply Comments in MB Docket No. 06-121 at 4 (Oct. 2007) (finding that members of minority groups owned a *greater* number of television stations in 2006 than they did before the FCC modestly relaxed the duopoly rule in 1999).

[125] *Notice* at ¶ 29 n.67, quoting H. Rep. No. 104-104 (1996) at 221 (internal citations omitted).

documented herein[126] and in the FCC's future of media proceeding. The Commission's examination of whether and how its ownership rules promote the goal of localism must take account of the high cost of providing quality local content, current threats to the revenue sources that support such "vitally important" local service, especially in smaller markets,[127] and the efficiencies that can be realized through common ownership.

Empirical research, the Commission and the courts have repeatedly confirmed that efficiencies realized through common ownership of media outlets produce public interest benefits, especially localism. For example, the Commission determined in 1999 to revise the local television ownership rule because local combinations were likely to yield efficiencies that "can in turn lead to cost savings, which can lead to programming and other service benefits that enhance the public interest."[128]

In the *2002 Biennial Review*, the Commission again revised the local television rule, concluding that common ownership of television stations in local markets could yield "consumer welfare enhancing efficiencies," which would in turn yield improved news and public interest programming.[129] Evidence supporting the FCC's conclusion included findings that commonly owned or operated television stations were more likely to carry local news than other stations,[130] and that television stations entering into local

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[126] *See* Section III.A. & B.

[127] *See* Sections III.B. & C.; IV.A.3.

[128] *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903 ¶ 34 (1999).

[129] *2002 Biennial Review Order* at ¶¶ 147, 164, 169.

[130] *See* B. Owen, K. Mikkelsen, R. Mortimer, and M. Baumann, Economists Incorporated, "Effect of Common Ownership or Operation on Television News Carriage, Quantity and Quality," Economic Study B attached to Comments of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Co., Inc. and

combinations generally improved their audience ratings.[131] Although aspects of the Commission's local television ownership rule were reversed and remanded upon court review, the court agreed with the Commission that common ownership of television stations "can improve local programming."[132]

Similar factual determinations have formed the basis for Commission decisions reforming its cross-ownership rules. The *2002 Biennial Review Order* adopted cross-media limits in lieu of the blanket ban on newspaper/broadcast cross-ownership combinations and the existing radio-television cross-ownership limits. In support of this decision, the Commission cited evidence "that efficiencies and cost savings realized from joint ownership may allow radio and television stations to offer more news reporting generally, and more local news reporting specifically, than otherwise may be possible."[133] The Commission also cited multiple empirical studies as well as anecdotal evidence that the newspaper/broadcast cross-ownership ban was "not necessary to promote broadcasters' provision of local news and information programming" and was

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Telemundo Communications Group, Inc., and Viacom in MB Docket No. 02-277 (Jan. 2, 2003).

[131] *See 2002 Biennial Review Order* at ¶ 150 & n. 295 (citing Mark R. Fratrik, "Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?" (Jan. 2003), appendix to Comments of Coalition Broadcasters et al., MM Docket No. 02-277 (Jan. 2, 2003)). Subsequent studies have reconfirmed these conclusions. *See* Section IV.A.3., *infra*.

[132] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 415 (3rd Cir. 2004).

[133] *2002 Biennial Review Order* at ¶ 383 (the record showed that "station owners will use additional revenue and resource savings from television-radio combinations to provide new and innovative programming, provide more in-depth local interest programming, and provide better service to the public, including locally oriented services.").

instead "actually working to inhibit such programming."[134] Although the cross-media limits were ultimately remanded, the Commission's underlying determination that cross-ownership could promote localism was upheld in court.[135]

The *2006 Quadrennial Review Order* modestly relaxed the newspaper/broadcast cross-ownership ban in the 20 largest DMAs based on "a considerable amount of empirical evidence," the balance of which "indicate[d] that cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets."[136] There, the Commission relied primarily upon three studies, all of which concluded that cross-owned television stations offered more news programming overall and more local news programming than stations that were not cross-owned.[137]

In sum, the Commission has repeatedly determined that relaxing its ownership restrictions promotes localism. Today, more than at any previous time, the Commission can be certain that the wide array of outlets offering news, information and entertainment will ensure diversity. At the same time, market and economic forces are

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[134] *2002 Biennial Review Order* at ¶ 342. *See also id.* at ¶¶ 343-50 (summarizing multiple studies showing that newspaper/broadcast combinations offered, on average, a higher quantity and better quality of news and information than non-cross owned outlets).

[135] *See Prometheus Radio Project*, 373 F.3d at 398-99 (upholding FCC determination that newspaper/broadcast cross-ownership ban could undermine localism by preventing efficient combinations that would allow for the production of high-quality local news).

[136] *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, ¶¶ 42, 46 (2008) ("*2006 Quadrennial Review Order*").

[137] *See Milyo Cross-Ownership Study* at 29; FCC, 2007 Ownership Study No. 3, Gregory Crawford, "Television Station Ownership Structure and the Quantity and Quality of TV Programming" at 23 (July 23, 2007) ("*Crawford Television Study*"); FCC, 2007 Ownership Study No. 4, Daniel Shiman, "The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming" at 2 (July 24, 2007) (*"Shiman Ownership Structure Study"*).

hindering the ability of broadcasters to earn revenue needed to support high quality content desired by local viewers and listeners. NAB urges the Commission to avoid conceptualizing diversity as merely maximizing the number of separate owners, or otherwise placing an unwarranted premium on diffuse ownership. Maximizing diffuse ownership (which, as shown above, will *not* maximize viewpoint diversity) will clearly prevent efficient combinations that are proven to promote localism.

Finally, in defining content as "local," the Commission should follow its own past decisions and those of courts by not placing an unjustified premium on content that may have been produced or originated locally.[138] The Commission and the courts rejected this approach long ago in favor of requiring a licensee to assemble and air content that meets the needs and interests of its viewers and/or listeners, from whatever source. It is long-standing policy that programming does not have to be originated locally to qualify as "issue-responsive" for purposes of a licensee's public service obligations.[139] The D.C. Circuit endorsed this view when it decided, over certain objections, that the statute governing the allocation of broadcast facilities requires only "that the Commission act to ensure a fair, efficient, and equitable distribution of radio service throughout the country,"[140] and that "as long as the Commission requires licensees to

[138] *See Notice* at ¶¶ 61, 63 (seeking comment on whether locally produced or originated content "makes a particular contribution towards our localism goal" and how to define such content).

[139] *See Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1430 (D.C. Cir. 1983).

[140] *Id*. at 1430 n.54, citing *Loyola University v. FCC*, 670 F.2d 1222, 1226 (D.C. Cir. 1982).

provide programming – *whatever its source* – that is responsive to their communities, § 307(b) is satisfied."[141]

As the Commission has previously determined, "locally-originated" programming does not necessarily equate to programming that is responsive to community needs. When the Commission eliminated its program origination requirement more than 20 years ago, it correctly determined that the very premise underlying the rule—that local origination would automatically result in programming relevant to the needs and interests of the local community—was flawed.[142] Significantly, the Commission also reasoned that "coverage of local issues does not necessarily have to come from locally produced programming" and therefore "no longer believe[d] that main studio facilities within the political boundaries of the community of license necessarily promote responsive programming."[143]

As NAB has previously discussed in the Commission's localism proceeding, as a matter of both law and fact, programming may be locally relevant regardless of where it is produced.[144] News and public affairs programming of importance to the entire nation also can be important to the citizens of a particular community, especially concerning such issues as national security, war, the environment, the national economy or the Presidential election. Programming and public service campaigns focusing on a range of issues, such as HIV/AIDS prevention and awareness, drug abuse, cancer

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[141] *Id.* at 1430 n.54, citing 47 U.S.C. § 307(b) (emphasis added).

[142] *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 ¶ 30 (1987) ("*1987 Main Studio Order*") (finding that the studio was no longer the center of program production and that it "may not be the best place for the origination of responsive programming").

[143] *1987 Main Studio Order,* 2 FCC Rcd at 3218 ¶ 31.

[144] *See* NAB Comments in MB Docket No. 04-233 at 8-9, 57-60, 64-65 (Apr. 28, 2008).

screenings, drunk driving or crime prevention, obviously can be responsive to the needs of local communities. It is irrelevant to a local station's audience where these campaigns are produced; the messages can still resonate locally.[145] What matters in this proceeding is promoting the type of ownership structures that will help ensure that radio and television stations have the resources to offer high quality locally-responsive programming to serve their diverse audiences.

III. Broadcasters' Continued Ability To Provide High Quality Local Service To Diverse Audiences Is Under Stress

Recent developments and innovations in media have brought about both challenges and opportunities for local broadcasters. As shown above, broadcasters today face unprecedented competition for consumers' attention – and for advertising revenues – from other media, including pay-TV and radio providers and countless Internet sites. Despite these challenges, radio and television broadcasters are embracing digital technologies, including multicasting, to adapt to changes in consumer behavior and to serve a variety of demographic groups with increasingly diverse programming. However, it is clear that the traditional bases supporting local broadcasting and local journalism are under threat, even though broadcast programming and services remain popular and highly-valued. If quality local service is to be maintained, then broadcasters must be permitted to compete effectively in the digital multichannel marketplace. Only financially secure local stations can invest in

[145] *See, e.g.,* Comments of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey, California in MB Docket No. 04-233 at 2-3 (Aug. 20, 2004); Joint Comments of Television Broadcasters in MB Docket No. 04-233 at 19 (Apr. 28, 2008).

new technologies, obtain costly programming to serve diverse audiences and maintain a significant local presence.

A. Only Economically Viable Broadcasters Can Continue Playing Their Vital Role in Local Communities

Unlike subscription video and audio providers, television and radio stations provide local communities and audiences – indeed, virtually every household in the nation – with high-quality services over-the-air, for free. Radio and television stations are licensed to serve local communities, and they reflect community interests and values. Broadcasters participate in their communities every day – by giving voice to local groups and concerns, by providing airtime and raising funds for local organizations and causes, by investing in newsrooms to report on local events and issues, and by providing vital emergency alerts and information.[146] Local stations today continue to play a critical and irreplaceable role, despite growing challenges to their financial vibrancy.

1. Broadcasting Is the Most Important Source for Critical, Life-Saving Emergency Journalism

As demonstrated in NAB's comments in the future of media proceeding, perhaps nowhere is broadcasting's commitment to the public more evident than in local stations' distinguished record with respect to emergency journalism. With "boots on the ground,"

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[146] *See* Reply Comments of NAB in MB Docket No. 04-233 at 6-27 (June 11, 2008) (describing in detail these community-related activities of broadcasters). In light of these extensive community-oriented services, it is unsurprising that studies have found strong relationships between use of local media, including local television news, and various indicators of community integration by citizens. *See* J. McLeod, *et al*., "Community Integration, Local Media Use, and Democratic Processes," 23 Communication Research 179, 196, 202 (April 1996).

broadcasters are the “first informers” of the local and national media ecosystem, providing initial and continuing reports that are vital during times of crisis.

For example:

- In May of this year, Nashville stations such as WSM-AM fought rising flood waters to stay on the air. Forced to evacuate from their studio, WSM engineers and on-air personnel relocated to the station’s 1930s-era studio under its tower and continued to serve its listeners during the record flooding that killed dozens of people.[147]

- During the blizzards that hit the East Coast this winter, broadcasters provided up-to-the-minute information critical to affected residents. Washington, D.C. station WRC-TV’s wall-to-wall coverage and “potentially life-saving newscasts” were lauded by Maryland Senator Barbara Mikulski, and stations WJLA-TV and WUSA also earned praise for their coverage of the snowstorms.[148] Station WTOP-FM alone sacrificed $140,000 in lost advertising revenue to provide 24-7 coverage, and incurred another $50,000 in expenses to cover the blizzards.[149] Chairman Genachowski observed that “not only were local broadcasters a lifeline for the community, WRC-TV used its robust Web site and Twitter feed to help residents who had lost power get up-to-the-minute information through their computers and phones.”[150]

- KLFY, a Lafayette, Louisiana CBS affiliate, broadcast continuous live coverage of Hurricane Rita when the path of the hurricane was determined to pose a risk to people in the station’s service area. The station put all its resources and personnel into action, and network and syndicated programming was preempted for live weather coverage.

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[147] *See* Gail Kerr, “Heck or High Water Can’t Knock WSM Off the Air,” *The Nashville Tennessean* (May 8, 2010).

[148] John Eggerton, “As the Snowy World Turns,” *Broadcasting & Cable* (Feb. 10, 2010).

[149] *See* “Washington DC Broadcasters Recap Snow Coverage for FCC,” *Radio Business Report/Television Business Report* (March 22, 2010). WTOP-FM’s morning anchor reported that, “[f]or well over 100,000 people who lost their power in the storm, WTOP was a lifeline. That’s not what I say. That’s what they told us.”

[150] Prepared Remarks of Chairman Julius Genachowski, NAB Show 2010, Las Vegas, Nevada, at 2 (Apr. 13, 2010).

The station provided overtime, extra staff, and food and shelter for employees during the emergency.[151]

- Following Hurricane Katrina, 13 local radio stations banded together to provide a lifeline to New Orleans residents and emergency personnel, broadcasting news, information about missing people, and other crucial content on station WWL(AM), New Orleans. Television stations WWL-TV and WDSU(TV) continued to broadcast despite the disaster by using transmitters in Baton Rouge, Houston, and elsewhere.

- Broadcasters pioneered the AMBER Plan (America's Missing: Broadcast Emergency Response) which since its roll-out in 1996 has been credited with helping to recover over 500 abducted children.

There are many more examples. Broadcast stations continue to provide emergency information and other services even though the costs -- in overtime for personnel, in meals and hotels, in equipment, and of course in advertising lost due to providing wall-to-wall coverage -- are substantial. In the attached survey regarding the economics of local television news, a station reported that one season's hurricane coverage cost $160,000 *before* accounting for lost advertising revenue.[152] Another station reported that it lost 50 percent of its revenue for an entire month following the events of September 11, 2001, because its intensive news programming preempted so much of its normal programming.[153] The Commission should ensure that its regulatory policies, including its ownership restrictions, do not inhibit local stations' ability to continue providing such vital, expensive local coverage and services.

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[151] *See* "The Economic Realities of Local Television News – 2010: A Report for the National Association of Broadcasters," at 24 (April 2010), attached hereto as Attachment B.

[152] *See* Attachment B at 23.

[153] *See id.* at 24.

2. Television and Radio Stations Serve Local Communities and Diverse Audiences by Offering Valued and Valuable Local and National News and Entertainment Programming to All Americans

Beyond providing critical emergency alerts and information, local radio and television stations provide valued, locally-oriented and increasingly diverse entertainment and informational programming to listeners and viewers in communities across the country. For example, there is a clear trend among radio broadcasters to serve more diverse audiences, including various demographic groups.[154] Between 2000 and 2010, the number of Spanish-language stations increased over 57 percent.[155] Today, nearly 47 percent of the Hispanic population in Arbitron markets resides in markets with 10 or more Spanish-language stations, with over 88 percent located in markets with at least three such stations.[156] The number of Urban programmed stations also increased (by 9.4 percent) between 2000 and 2010.[157] Radio broadcasters have continued to increase the news and information being provided to their local communities, with the number of stations airing news and talk programming growing by 26.6 percent from 2000-2010.[158] Fifty-four percent of Americans report that, on a typical day, "they listen to a radio news program at home or in the car."[159]

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[154] *See* BIA/Kelsey, "Over-the-Air Radio Service to Diverse Audiences – A Further Update" (April 30, 2010) ("*Local Radio Service Report*"), attached hereto as Attachment A.

[155] *See id.* at 5.

[156] *See id.* at 6.

[157] *See id*. at 7.

[158] *See id*. at 8.

[159] *Pew Participatory News Consumer Study* at 3.

Local stations are now utilizing the capabilities of HD Radio to provide increased service to specific demographic/ethnic groups and groups with particular interests, as demonstrated by the programming offered on multicast streams, ranging from Urban to Spanish, Asian to Mexican, Big Band to Christian.[160] Local audiences in markets across the country now have access to new multicast programming streams with formats ranging literally from A (adult album alternative) to V (variety).[161] Over half of the population (53.9 percent) in Arbitron markets now has access to 10 or more multicast signals, and nearly 76 percent are in markets with at least three.[162] And it is clear that multicasting has enhanced substantially the diversity of radio programming available to consumers. For example, of the 63 markets with new multicast classical signals, 22 formerly had no other classical stations in the market; of the 56 markets with new multicast jazz signals, 28 formerly had no other jazz stations in the market; of the 23 markets with new rhythm/blues signals, 20 formerly had no other rhythm/blues stations in the market; and of the 40 markets with new alternative signals, 22 had no other alternative stations in the market.[163]

A recent report on programming by the Government Accountability Office ("GAO") confirmed that diverse programming and preferences are reflected within individual radio markets. Specifically, GAO found that within selected individual

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[160] *See Local Radio Service Report* at Appendix 1.

[161] *See id.* at Appendix 1.

[162] *See id.* at 11.

[163] *See id.* at 12. Television stations across the country in markets large and small are similarly experimenting with new approaches for utilizing their digital multicast capabilities, including offering news, sports, entertainment and niche programming such as multilingual content and programming aimed at underserved demographic groups. *See* NAB Future of Media Comments at 17-22 for a detailed discussion of local television stations' multicast programming.

markets, the top radio formats differ from the top radio formats nationally, "indicating that programming decisions are locally based on the preferences and interests of listeners within a given market."[164] Perhaps reflecting the high degree to which local radio stations provide programming responsive to their audiences and communities, fully 236 million Americans listened to radio in an average week in the fall of 2009.[165] *See Notice* at ¶ 36 (inquiring about media utilization).

Similarly, millions of Americans rely on local television stations, especially for news and information. For example, a recent survey by the Pew Research Center found that "television remains the dominant news source for the public," with 64 percent of respondents reporting that they receive most of their local news from television, and 71 percent of respondents reporting that they receive most of their national and international news from television.[166] Favorability ratings of local television news (73 percent) remain at the top of all media.[167] Local television news is not seen as partisan, with 79 percent of Republicans and 77 percent of Democrats viewing local television news favorably.[168] And while "Americans today routinely get their news from multiple

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[164] Government Accountability Office, GAO-10-369, "Media Programming: Factors Influencing the Availability of Independent Programming in Television and Programming Decisions in Radio," at 28 (March 2010) ("*GAO Programming Report*").

[165] Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media," Sector Highlights/Audio, *available at* www.stateofthemedia.org/2010/audio_summary_essay.php

[166] Pew Research Center for the People & the Press, "Public Evaluations of the News Media: 1985-2009, Press Accuracy Rating Hits Two Decade Low," at 4 (Sept. 12, 2009). *See also id.* at 14 (noting that the vast majority of Americans (82 percent) "say that if all local television news programs went off the air—and shut down their web sites—it would be an important loss").

[167] *See id.* at 11.

[168] *See id.* at 12.

sources and a mix of platforms," on a "typical day," 78 percent of Americans still "get news from a local TV station."[169] Certain "demographic groups are particularly likely to watch local TV news," including African-Americans, older Americans and women.[170] *See Notice* at ¶¶ 34-37 (inquiring about consumer utilization of and satisfaction with media).

Local stations have demonstrated their commitment to serve their communities by *increasing* local news and other programming services while enduring economic hardships and job losses. A Radio TV Digital News Association ("RTDNA")/Hofstra University study released in the spring of 2010 found that "2009 meant another year of TV news doing more with less," with the amount of news on the average station rising to a record high of five hours per weekday.[171]

Attachment B to these comments is a report on a recent nationwide survey conducted for NAB regarding the economics of local television news.[172] As indicated in the study, television stations have remained committed to investing in local news, despite the economic downturn. Respondent stations produce, on average, 26.6 hours

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[169] *Pew Participatory News Consumer Study* at 3.

[170] *Id*. at 11. More than 20 percent of African American television households, more than 25 percent of Hispanic television households, and over 23 percent of households with incomes under $30,000 per year rely solely on over-the-air broadcasting for their television service. *See* Comments of NAB, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, at 2-3 (July 29, 2009).

[171] Bob Papper, "2010 TV and Radio Staffing and News Profitability Survey," RTDNA/Hofstra University, *summarized at* www.rtdna.org/pages/media_items/2010-tv-and-radio-news-staffing-and-profitability-survey1943.php?id=1943 In 2009, about 1.5 percent of the local television workforce lost their jobs. In 2008, about 4.3 percent of the local television workforce lost their jobs.

[172] "The Economic Realities of Local Television News – 2010: A Report for the National Association of Broadcasters," (April 2010).

of local news programming per week, or about 1,400 hours of local news programming annually.[173] In addition, they produce an average of 27.2 hours per year of emergency journalism and special news programming.[174] On average, the respondent stations invest over $4 million per year in their news operating budgets and over $700,000 in their news capital budgets.[175] It is common for more than half of station employees to be involved in the production of local news.[176] And as shown in Attachment C, expenses spent on news consistently constitute about 25 percent of total television station expenses.[177] *See Notice* at ¶ 57 (inquiring about local news "programming inputs," including expenditures).

Today, free, over-the air television and radio broadcasters are also embracing mobile and online technologies and using the Internet in innovative ways to serve their audiences. Mobile DTV is being launched in initial commercial operations across the United States, which will provide new, valuable benefits to viewers.[178] Broadcast station

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[173] *See id*. at 10-12. Aggregating these survey results to all television stations in the country that originate local news, local stations produce over one million hours of original local news per year. *Id*. at 12.

[174] *See id.* at 10-11.

[175] *See id.* at 12-13. As the report notes, averaging these figures across all stations nationwide originating local news would indicate that local broadcasters spend $3.1 billion in operating funds and $545 million in capital funds each year to produce local news. *See id.* at 13. These estimates do not account for unbudgeted costs and expenses, such as the overtime, lost advertising, and other expenses incurred to provide emergency journalism. *See id.* at 13 and 23-26.

[176] *See id.* at 13-14.

[177] *See* Attachment C, "Television Station Financial Data, 1998-2008," at 19-20.

[178] The mobile DTV standard enables broadcasters to provide real-time, mobile-streaming video, including local content, along with interactive services such as programming guides, audience measurement tools, and viewer voting. Washington, D.C. stations have recently launched the mobile DTV "Consumer Showcase," which will

websites are increasingly broad-based, multimedia platforms that include video, user-generated content and special features created solely for the Internet. Station websites also permit hyper-local news coverage.[179]

However, only stations that can afford serious investments in new technologies and platforms are able to provide these enhanced services to local communities and audiences. According to the recent survey conducted for NAB, some television stations in the top 25 markets spend over $1 million annually just for news production on their websites.[180] Respondent stations typically employ two or three full-time web producers, and many produce extra newscasts exclusively for website distribution.[181] Similarly, only broadcasters with sufficient profitability levels could afford to develop initially and then deploy mobile DTV.[182] Significant capital expenditures are also required for upgrades that will allow the public to realize other benefits of the DTV transition, such as high definition production of local news.[183] If the Commission believes that such enhanced news and programming offerings serve the public interest, then it must ensure that its policies, including its ownership regulations, allow local stations – upon

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provide viewers in the capital area with a chance to watch local DTV on a range of mobile devices. *See* NAB Future of Media Comments at 23-25.

[179] *See* NAB Future of Media Comments at 25-27.

[180] *See* Attachment B at 20.

[181] *Id.* at 20-21.

[182] According to the Open Mobile Video Coalition, it costs approximately $100,000 for a station to add the transmission technology for mobile DTV to its existing infrastructure and towers. *See* Danielle Levitas, "Assessing the Mobile DTV Opportunity and Its Role in the United States' Communications Ecosystem, IDC White Paper (March 2010). For some small market stations, $100,000 may be the equivalent (or near equivalent) of a year's profits.

[183] A number of local stations, especially in smaller markets, have been unable to convert their local facilities to high-definition production due to financial constraints.

which millions of consumers continue to rely – to remain competitive and financially vibrant in today's marketplace.

Policies promoting the continued viability of broadcast outlets are also important, given the role that local and national broadcast news can play in contributing to civic and political interest, knowledge and participation by at least some citizens. *See Notice* at ¶ 58 (inquiring about civic engagement metrics, such as civic knowledge or voting, as a means to demonstrate achievement of FCC's localism goal).

A study of the most recent midterm elections showed that exposure to local/national television news was a "significant correlate[ ] of election knowledge."[184] A comprehensive survey of voter learning in U.S. presidential elections (reviewing data from the 1988, 1992, 1996, 2000 and 2004 elections) indicated that television news and televised debates "are important predictors, or at least correlates, of voter learning of the issue positions of the leading candidates and interest in a presidential election campaign."[185] This survey also found that "attention to radio news" was a "predictor, or at least a correlate, of campaign interest" in presidential elections.[186] Another study of the 2000 presidential election found that those who listened to speeches or discussions

[184] R. Wei and V. Lo, "News Media Use and Knowledge About the 2006 U.S. Midterm Elections: Why Exposure Matters in Voter Learning," 20 *Int'l Journal of Public Opinion Research* 347, 358 (2008).

[185] D. Drew and D. Weaver, "Voter Learning in the 2004 Presidential Election: Did the Media Matter?," 83 *Journalism & Mass Communication Quarterly* 25, 38 (Spring 2006).

[186] *Id*. at 38.

about the campaign on the radio were more likely to hold specific opinions on campaign issues and to be more aware of where each candidate stood on policy issues.[187]

Various studies additionally show that local and national reporting provided by broadcasters is particularly valuable for fostering increased civic and political awareness and participation within certain demographic groups. For example, research has shown that “Spanish-language news programs substantially boost Hispanic turnout in nonpresidential election years,” with Spanish language local television news raising overall Hispanic voter turnout by about five percentage points in those years.[188] This study shows that “for the case of Spanish-language television news, the spillovers from local media to local civic engagement appear to be fairly important.”[189] And radio stations targeting African American listeners increase African American voter participation.[190]

With regard to other specific demographic groups, studies have concluded that television news plays a significant role in political learning for immigrants.[191] Both older

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[187] *See* S. Kim, D. Scheufele and J. Shanahan, “Who Care About the Issues? Issue Voting and the Role of News Media During the 2000 U.S. Presidential Election,” *Journal of Communication* 103, 111-12 (March 2005).

[188] F. Oberholzer-Gee and J. Waldfogel, “Media Markets and Localism: Does Local News *en Español* Boost Hispanic Voter Turnout?,” 99 American *Economic Review* 2120, 2127 (2009). “There is no significant increase in presidential years.” *Id*. at 2124.

[189] *Id.* at 2121.

[190] *See* F. Obeholzer-Gee and J. Waldfogel, “Strength in Numbers: Group Size and Political Mobilization,” 48 *Journal of Law and Economics* 73, 74 (April 2005).

[191] *See, e.g.,* S. Chaffee, C. Nass, S. Yang, “The Bridging Role of Television in Immigrant Political Socialization,” 17 *Human Communication Research* 266 (Winter 1990) (national and local television news exposure found to be a positive predictor of political learning for sample of Korean immigrants, especially those who had been in the U.S. a short period of time and who lacked skill in English); K. Martinelli and S. Chaffee, “Measuring New-Voter Leaning via Three Channels of Political Information,” 72 *Journalism and Mass Communication Quarterly* 18 (Spring 1995) (survey of newly

and more recent studies also have found "positive correlations between political knowledge" and adolescents "watching television news."[192] One recent study demonstrated that local television news in particular "had a positive, significant effect on civic participation" by adolescents.[193] Additional studies have noted the effectiveness of television news for political learning by lesser interested or lesser educated individuals.[194] Thus, as one study concluded, "television news may be an appropriate vehicle to encourage political participation among diverse groups."[195]

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naturalized U.S. citizens found that television news made a significant contribution to political issue learning).

[192] S. Chaffee and S. Frank, "How Americans Get Political Information: Print Versus Broadcast News," 546 *The Annals of the American Academy of Political and Social Science* 48, 56 (July 1996) (surveying research literature from 1960s to 1990s).

[193] L. Hoffman and T. Thomson, "The Effect of Television Viewing on Adolescents' Civic Participation: Political Efficacy as a Mediating Mechanism," 53 *Journal of Broadcasting & Electronic Media* 3 (March 2009). Specifically, this 2009 study found that viewing local television news "increases adolescents' internal political efficacy" (*i.e.*, their level of confidence in being able to meaningfully participate in politics), which "in turn positively predicts their civic participation" (*e.g.*, participation in student government or in youth organizations/clubs; volunteering for school, neighborhood, civic or religious groups or programs, etc). *Id*. at 16.

[194] *See, e.g.*, Chaffee and Frank, "How Americans Get Political Information" at 48, 55 (television news reaches groups that tend to lack political information, including less interested citizens); David Stromberg, "Distributing News and Political Influence," *The Right to Tell: The Role of Mass Media in Economic Development* (2002) (study on the effects of the widespread introduction of television from 1950-1960 found that "increases in TV use is very clearly associated with increases in voter turnout, and more so in counties with many people with low education"). *See also* K. Wilkins, "The Role of Media in Public Disengagement from Political Life," 44 *Journal of Broadcasting & Electronic Media* 569, 579 (Fall 2000) (noting that "while reading the newspaper is highly associated with level of education, watching television news appears to transcend educational distinctions").

[195] Wilkins, "The Role of Media" at 579. *See also* David Stromberg, "Radio's Impact on Public Spending," 119 *Quarterly Journal of Economics* 189 (2004) (finding that the widespread introduction of radio from 1920-1940 played a particularly significant role in increasing voting (and, in turn, increasing the allocation of government funds) in rural areas).

One must be cautious, however, not to overestimate the effects that broadcast stations – or even the media as a whole – have on "civic engagement," "voter turnout" or "civic knowledge."[196] For instance, the survey of media effects on voters from 1988 to 2004, which found attention to television news and televised debates to be a predictor (or at least a correlate) of voter learning and campaign interest, nonetheless concluded that demographic factors (e.g., education, age, gender, income, etc.) had the "strongest relationship with knowledge about candidate stands on the issues" and were the "strongest predictor" of actual "likelihood of voting."[197] Similarly, while another study discussed above found that attention to the "news media" (television and radio news and newspapers) had a "significant effect on voters' issue opinionation," this effect was "small," with the authors concluding that "issue voting is in large part a function of education."[198]

Indeed, the "relationship between education and voter turnout ranks among the most extensively documented correlations in American survey research."[199] Education has not only been found to increase "electoral turnout," but also "political participation . .

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[196] *Notice* at ¶ 58.

[197] Drew and Weaver, "Voter Learning in the 2004 Presidential Election" at 30-31.

[198] Kim, Scheufele and Shanahan, "Who Cares About the Issues?" at 116. *Accord* Wilkins, "The Role of Media" at 577 (while finding that newspaper reading and television news watching tended to be associated with electoral participation, study concluded that education was a "critical factor," with higher levels of education associated with both participation in electoral politics and civic activities).

[199] R. Sondheimer and D. Green, "Using Experiments to Estimate the Effects of Education on Voter Turnout," 54 *American Journal of Political Science* 174, 185 (Jan. 2010) (evidence shows that "educational attainment profoundly affects voter turnout" and that the correlation is "causal").

. civic engagement, political knowledge, and democratic attitudes and opinions."[200] In addition to education, other studies have identified numerous additional demographic and social factors that affect voter turnout, including but not limited to income, age, residential mobility, and marriage.[201] Finally, less measurable "communication" factors, such as the "frequency of interpersonal discussion of elections" have also been identified as likely affecting knowledge of and interest in campaigns and likelihood of voting.[202]

Thus, a number of factors, especially education, affect voter turnout and civic knowledge, and these factors "are outside the control and scope of the news media."[203] Given the comparatively limited role that television or radio news overall generally plays in influencing political participation and civic knowledge, the ownership structures of particular broadcast outlets cannot realistically be expected to substantially influence

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[200] D. Hillygus, "The Missing Link: Exploring the Relationship Between Higher Education and Political Engagement," 27 *Political Behavior* 25 (March 2005). *Accord* J. Harder and J. Krosnick, "Why Do People Vote? A Psychological Analysis of the Causes of Voter Turnout," 64 *Journal of Social Issues* 525, 530 (2008) ("[c]itizens with more formal education are more likely to vote; each additional year of education is associated with higher turnout").

[201] *See, e.g.*, N. Wolfinger and R. Wolfinger, "Family Structure and Voter Turnout," 86 *Social Forces* 1513, 1520 (June 2008) (finding "higher turnout of married citizens, irrespective of demographic differences"); Harder and Krosnick, "Why Do People Vote?" at 528-541. Interestingly, this review of the literature on voting by Harder and Krosnick surveyed the research on 31 factors affecting whether citizens vote, but did not even mention attention or exposure to the news media. (The main media-related factor identified was whether "negative advertising" impacted voter turnout.)

[202] Drew and Weaver, "Voter Learning in the 2004 Presidential Election" at 38. Mass communication scholars have for decades stressed that interpersonal communication with friends, family, co-workers and others greatly influences the diffusion and acceptance of ideas generally and that many citizens heavily rely on "opinion leaders" (rather than media directly) for their opinions. *See, e.g.*, E. Katz and P. Lazarsfeld, *Personal Influence: The Part Played by People in the Flow of Mass Communications* (1955).

[203] Drew and Weaver, "Voter Learning in the 2004 Presidential Election" at 38.

such complex social and political phenomena.[204] To the extent that the *Notice* raises the issue of political participation or civic engagement as a purported function of the ownership structures of certain media outlets in local markets,[205] NAB believes it will be challenging to isolate, let alone accurately measure, the likely extremely limited effects (if any) of station ownership characteristics or broadcast market structure from the myriad factors that have greater influence on individuals' political and civic behavior.

B. Quality Local Journalism Requires Substantial Investment by Local Stations

The local journalism provided by broadcasters requires extensive investments, from employing reporters, anchors, camera operators, newsroom personnel, and technical staff to purchasing and maintaining the necessary equipment, such as electronic newsgathering trucks, satellite or microwave linking facilities, cameras and microphones, studio equipment, and other key infrastructure. The resources required to provide local journalism and emergency information are extensive, but broadcasters believe that these investments are worth the price so that they can provide relevant, timely, and critical services to the public.

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[204] The various articles cited above examining the impact of broadcast and other news media on political knowledge and participation did not address questions about the ownership of media outlets. We note that the studies showing the greatest apparent impact of local broadcast news (those by Oberholzer-Gee and Waldfogel on the effects of minority-targeted media on minority turnout) made no reference to any ownership characteristics of the broadcast outlets, but only considered, for example, whether the stations aired local news in Spanish. *See* Oberholzer-Gee and Waldfogel, "Does Local News *en Espanol* Boost Hispanic Voter Turnout?" at 2121 (authors report gathering list of stations broadcasting news in Spanish from Telemundo and Univision web sites).

[205] *See Ownership Studies Public Notice*. Study 2 on consumer valuation of media as a function of local market structure "may also collect information on certain measures of civic engagement or political participation." In addition, Study 3 will attempt to examine "civic knowledge/engagement as a function of local market structure." *See also Notice* at ¶ 58.

In the aggregate, each year local television stations in the U.S. spend approximately $3.1 billion in operating expenses and $545 million in capital funds, and dedicate roughly 83 million employee-hours, to produce and broadcast local news.[206] Given this level of resources necessary to maintain local news operations and produce local programming, the clear connection between the financial health of broadcast stations and the provision of local news and other non-entertainment programming is unsurprising.

For example, one study the Commission conducted in connection with its 2006 quadrennial review found that the "financial strength of the parent" of a television station, "measured by its revenues, is associated with a larger news output."[207] Other recent studies and surveys have similarly linked station profitability with the provision of news and local public affairs programming. One study concluded that television "[s]tations in larger markets tend to provide more local news programming than stations in smaller markets," likely due to "the greater revenue potential for stations in larger markets," and expressly found that public affairs programming "is a function of station revenues."[208] NAB's survey of local news economics confirms that the amount of local news programming appears correlated with market size, with large market stations

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[206] *See* Attachment B at 3; 13-14. Initial start-up costs for local news operations are particularly high, especially in relation to the wide array of syndicated programming available for any station to carry in lieu of news.

[207] *Shiman Ownership Structure Study* at 21.

[208] Philip Napoli, "Television Station Ownership Characteristics and News and Public Affairs Programming: An Expanded Analysis of FCC Data," 6 *Info: The Journal of Policy, Regulation, and Strategy for Telecommunications, Information, and Media* 112, 119 (2004) (concluding that "[t]hose stations in better financial standing are more inclined to incur the expense of providing local public affairs programming").

airing more local news than stations in smaller markets, on average.[209] And in several cases, stations' financial struggles—particularly in smaller markets—have resulted in the reduction or loss of local news.[210] Lower-rated newscasts in smaller markets face particular financial difficulties and are increasingly vulnerable to cutbacks or elimination.[211] These recent research findings confirm earlier studies that also demonstrated the link between station profitability and the provision of news and other non-entertainment programming.[212]

C. The Traditional Financial Bases of Local Broadcasting and Local Journalism Are Under Threat

Broadcasters, like other advertiser-supported media, are faced with challenges as to how to utilize opportunities presented by the digital revolution and how to monetize content on new distribution platforms. Although the online revenues and online audiences of television and radio stations are growing, local stations face real

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[209] *See* Attachment B at 12.

[210] *See, e.g.*, Coalition of Smaller Market Television Stations Comments, MB Docket No. 06-121 *et al.*, at 9-10 (Oct. 23, 2006); Media General *Ex Parte* in MB Docket No. 06-121 (July 26, 2006); NAB Comments in MB Docket No. 06-121 at 14-15 (Dec. 11, 2007).

[211] *See, e.g.*, S. Schechner and R. Dana, "Local TV Stations Face a Fuzzy Future," *The Wall Street Journal* (Feb. 10, 2009) (noting that stations have ended some news shows in markets such as Lexington, KY and Yakima, WA and that, even with these cuts, "there are more local newscasts than the market can bear"); M. Malone, "WYOU's Disbanded News Operation May Be the First of Many," *Broadcasting & Cable* (April 13, 2009) (reporting that it is increasingly unprofitable to continue a "fourth-place" newscast and quoting SmithGeiger as stating that at some stations, news is "totally unprofitable, and the station is not making money because of the cost of news").

[212] *See, e.g.,* Raymond Carroll, "Market Size and TV News Values," 66 *Journalism Quarterly* 49, 55-56 (1989); Barry Litman, "Public Interest Programming and the Carroll Doctrine: A Reexamination," 23 *Journal of Broadcasting & Electronic Media* 51, 59 (Winter 1979); R.E. Park, Rand Corp., "Television Station Performance and Revenues," P-4577 (Feb. 1971).

challenges in monetizing these new platforms.[213] Perhaps as a result of these challenges, local television revenues from online sources represented just three percent of industry revenues in 2009. Similarly, online ad revenues accounted for less than one fortieth of total broadcast radio advertising revenues.[214] Thus, as yet, these new platforms are unable to provide the extensive revenues required to provide local journalism and emergency information. Indeed, as the Project for Excellence in Journalism has concluded, "as we enter 2010 there is little evidence that journalism online has found a sustaining revenue model."[215] *See Notice* at ¶ 51 (inquiring about consequences of traditional media's challenges in monetizing content on Internet).

At the same time, the traditional bases of broadcasters' revenue streams that have supported and continue to support these and other broadcast services are under threat. The most significant threats include:

- The reduction in advertising spending by companies nationwide, attributable to the recession;
- The fragmentation of the advertising market and strength of competitors for advertising dollars, including the rise of new media such as the Internet; and
- Calls by pay television providers to tilt the free market retransmission consent regime established by Congress in their favor, thus undermining

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[213] Attachment B describes several of these challenges, including advertiser reluctance to "buy in" to new platforms, a lack of established standards and pricing, and a limited number of local advertisers. One station suggested that, while new platforms may increase stations' inventory, "to some degree, existing dollars are just being moved around." Attachment B at 22. *See also* Sarah McBride, "Mixed Signals in Web Radio" *The Wall Street Journal* (Dec. 1, 2009) (noting radio companies' difficulty turning the growing online audience into cash, in part due to newness of the technology).

[214] *See* Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media, Executive Summary, available at www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf

[215] *Id*.

the ability of local stations to negotiate for compensation for the value of their signals.[216]

"Already facing intense competition from multichannel video programming distributors[] and the Internet for viewers and advertising dollars, the global recession hit local broadcasters hard," and stations are "having to fight harder than ever for each and every viewer."[217] Given that most stations report that the vast majority of their revenues come from on-air advertising,[218] the recession had a devastating impact on local broadcasters.[219]

Data regarding the financial performance of television stations from 1998 to 2008 is illuminating.[220] On average and across all markets, pre-tax profits for stations

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[216] Retransmission consent is discussed in greater detail in the Opposition of the Broadcaster Associations in MB Docket No. 10-71 (filed May 18, 2010).

[217] Attachment B at 3-4. *See id.* at 4-5 (noting declines in local television advertising and revenue).

[218] *See id.* at 10. This is consistent with recent data from the Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media" Report (noting that approximately 90 percent of station revenue comes from on-air advertising). *See* "Local TV – Economics," *available at* www.stateofthemedia.org/2010/local_tv_economics.php. Other sources of station revenues include retransmission consent fees and online advertising. *See* Attachment B at 10.

[219] *See, e.g.*, N. Justin, "Television: Bad News for Local Television Stations," *Star Tribune* (Nov. 21, 2009) ("many local TV stations are running on fumes" due to decline in ad revenues from auto industry); "Stations Tighten Belt a Few More Notches," *TV Newsday* (May 14, 2009) (TV station revenues down double digits); L. Horwitch, "Wave of Bankruptcies Further Weaken TV Market," *The Wrap* (dozens of network-affiliated stations in jeopardy of failing, as companies that own them declare bankruptcy); G. Prodhan, "NBC Says Local TV Profoundly Affected by Downturn," washingtonpost.com (Sept. 26, 2008) (economic downturn has "had a severe effect" on NBC's local television stations).

[220] Data in this section is drawn from NAB's annual Television Financial Reports, based on NAB's television financial surveys conducted from 1999 to 2009. A summary is attached hereto as Attachment C, "Television Station Financial Data: 1998-2008." For many years, NAB, in conjunction with an outside accounting firm, has conducted an

declined 56.3 percent over the course of that decade.[221] Even stations in the largest Designated Markets Areas ("DMAs") experienced significant financial declines – a 50.8 percent drop in pre-tax profits over the period for stations in DMAs 1-49.[222] In mid-sized and smaller DMAs, the decrease in profitability was even larger, with stations in DMAs 50-99 suffering a dramatic 67.1 percent drop in pre-tax profits from 1998-2008. Similarly, stations in the smallest DMAs (150-210) experienced declines of 62.9 percent for all stations (and 62.3 percent even for those stations affiliated with the "Big Four" networks – ABC, CBS, NBC, and Fox).[223] The following chart from Attachment C shows the pre-tax profit average for all stations and for Big Four network affiliated stations from 1998 to 2008, in markets 150-210:

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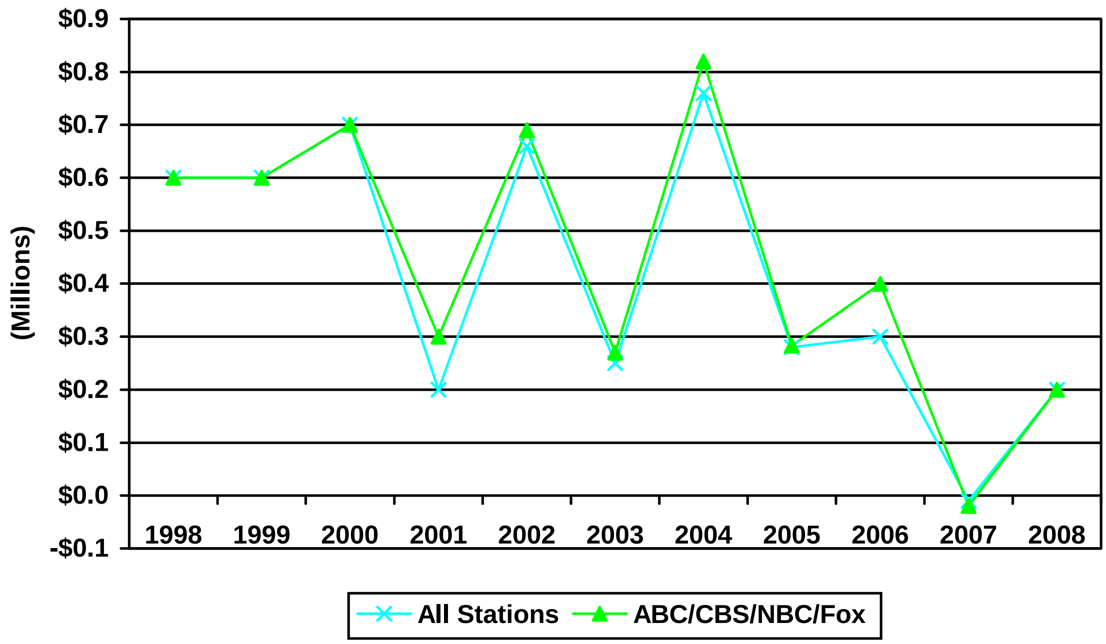
annual financial survey of all commercial television stations in the country. Between 60-70 percent of all stations consistently respond to these annual surveys.

[221] *See* Attachment C at 1.

[222] *See id*. at 4.

[223] *See id.* at 7, 13.

Pre-Tax Profit Average
Markets: 150-210



Local broadcast stations experienced another challenging year in 2009. Local television stations' advertising revenue dropped by 24 percent in 2009 (triple the decline of 2008), according to a recent study by the Pew Research Center.[224] Similarly, broadcast radio experienced an 18 percent drop in advertising revenues in 2009 compared to 2008 (which was itself a year in which advertising revenue had declined from 2007).[225] "Many stations have left the air and some owners of multiple stations have entered bankruptcy."[226] Following the disastrous 2009, radio and television station revenue projections are both up for 2010. However, SNL Kagan projects that neither

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224 *See* Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media," Overview/Introduction, *available at* www.stateofthemedia.org/2010/overview_intro.php.

225 *See id*.

226 *Id*. at www.stateofthemedia.org/2010/audio_summary_essay.php

radio nor television station ad revenues will, even by 2019, recover to the level of ad revenues enjoyed by broadcast stations in 2006.[227]

Beyond the economic downturn, then, broadcasters' revenue losses are also clearly attributable to an incontrovertible fact: broadcasters compete with multichannel video and audio providers and online media more than ever for fragmenting audiences and, thus, for local advertising. In its last quadrennial review, the Commission recognized the "marked fragmentation of audience share as viewers, listeners and readers gravitate" to "new sources of information and entertainment," many of which "simply did not exist" when the agency adopted certain of its ownership restrictions but yet now "vigorously compet[e] for audiences."[228] *See also Notice* at ¶¶ 45-46 (noting, *inter alia*, declining audiences for local television stations and the encroachment of online radio and iPod/MP3 player use on traditional radio listening).

Significantly for advertising-supported media including broadcast stations and newspapers, the Commission has also recognized that "advertising dollars continue to shift with the changing structure of the marketplace."[229] For example, between 1995 and 2005, cable's local advertising revenues doubled.[230] The market for online search

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[227] *See* Robin Flynn, SNL Kagan, "Radio Station Revenue Projections Update" (May 27, 2010) and "TV Station Ad Revenue Projections" (May 26, 2010), *available at* www.snl.com

[228] *2006 Quadrennial Review Order* at ¶ 24 (citing satellite radio, various multichannel video providers, increasing numbers of broadcast outlets and the Internet).

[229] *Id*.

[230] *See* Project for Excellence in Journalism, "2005 Annual Report: Local TV Economics," *available at* www.journalism.org/node/739 ("Due to [cable franchisee] consolidation, cable companies dominate entire metropolitan areas, and new technology makes it possible to run the same ad on a group of systems at once…. [The rise in cable local ad spending] would represent a growth rate of at least 10% each year, [while] local broadcast revenues are expected to grow barely 5% a year."). In its

engine advertising for local business more than doubled in the last decade; in the first quarter of 2006, for example, online advertising rose by almost 47 percent while local broadcast spot advertising remained flat.[231] Notably, even during the recent severe recession, online search advertising grew a projected three percent in 2009.[232] Satellite television operators are now entering the local video advertising market for the first time.[233] This year, advertisers are predicted to reduce spending on television, radio and movies and spend nearly ten percent more on web sites and other digital media.[234] Moreover, "[e]ven with improvements in the overall economy," BIA/Kelsey does "not anticipate a rapid recovery among traditional media" in the next several years because the "structural change in the local media industry has accelerated."[235]

Obviously, a flow of advertising dollars away from local broadcast stations can in the longer-term undermine the financial support for costly local services such as news

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most recent video competition report, the FCC reported that cable operators' local advertising revenues rose eight percent from 2005-2006. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd 542, ¶ 47, Table 5 (2009).

[231] *See* Kris Oser, "2008 Market for Local Search Engine Ads: $2.5 billion," *AdAge* (Nov. 2, 2004) (http://adage.com/digital/article?article_id=41448); Samantha Melamed, "Stunner: Web Dollars Rise 46.4 Percent," *Media Life* (July 18, 2006) (www.medialifemagazine.com/cgi-bin/artman/exec/view.cgi?archive=399&num=6030).

[232] *See* Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media," *available at* www.stateofthemedia.org/2010/online_economics.php.

[233] *See* D. Yao, "DirecTV to Sell Local Ads for the First Time," Yahoo! News (June 25, 2010).

[234] *See* "Online Ad Spending to Surpass Print in the U.S. This Year," *Bloomberg Business Week* (May 7, 2010).

[235] BIA/Kelsey, News & Events, "BIA/Kelsey Forecasts U.S. Local Advertising Revenues to Reach $144.9B in 2014" (Feb. 22, 2010).

and emergency journalism, and even the continued viability of some stations.[236] *See Notice* at ¶ 50 (asking about impact of marketplace changes on economic viability of broadcasters and their services, including local news).

These "structural" changes in the media marketplace, and the undermining of traditional sources of financial support for local broadcast stations, have occurred despite the continued popularity of broadcast programming and continued consumer reliance on broadcast services.[237] Now that advertisers may easily shift their ad dollars around, traditional media outlets are experiencing considerable difficulties in finding "sustained support for their creative endeavors – especially the task of producing quality journalism."[238] If local stations are to continue providing such costly and resource intensive services in the future, broadcasters must utilize fully opportunities presented by digital technologies, find ways to monetize content on new distribution platforms, and form more efficient ownership structures.

The Commission has already recognized in several contexts the financial challenges faced by broadcast television stations, especially small market stations, independent stations, and stations affiliated with minor networks.[239] And according to

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236 As shown in Attachment C, lower performing television stations in markets of all sizes (including top 50) have consistently suffered financial losses, not just declining profits, from 1998 to 2008.

237 *See* Pew Research Center, Project for Excellence in Journalism, "2010 State of the News Media," Executive Summary, *available at* www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (noting that, among audio providers, traditional broadcast radio has the largest audience, yet also noting that "[t]his is where the profit and revenue are under the most pressure"). *See also* Section III.A.2. (showing continued consumer reliance on local television news).

238 *PFF Report* at 23.

239 *See, e.g.,* Third Report and Order, 22 FCC Rcd 21064 n.192 (2007) (noting the "particularly great" financial hardships of these television stations). More recently, the

the Commission's CDBS system, 107 AM stations and 466 FM stations and translators are currently silent. Obviously, financially struggling stations cannot serve their local audiences as effectively as economically healthy stations with greater resources – and silent stations cannot serve the public interest at all. The Commission may aid broadcast stations and newspapers in their "creative endeavors," including "producing quality journalism," by bringing its regulatory policies into the digital age and affording local stations the flexibility to create ownership structures permitting them to compete vigorously in today's multichannel, multiplatform marketplace.

IV. Ensuring A Quality Local Broadcast System In The Digital Age Requires Reform Of Asymmetric Ownership Restrictions That Disfavor Locally-Oriented Radio And Television Stations

The FCC's broadcast ownership rules should not only take account of the unprecedented competition and diversity that exist in local media markets, but also should seek to avoid the substantial costs imposed by asymmetric regulation (*i.e.*, regulatory costs and restrictions imposed on only some marketplace participants, leaving other competitors unencumbered by regulation). Certain regulations impose heavy costs on broadcasters, affecting their competitive posture and spurring scarce capital to flow to the market participants who compete without these constraints. As we move forward into the new media age, Commission policy should not continue tilting the competitive playing field against locally-licensed and -oriented broadcasters.

National Broadband Plan reported that "broadcast TV station revenues have declined 26%" since 2005, and "overall industry employment has declined as well." FCC, "A National Broadband Plan for Our Future," GN Docket No. 09-51, at 89 (March 16, 2010).

A. The Commission Should Reform Ownership Rules so that They Reflect Current Competitive Realities in a Multichannel, Multiplatform Media Marketplace

The Commission's current ownership rules have the unintended consequence of artificially fragmenting the broadcasting industry. They hinder broadcasters from competing fully and efficiently with other media outlets, including those that earn subscription revenues, and, thus, must not be retained under Section 202(h). Ironically, rules meant to promote diversity and localism can undermine those goals by preventing combinations and ventures that could save or expand local journalism.

1. Eliminating Unnecessary Restrictions on the Cross-Ownership of Broadcast Outlets and Newspapers Will Promote the Public Interest

The financial and other competitive problems of the newspaper industry are well known, and many have documented these struggles in previous Commission proceedings.[240] Indeed, in its last quadrennial review, the Commission discussed in detail the "steep reduction in newspaper circulation in recent years" and the consequent "cascade of negative impacts" on the industry.[241] Local newspapers have continued to struggle since that decision. *See Notice* at ¶ 47 (citing further recent declines in newspaper circulation and ad revenue).[242]

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[240] *See, e.g.*, Comments of NAB in MB Docket No. 06-121 at 110-120 (Oct. 23, 2006); Reply Comments of NAB in MB Docket No. 06-121 at 81-91 (Jan. 16, 2007).

[241] *2006 Quadrennial Review Order* at ¶ 28.

[242] *See also* A. Mutter, "Make No Mistake: Newspapers Are Still in Trouble," *Reflections of a Newsosaur*, newsosaur.blogspot.com (June 15, 2010) (newspaper ad sales in first quarter of 2010 dropped 9.7 percent, coming on top of 40 percent sales skid in the two years ending December 31, 2009); J. Plambeck, "Newspaper Circulation Falls Nearly 9%," *New York Times* (Apr. 26, 2010) (in six-month period ending March 31, 2010, Sunday newspaper sales dropped 6.5 percent and weekday sales 8.7 percent compared with same period a year ago); R. Chittum, "Newspaper Industry Ad Revenue

Current regulations, however, suggest that it is better for a newspaper to go out of business (or significantly reduce its coverage and/or distribution) than for its newsroom resources to be combined with a broadcast newsroom – an outcome that makes little sense and does not advance the interests of modern media consumers. *See Prometheus*, 373 F.3d at 398-99 (court concluded that "newspaper/broadcast combinations can promote localism," and agreed with the FCC that a "blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity").

Studies conducted by and for the Commission in 2007 clearly demonstrate that common ownership of newspapers and broadcast outlets benefits viewers and listeners in local markets by promoting the provision of news programming generally and local news specifically.[243] These studies were in addition to numerous earlier studies over the course of decades showing that newspaper cross-ownership of broadcast stations in local markets resulted in the production of more and higher quality news and nonentertainment programming on the broadcast outlets. In fact, in comments in 2007,

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at 1965 Levels," *Columbia Journalism Review* (Aug. 19, 2009) (inflation-adjusted numbers show that newspapers "are even worse off than you think").

[243] *See Shiman Ownership Structure Study* at 21-22 (finding that television stations provided 11 percent more news programming generally if they were cross-owned with a newspaper); *Milyo Cross-Ownership Study* at 29 (finding television stations cross-owned with in-market newspapers aired more local news content, including more coverage of state and local political candidates); *Crawford Television Study* at 23 (finding newspaper cross-owned television stations aired more local news). FCC studies from 2007 also found that newspaper/radio cross-ownership promotes the provision of news programming. *See* FCC, 2007 Ownership Study No. 4, Section III, Craig Stroup, "Factors that Affect a Radio Station's Propensity to Adopt a News Format," at 14-15 ("*Stroup News Radio Study*") (a radio station that is cross-owned with a newspaper is 4-5 times more likely to have a news format than a non-cross-owned station); FCC, 2007 Ownership Study No. 4, Section II, Kenneth Lynch, "Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay," at 18, 23 ("*Lynch Radio Airplay Study*") (radio stations cross-owned with newspapers were significantly more likely to air news and aired significantly more public affairs programming).

NAB identified *ten* such studies conducted by different parties, including the Commission, scholars, industry analysts and research foundations.[244] In sum, myriad studies have established that "increased . . . newspaper-television cross-ownership may in fact promote the availability of local news programming" on local television stations.[245]

Multiple studies moreover demonstrate that such common ownership does not present diversity concerns because ownership does not determine the viewpoint or "slant" of media outlets and that commonly-owned outlets can and do offer diverse viewpoints.[246] Indeed, rather than ownership, a growing number of studies have concluded that market forces – specifically the ideology or preferences of the potential audience – drives the political orientation or slant of newspapers and other outlets much more than ownership.[247] *See* Section II.A., *supra*, for a more detailed discussion of the significant literature on how consumer demand drives viewpoint diversity.

In any event, since the *Notice* (at ¶ 87) recognizes that fewer consumers are relying on newspapers and instead obtaining news and information from nontraditional

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[244] *See* NAB Reply Comments in MB Docket No. 06-121 at 82-84 (Jan. 16, 2007). *See also* Napoli, "Television Station Ownership Characteristics and Local News and Public Affairs Programming," at 119 (newspaper ownership is "positively related to the provision of local news programming" on television stations); K. Kirby and M. Gibson, "The Newspaper-Broadcast Cross-Ownership Rule: The Case for Regulatory Relief," 25 *Communications Lawyer* 22 (Spring 2007) (summarizing showings by various parties as to benefits of newspaper cross-ownership in numerous markets).

[245] Napoli, "Television Station Ownership Characteristics and Local News and Public Affairs Programming" at 119.

[246] *See, e.g., Gentzkow/Shapiro Media Slant Review* at 37-38, 64; *Milyo Cross-Ownership Study* at 29; Pritchard, "One Owner, One Voice?" at 21-23; and other studies cited in Section II.A. above.

[247] *See, e.g., Gentzkow/Shapiro Media Slant Review* at 37-38, 64; *Milyo Cross-Ownership Study* at 29; Mullainathan and Shleifer, "The Market for News" at 1042; and other studies cited in Section II.A. above.

sources (especially online), allowing more freely the combination of newspapers and broadcast outlets would appear to raise no serious diversity concerns. On a "typical day," 92 percent of Americans "use multiple platforms to get news," with close to half (46 percent) obtaining news "from four to six media platforms" and 61 percent obtaining news online.[248] Given that consumers "today routinely get their news from multiple sources and a mix of platforms,"[249] including online websites and social media, there is less need than ever for rules restricting the ownership of only certain types of traditional media outlets. *See* Section I.C.2., *supra*, for a detailed discussion of the breadth of the market for information.

Despite the documented competitive and financial struggles of the newspaper industry and the proven benefits of newspaper/broadcast combinations, the cross-ownership rule adopted in the FCC's 2006 review did not actually authorize any combinations, but merely created a "positive presumption" that, in very limited circumstances in only the top 20 markets, a combination of a daily newspaper and one radio station or one television station not among the top-four rated would be in the public interest. In light of continuing competitive changes in local media markets, such severe restrictions on newspaper/broadcast cross-ownership do not comport with Section 202(h) or even the requirements of general administrative law.[250] The

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[248] *Pew Participatory News Consumer Study* at 2-3.

[249] *Pew Participatory News Consumer Study* at 3.

[250] Clearly, after 35 years experience with the newspaper cross-ownership rule, the FCC has the burden of empirically demonstrating the benefits, if any, that flow from the restriction and can no longer rely on speculation, assumptions or unverified predictions to retain the rule. *See, e.g., Bechtel*, 10 F.3d at 880. It is highly unlikely that the FCC will be able to provide this requisite showing, as a recent, thorough survey of newspaper/broadcast cross-ownership studies since the 1940s concluded that "there is no empirical basis for believing that cross-owned media do any less than other media to

Commission should repeal the newspaper/cross-ownership rule because it is no longer in the public interest in today's digital, multichannel marketplace.

2. Especially in Light of Local Ownership Restrictions on Television Stations and Radio Stations, the Radio/Television Cross-Ownership Rule Is Not Necessary in the Public Interest

As NAB has previously urged, the Commission should repeal the radio/television cross-ownership rule, which, in its current form and under current market conditions, does nothing to advance the public interest. Indeed, the radio/television cross-ownership rule today primarily serves to limit radio station ownership arbitrarily. For example, the rule does not permit – under any circumstances and even in the largest markets – the common ownership of the maximum number of radio stations allowed under the local radio ownership rule (eight) and even a single television station. The rule, however, already allows the common ownership of two television stations (the maximum number permitted under the television duopoly rule) and up to six radio stations. Repeal of the radio/television cross-ownership rule would, as a practical matter, only permit the common ownership of one or two additional radio stations, in conjunction with a television station, in the largest markets.

Given the very limited effect of a repeal of the cross-ownership rule, it is difficult to contend that the rule's elimination will harm the public interest, especially in today's competitive media marketplace. Given the fundamental changes in local advertising markets and the shifting of ad revenues away from broadcast stations and toward multichannel and online outlets, any rationale for the rule based on an asserted need to

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serve the public interest." Pritchard, "One Owner, One Voice?" at 27. In fact, this survey found that in terms of the quantity and quality of news and journalism provided, cross-owned stations tend "to be as good, if not better, than" non-cross-owned stations. *Id*. at 13-14, 23.

preserve competition simply does not exist. *See* Sections I.C.1. & III.C., *supra*. And in light of the explosion of multichannel audio and video outlets and Internet-related media in all markets, and the resulting fragmentation of the local audience across ever-growing numbers of outlets that consumers use to access entertainment and information, repeal of the rule will not adversely affect the availability of diverse audio and video programming and viewpoints. *See* Section I.C.2., *supra* (describing the breadth of the information market).

In addition, NAB emphasizes that the rule – like other broadcast-only restrictions – disadvantages local broadcasters in today's competitive multichannel environment. For example, the rule prohibits the owner of a single broadcast television station in a large market from also obtaining the maximum number of radio stations permitted under the local radio ownership rules (eight), but does not preclude a cable operator with a dominant position in the local video market from acquiring up to eight radio stations in that market.[251] The combined Sirius/XM, which places hundreds of channels of audio programming into every local market, is similarly not barred from acquiring up to eight radio stations in every market of sufficient size. With television and radio broadcasters facing unprecedented competition from cable, DBS, satellite and Internet radio, and other video and audio programming sources including online, a cross-ownership rule applicable only to local broadcast television and radio stations is inequitable and outdated.

[251] Similarly, a dominant cable operator can acquire a daily newspaper in the same local market without restriction and, as a result of the elimination of the cable/broadcast cross-ownership rule, it can acquire in the same market one or two broadcast television stations (depending on the size of the market) and multiple radio stations.

Moreover, several of the Commission' own studies from 2007 demonstrate the benefits stemming from cross-ownership of radio and television stations, including greater amounts of news and public affairs programming.[252] In light of this empirical evidence, as well as the evidence as to the ever-increasing levels of competition and diversity in today's media marketplace, the current restrictions on the common ownership of radio and television stations appear insupportable. Especially given that the current rule primarily serves to limit radio station ownership arbitrarily and to handicap broadcasters in their efforts to compete against multichannel and online providers, Section 202(h) requires the rule be eliminated as no longer serving the public interest in light of competition.[253]

3. Reforming the Television Duopoly Rule to Allow Duopolies in All Markets Will Promote the Public Interest

As long ago as 1996, Congress expressed its belief that "significant changes in local video markets," including increases in multichannel competitors, "require substantial deregulation of local [television] station ownership and greater reliance on marketplace forces to assure vigorous competition and diversity."[254] However, the current duopoly rule, with its eight-voices test, essentially prohibits the common

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[252] *See Shiman Ownership Structure Study* at 24 (while other ownership characteristics did not have a statistically significant impact on the quantity of public affairs programming, the cross-ownership with radio stations was associated with a 15 percent increase in public affairs programming on television stations). Other Commission studies found that cross-ownership with a television station in the same market (1) significantly increased the likelihood that a radio station will be a news-formatted station, and (2) increased the quantity of news programming on the commonly-owned radio station. *See Stroup News Radio Study* at 15; *Lynch Radio Airplay Study* at 19.

[253] NAB notes that, if the Commission decides to retain the local radio ownership rule and the television duopoly rule in some form, the case for also retaining the cross-ownership rule is even less persuasive.

[254] *House Report* at 118.

ownership of two television stations in the vast majority of markets – those outside the top 50 largest markets. In light of Section 202(h)'s directive, and substantial empirical evidence demonstrating the competitive and financial challenges facing local television stations and the public benefits of common ownership, the Commission must reform the duopoly rule to allow combinations in markets of all sizes, including smaller ones.[255]

As shown in Attachment C, this rule generally prevents the efficient combination of television stations in markets (DMAs 50-210) where stations experienced a 63.7 percent decline in pre-tax profits from 1998-2008 (and where even economically stronger major network affiliates experienced a 52.9 percent decline in pre-tax profits).[256] Indeed, the data show that lower performing stations in these markets where duopolies are generally prohibited consistently suffered *actual losses* (not just declining profits) during the 1998-2008 period.[257]

These financial reverses are the natural consequence of increasing competition for audiences and advertisers in an ever more fragmented media marketplace. As shown in Attachment E, cable's share of local television advertising revenues has continued to rise. In the top-10 television markets from 2003-2008, cable's share of

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[255] The legislative history of the 1996 Act (*see* Section I.B., *supra*) demonstrates that Congress intended to ensure the broadcast television "industry's ability to compete effectively in a *multichannel media market*" and to "remain a vital element in the video market." *House Report* at 55 (emphasis added). NAB has previously discussed how the current duopoly rule, which only counts in-market broadcast television stations as "voices," fails to consider adequately the competitive effects of multichannel and online video providers, contrary to Section 202(h) and congressional intent. *See* NAB Comments in MB Docket No. 06-121, at 106-109 (Oct. 23, 2006). *See Notice* at ¶ 84 (asking whether the 1996 Act requires the FCC to maintain competition between broadcasters and other video providers or only between television broadcasters).

[256] *See* Attachment C at 16.

[257] *See id.* at 17-18. *See* Section III.C., *supra*, for a more detailed discussion of the financial declines of local television stations.

local television advertising revenues rose from 17.4 percent to 24.3 percent. During this time period, cable's share of the local television ad "pie" grew from 16.7 percent to 21.8 percent in DMAs 11-25, and also increased by about one-third in DMAs 26-50 and 51-100.[258]

Local television market revenue statistics demonstrate that stations in smaller markets face even greater economic hardship from new competition for viewers and advertisers. For example, in Fort Smith, AR (DMA 100) in 2009, the six in-market commercial television stations competed for about *one-thirtieth* the total broadcast television advertising revenues as the 16 commercial stations in the New York DMA.[259] Obviously, the reduction in the number of stations from large to small markets is outpaced by the decline in available revenues. Thus, "small market stations are competing for disproportionately smaller revenues than stations in large markets."[260] For these reasons, the Commission has previously concluded, and must conclude in this review, that "the ability of local stations to compete successfully" in the video marketplace "is meaningfully (and negatively) affected in mid-sized and smaller

[258] *See* Attachment E, "Cable Share of Local TV Revenues, 2003-2008." According to Veronis Suhler Stevenson, "subscription TV" overall "will see ad dollars almost equal to broadcast television by 2013 . . . . propelled by the medium's ability to provide niche audiences to advertisers." *Communications Industry Forecast 2009-2013*, at Advertising 7 (23rd ed. 2009).

[259] See Attachment E, "2009 Television Market Revenues."

[260] *2002 Biennial Review Order*, 18 FCC Rcd at 13698. In addition, Attachment E shows that the average television household in smaller markets is valued less by advertisers on a per household basis than the average television household in larger markets. For instance, based on 2009 advertising revenue figures, the average television household in the New York DMA was worth $147 in annual revenue, while the average television household in Ottumwa, IA/Kirksville, MO (DMA 200) was worth only $85. These differences in household valuation by advertisers only add to the economic challenges faced by small market television broadcasters.

markets."[261] Clearly, the highly restrictive eight voices/top four duopoly rule no longer serves the Commission's goals, particularly in smaller markets.[262]

Evidence submitted in the Commission's previous ownership reviews shows that permitting stations (especially those under financial stress) the flexibility to form same market combinations would promote improved programming generally and increased local news and public affairs programming specifically. For example, in a range of markets from Seattle to Jacksonville, in-market television station duopolies have preserved or increased local news and public interest programming.[263] Like duopolies, local marketing agreements ("LMAs"), which allow a brokering station to provide up to 15 percent of the programming aired on another in-market station, increase the

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[261] *2002 Biennial Review Order*, 18 FCC Rcd at 13698.

[262] *See Notice* at ¶¶ 83-84 (inquiring whether the eight-voice and top-four restrictions continue to serve the FCC's goals and whether relaxation of the duopoly rule is warranted in smaller markets). NAB has previously addressed the top-four restriction in detail and demonstrated that it is unwarranted in today's competitive video marketplace. *See* NAB Comments in MB Docket No. 06-121 at 102-106 (Oct. 23, 2006) (explaining, *inter alia*, that the restriction prevents the formation of duopolies in markets with fewer than five stations and severely restricts their formation in markets with five or six stations, and that there is no rational demarcation between top four stations and other stations – whether based on ratings, news programming or any other basis – that warrants imposing this restriction across all markets).

[263] *See, e.g.*, Belo Comments, MB Docket No. 06-121, at 22-25 (Oct. 23, 2006) (duopolies in Seattle-Tacoma, Phoenix, Tucson, and Spokane markets resulted in increased local news, including addition of daily newscasts, weekly local public affairs program, and public affairs specials); Gannett Comments, MB Docket No. 06-121, at 46 (Oct. 23, 2006) (same public interest benefits in Gannett's duopoly markets of Jacksonville, Denver, and Atlanta); Waterman *et al. Ex Parte*, MB Docket No. 02-277 (May 23, 2003) (noting the local news increases and public interest benefits resulting from duopolies, in Ft. Myers, Honolulu, Cleveland, Grand Rapids, Hartford-New Haven, Norfolk-Portsmouth-Newport News, Austin, and Providence-New Bedford); Coalition of Smaller Market Television Stations Reply Comments, MB Docket No. 06-121, at 13 and cites therein (Jan. 16, 2007) (noting that "the record evidence convincingly demonstrates that station combinations in smaller and mid-size markets provide localism benefits").

likelihood of stations carrying local news and public affairs programming, and in many cases have allowed the weaker station to air more news programming or acquire network affiliation.[264] A study by Economists Incorporated in late 2007 demonstrated that television stations commonly owned or operated (via an LMA or local service agreement) with another station in the same market are more likely to carry local news, public affairs or current affairs programming.[265] And the FCC's own 2007 media ownership studies demonstrated that allowing local television broadcasters to adopt more economically viable ownership structures directly results in more local news.[266]

Beyond promoting local news and public affairs programming specifically, studies have demonstrated that the acquired station in duopolies experience increases in their local audience share and revenue share following their acquisition.[267] The 2006 study

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[264] *See, e.g.,* LIN Television Corp. and Raycom Media Petition for Reconsideration, MB Docket No. 02-277, at 6-8 (Sept. 4, 2003). NAB notes that the 15 percent limitation on LMAs in fact can limit the amount of news market-wide in some cases, since the Commission's attribution rules, combined with the duopoly rule, bars the brokering station from providing additional news, even if it would otherwise be willing and able to do so. The result is less news than might otherwise be aired on the brokered station.

[265] *See* Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, "Effect of Common Ownership or Operation on Television News Carriage: An Update" (Attachment A, NAB Reply Comments, MB Docket No. 06-121, at 6-7 (Nov. 1, 2007)) (finding that a station in a same-market combination is 6.2 percent more likely to carry local news and public affairs programming than a station that is not in such a local combination). This 2007 study reconfirmed an earlier Economists Incorporated study, which made similar findings and which was cited by the Third Circuit in upholding the FCC's conclusion in its 2002 review that common ownership "can improve local programming." *Prometheus*, 373 F.3d at 415.

[266] The *Shiman Ownership Structure Study* found that co-ownership of television stations in the same market "has a large, positive, statistically significant impact on the quantity of news programming." *Id.* at 21. "For each additional co-owned station within the market, there is an increase in the amount of news minutes by 24 per day, about a 15% increase." *Id*.

[267] *See* BIA Financial Network, "Economic Viability of Local Television Stations in Duopolies" (Attachment H, NAB Comments, MB Docket No. 06-121 (Oct. 23, 2006));

found that the acquired stations experienced an 11.0% increase in their audience shares and a 15.4% increase in their revenue shares from pre-acquisition levels.[268] Thus, the formation of duopolies enables stations to improve their overall programming service by offering programs preferred by more of their local viewers. *See Notice* at ¶ 84 (asking whether common ownership of television stations would result in "more and better programming"). And that fact that same-market combinations also allow stations to improve their revenue shares is also significant, due to the demonstrated relationship between financial health and the offering of costly programming such as local news. *See* Section III.B., *supra*. It is therefore clear that in-market asset- and resource-sharing structures preserve and expand broadcasters' ability to serve their communities, and that the duopoly rule treating most in-market combinations as *per se* harmful to the public interest – despite evidence to the contrary – inhibit that ability. Indeed, a recently published economic study concludes that there should be a presumption in favor of allowing television duopolies in smaller markets, as they will produce diversity in local news and public affairs programming.[269]

Respondents to the 2010 survey for NAB on the economics of local television news provided numerous concrete examples of ways in which local partnerships enhance the provision of local news. Many television stations reported unique

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BIA Financial Network, "Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?" (Attachment A, Comments of Coalition Broadcasters, MB Docket No. 02-277 (Jan. 2, 2003)). The court in *Prometheus* specifically cited this earlier study when confirming the FCC's finding that common ownership "can improve local programming." *Id.*, 373 F.3d at 415.

[268] BIA, "Economic Viability of Local Television Stations in Duopolies," at 6.

[269] *See* Spitzer, "Television Mergers and Diversity in Small Markets" at 50, discussed in more detail in Section II.A. above.

partnerships that increase the amount of local news in the market, from a station that produces an original morning newscast for another local station (and has a partnership with six local radio stations and three local newspapers) to a station that has a newsgathering partnership with ten regional newspapers in outlying counties of its markets.[270] As the report notes, many "broadcasters that own television duopolies report that co-ownership provides operational efficiencies leading to higher quality and more local news than would otherwise be produced absent the duopoly."[271] As shown above, consumers benefit when stations have flexibility to cooperate and share resources with other local media outlets, whether through duopolies, LMAs, joint sales agreements or shared services agreements. Indeed, these types of arrangements help make it possible for local stations to continue providing extensive and expensive local news programming and emergency journalism, despite facing significant economic challenges.[272]

Finally, NAB notes that the current "failing" station waiver has been of very limited utility for struggling television stations, and thus should be reformed. *See Notice* at ¶ 83 (asking whether to change the standard). First, it is generally not available where the struggling station has more than a four percent all-day audience share. Financially troubled network-affiliated stations (such as those in a number of smaller

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[270] *See* Attachment B at 26.

[271] *Id*. at 26-27 (providing specific examples).

[272] *See Notice* at ¶ 99 (inquiring about shared services agreements). As NAB discussed in comments submitted to the Federal Trade Commission, joint news ventures, such as the "pooling" of photographers for certain assignments or sharing news helicopters or satellite trucks, permit stations to deploy increasingly scarce resources more efficiently and to save resources for highly demanded enterprise journalism, rather than for redundant coverage of commodity events. *See* Comments of NAB, New Media Workshop Project No. P091200 (filed Nov. 6, 2009).

markets) usually will be unable to meet this test given the relative popularity of their network programming. Second, the policy generally requires stations to demonstrate negative cash flow for the previous three years. In the context of an application process, this essentially amounts to a four year wait. It also fails to address the growing problem of distressed stations that, particularly in order to avoid defaults in their debt covenants, are forced to forego the investments necessary to provide high quality local news and other valued programming. As part of its necessary broader reform of the duopoly rule, the Commission should reexamine these requirements for a failing station waiver and amend them so that distressed stations struggling to maintain local services and a significant local presence may better take advantage of the waiver process in a timely manner.

The continued maintenance of the current, highly restrictive eight voices/top four duopoly rule cannot be justified under Section 202(h), especially in light of the ever increasing levels of competition offered by multichannel video providers and online outlets and the substantial empirical evidence demonstrating that television duopolies promote enhanced service to the public. Retention of the eight-voice rule that counts only in-market broadcast television stations is not only irrational in today's video marketplace, it is also contrary to the D.C. Circuit's decision in *Sinclair*.[273] To comply

[273] In *Sinclair*, the court criticized the FCC for "not provid[ing] any justification for counting fewer types of 'voices' in the local ownership rule than it counted in its rule on cross-ownership of radio and television stations." 284 F.3d at 162; *see also id*. at 164 (noting that the FCC "found for purposes of cross-ownership that counting other media voices 'more accurately reflects the actual level of diversity and competition in the market'"). *See* Brief of Petitioners NAB and Coalition of Smaller Market Television Stations in *Prometheus Radio Project v. FCC*, Nos. 08-3078, *et al*. (Third Cir. May 17, 2010) for a full discussion of why counting only local television stations as voices is

with Section 202(h) and the court's directive in *Sinclair*, and to ensure consumers' continued access to valued local television services, the Commission must reform the duopoly rule. A full consideration of the nature of competition for both viewers and advertisers in local video markets inevitably will lead to relaxing the rule to permit combinations in markets of all sizes, including smaller ones where regulatory relief is particularly needed.

4. In Light of Current Marketplace Conditions, the Commission Should Provide Greater Ownership Flexibility to Local Radio Broadcasters

Given the substantial record in past Commission proceedings that common ownership of radio stations promotes programming diversity and does not harm competition in the advertising market, NAB urges the Commission to consider continued relaxation of the local radio restrictions set by Congress nearly 15 years ago in a less competitive and diverse marketplace. Section 202(h) requires the Commission to consider the growing competitive challenges to local radio stations in today's multichannel, multiplatform audio marketplace.

As NAB described in detail in earlier submissions, the Commission's own 2007 studies support continued relaxation of the local radio restrictions.[274] For example, the *Stroup News Radio Study* (at 16) found that "[h]aving a sibling news station in the market appears to increase a [radio] station's propensity to adopt a news format by about 50%." The *Lynch Radio Airplay Study* (at 1) concluded that radio stations "owned

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inconsistent with *Sinclair*, Section 202(h) and the requirements of the Administrative Procedure Act.

[274] *See* NAB Comments in MB Docket No. 06-121 at 18-25 (Oct. 22, 2007); NAB Comments in MB Docket No. 06-121 at 24-27 (Dec. 11, 1007).

by parents having more pervasive radio operations are more likely to air informational programming." In particular, "stations owned by parents with more extensive radio operations, both in- and out-of-market, aired a significantly greater quantity of public affairs programming overall." Specifically, "an additional in-market station owned by the parent increased the quantity of public affairs programming" by "about 10%."[275]

As discussed in Section II.A. above, numerous earlier studies by several parties have shown that common ownership of radio stations leads to greater radio programming diversity. A major radio study conducted in 2007 for the Commission found that "more concentrated markets are associated with more, not less, program variety" and that "consolidation of radio ownership does not diminish the diversity of local format offerings."[276] Indeed, "[i]f anything, more concentrated markets have less pile-up of stations on individual format categories and large national radio owners offer more formats and less pile-up."[277] Beyond the Chipty study, comments submitted by NAB in 2007 identified *eight* additional studies finding that common ownership of radio stations resulted in the offering of more diverse and more targeted programming to audiences.[278] Moreover, listeners "served by large radio groups, as measured by the number of commercial stations owned nationally by in-market owners, listen more," and

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[275] *Lynch Radio Airplay Study* at 22-23.

[276] FCC, 2007 Ownership Study No. 5, Tasneem Chipty, CRA International, Inc., "Station Ownership and Programming in Radio" at 44-45 (June 24, 2007) ("*Chipty Radio Programming Study*").

[277] *Id*. at 44.

[278] *See* NAB Comments in MB Docket No. 06-121 at 21-22 (Oct. 22, 2007). As discussed in detail in the attached *Local Radio Service Report*, this has included greater numbers of stations airing programming targeted to members of niche groups including minority groups, such as Spanish and other foreign language-speaking listeners and African-American listeners.

"stations operating in markets with other commonly owned stations achieve higher ratings" than "independent stations."[279] Clearly, the common ownership of radio stations leads to the airing of improved programming preferred by greater numbers of listeners. *See Notice* at ¶ 36 (inquiring about media utilization as a measure of consumer satisfaction).

A recent GAO report on radio programming has confirmed these earlier findings about local radio diversity. Specifically, GAO found that within individual markets, the top radio formats differ from the top radio formats nationally, showing that programming decisions are locally made based on the interests and preferences of local listeners.[280] In addition, GAO analyzed data for the top 10 national radio station owners in 2009 and found that for most owners, "stations' formats were differentiated within individual markets."[281]

In addition to promoting more diverse and targeted programming, the common ownership of radio stations in local markets, according to the FCC's own study, "has no statistically significant effect on advertising prices."[282] Common ownership nationally in fact has a "statistically significant, negative effect on advertising prices."[283] The results

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[279] *Chipty Radio Programming Study* at 42-43 (also noting that "cross-ownership with local newspapers has a statistically-significant positive effect on listenership" of radio stations).

[280] *See GAO Programming Report* at 28.

[281] *Id*. at 33.

[282] *Chipty Radio Programming Study* at 40.

[283] *Id*. at 41.

of the Chipty study on advertising rates are further consistent with several previous studies of the radio industry.[284]

Indeed, it is hardly surprising that several empirical studies have concluded that radio groups do not exercise undue market power in today's media marketplace, given the ever increasing levels of competition radio stations face for listeners and vital advertising dollars.[285] Due to the expanding numbers of audio outlets and growing audience fragmentation, even market leading stations must continually find new ways to earn audience share. Stations find it increasingly challenging to maintain listenership shares, particularly among younger listeners,[286] as consumers are increasingly utilizing

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[284] Other studies have similarly concluded that ownership changes after 1996 did not cause increases in advertising pricing. *See, e.g.,* J. Waldfogel & J. Wulf, "Measuring the Effect of Multimarket Contact on Competition: Evidence from Mergers Following Radio Broadcast Ownership Deregulation," 5 *B.E. J. Econ. Analysis & Policy* 1, Article 17 (2006). *See also* NAB Comments in MB Docket No. 06-121, at 74-76 (Oct. 23, 2006) (discussing several earlier studies of the radio industry showing that common ownership has not led to the exercise of market power by radio groups or to higher ad prices); C. Romeo and A. Dick, "The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes," 27 *Rev. Ind. Org*. 351, 354 (2005) (concluding that format changes by smaller radio groups or individual stations can counter or defeat the potential exercise of market power by any radio group that acquires a substantial share of a particular audience demographic through merger).

[285] *See* NAB Comments in MB Docket No. 06-121 at 12-22; 31-35 (Oct. 23, 2006); NAB Reply Comments in MB Docket No. 06-121 at 32-33 (Jan. 16, 2007); NAB *Ex Parte* in MB Docket No. 06-121 at 10-11 (filed Nov. 1, 2007) (describing how satellite radio and new Internet applications and devices, including streaming, podcasting, and iPods, now all compete with traditional radio stations in local markets for listeners and advertisers). *See also* BIA Financial Network, "A Review of the Future of Music Coalition Study: Missing a Basis in the Reality of the Radio Industry," at 2-3; 9-12 (Nov. 1, 2007), NAB *Ex Parte* in MB Docket No. 06-121 (Nov. 1, 2007) (discussing how competition is impacting terrestrial radio, including listening levels, advertising and stock prices).

[286] *See, e.g*., NAB Comments in MB Docket No. 06-121, at 73-74; 84-86 (Oct. 23, 2006); NAB Reply Comments in MB Docket No. 06-121, at 51-52 (Jan. 16, 2007); "Aggregate Shares of Top 5 Stations in Top 100 Arbitron Markets: Spring 2006 vs. Spring 2001 and Spring 1996" (Attachment D, NAB Comments, MB Docket No. 06-121 (Oct. 23, 2006)).

alternatives such as Internet-only audio.[287] As shown in Section III.C. above, broadcast radio stations experienced significant drops in advertising revenue in 2008 and 2009, with a number of stations entering bankruptcy or going dark.

In short, Section 202(h) requires the Commission, in light of the increasingly competitive audio marketplace and the financial challenges facing local radio stations in today's fragmented media market, to examine carefully restrictions on radio ownership adopted before the development and growth of satellite radio, online radio and numerous devices such as MP3 players and iPods. Among proposals made in previous ownership proceedings, it has been suggested that removing the same service (AM or FM) limit could enable broadcasters that focus on serving underserved demographic groups through AM stations to improve service to their communities.[288] As shown above, common ownership of radio stations promotes diversity of programming and service to local audiences and, thus, providing greater ownership flexibility to local radio broadcasters would serve the public interest.

B. "Bright-Line" Rules with Appropriate Waiver Standards Would Best Serve the Public Interest

The *Notice* also inquires as to the general approach the Commission should take in revising its ownership rules. In particular, the *Notice* (at ¶¶ 90-96) asks whether the Commission should have bright line rules, a more case-by-case approach or some

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[287] *See* Section I.C.2., *supra*. *See also* Veronis Suhler Stevenson, *Communications Industry Forecast 2009-2013* at Executive Summary 10 (23rd ed. 2009) (noting falling radio usage by consumers, especially young listeners who prefer to listen to music on social media sites).

[288] *See* Comments of Multicultural Radio Broadcasting, Inc., MB Docket No. 06-121 (Oct. 23, 2006). Removing the service limit would not increase the number of stations that a single entity could own in any local market.

hybrid. NAB believes that the vast majority of proposed media transactions can be addressed using bright line standards, and would generally prefer such standards for any rules that the Commission does not eliminate in this proceeding. As the Commission has observed, bright line rules provide greater certainty and predictability for broadcasters, prospective new entrants, investors, and other parties monitoring and analyzing the media marketplace.[289] Such certainty and predictability serves the public interest by reducing transaction costs (thereby allowing broadcasters to maximize focus on serving the needs and interests of audiences) and expediting regulatory review (thereby conserving Commission resources and permitting the public to more quickly realize the public interest benefits of media transactions).[290]

We recognize, however, that waivers of bright-line rules may well be appropriate in certain circumstances. To the extent that the Commission can establish standards that provide useful guidance regarding the types of waivers of bright-line rules that may be appropriate to grant, then even the waiver process could provide some certainty and predictability.

The Commission also seeks comment on the possibility of developing a "hybrid" approach similar to the presumption adopted for purposes of the newspaper/broadcast

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[289] *See, e.g., In The Matter of Promoting Diversification of Ownership in the Broadcasting Services*, 23 FCC Rcd 5922, 5937 (2009) (bright line attribution rules create "regulatory certainty for entities in planning their financial transactions, an important goal of the … rules"); *In The Matter of The Commission's Cable Horizontal and Vertical Ownership Limits*, 23 FCC Rcd 2134, 2183-84 (2008) ("We have sought to make the Commission's attribution rules bright-line tests in order to provide reasonable certainty and predictability to our regulatees, to ease administrative processing, and to avoid unduly disrupting capital flow.").

[290] *2002 Biennial Review Order*, 18 FCC Rcd at 13645, ¶ 82 (discussing benefits of bright-line ownership rules including certainty of outcome, conservation of administrative resources, reduction of administrative delays, and lowering of transaction costs).

cross-ownership rule during the *2006 Quadrennial Review*.[291] A hybrid approach that sets forth presumptions or additional factors for consideration in review of license transfer/assignment applications can be an effective way of establishing greater flexibility while still offering reasonable certainty. As with waiver standards, it is important that any hybrid approach provide adequate specificity so that parties considering transactions that implicate ownership rules have some sense of the likely outcome of Commission action on an application and can make the appropriate showings needed to meet the standards.

The Commission also inquires whether it should develop a broad cross-media approach to regulating media ownership.[292] While certainly an interesting concept, the FCC's experience with such limits suggest it would be impracticable to try to develop a single regulatory mechanism governing ownership of all media within a market.[293] When such an approach was under consideration during the *2002 Biennial Review,* NAB noted that creating a single local ownership rule under which all the media interests controlled by a single entity would be counted or weighed and "capped" raised "complex questions of comparing media outlets of varying type and scope."[294] NAB also cautioned that determinations about the relative "weight" to be accorded to media outlets under a local cap could be ripe for challenge by entities that felt disadvantaged by the Commission's determinations.[295] Although the Commission did not adopt a

[291] *See Notice* at ¶¶ 95-96.

[292] *See Notice* at ¶¶ 97-99.

[293] *See* NAB Comments in MB Docket Nos. 02-277 *et al.* at 58-59 (Jan. 2, 2003).

[294] *Id*. at 58.

[295] *Id*. at 58-59.

single rule governing all local ownership in that proceeding, its efforts to establish a single set of cross-media limits in lieu of the existing newspaper/broadcast and radio/television cross-ownership rules faced successful legal challenges which, among other things, specifically targeted the Commission's decisions about how to weigh different outlets.[296] Although the *Prometheus* decision certainly does not preclude the FCC from revisiting or even expanding upon a broad cross-media approach, the complexities and impracticalities of such an approach suggest that focusing on eliminating or modifying each of the existing rules to reflect current marketplace conditions would be a preferable approach.

C. Further Consideration Is Needed Before Establishing Appropriate Digital Contour Standards for Application of the Multiple Ownership Rules

The Commission also seeks comment on updating certain geographic and technical references in its ownership rules.[297] The Commission's cross-ownership,[298] local television ownership,[299] and television satellite station rules[300] each reference

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[296] *See Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004).

[297] *See Notice* at ¶¶ 102-105.

[298] The newspaper/broadcast cross-ownership rule prohibits certain combinations if the Grade A contour of a television station encompasses the entire community in which the paper is published. Similarly, the radio/television cross-ownership rule is triggered when a Grade A contour of a television station encompasses the entire community of license of an existing or proposed commonly-owned radio station. The analog Grade A contour is defined in 47 C.F.R. § 73.623.

[299] The local television ownership rule permits any entity to own two television stations in the same DMA if the Grade B contours of the stations do not overlap. 47 C.F.R. § 73.3555(b)(1)(2002) (citing 47 C.F.R. § 73.683). The Grade B contour also is relevant to the count of the number of independent "voices" post-transaction. 47 C.F.R. § 73.3555(b)(2)(ii)(2002).

[300] To qualify for the presumptive television satellite exemption to the local television ownership rule, the Commission requires satellite television stations to demonstrate that no analog city grade contour-overlap exists between the parent station and the

certain analog television station contours that no longer apply in the digital world. As explained in the *Notice*, the Commission has defined two digital television service contours: (i) the digital noise limited contour ("NLSC"), which was designed to approximate an equivalent level of service to a Grade B contour, and (ii) the DTV principal community contour, which the Commission states does not approximate either the analog City Grade or Grade A service contours.[301]

NAB agrees that the Commission should, to the extent feasible, maintain a contour-based approach for the triggers and tests within its ownership rules. To assist the Commission to identify appropriate comparable technical standards, NAB has begun the process of analyzing the contour issue and gathering relevant data. As the instant proceeding moves forward, NAB anticipates that it will be able to suggest standards for Commission consideration.

Until the Commission ultimately adopts new standards for purposes of its ownership rules, NAB urges the FCC to apply the NLSC standard in lieu of the Grade B standard, and to use stations' pre-DTV transition Grade A and City Grade contours as a guide in making determinations about cross-ownership or television satellite stations, as

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television satellite station. *Television Satellite Stations Review of Policy and Rules*, Report and Order, MM Docket No. 87-8, 6 FCC Rcd 4212 (1991). The analog city grade contour is defined in 47 C.F.R. § 73.685.

[301] *See Notice* at ¶ 103. *See also New Young Broadcasting Holding Company, Inc.,* FCC File Nos. BALCDT-20080820ACC *et al*, 2010 WL 246972 (rel. Jun. 18, 2010) ("in the digital television era . . . full-power television stations have principal community contours that serve much larger areas than their former analog City-Grade contours. Thus, the principal community contour is not an equivalent standard to use in determining whether a proposed satellite qualifies for the presumptive satellite exemption to the duopoly rule.").

has it done in decisions concerning satellite station status.[302] Using the NLSC standard as a proxy for the Grade A or City Grade standards, when that standard was never intended to serve as such a proxy, would not be an appropriate solution even on an interim basis. To provide greater certainty to applicants, the FCC could expand upon past decisions by explicitly stating that a pre-transition lack of contour overlap will serve as a proxy for meeting the presumptive satellite station standard, and that the cross-ownership rules will not be triggered unless there was pre-transition overlap. Recent FCC orders analyzing satellite station status demonstrate that this is an equitable approach that will serve the public interest until new technical standards are developed.

V. Conclusion

Given the technological and marketplace developments that have dramatically altered the media landscape in which the broadcast ownership rules were adopted, the Commission in this quadrennial review must seriously consider whether its local broadcast ownership rules in their current form continue to serve the public interest. NAB believes that they do not. In a multichannel environment dominated by consolidated cable and satellite system operators and burgeoning online providers,

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[302] *See, e.g., HBK NV, LLC, Transferor, and C. Thomas McMillen, Transferee*, FCC File Nos. BTCCDT-20091118ABB *et al*, 25 FCC Rcd 2354 ¶ 7 (2010); *ION Media Networks Liquidating Trust (Transferors) and Media Holdco, LP (Transferee)*, FCC File Nos. BTCCDT-20090901ABT *et al,* 24 FCC Rcd 14579 ¶ 6 (2009); *America-CV Station Group, Inc.*, FCC File Nos. BALCDT-20091123AKM *et al*, 24 FCC Rcd 2751 (2010). In each case, although the licensees could not meet the three-prong presumptive satellite station standard due to the absence of a City Grade showing, the fact that the stations did not have City Grade overlap prior to the digital transition, combined with other factors, led the FCC to approve satellite status under its *ad hoc* standard. *Id.* The *ad hoc* standard is applied where a licensee/applicant cannot meet the presumptive three-part satellite station test. *See Television Satellite Stations Review of Policy and Rules*, Report and Order, MM Docket No. 87-8, 6 FCC Rcd 4212, 4215 (1991).

local broadcasters are certainly constrained in their ability to "obtain[] and exercis[e] market power,"[303] and should not be subject to a regulatory regime applicable only to them and not their competitors. Indeed, the primary concern in today's digital, multichannel marketplace is the ability of local broadcasters to compete effectively and continue to offer free, over-the-air entertainment and informational programming (including local news and emergency journalism) to consumers. To best achieve the goals of a competitive media marketplace that provides high-quality service and greater innovation to consumers, the Commission should now structure its local ownership rules so that traditional broadcasters and newer programming distributors can all compete on an equitable playing field. The time has certainly come to be "skeptical" of regulatory restrictions that require "organizational forms that private enterprise would not otherwise adopt," especially when those restrictions "are trying to accomplish something that is essential to the survival and prosperity" of outlets in a competitive marketplace, such as being "responsive" to consumers and serving "available market niches."[304]

Local stations provide a wealth of local and national news, emergency information, other locally produced and responsive programming, and popular entertainment programming. But given the relentless competition for audience and advertising shares from the vast array of other media outlets, including online and consolidated multichannel providers, broadcast stations' ability to maintain their economic viability is being challenged as never before – and, thus, their continued ability to provide the type of services their audiences have come to expect and deserve

[303] *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd at 12916.

[304] *Bechtel*, 10 F.3d at 881.

is under stress. Reforming the existing ownership rules to permit local broadcasters to form more efficient and competitively viable ownership structures will therefore serve local viewers and listeners.

For all the reasons set forth in detail above, the Commission, as required by Section 202(h) of the 1996 Act, should reform its local ownership rules to reflect the vast technological and marketplace changes that have already occurred and are only accelerating today. Ensuring that local broadcasters are not hampered by outmoded regulation in their efforts to compete and serve their audiences in today's digital, multichannel environment would clearly be in the public interest.

Respectfully submitted,

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Attachment A

OVER-THE-AIR RADIO SERVICE TO DIVERSE AUDIENCES – A FURTHER UPDATE

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BIA/Kelsey

April 30, 2010

TABLE OF CONTENTS

Executive Summary

In their continuing effort to attract listeners and generate advertising revenues, local radio stations are focused on improving the attractiveness of their programming. Facing competition from numerous radio stations as well as other sources of audio programming, radio broadcasters continually seek to adjust their programming services offered in local markets. As a result of this marketplace competition, radio broadcasters are increasingly providing service to more diverse audiences, including different demographic groups, in their local markets.

This paper reexamines the diversity of programming resulting from radio broadcasters' efforts to attract audiences in a competitive marketplace. We will update prior reports that analyzed some of these same issues. Additionally, we will reexamine the extent of digital radio service, specifically examining the number of stations on air, the number utilizing the multicasting capabilities of that new technology, and the various types of programming being offered.

The results of this update clearly show that the trend for greater service to local markets continues:

- ❖ The number of Spanish-language stations has dramatically increased, with the number having grown by over 57% in the past ten years.
- ❖ Nearly 47% of the Hispanic population in Arbitron markets now resides in markets with 10 or more Spanish-language stations, with nearly 90% located in markets with at least three such stations. Over three-quarters of the Hispanic population located in Arbitron markets receive six or more Spanish programmed stations.
- ❖ From 2000 to 2010, the number of Urban programmed stations rose 9.4%. Almost 70% of African Americans in Arbitron markets now reside in markets with three or more Urban programmed stations, compared to only approximately 62% in 2000.
- ❖ Nearly six of ten people residing in Arbitron markets are in markets with at least six news/talk stations, and three-quarters of the population in these markets are in markets with at least four news/talk stations. Since 2000, the number of news/talk stations has increased 26.6%.
- ❖ The number of radio stations broadcasting in digital has increased dramatically to over 2,000, with 1,127 additional multicast programming streams now being provided.
- ❖ Over one-half (53.9%) of the population located in Arbitron markets are in markets with 10 or more digital multicast signals, and over three-quarters (75.9%) are in markets with at least three.
- ❖ Multicast signals are bringing more diverse programming into local markets. For example, of the 63 markets with new multicast Classical signals, 22 had no other Classical stations in the market; similarly, of the 56 markets with new multicast Jazz signals, 28 had no other Jazz stations in the market; of the 40 markets with new Alternative signals, 22 had no other Alternative stations in the market; of the 23 markets with new Rhythm/Blues signals, 20 had no other Rhythm/Blues stations in the market.

Obviously, over-the-air radio stations are continuing to search for new and different programming in response to competitive pressures in today's digital, multichannel marketplace. Whether it is adjusting their program elements (e.g., play lists, personalities) or changing entire program formats, radio broadcasters are always seeking to improve their programming to attract larger audiences. As the findings summarized above show, one option has been for radio stations to provide increased programming appealing to specific demographic groups, and another to expand the provision of news/talk programming. Also, radio stations that are broadcasting in digital expand the diversity of programming by providing new types of programming in their local markets so as to attract new listeners, including members of niche audiences.

LOCAL RADIO SERVICE TO DIVERSE AUDIENCES – A FURTHER UPDATE

Introduction

Local radio stations continue to compete to attract listeners and generate advertising revenues, and, consequently, continue to be interested in improving the attractiveness of their programming. Facing competition from other radio stations as well as other sources of audio programming, radio broadcasters continually seek to adjust their programming services and differentiate their programming from that of their competitors. This marketplace competition leads to local radio broadcasters increasingly providing service to more diverse audiences, including different demographic groups and niche audiences, in their local markets.

Providing more diverse programming has also resulted from radio stations broadcasting digitally, with many of these stations also multicasting one, two, three, or even four additional programming streams. Broadcasters can experiment with their programming by airing additional programming streams and by providing programming on a local level that would not have been financially viable and sustainable on their main signal.

In this paper we reexamine the diversity of programming in local markets resulting from radio broadcasters' efforts to attract audiences in a competitive marketplace. In two previous papers,[1] we examined the delivery of programming targeted at diverse audiences, including various demographic groups and including specifically news/talk/informational programming.

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[1] Mark R. Fratrik, *Over-the-Air Radio Service to Diverse Audiences*, October 23, 2006, submitted as Appendix G, NAB Comments in MB Docket 06-121 ("*2006 Radio Diversity Study*"); and Mark R. Fratrik, *Local Radio Service to Diverse Audiences – An Update*, April 28, 2008, submitted as Appendix E, NAB Comments in MB Docket 04-233.

We will update the results of those earlier analyses. Additionally, we will update our examination on the growth of digital radio service, specifically examining the number of stations on air, the number utilizing the multicasting capabilities of that new technology, and the various types of programming being offered.

Clearly, the earlier studies and this updated report demonstrate that radio stations are serving increasingly diverse audiences in their local markets, and, with expected growth in digital services, this trend should only continue. Faced with continually increasing competition in the audio marketplace, local radio stations are reacting by offering new and varied programming while continuing to provide news and informational services.

Specific Programming to Diverse Audiences

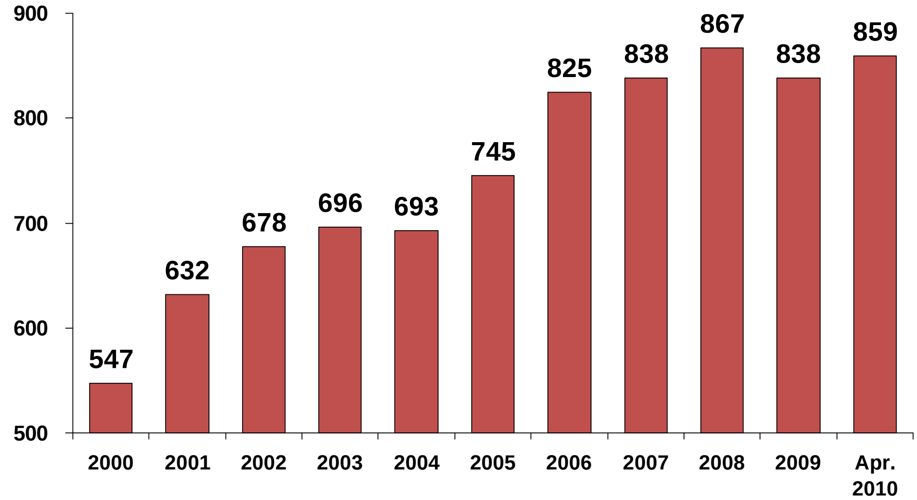
To evaluate the extent of local radio stations' provision of service to specific audiences, we examined the number of radio stations providing Spanish language, Urban, and News/Talk programming, as well as the coverage of these stations.

Spanish-Language Programming

The radio industry has dramatically increased the amounts of Spanish language programming available throughout the U.S. Increasing populations of Hispanics in many markets have led more radio stations to provide programming targeted to this population, including in smaller and more rural markets.[2] Figure 1 below shows the number of radio stations providing Spanish-language programming over the last ten years.

[2] For example, in the Louisville, KY radio market, where only 3.1% of the population is of Hispanic descent, there are now three radio stations airing Spanish-language programming.

Figure 1
#of U.S. Hispanic Radio Stations



Source: Media Access Pro, BIA Financial Network

In just ten plus years, the number of U.S. Spanish-language radio stations has increased over 57%.[3] These Spanish-language stations are offering varied programming, including different types of music – Mexican, Tejano, Tropical, Ranchero, etc. – and news/talk programming.

Another way of evaluating the service being provided to the Hispanic community is to examine the number of stations in each market providing Spanish-language programming. In particular, examining the percentage of the Hispanic population in Arbitron metro markets with varying number of Spanish-language stations provide a clear picture of the widespread provision of this programming to this demographic group. Figure 2 shows that distribution.

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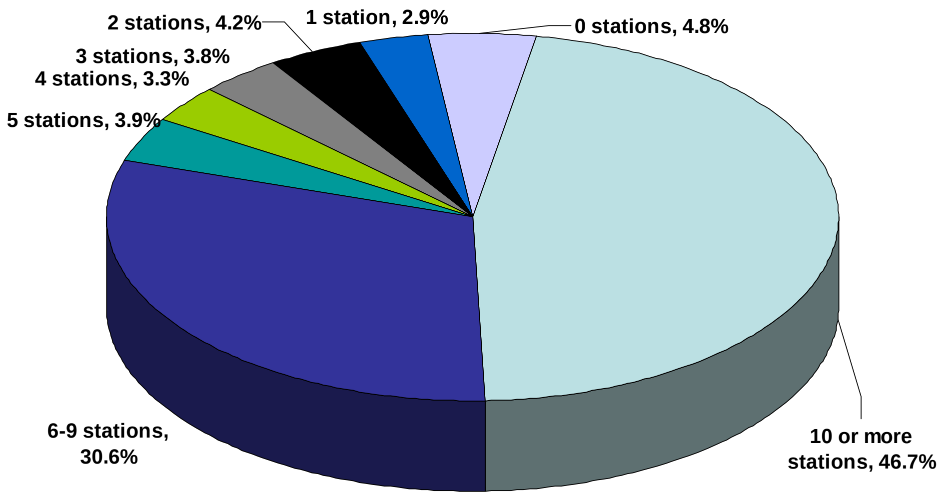
[3] This number actually understates the number of Spanish-language radio stations as it does *not* include the Mexican radio stations airing this programming and serving U.S. populations in markets along the U.S.-Mexican border.

Figure 2
Percentage of Hispanic Population Receiving Spanish Programmed Stations



These percentages have not changed significantly since the previous two surveys, with over 75% of the Hispanic population in these Arbitron markets continuing to receive six or more Spanish programmed stations. Currently, nearly 90% (88.3%) of the Hispanic population located in Arbitron markets are in markets with at least three Spanish language stations.

Urban Programming

In earlier studies, it was shown that African American listeners were being provided with increased amounts of targeted programming, as more radio stations in local markets offered Urban programming.[4] The increase in service to this demographic group from 2000 to 2010 was

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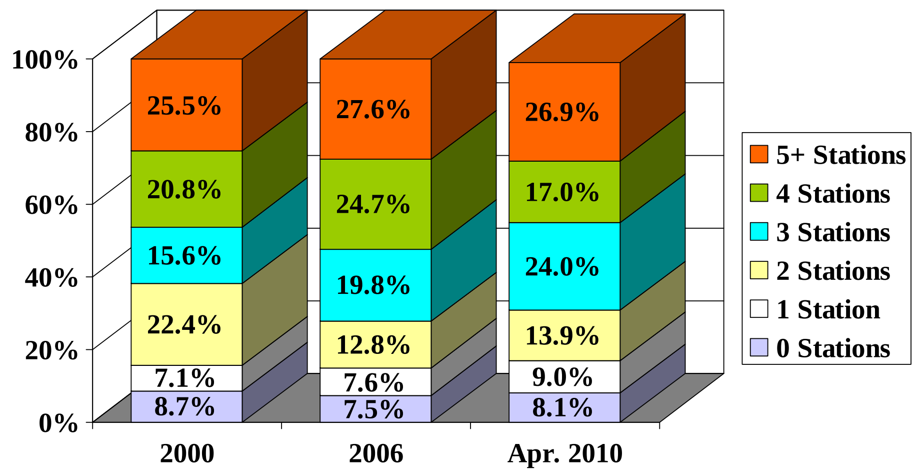
[4] *See 2006 Radio Diversity Study* at 11-12. As previously noted, Urban stations, like Spanish-language ones, are quite varied, with stations targeting different demographic groups within the African American community by offering programming ranging from Urban/Talk to diverse music formats, including Urban AC, Urban CHR, Urban/Jazz, Rhythm and Blues and even Urban/Gospel.

noteworthy. There are presently a total of 409 Urban stations today compared to 374 in 2000 (an increase of 9.4%).

Figure 3 shows the percentage of African Americans within Arbitron radio markets that are served by varying numbers of Urban programmed stations for 2000, 2006, and 2010.

Figure 3
Percentage of African American Population Receiving Urban Programmed Stations

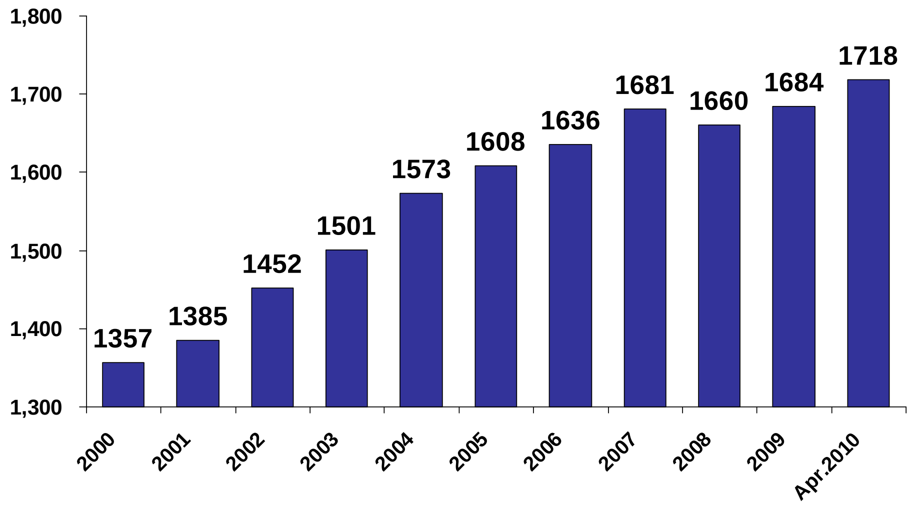


The share of African Americans in Arbitron markets with at least one Urban programmed station has not changed substantially in the past ten years, though the number with at least three stations has increased (61.9% in 2000 and 67.9% in April 2010).

News/Talk Programming

Beyond providing expanded services to specific demographic groups as shown above, radio broadcasters continue to increase the news and information being provided to their local communities. The number of radio stations airing news and talk programming has steadily increased. Figure 4 shows the number of news/talk programmed stations over the past eight years.[5]

Figure 4
of U.S. News/Talk Radio Stations



Over the past ten years, the number of news/talk local radio stations has grown by over 360, a 26.6% increase. Just citing the number of news/talk stations may, however, not fully demonstrate the true level of service being afforded by these stations in local markets. As with Spanish-language and Urban stations, the widespread service afforded by news/talk stations is best shown by examining the percentages of the population in Arbitron markets receiving service from different numbers of news/talk radio stations. Figure 5 shows this distribution.

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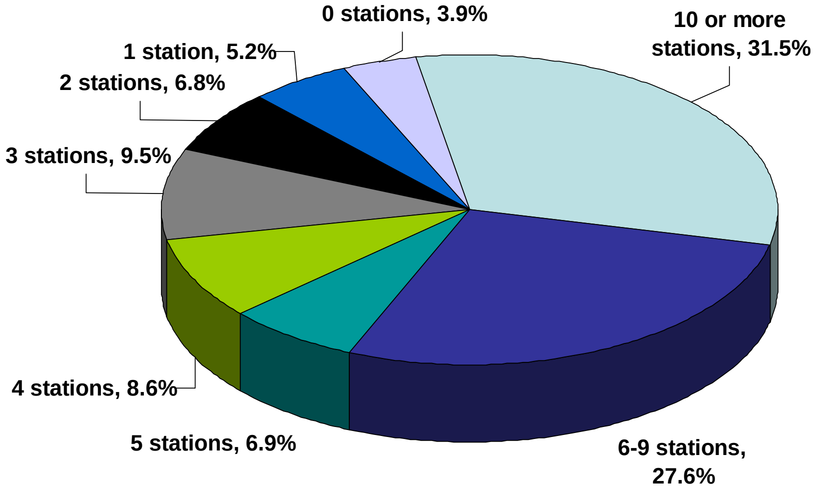
[5] It should be pointed out that these totals do *not* include stations that are either sports or sports/talk stations.

Figure 5
Percentage of Population Receiving News/Talk Programmed Stations

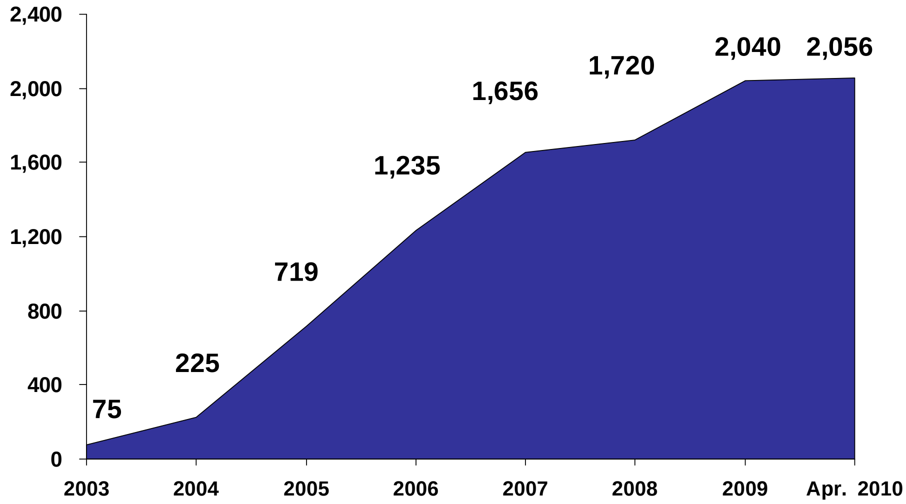


The availability of news/talk programming in local markets clearly continues to increase. Nearly six of ten people (59.1%) residing in Arbitron markets are in markets with at least six news/talk stations (2006 value: 55.5%). Three quarters (74.6%) of the population in Arbitron markets are in markets with at least four news/talk stations (2006 value: 70.8%).

HD Radio Service

In recent years, the radio industry has made significant investments in improving its technical facilities and expanding programming services. Investment in the new digital radio service, HD Radio, has been widespread and significant by radio broadcasters across the country. Although the number of HD radio receivers in the marketplace is still relatively small, many radio stations are presently broadcasting in digital, with the expectation that the new and improved services provided by this technology will lead to more widespread consumer acceptance of digital radio in the next few years, just as digital television has gradually been embraced by consumers.[6] Figure 6 shows the number of digital radio stations on the air for each of the past eight years.

Figure 6
of HD Radio Stations @ Year End



Local radio stations are offering digital service for several reasons. One is to improve the quality of their sound in an era where consumers have many choices for audio entertainment. Another is the ability to provide additional programming through multicasting. Currently, 1,127 additional multicast programming streams are being provided to audiences by their local radio stations. To see the breadth of this service, Figure 7 shows the percentages of the population in Arbitron markets served by varying numbers of multicast radio signals.

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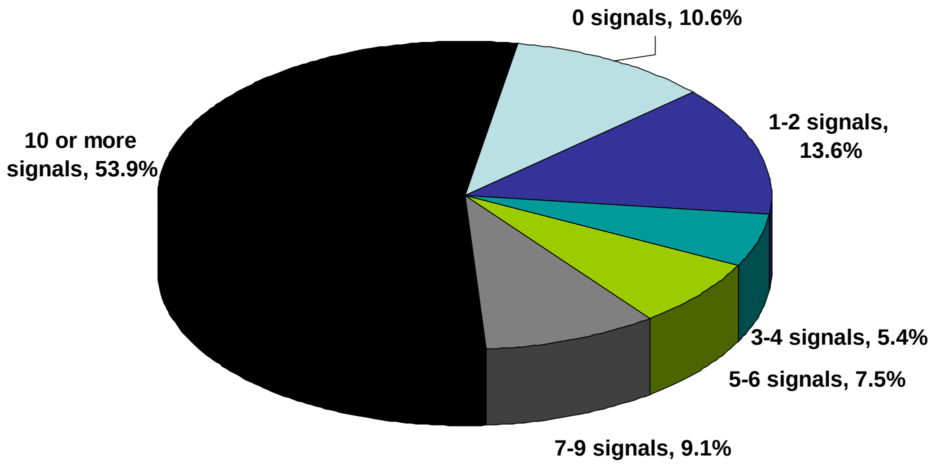
6 Many broadcasters are continuing to stream their multicast programming over the Internet, providing this new programming service to consumers who have not yet purchased an HD Radio receiver.

Figure 7
Percentage of Population Receiving Multicast Signals



Over one half (53.9%) of the population located in Arbitron markets are in markets with at least ten multicast signals, and over three-quarters (75.9%) are in markets with at least three. This number will grow as more stations that are already operating in digital determine the types of programming best suited for their multicast signals and as more stations convert to digital.

To attract listeners to these new multicast signals, many radio stations are offering programming that differs from any programming presently being offered in their local markets. Appendix 1 identifies the various types of programming now being offered in local markets via these multicast signals. After analyzing some local markets in detail, it is clear that multicasting has significantly enhanced the diversity of programming available to consumers. For example:

- Of the 63 markets with new multicast Classical signals, 22 had no other Classical stations in the market;

- Of the 56 markets with new multicast Jazz signals, 28 had no other Jazz stations in the market;
- Of the 40 markets with new Alternative signals, 22 had no other Alternative stations in the market; and
- Of the 23 markets with new Rhythm/Blues signals, 20 had no other Rhythm/Blues stations in the market.
- Of the 19 markets with new Comedy signals, all 19 had no other Comedy stations in the market.
- Of the 7 markets with new International signals, all 7 had no other International stations in the market.

Conclusions

Over-the-air radio stations are continuously searching for new and different programming in response to competition from both over-the-air radio stations and other audio programming sources. Whether it is adjusting their program elements (e.g., play lists, personalities) or changing entire programming formats, radio broadcasters are always seeking to improve their programming to attract larger audiences. One option for radio stations has been to provide increased programming appealing to specific demographic groups. This paper confirms the findings of earlier studies showing increases in the number of stations offering services targeted to specific audience segments.

As a result of the development and adoption of digital technology, stations are also now able to expand their services to local communities by airing multiple programming services on multicast signals. While provision of certain programming services that appeal to smaller numbers of listeners may not make financial sense on the main signal of a radio station, and could not be sustained, such niche programming may well be economically viable on one of a station’s multicast signals.

Further expansion of free over-the-air radio services to diverse local audiences is also likely to occur as the radio industry’s transition to digital broadcasting continues and the number of multicast programming streams grows. Radio stations have a strong economic incentive to expand their reach by offering more niche programming on these streams, thereby greatly expanding radio service in local markets. These expanded services will be necessary for local radio stations to respond to growing competition and will also benefit local listeners and communities.

Appendix 1 – Types of Programming Being Offered Via Multicast Signals

70s & 80s
70s Hits
70s Oldies
80&90/90&20
80s & 90s
80s Hits
90s & 2000s
AAA
AAA/Folk
AAA/Urban
AC
AC/Classic Hits
AC/Rhythmic
Adult CHR/Soft Rock
Adult Hits/Variety
Adlt Stndrd
Adult Standards/Oldies
Adult CHR
Adult Hits
Adult Rock
Alternative
Alternative/Classic Hits
Americana
AOR
Asian
Big Band
Black Gospel
Blue Grass/Americana
Blue Grass
Blues
Bob
Bright AC
Business News/Talk
ChristianContemporary/Rock
Children
CHR
CHR/Rhythmic
CHR/Top40
Christian
Christian Contemporary
Christian/AC
Christian/CHR
Christian/Hip Hop
Christian/Inspirational
Christian/Rock
Christian/Talk
Classical
Classical/News/Information
Classic Hits
Classic Rock
Classical/Alternative
Classical/Jazz
Classical/News
Classical/NPR
Classical/Variety
Country/Rock
Country/Variety
Comedy
Country
Cst/Hip Hop/Urban
Dance
Dance Olds
Dance/Top40
Eclectic
Eclectic/Pub Service
Educational/Info
Ethnic
Family Hits
Folk
Gospel
Gospel/Inspirational
Gospel/Rhythmic
Hip Hop
Hot AC
Hip Hop/ R&B
Hurban
Info/News
Information
Inspiration
International
Jack
Jazz/Hip Hop/International
Jazz
Jazz/Blues
Jazz/Classical
Jazz/News
Jazz/NPR
Lite AC
Mexican/CHR
Mexican/Variety
Mexican
Modern AC
Modern Rock
New Rock
News
News/Classical
News/Info
News/Jazz
News/Talk
NPR
NPR/Classical
NPR/Eclectic
NPR/News
NPR/News/Classical
NPR/News/Information
NPR/News/Talk
NPR/Talk
New Rock/Alternative
News/Jazz/NPR
News/Talk/Information
News/Talk/Sports
Oldies
Pop
Pop/CHR
Pop/Dance
Pride
Public
Ranchera
Reggaeton
Religion/Inspirational
Religion/Talk
Religious Music
Religion
Rhythmic/AC
Rhythmic/CHR
Rhythmic/Oldies
Rhythm/Blue
Rock
Rock & Roll
Rock AC
Rock/Alternative
Rock/Country
Rock/Span
Rock/Variety
Romantic
Spanish AC/News/Talk
Smooth Jazz
Soft AC

Soft Rock
Southern Gospel
Span/80Hts
Span/ChristianContemporary
Span/CHR
Span/Oldies
Span/Religion
Span/Rock
Span/Sports
Span/Tejano
Span/Variety
Spanish
Spanish AC
Spanish/NPR/Information
Spanish/News/Talk
Spanish/News/Variety
Spanish/Talk/Sports
Spanish AC/Rhythmic
Sports
Sports/Talk
Talk
Talk/Classical
Talk/News
Tejano
Top 40
Top40/Dance
Top40/Rhythmic
Tropical
Urban
Urban AC
Urban/Hip Hop
Urban/Oldies
Urban/Rhythmic Blues
Urban/Variety
Variety
Variety Hit

Attachment B

THE ECONOMIC REALITIES OF LOCAL TELEVISION NEWS—2010

A Report for the National Association of Broadcasters

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THE ECONOMIC REALITIES OF LOCAL TELEVISION NEWS—2010

A Report for the National Association of Broadcasters

In launching the Future of Media project,[1] the Federal Communications Commission is asking some of the very same questions that television broadcasters have been grappling with for some time now. In many places and for many people, the local television station remains the community's most reliable source for news and information about issues of importance to local residents. According to the Pew Internet and American Life Project, even with the explosive growth of access to news on the Internet and cell phones, 78% of Americans still get some part of their news on a typical day from a local television station, the most of any single news source.[2] According to the Commission's last video competition report, 15.5 million households (14% of the U.S. total) continued to rely *solely* on over-the-air television broadcasts for their video programming, including their local news.[3] Local television stations responded to that need in 2009 by producing and broadcasting, in the aggregate, more than 1,000,000 hours of original

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[1] *FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, Public Notice, 25 FCC Rcd 384 (2010).

[2] *Understanding the Participatory News Consumer*, Pew Internet and American Life Project at 3, 10 (2010), *available at* <http://www.pewinternet.org/Reports/2010/Online-News.aspx?r=1>. That same survey found, for example, that only 50% of Americans get their news from the print version of the local newspaper. *See id.*

[3] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, ¶ 108 (2009). Almost 87% of U.S. households subscribe to a multichannel video programming distributor ("MVPD") service, *see id.* at ¶ 8, through which they can access local news. In addition, millions of MVPD households have one or more television sets that receive only over-the-air signals.

local news.[4] That herculean effort required a significant investment of both financial and human resources. Every year, local stations, in the aggregate, spend some $3.1 billion in operating funds and $545 million in capital funds, and devote some 83 million employee-hours just to produce and broadcast local news.[5]

Local broadcast stations are the very backbone of the Commission's "localism" policy pillar.[6] Despite many technological and marketplace changes, local television stations remain the last, best hope to preserve vital local content and services in a video programming ecosystem with increasing numbers of cable, satellite and Internet-based channels and outlets.

By any measure, the past two years have been incredibly challenging for local television broadcasters. Already facing intense competition from multichannel video programming distributors ("MVPDs") and the Internet for viewers and advertising dollars, the global recession hit local broadcasters hard.[7] In almost every relevant area—revenue, staffing, transactional

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[4] This number is based on 762 local stations originating local news as reported in Robert Papper, *TV and Radio Staffing and News Profitability Survey 2010*, RTDNA/Hofstra University Survey (forthcoming) ("*2010 Papper/RTDNA Study*"). The *2010 Papper/RTDNA Study*, due to be published in the spring of 2010, found that stations in 2009 broadcast an average of 28.3 hours of news per week (5 hours per day on weekdays, 1.7 hours on Saturday, and 1.6 hours on Sunday). That figure is in line with the results of a survey of a sampling of NAB members taken in April 2010 (discussed below), in which the 53 stations across a range of markets that responded reported an average of nearly 27 hours per week of local news.

[5] Both figures are derived from the results of an April 2010 survey by the National Association of Broadcasters of a sampling of its member television stations on the economics of local news and assume there are 762 local stations originating local news. *See supra* note 4.

[6] *See* CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 89 (2010), *available at* <http://download.broadband.gov/plan/national-broadband-plan-chapter-5-spectrum.pdf>.

[7] *Local TV*, Pew Research Center Project for Excellence in Journalism, THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM at 2 (2010), *available at* http://www.stateofthemedia.org/2010/printable_local_tv_chapter.htm ("*State of the News Media*").

activity, and ratings—2009 brought more bad news for local broadcasters. Local television stations are having to fight harder than ever for each and every viewer.[8] More importantly, faced with the worst economic circumstances in industry history, local television stations have been forced to modify a revenue model that relies almost entirely on advertising revenue, and, in particular, advertising from just a handful of economic sectors. Under this model, bad news in one of those sectors (such as the automotive industry) has an outsized effect on local television stations' budgets.

Though the final numbers for 2009 are not yet available, estimates indicate that total revenue for broadcasters fell approximately 22% between 2008 and 2009.[9] That comes after a 4% decline between 2007 and 2008.[10] Closely related to this is the Television Bureau of Advertising's report that in the first nine months of 2009 local television advertising was down 27% from the previous year.[11] The collapse of the automotive industry led to a drop of more than 50% in automotive advertising in the first nine months of 2009.[12] Considering that as recently as 2006 automobile advertising accounted for more than 30% of all advertising on local television, this precipitous drop carved a major hole in station budgets.[13] The recession reached

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[8] The Pew Research Center's *State of the News Media* report found, for example, that in 2009 viewership of the late local news on NBC and ABC affiliates fell by almost 20% and 9%, respectively. *See id.* at 37-38. Viewership for CBS affiliates' late local news programs increased slightly in 2009. *See id.*

[9] *See State of the News Media* at 9 (citing BIA/Kelsey Group estimates).

[10] *See id.*

[11] *See id.* at 10 (citing Television Bureau of Advertising statistics).

[12] *See id.*

[13] *See id.*

far beyond the automotive industry, however, as advertising revenue was down in 22 of 25 categories of local television advertisers, including furniture stores (down 21%), financial (down 19%), cosmetics (down 35%) and motion pictures (down 23%).[14]

More broadly, after peaking in 2006 at approximately $23 billion, total revenue for local broadcasters in 2009 is projected to be just more than $16 billion.[15] Of the top 30 television station ownership groups, which in the aggregate account for 80% of the total industry revenue, 27 reported lower revenue in 2008 than in 2007.[16]

In response, as the poor economy caused companies' advertising budgets to shrink, and as ratings generally declined, local broadcasters are increasingly seeking to develop new, non-broadcast-advertising revenue streams. For example, in 2009, across all market sizes, 35% of television stations reported making a profit on their station website, up from approximately 30% in 2008.[17]

In addition to maximizing new revenue streams, local television stations have made painful budget cuts and have asked their smaller staffs to do more with less. As Hofstra University's Bob Papper commented in his 2010 study of television and radio news staffing and profitability, which is due to be published this spring, the television news budget numbers for 2008 were the worst he had seen in 15 years, and 2009 made 2008 "look like the good old

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[14] *See* Television Bureau of Advertising, *Ad Revenue Track: 2009 TV Ad Revenue Figures* (Mar. 19, 2010) ("*2009 Ad Revenue Track*"), *available at* <http://www.tvb.org/nav/build_frameset.aspx>.

[15] *See State of the News Media* at 9.

[16] *See id.* at 27.

[17] *See 2010 Papper/RTDNA Study*.

days."[18] In 2009, more than 65% of stations across all markets decreased their news budgets, while fewer than 10% increased their budgets. For Big 4 affiliates, the numbers were even worse—nearly 68% decreased their budgets and fewer than 9% showed an increase.[19] That follows 2008, in which nearly 42% of stations across all markets decreased their news budgets while 25% increased their budget.[20]

As one might imagine, as budgets for local news decreased, so too did staff size. Across all markets, 64% of stations reported a decrease in staff size in 2009.[21] Fewer than 12% of stations increased their news staff size in 2009.[22] Overall, the local news industry lost approximately 400 jobs in 2009, a third of what it lost in 2008.[23] In a testament to how seriously local broadcasters take their core mission—to provide the community with in-depth and current news about important public issues—many local stations have continued to add *more* local news to their weekly schedule, despite shrinking budgets and staffs. Moreover, as outlined below, local television stations have demonstrated their commitment in times of emergency and disaster (natural and otherwise) to provide the community with vital information, notwithstanding the cost.

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[18] *Id.*

[19] *See id.*

[20] *See* Robert Papper, *TV and Radio Staffing and News Profitability Survey 2009*, RTDNA/Hofstra University Survey (2009), *available at* <http://www.rtdna.org/media/pdfs/research/TV%20and%20Radio%20Staffing%20and%20Profitability.pdf> ("*2009 Papper/RTDNA Study*").

[21] *See 2010 Papper/RTDNA Study*.

[22] *See id.*

[23] *See id.*

Even with the quickly changing financial picture, the fact remains that local television news broadcasts continue to be a major source of television station revenue, and, for many stations, a profit center. In 2009, nearly 48% of stations across all markets reported making a profit on their local news.[24] Another 15% reported breaking even. This apparent good news is tempered by the fact that those numbers mark a significant decrease from previous years. In 2008, 53% of stations made money on their local news.[25] In 2007, more than 55% recorded a profit on their local news. In the early 2000s, approximately 58% of stations reported making money on their local news.[26]

Without question, the financial pressures that local television stations face will, in the long run, have an impact on their ability to provide top-quality local news. To ameliorate these pressures on local news production, the Commission should adopt policies that allow (and rescind, or at least not adopt, polices that hinder) local broadcasters to (1) pursue opportunities for non-advertising revenue, such as that derived from retransmission consent, and (2) benefit from economies of scale and allocate their news resources in the most efficient way, such as through modifications to the Commission's structural ownership rules.

NAB Survey Provides Economic Snapshot

In April 2010, the National Association of Broadcasters sampled its member television stations on the economics of local news. The survey sought detailed information on the sources of station revenues, revenues specifically supporting local news, news budgets, news staffing,

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[24] *See id.*

[25] *See id.*

[26] *See id.*

and local news production, as well as information and insights on local news trends, new news platforms (such as multicast channels and websites), emergency journalism, strategic news partnerships, and competitive pressures affecting local television news production.

NAB received detailed responses from 53 television stations, including ten in DMAs 1-25, nine in DMAs 26-50, 16 in DMAs 51-100, 13 in DMAs 101-150, and five in DMAs 151-210. Respondents were primarily television stations affiliated with one of the Big 4 Networks (ABC, CBS, FOX, and NBC) but also included stations affiliated with the CW Network and MyNetwork programming service, as well as an independent station. Numerical results are aggregated in the tables below, followed by a narrative summary by topic of other survey information related to news production. Numerical responses are based on current year data.

NAB News Results Consistent with Other Studies

To ensure validity, the results generated by NAB's sample survey were compared against other recent surveys and reports examining the economics of local broadcasting and local news. These reports include the Pew Research Center's 2010 *State of the News Media* report,[27] Bob Papper's 2009 and 2010 *TV and Radio Staffing and News Profitability Survey*,[28] and NAB's *Television Financial Surveys: 1999-2009*. As is detailed below in discussing the April 2010 NAB news survey, its results were fully consistent with these other reports, even though NAB's sample size was smaller than those of the other reports.[29]

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[27] *See supra* note 7.

[28] *See supra* note 4.

[29] For example, Papper surveyed more than 1,770 television stations and received

(continued . . .)

NAB News Survey Results

As seen in Table 1, the vast majority of station revenues derive from on-air advertising. This result is consistent with the Pew Research Center's 2010 *State of the News Media* report, which found that across all markets approximately 90% of station revenue comes from on-air advertising.[30] The second most important category of station revenues is retransmission consent fees, which every station in the NAB survey reported receiving, followed, in most cases, by web advertising revenues. Retransmission consent fees as a percentage of station revenue ranged from a low of 1.2% to a high of 14.0%, with a median value of 6.3%. Retransmission consent fees as a percentage of revenue were nearly twice as high as web advertising, the third most important source of revenue. Previously, "network compensation" had been an important source of station revenues for network-affiliated stations. Only one quarter of the stations sampled reported receiving any network compensation, and the impact on station revenues is now very small, averaging just 0.7%. Market size does not appear to have any appreciable influence on the relative percentages of the sources of station revenues.

As noted, local news production is generally supported by on-air advertising and other revenue sources such as retransmission consent fees. However, particular forms of advertising do support news production. These include news sponsorships, news billboards, weather bug and weather radar sponsorships, and locator map sponsorships (e.g., for accidents, fires, etc.). These various sponsorships are a relatively small source of revenue for news production (approximately 1.3% on average).

(. . . continued)
responses from 1,355 (76.6%).

[30] *See State of the News Media* at 9.

Table 1
Sources of Station Revenues

	Advertising Revenues			**Other Revenues**			
Markets	On-Air Advertising	Paid Programming	Web Advertising	Retransmission Fees	Production	Network Compensation	Miscellaneous*
All	84.6%	2.7%	3.2%	6.2%	0.3%	0.7%	2.2%
1-25	85.3%	3.8%	2.5%	6.3%	0.1%	1.0%	1.0%
26-50	86.6%	1.2%	1.6%	5.9%	0.7%	1.0%	3.0%
51-100	83.7%	2.9%	2.8%	6.7%	0.7%	0.6%	2.6%
101-150	84.3%	2.5%	4.3%	5.9%	0.1%	0.5%	2.6%
151+	83.5%	3.2%	5.4%	6.1%	0.2%	0.6%	1.0%

* Miscellaneous station revenues include revenues derived from such sources as rental fees, tower fees, royalties, and joint sales agreements.

According to the stations responding to the 2010 NAB survey, although local news programming accounts, on average, for only 16% of the broadcast day, 39% of a station's revenue, on average, is derived from advertising associated with the broadcast of local news. In fact, this number may well be conservative, as the *2010 Papper/RTDNA Study* found that across all markets stations derived nearly 45% of their yearly revenue from the local news.[31]

As seen in Table 2, respondent stations produce an average of 26.6 hours of local news programming per week. This figure does not include national news programming the stations broadcast from their affiliated network, nor does it include local news programming produced by the respondent station for another local television station in its market. In addition, stations estimated that they produce, on average, 27.2 hours per year of emergency journalism and

[31] *See 2010 Papper/RTDNA Study*. For stations in DMAs 1-25, 47% of their revenue came from local news. For stations in DMAs 26-50, nearly 40% of revenue came from local news. Stations in DMAs 51-100 derived more than 45% of their revenue from local news.

special news programming (e.g., weather emergencies, candidate forums, etc.).

Table 2
Local News Production

Markets	Local News Hours Per Week	Emergency & Special News Programming Hours Per Year	Total Local News Programming Hours Per Year
All	26.6	27.2	1413
1-25	35.8	37.2	1899
26-50	29.3	44.4	1570
51-100	26.6	22.8	1406
101-150	20.5	20.2	1088
151+	19.5	7.5	1022

Again, the results of the *2010 Papper/RTDNA Study* indicate that the numbers reported to NAB may be conservative. That study found that in 2009 stations increased the amount of news they broadcast by an average of 24 minutes per weekday.[32] As a result, according to Papper, local broadcasters across all markets now broadcast an average of 28.3 hours of news per week (5 hours per day on weekdays, 1.7 hours on Saturday, and 1.6 hours on Sunday).[33] The 2009 increase follows a similar jump in 2008, when stations added nearly a half-hour of news each week (up to 26.4 hours total per week).[34]

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[32] *See 2010 Papper/RTDNA Study*.

[33] *See id.*

[34] *See 2009 Papper/RTDNA Study*.

The amount of local news programming does appear correlated to the larger revenue base related to market size. Stations in larger markets air more local news than stations in smaller markets, on average. In fact, stations in major media markets (DMAs 1-25) produce 84% more local news programming than stations in the smallest markets (DMAs 151-210).

The results show that local television stations, on average, air more than 1,400 hours per year of local news programming (again, not including national news programming). Stations in the largest media markets (DMAs 1-25) broadcast, on average, nearly 1,900 hours per year of local news programming. If the all-markets averages are applied to all 762 local television stations originating local news,[35] the local broadcasting industry produces more than 1,000,000 hours (1,076,706) of original local news per year.

Table 3 provides the aggregate responses for stations' news budgets. As seen, the average station's news operating budget is more than $4 million per year, representing more than 25% of the station's total budget,[36] and the average station's news capital budget is more than $700,000. Not surprisingly, both news operating and news capital budgets appear correlated with market size, with major market stations (DMAs 1-25) spending nearly $11 million per year, on average, to produce local news programming and spending nearly another $1.5 million per year on capital items for the local news. These expenditures exceed by multiples the amounts that smaller market stations can afford to spend. Except for the very largest and smallest markets, news capital budgets hover around 53+% of a station's total capital budget.

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[35] *See supra* note 4.

[36] This figure is consistent with the results of the *NAB Television Financial Surveys: 1999-2009*, which found that approximately 24% of all stations' total expenses were news expenses during the years 1998-2008.

Table 3
News Budgets

Markets	News Operating Budget	News Operating Budget As % of Station Budget	News Capital Budget	News Capital Budget As % of Station Budget
All	$4,068,331	25.9%	$715,225	56.7%
1-25	$10,830,833	36.7%	$1,408,200	68.9%
26-50	$6,476,046	28.3%	$461,110	53.3%
51-100	$2,240,324	23.9%	$428,528	52.2%
101-150	$1,260,542	21.7%	$376,913	54.0%
151+	$694,210	19.7%	*	45.0%

* Insufficient reportage.

Reported station news operating budgets range from $321,000 in a small market (DMA 151-210) to more than $18 million in a large market (DMA 1-25). The median operating budget is $2,121,000 and the median capital budget is $428,000.

If the all-markets averages are applied to all 762 local television stations originating local news, the local broadcasting industry spends $3.1 billion in operating funds and $545 million in capital funds each year to produce the local news. (These gross estimates do not include expenses for unbudgeted emergency journalism or the lost advertising revenues attendant upon such wall-to-wall local coverage.)

Table 4 shows the human capital dedicated to local news production. As seen, slightly more than half of all station employees (51%), on average, are involved in the production of local news—55 such employees at the average station. Again, news staffing appears to be correlated with market size. In major media markets (DMAs 1-25), stations detail nearly a hundred employees (95) to local news production on average. In fact, seven stations reported employing more than 100 persons for the production of local news, ranging as high as 140 employees. Even stations in the smallest markets (DMAs 151-210) employ nearly two dozen employees to produce local news. The median number of news employees across all stations is 51, and the median percentage of news staff to total station staff is 50%.

Table 4
News Staffing

Markets	Number of News Employees	News Employees As % of Station Staff	Employee-Hours Per Year Devoted to News Production
All	55	51%	109,434
1-25	95	58%	189,400
26-50	74	53%	147,556
51-100	45	52%	89,375
101-150	36	49%	72,923
151+	20	40%	40,000

On average, stations devote more than 100,000 employee-hours per year (109,434) to produce local news, with major market stations devoting nearly 75% more employee-hours per year than the average (189,400 employee-hours per year, on average).[37] These figures do not include employee overtime hours dedicated to producing emergency journalism.

If the all-markets average is applied to all 762 local television stations originating local news, the local broadcasting industry devotes more than 83 million employee-hours per year to produce local news.

Trends Reported by NAB Members

[37] These calculations are based on a 2000-hour work year.

In the past several years, television stations have faced the worst economic environment in their industry's history, while undergoing the digital television ("DTV") transition and dealing with other macro-forces, such as the development of the Internet and broadband services, that are beyond their control. As a general rule, stations report that they are doing more with less.

More specifically, news staffing is down throughout the industry, although one station (DMA 101-150) reports that its news budget has increased 3%, even though staffing is down 8.1%. For some stations, the reduction in staffing during the economic downtown, but the expansion in the number of half-hours of local news—by stretching news personnel—has proven to be a good way of leveraging existing fixed costs over more inventory. For example, one station (DMA 26-50) reports that news staffing is down 20% over the past five years but news production has increased 63% over that same time period.

Doing more with less has been made possible, in part, because operational costs have been partially contained through technological efficiencies. However, some stations report that modern equipment needs and costs have outstripped capital budgets, and that this, in part, is responsible for the delay in more stations broadcasting local news in high definition ("HD"). Some stations have achieved operational efficiencies through joint sales agreements ("JSAs") and local marketing agreements ("LMAs") which can allow for a significant reduction of operating expenses through consolidation of functions and reductions in staff.[38] As seen below,

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[38] Indeed, studies commissioned by the FCC have recognized the benefit of economies of scale and have concluded that "[h]aving co-owned stations in the same market, which is sometimes referred to as duopoly status, has a large, positive, statistically significant impact on the quantity of news programming. For each additional co-owned station within the market, there is an increase in the amount of news minutes by 24 per day, about a 15% increase. . . ." *See FCC Seeks Comment On Research Studies On Media Ownership*, Public Notice, 22 FCC Rcd 14313, 14565 (2007) (quoting 2007 study by Daniel Shiman titled "The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming").

such arrangements typically result in an increase in production of local news, not a decrease.

Many stations are migrating to a video journalist model which typically consolidates the responsibilities of the reporter, photographer, editor, and writer into a single video journalist – a sort of "one man band." Video journalists act as "mobile newsrooms," able to feed in stories using Wi-Fi hotspots or wireless broadband. Video journalists still do live shots when necessary using live vans staffed by operators who continue to do only live shots. According to the *2010 Papper/RTDNA Study*, the number of stations in 2009 reporting that they are "mostly" using video journalists rose to nearly 32%, from 22% in 2006.[39] Another 29% reported "some" use of video journalists in 2009.[40] As one might expect, stations in smaller markets (DMAs 101 and higher) reported higher use of video journalists, with two-thirds of stations in DMAs 151 and higher "mostly" using video journalists.[41]

The importance of news to stations that want to be market leaders cannot be overstated. Indeed, stations are seeing the percentage of station revenue coming from news dayparts to be higher now than when prime time ratings were higher. Within those news dayparts, viewership levels for late news have been decreasing while viewership levels for early morning news have been increasing, and advertising revenue is following this trend.

[39] *See 2010 Papper/RTDNA Study*.

[40] *See id.*

[41] *See id.*

The overall trend of the past few years is towards dual revenue streams to support station and news operations. In particular, as seen in the numerical survey results above, first retransmission consent revenue, followed by web advertising revenue, are offsetting some of the declining on-air advertising revenue and, for affiliates, the loss of significant network compensation.

Ten years ago there were no effective competitive alternative platforms. But the rise of these platforms, together with the explosive growth in the number of satellite-delivered cable networks, has led to increasing audience fragmentation. This has put pressure not only on traditional revenue sources, but news and sales staffs have had to become familiar with multi-platform media.

Looking to the future, television stations predict that news production costs will continue to increase. Indeed, news costs are likely to continue to become a greater share of overall expenses until news resources can be contributed and shared by multiple outlets (e.g., a second station, a local newspaper, mobile TV). The "doing more with less" model will likely continue, as smaller news staff utilizing improved technologies will generate the same amount or more content and repurpose that content on multiple platforms (primary and multicast channels, website, mobile TV, etc.). In fact, several stations commented that they see a need for additional news content on their non-news multicast channels. However, additional growth in news production itself may be difficult due to shrinking staff numbers. Some foresee that increasing automation may result in further reduction in news staffing requirements. It is likely that stations will make increasing use of the video journalist model discussed above.

The other major trends stations foresee in the next few years revolve around new distribution platforms. The migration of younger viewers to mobile and web content will continue. Viewership of broadcast news via traditional platforms will decline somewhat, while it will increase for the web and mobile devices; however, it is believed that revenues will fall more rapidly for broadcast than they will increase for the newer technologies. Nevertheless, stations say they will dedicate resources to new platforms, such as mobile TV, to supply daily news and emergency information to viewers, even if advertising support lags behind.

Stations also predict that they will be producing more long-form news as web and multicast platforms develop, use more viewer-generated stories and video, and explore the use of electronic billboards. These new platforms are creating a demand for more "on demand" news. Newsroom skill sets and cultures are slowly shifting to a framework of 24/7 "publishing" on all platforms as a result of technological, economic, and cultural changes.

The Role of Multicasts

As the country approaches the first anniversary of the DTV transition, television stations are still finding their way with multicast channels. Some stations have programmed general entertainment channels, including some in foreign languages, others have programmed 24/7 news or weather channels, and others have not yet dipped their toes into multicasting, waiting to see how the economic currents develop.

One of the principal problems with multicasting is that multicast channels are frequently not carried by MVPDs. For example, multicast channels that are not the primary in-market affiliate of a Big 4 Network are typically not available on DIRECTV, DISH Network, or AT&T's U-verse. Therefore, audience levels are necessarily smaller than for a stations' primary channel, which adds to the challenge of monetizing them. More problematically, the reluctance of MVPDs to carry multicasts is a significant barrier to stations that are attempting to use their multicasts for local content and emergency information.

Stations that are multicasting report that they are using their multicast channels in a variety of ways with respect to news and weather content. For stations programming a general entertainment multicast, the channel provides an alternative outlet for programming during news events. For instance, continuous news coverage can be provided on the multicast channel without preempting the network programming on the primary channel. Conversely, network programming can be moved to the multicast channel with continuous news coverage on the primary channel.

One station (DMA 51-100) reports that it currently offers two multicast channels—a 24-hour news channel and a 24-hour weather channel:

> We have offered the news channel via cable for over 9 years. Recently we lost the cable placement during retransmission negotiations and opted to continue the service over our digital channels. While the focus of the news channel is a repeat of our daily newscasts, we are also programming other live news programs, events, and breaking news stories that are of interest to the public. Earlier this year, we televised the New Orleans Saints parade following their Super Bowl win. Without this channel, we would not have had the opportunity to preempt network programming to provide this coverage. During hurricane season last year, our staff televised live coverage of the storms via our digital channel and also streamed this information via the web. Today our news department produces monthly news enterprise shows on topics of interest to the DMA. These shows focus on severe weather preparations, the political scene, medical issues, sports, education, crime, etc.

On non-news multicast channels, taped replays of the news broadcast on the primary channel appears to the be the most common approach (e.g., a station in DMA 101-150 provides taped replays of its 5:00 pm and 10:00 pm newscasts on its multicast channel; another station in DMA 101-150 provides a taped replay of its 6:00 am newscast on its multicast channel). Other stations do produce unique news content, even for non-news multicast channels. Thus, a station in DMA 1-25 produces a separate 11:00 am one-hour weekday newscast on its general entertainment multicast channel. The additional cost is approximately $80,000 per year.

Many stations broadcast 24/7 weather multicast channels. One station (DMA 26-50) reports that its weather multicast channel uses an automated weather template with software allowing for the insertion of local weather information and commercials. The additional cost is approximately $25,000 per year; however, existing personnel are used for talent and production. Another station (DMA 51-100) uses a third-party weather service for its weather multicast channel at a cost of $24,000 per year. The station's weather staff produces 10-15 mini-broadcasts per day for this multicast (depending on weather conditions). Similarly, a station in DMA 51-100 produces 12 unique one-minute weather reports for its weather multicast; all other content is provided via shared video servers and/or duplicate streams from existing weather and graphics systems.

Use of Station Websites

Television stations are devoting substantial efforts to news production on their websites. Major market stations (DMA 1-25) spend upwards of $1,000,000 per year just for news production on their websites (e.g., one station reports that it devotes approximately $1,000,000 of its news budget (12.8%) to its web-based platforms; a second station reports that it devotes $1,260,000 of its news budget (15.8%) to its website; and a third station reports that its annual budget for website operations is approximately $900,000, with the incremental cost for news production on the web being approximately $300,000 per year).

Generally, it appears that television stations employ two or three full-time web producers. Examples include a station in DMA 101-150 that has two full-time web producers, who, together with other members of the news staff, produce local news content for the website; costs are about

12% of the news budget. Another station in DMA 1-25 has two full-time web producers; costs are about 10% of the news budget. A station in DMA 26-50 has two full-time web producers with a budget of $101,000 for the web platform and $75,000 in payroll. A station in DMA 51-100 has two full-time web producers with a budget of approximately $100,000 and $90,000 in payroll. A station in DMA 1-25 has three full-time and three part-time employees dedicated to its website; total payroll is approximately $165,000, with an additional $10,000 budgeted for overtime for those positions due to breaking news coverage.[42]

In addition to news personnel posting scripts and video to a station's website, many stations produce unique newscasts for their websites. A station in DMA 101-150 reports that it produces an additional mid-day newscast (10 minutes) and intra-day updates (2 minutes each) specifically for its website. Another station in DMA 101-150 produces three 5-minute news updates for its website. And a station in DMA 26-50 not only streams live video of news, weather, and breaking news to website, but it also produces three newscasts exclusively for its website each day, as well as three video weather forecasts for the website each day.

Challenges in Monetizing New Platforms

While television stations are devoting significant resources to news production for their websites and multicast channels, stations responding to the NAB survey reported that they are not yet making significant money from these platforms to support any additional growth in such news production.[43] These platforms are in essence new businesses for broadcasters, and any new

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[42] According to the *2010 Papper/RTDNA Study*, stations across all markets employ an average of 2.8 full-time people to work on the station website.

[43] The *2010 Papper/RTDNA Study* found that 35% of all stations reported making a profit on the station website. Of course, more than 43% of all stations reported that they did not know
(continued . . .)

business requires some time to develop positive revenue streams. The reasons that these new platforms cannot be easily monetized are myriad:

* Advertisers are reluctant to "buy in" to new platforms.
* There is a lack of accurate measurement of audience for these new platforms.
* There is a lack of proven results for these new platforms.
* Advertisers are inexperienced in buying on new platforms.
* Advertisers are dubious of "impression reporting."
* Web-based platforms are in a very crowded space that lacks established standards and pricing.

Perhaps most fundamentally, demand for the newly created inventory, especially given the economy generally and the advertising market in particular, is lagging. In addition, multicast channels add more inventory, but there is still the same number of local advertisers in the market. As one station commented, to some degree, existing dollars are just being moved around.

Another difficulty stations face is that even when they do sells ads, their margin is lower since salespersons are paid a higher commission rate because of the increased difficulty of selling ads on new platforms.

On the positive side, stations believe that their local "brand" should ultimately give local stations a competitive marketing advantage for their websites. Another station has found that it can generate a new revenue stream in operating as an "advertising agency" and producing ads for direct customers.

(. . . continued)
whether or not their website was profitable, casting doubt on the accuracy of all website profitability statistics.

Emergency Journalism

Television stations know that they are "first informers" when it comes to emergency journalism. Time after time, emergency after emergency, stations as a matter of course take an "all hands on deck" approach to covering emergencies and disasters, regardless of the financial costs. For example, one station recently provided wall-to-wall coverage of the West Virginia mining disaster.

But that does not mean that the costs in overtime, meals, hotels, and equipment—not to mention, lost advertising—are not substantial. A station in DMA 26-50 reports that minor events, such as a snow storm, tornado or small hurricane, can easily cost $20,000 in unbudgeted expenses; a major event, such as a large hurricane, can easily exceed $100,000 in unbudgeted expenses—not counting lost advertising revenues. A station in DMA 51-100 reports that additional expenses for severe weather events typically run from $5,000 to $25,000 per event. A station in DMA 1-25 reports that coverage of four hurricanes in one season cost the station $160,000 in overtime, meals, travel, satellite fees, and generator rental, not counting lost advertising revenue. Coverage of a recent flood for a station in DMA 1-25 cost $26,000 in overtime, hotel rooms, and meals, not counting lost advertising revenue. Overtime for a single catastrophic event, such as a 100-year flood, can approach budgeted overtime for the entire year.

A station in DMA 26-50 reports that tornado warnings and coverage can cost the station anywhere from $5,000 to $30,000 in lost advertising revenue per event. During this past winter, 80% of the news staff at a station in DMA 51-100 worked multiple weekends to provide around-the-clock coverage of several major snowstorms and their aftermath. The station preempted all advertising for a total of 8 hours to provide continuous coverage. When a Midwest station (DMA 1-25) provided around-the-clock coverage of the I-35 bridge collapse in 2007, the out-of-pocket costs to the station were approximately $73,000, with an additional $94,000 in lost advertising revenue. In extreme events, the costs to a station can be enormous. For example, one station in a relatively small market (DMA 101-150) reported that its revenue was reduced by 50% for the entire month following the tragic events of 9/11 because its news coverage preempted so much normal programming. And these costs do not include the fundraising that television stations will engage in to support relief efforts, such as the telethons that a station (DMA 51-100) produced and aired around disasters such as Hurricane Katrina, 9/11, and the Indonesian tsunami, each of which is non-revenue generating programming broadcast solely for charitable purposes.

Two stations, in particular, illustrate the all-out efforts broadcasters undertake in times of emergency. Station KLFY is a CBS affiliate in Lafayette, Louisiana (DMA 123). KLFY began broadcasting continuous live weather coverage of Hurricane Rita, the most intense tropical cyclone ever observed in the Gulf of Mexico, when the path of the hurricane was determined to put people in the station's coverage area in harm's way. The station explained its preparations as follows:

> All resources were put into action. All reporters, live trucks, videographers, directors, producers, studio personnel, and engineering were on hand till the "all clear" was sounded. Network and syndicated programming was preempted for live weather coverage. Emergency generators were put on line when power was lost. Generators could/would run for 72 hours without refueling. Special arrangements were made with MVPDs to ensure the television station's signal would continue to reach viewers. In addition, additional "signing" persons were hired for the hearing impaired. Bulk food supplies had to be purchased to feed the employees. Sleeping arrangements were provided for personnel on shift relief. The station prepared for 72 hours of continuous coverage before personnel were released to start coverage of the "aftermath." Overtime, extra staff, food, and shelter were all provided by the station.

Station WKMG, the CBS affiliate in Orlando, Florida (DMA 19), branded as "Local 6," explains its emergency journalism efforts during several recent incidents:

> On November 6, 2009, a lone gunman walked into a downtown Orlando office building and began shooting people. Within minutes, Local 6 was on the air warning viewers that a dangerous man was on the loose. Police blocked off several blocks and completely shut down a major interstate highway (I-4). Local 6 told viewers about the shut down and stayed on the air as the gunman continued to evade police. We were on the air for approximately 5 hours until they found the gunman. We used 6 photographers and 5 reporters during this coverage. Because we kept morning crews past their shift, we incurred about 20 hours of overtime.
>
> During summer months thunderstorms can be very dangerous and even deadly. High winds during these thunderstorms can cause damage to homes and structures. Florida is the lightning capital of the world and people die from lightning strikes each year. Between June and September each year, Local 6 breaks into programming to warn viewers about dangerous thunderstorms approximately 8 hours each week. If the severe weather is especially dangerous, we will stay on the air for several hours. We are able to warn viewers that dangerous weather is heading their way so they can take precautions to stay safe. On March 11, 2010, we went into continuing coverage mode to warn the public about tornado warnings in our area. We were on the air for several hours as the storms became more intense. We also went into continuing coverage mode for an actual tornado touchdown on July 15, 2009. In both cases, we dedicated at least 6 photographers and 5 reporters to the story.
>
> When a child is missing, the state issues an Amber Alert. When this happens Local 6 goes on the air asking the public to keep an eye out for the endangered child. On April 9, 2010, 11-year old Nadia Bloom walked into the woods. Her parents called 911 and the search for Nadia began. Local 6 put Nadia's picture on the air in hopes that someone would spot her. She was later found safe. On November 16, 2008, a woman kidnapped a baby from a local hospital. As soon as we learned about this we broke into programming to inform the public. Police released video and pictures of the kidnapper. We showed her picture in hopes of finding her and the baby. A few hours later, the baby was found safe and the kidnapper arrested.

When it comes to reporting weather and other emergencies, no one else in the entire information ecosystem is able to provide the kind of minute-by-minute, street-level reporting that local broadcasters do every day—not cable, not the Internet, and not newspapers. In short, no other media can dedicate the resources that local television stations put into action whenever there is a local emergency.

Strategic Partnerships

Television stations have entered into a variety of arrangements to bring more and better news coverage to their communities. These partnerships include arrangements with other television stations in their own market as well as with stations in neighboring markets, with local and regional newspapers, and with local radio stations. Examples include the following:

* A station in DMA 101-150 produces 19.5 hours per week of local news for another station in its market through a JSA. This station also produces news and weather reports for four local radio stations.

* A station in DMA 51-100 produces an original daily 10:00 pm newscast for another local station. This station also has partnerships with 6 local radio stations and 3 local newspapers.

* Similarly, another station in DMA 51-100 produces 7 hours per week of local news for another local station under a shared services agreement.

* A station in DMA 26-50 has a news gathering partnership with 10 regional newspapers in outlying counties of its market.

* A station in DMA 101-150 produces a 30-minute weekday newscast for another local station in its market under a JSA. This station devotes three dedicated staff members, with contributions from the rest of its news staff, for this news production.

* A station in DMA 1-25 simulcasts some newscasts on 3 radio stations and provides weather reporting for 6 radio stations. This station also uses traffic reporters from a local radio station in its morning and early evening newscasts.

* A station in DMA 26-50 has a significant partnership with its grandfathered co-owned newspaper. The station's and newspaper's reporters share research and investigative journalism in both directions for both media.

A number of broadcasters that own television duopolies report that co-ownership provides operational efficiencies leading to higher quality and more local news than would otherwise be produced absent the duopoly. Thus one station (DMA 26-50) produces more than 14 hours of local news programming per week for its sister station that would not otherwise be produced. More importantly, the revenue generated from the additional newscasts is ploughed back into the joint news operations, making the newscasts both best-in-class and the forum of record in the local market.

As a broadcaster in the Northwest states:

> We operate 3 radio stations, 2 television stations with 1 multicast stream (all three of which are broadcasting a mobile DTV signal), and local websites. We hold a common news brand in the market across our all-news radio station, our network-affiliated television property, and our websites. We also own a Univision-affiliated television station and share all news resources in the production of a local 30-minute daily newscast for the Hispanic market. Within the past year, we have launched over 50 hyper-local neighborhood websites that serve many different communities within the DMA. We operate one newsroom under common leadership that serves radio, English and Spanish television, and all digital platforms.

In addition to actually producing news for other outlets, television stations engage in a number of other news gathering partnerships and arrangements. For example, stations may share scripts and video with stations in neighboring markets (through FTP file sharing); partner with rural radio stations for story sharing; partner with a local monthly magazine to generate content ideas and provide a forum for the magazine's editors to highlight their major stories during a station's newscasts; particularly in larger markets, share a news helicopter with other local stations; enter into pool camera agreements with other local stations; and, in one instance in DMA 51-100, jointly own, manage, and utilize an ENG receive site on the tallest structure in the market.[44] The prevalence and success of these partnerships and JSAs is evidence that the market is pushing for efficiencies while regulatory policy lags behind.

Competitive Pressures

Television stations are facing a variety of competitive pressures that affect their ability to produce news in the quality and quantity that they would prefer. Cable operators, through a variety of means, are one of the leading pressure points on local broadcast news. In some markets, the local cable operator has launched its own local news operation. Other markets, such as a mid-size market (DMA 51-100), face news competition from two regional all-news cable channels. In another market (DMA 26-50), the dominant cable operator has added a local sports channel to its line-up in the market. As one broadcaster reports, competition is so fierce in its small market (DMA 151-210)—there are multiple cable operators and 21 radio stations—that the station's advertising competitors are giving away spots for *free*.

Of course, competition comes from fellow broadcast stations as well as from non-broadcast competitors. Thus, in one market (DMA 51-100), all four local Big 4 Network-affiliated television stations are producing local news in expanded time periods at the same time that the local newspaper is adding video content to its website. In another market (DMA 1-25), the four English-language affiliates, one Spanish-language station, and a 24/7 local cable news channel are all producing local news in the same market, competing for the same

[44] According to the *2010 Papper/RTDNA Study*, in 2009, nearly 33% of all stations provided some news content to another local or nearby station. More than 50% provided news content to a local radio station. In addition, 24% of all stations in 2009 had some kind of cooperative news gathering or coverage agreement with a local newspaper, and 28% had such an agreement with a local radio station. These agreements provided for the sharing of information (32%), pooling of video (15%), and splitting of costs to operate a helicopter (4%).

viewers and advertisers.

To remain competitive, particularly with other sources of news, some stations believe they will need additional staff to produce news outside of the “normal” television news time coverage (e.g., late night and weekends).

Other Observations from NAB Members

Several television stations participating in the survey also provided a number of other observations concerning their production of news. A broadcaster in a small market noted that capital expenses in smaller markets are challenging because they are unrelated to revenue potential: A camera, a news truck, a microphone costs the same regardless of market size. Another broadcaster observed that substantial capital was drained by the DTV conversion.

As seen by the survey results, the costs of news production are the single largest portion of any traditional affiliate’s operating budget. Nevertheless, news production is commonly seen as a completely necessary component both to establish the long-term viability of the broadcast property and as necessary to fulfill the stations’ deeply held commitment to community service.

Stations believe they need a strong investigative presence in their news product on a frequent basis. One station (DMA 26-50) reported that, to accomplish this, it has four highly-experienced journalists that make up the station’s own investigative unit. Not surprisingly, these are some of the station’s most highly paid news reporters.

In addition to the extraordinary emergency journalism efforts detailed above, some stations produce substantial amounts of special news programming. For example, one station in DMA 26-50 maintains a full-time, exclusive documentary unit that produces seven or eight programs per year on important local subjects. The operating expense for this special unit is approximately $250,000 per year.

As one broadcaster summed it up: "Doing real journalism—even in a small market—is expensive. 'Citizen journalism' is fine, but we cannot rely on it to keep the public informed."

Conclusions

As the foregoing statistics from both the 2010 NAB news survey and other studies make clear, the financial upheaval in the past two years has forced local television broadcasters to face difficult questions about the future of local news. While local news broadcasts continue to be the primary source of revenue for most stations, declining advertising revenue and ratings have forced stations to significantly trim their budgets and to find other non-broadcast-advertising sources of revenue.

Nonetheless, despite intense financial pressures, local broadcasters have found ways to put *more* news than ever on the air and have responded with full force when emergencies or disasters hit their communities. Broadcasters' ability to overcome these financial pressures and to continue to fulfill their public duty is not without limits, however. As the Commission examines the Future of the Media and considers ways to bolster the provision of local news, it should adopt policies that allow (and to rescind, or at least not adopt, polices that hinder) local broadcasters to (1) pursue opportunities for non-advertising revenue, such as that derived from retransmission consent, and (2) benefit from economies of scale and allocate their news resources in the most efficient way, such as through modifications to the Commission's structural ownership rules. Such policies will support the Commission's vital focus on "localism" by providing a solid financial foundation for the production of local news.

Attachment C

Television Station Financial Data 1998-2008

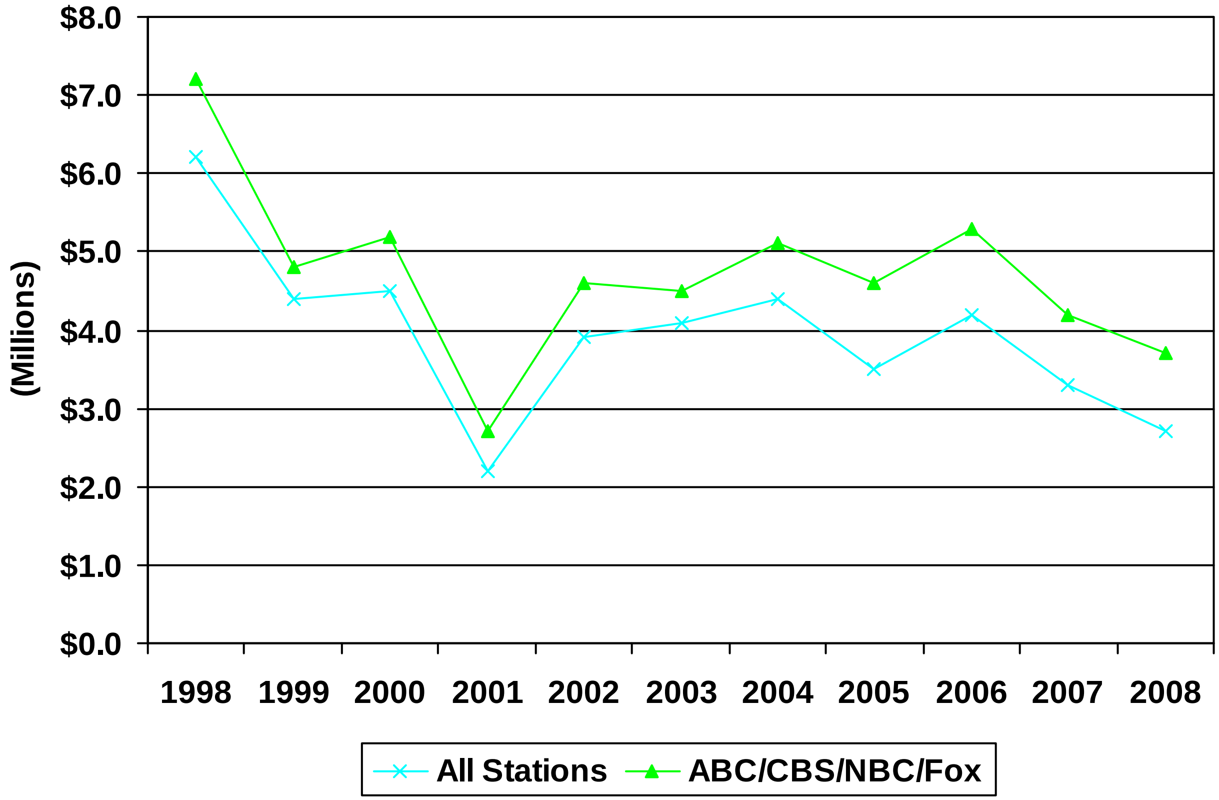
Pre-Tax Profits and News Expense

Source: NAB Television Financial Surveys: 1999-2009

Pre-Tax Profit

Television Station National Averages

(Data detail contained in the next two charts)



	Percent Change 1998-2008	***CAGR 1998-2008***
All Stations	(56.3%)	(7.9%)
ABC/CBS/NBC/Fox	(48.6%)	(6.4%)

Source: NAB Television Financial Surveys: 1999-2009

Pre-Tax Profits Average All Markets All Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$6,145,583	($220,970)	$1,575,778	$5,944,967
1999	$4,361,828	($659,146)	$916,554	$4,323,452
2000	$4,537,894	($584,884)	$1,113,634	$4,596,413
2001	$2,171,188	($1,445,544)	$67,067	$2,575,895
2002	$3,858,644	($451,601)	$911,827	$4,188,476
2003	$4,073,056	($458,512)	$464,019	$3,344,000
2004	$4,442,379	($158,079)	$1,128,782	$4,686,237
2005	$3,512,208	($512,639)	$670,946	$3,426,952
2006	$4,210,359	($305,161)	$1,120,443	$4,154,310
2007	$3,320,667	($454,837)	$520,164	$3,446,126
2008	$2,686,481	($750,149)	$630,300	$3,178,780

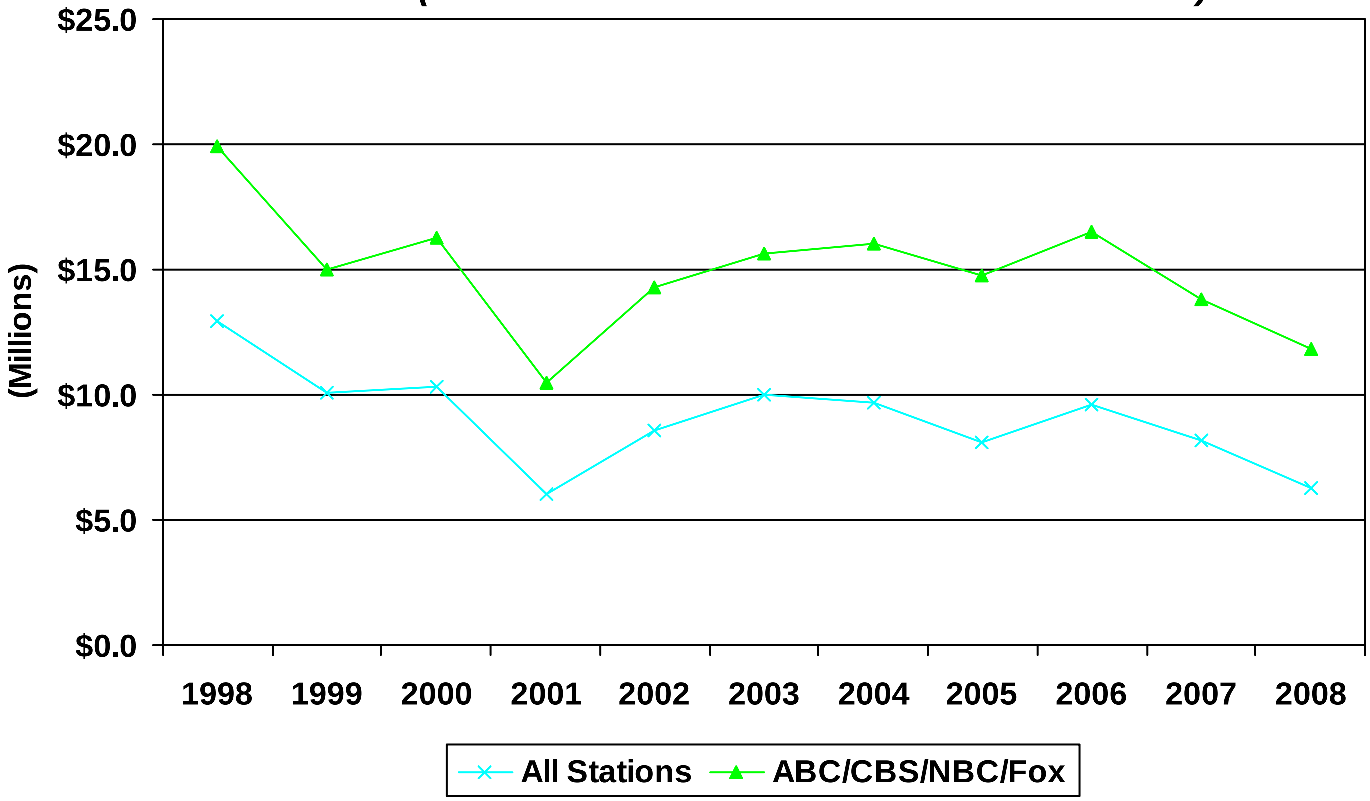
Percent Change 1998-2008:	(56.3%)
CAGR 1998-2008:	(7.9%)

Pre-Tax Profits Average All Markets ABC/CBS/NBC/Fox Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$7,193,369	$280,202	$1,901,898	$7,128,773
1999	$4,810,849	($202,824)	$1,114,579	$4,501,192
2000	$5,191,611	$20,640	$1,476,582	$4,806,008
2001	$2,714,160	($1,010,131)	$275,077	$2,876,357
2002	$4,591,075	$23,658	$1,580,710	$4,598,100
2003	$4,524,942	($209,253)	$846,973	$3,787,402
2004	$5,148,287	$267,750	$1,702,493	$5,426,739
2005	$4,606,835	($69,096)	$1,033,987	$4,406,915
2006	$5,268,941	$187,536	$1,717,122	$5,303,542
2007	$4,168,157	($189,446)	$828,947	$4,112,912
2008	$3,700,547	($220,863)	$1,067,431	$4,394,017
Percent Change 1998-2008:	(48.6%)			
CAGR 1998-2008:	(6.4%)			

Pre-Tax Profit Average

Markets: 1-49

(Data detail contained in the next two charts)



	Percent Change 1998-2008	*CAGR 1998-2008*
All Stations	(50.8%)	(6.8%)
ABC/CBS/NBC/Fox	(40.6%)	(5.1%)

Source: NAB Television Financial Surveys: 1999-2009

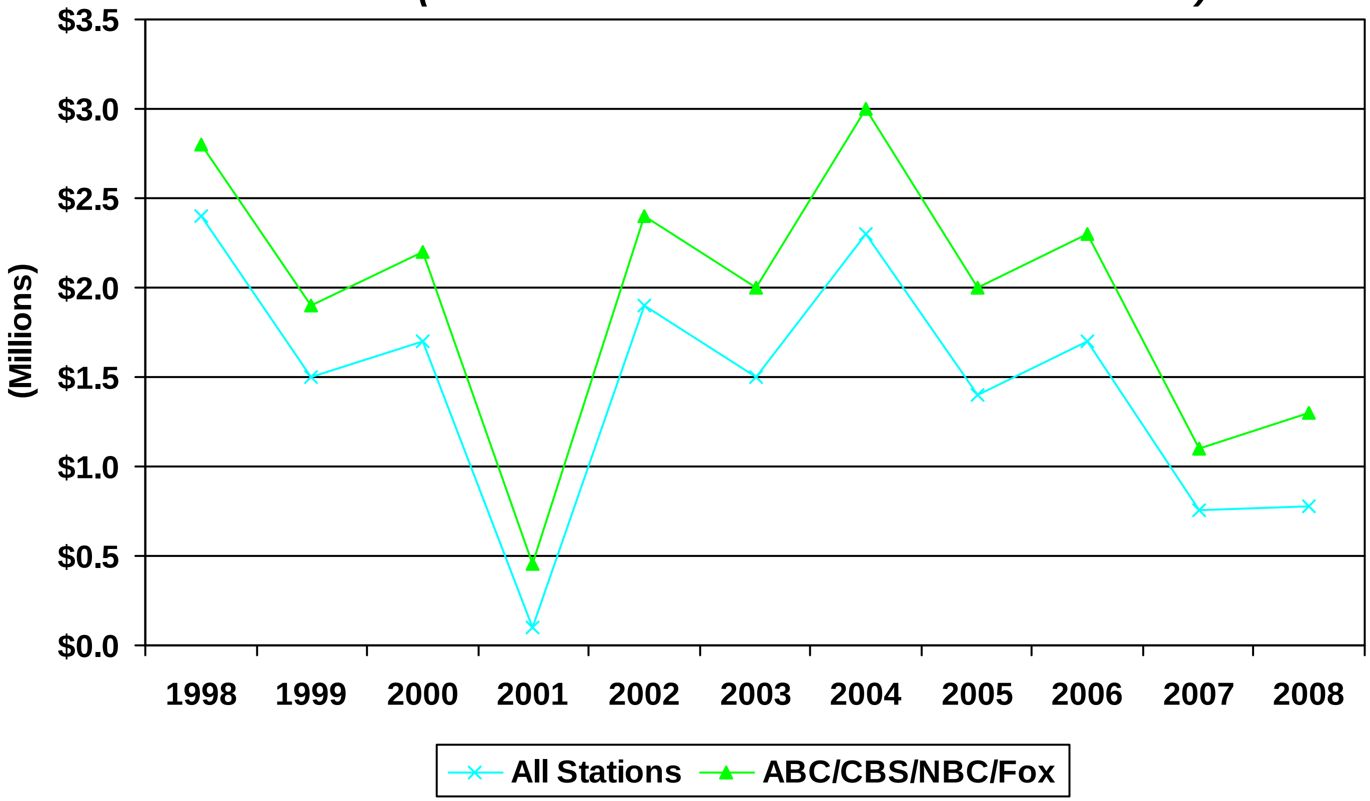
Pre-Tax Profits Average Markets: 1-49 All Stations				
		---------------*Percentiles*---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$12,850,095	($171,226)	$5,490,000	$15,815,303
1999	$10,052,113	($752,860)	$4,821,089	$11,877,679
2000	$10,343,354	($894,741)	$4,487,269	$13,191,352
2001	$6,013,356	($2,500,980)	$1,612,756	$8,637,036
2002	$8,591,247	($766,878)	$3,557,986	$13,103,067
2003	$9,952,173	($362,321)	$2,670,588	$12,810,244
2004	$9,748,494	($351,591)	$3,622,591	$13,440,792
2005	$8,071,946	($509,488)	$3,220,287	$11,535,691
2006	$9,618,093	($152,891)	$3,789,165	$14,295,260
2007	$8,247,137	($226,082)	$3,573,239	$9,945,086
2008	$6,326,101	($1,031,662)	$2,641,241	$9,643,176
Percent Change 1998-2008:	(50.8%)			
CAGR 1998-2008:	(6.8%)			

Pre-Tax Profits Average Markets: 1-49 ABC/CBS/NBC/Fox Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$19,887,595	$4,735,889	$11,840,000	$21,506,700
1999	$14,984,676	$1,454,151	$8,777,727	$16,634,325
2000	$16,312,772	$1,819,325	$9,691,000	$18,897,383
2001	$10,463,374	$418,660	$5,680,878	$11,850,991
2002	$14,336,079	$3,354,000	$9,805,409	$16,787,170
2003	$15,605,649	$2,354,275	$8,299,974	$15,424,044
2004	$15,958,797	$4,729,870	$10,727,362	$18,671,728
2005	$14,779,475	$3,116,344	$9,632,649	$16,990,646
2006	$16,498,925	$4,043,980	$11,520,672	$17,935,944
2007	$13,772,002	$3,523,160	$7,984,000	$15,134,308
2008	$11,812,225	$3,052,738	$7,778,740	$14,165,000
Percent Change 1998-2008:	(40.6%)			
CAGR 1998-2008:	(5.1%)			

Pre-Tax Profit Average

Markets: 50-99

(Data detail contained in the next two charts)



	Percent Change 1998-2008	***CAGR 1998-2008***
All Stations	(67.1%)	(10.5%)
ABC/CBS/NBC/Fox	(53.4%)	(7.3%)

Source: NAB Television Financial Surveys: 1999-2009

Pre-Tax Profits Average Markets: 50-99 All Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$2,358,660	($89,885)	$1,960,963	$3,834,240
1999	$1,482,768	($768,623)	$1,264,315	$3,186,665
2000	$1,737,339	($581,903)	$1,502,384	$3,618,461
2001	$148,634	($1,931,537)	$115,059	$1,999,741
2002	$1,925,580	($445,786)	$1,416,161	$3,777,167
2003	$1,541,609	($439,551)	$819,861	$3,071,690
2004	$2,319,131	($98,095)	$1,491,795	$4,223,264
2005	$1,428,424	($641,945)	$703,261	$2,880,138
2006	$1,668,550	($604,394)	$1,242,330	$3,892,066
2007	$760,571	($672,777)	$407,730	$2,150,785
2008	$775,551	($1,055,654)	$496,225	$2,490,447

Percent Change 1998-2008:	(67.1%)
CAGR 1998-2008:	(10.5%)

Pre-Tax Profits Average
Markets: 50-99
ABC/CBS/NBC/Fox Stations

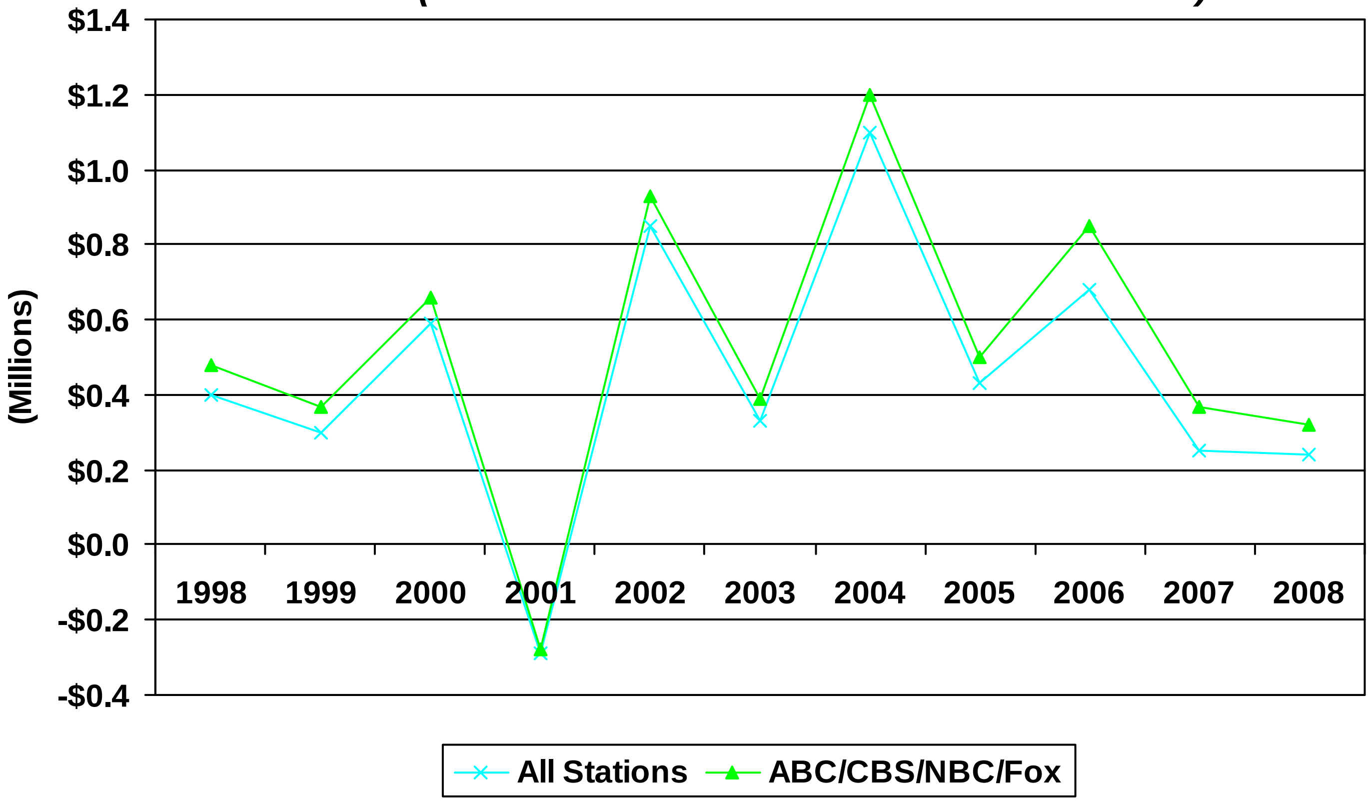
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$2,820,621	$614,265	$2,436,173	$4,414,067
1999	$1,941,239	($234,979)	$1,722,601	$3,693,508
2000	$2,246,530	$155,527	$2,153,243	$3,975,058
2001	$461,961	($1,850,838)	$405,761	$2,205,068
2002	$2,434,949	$189,093	$1,879,420	$4,438,207
2003	$1,952,566	($122,147)	$1,321,067	$3,619,767
2004	$2,968,284	$384,796	$2,247,913	$4,722,234
2005	$1,964,239	($27,440)	$1,160,116	$3,185,246
2006	$2,335,743	$471,845	$1,968,655	$4,514,636
2007	$1,117,541	($406,966)	$954,743	$3,210,697
2008	$1,314,797	($376,000)	$1,206,136	$3,146,267

Percent Change 1998-2008:	(53.4%)
CAGR 1998-2008:	(7.3%)

Pre-Tax Profit Average

Markets: 100-149

(Data detail contained in the next two charts)



	Percent Change 1998-2008	***CAGR 1998-2008***
All Stations	(39.7%)	(4.9%)
ABC/CBS/NBC/Fox	(32.3%)	(3.8%)

Source: NAB Television Financial Surveys: 1999-2009

Pre-Tax Profits Average Markets: 100-149 All Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$397,865	($452,752)	$515,648	$1,504,851
1999	$299,694	($758,191)	$218,179	$1,069,946
2000	$591,963	($457,294)	$657,161	$1,558,422
2001	($292,945)	($1,186,992)	($241,922)	$630,180
2002	$848,613	($407,530)	$493,628	$1,946,785
2003	$330,907	($575,857)	$145,500	$1,092,814
2004	$1,056,564	($24,236)	$812,426	$2,227,530
2005	$432,738	($509,489)	$428,129	$1,559,762
2006	$676,201	($354,437)	$675,767	$1,909,644
2007	$250,153	($551,748)	$287,945	$1,134,448
2008	$240,077	($763,457)	$403,634	$1,496,726
Percent Change 1998-2008:	(39.7%)			
CAGR 1998-2008:	(4.9%)			

Pre-Tax Profits Average
Markets: 100-149
ABC/CBS/NBC/Fox Stations

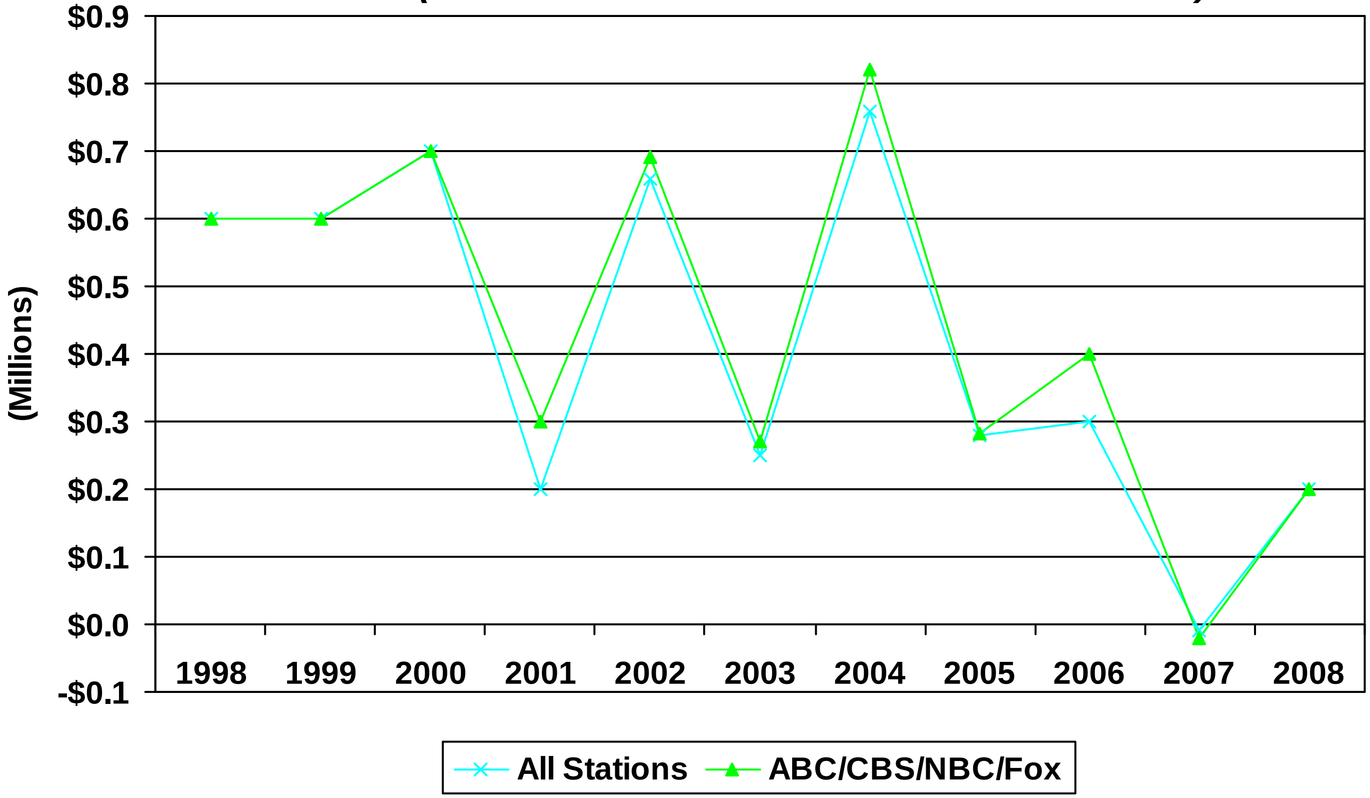
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$478,633	($412,105)	$534,744	$1,590,589
1999	$372,540	($710,348)	$324,100	$1,209,816
2000	$664,134	($199,524)	$677,619	$1,575,656
2001	($280,430)	($1,186,992)	($241,922)	$776,471
2002	$930,277	($362,656)	$612,685	$2,119,485
2003	$386,161	($552,130)	$151,374	$1,126,326
2004	$1,208,952	$52,389	$912,171	$2,548,655
2005	$504,147	($373,275)	$450,337	$1,584,143
2006	$849,021	($89,808)	$791,059	$2,240,881
2007	$367,739	($460,677)	$437,000	$1,637,842
2008	$323,881	($784,232)	$425,775	$1,547,114

Percent Change 1998-2008:	(32.3%)
CAGR 1998-2008:	(3.8%)

Pre-Tax Profit Average

Markets: 150-210

(Data detail contained in the next two charts)



	Percent Change 1998-2008	*CAGR 1998-2008*
All Stations	(62.9%)	(9.4%)
ABC/CBS/NBC/Fox	(62.3%)	(9.3%)

Source: NAB Television Financial Surveys: 1999-2009

Pre-Tax Profits Average
Markets: 150-210
All Stations

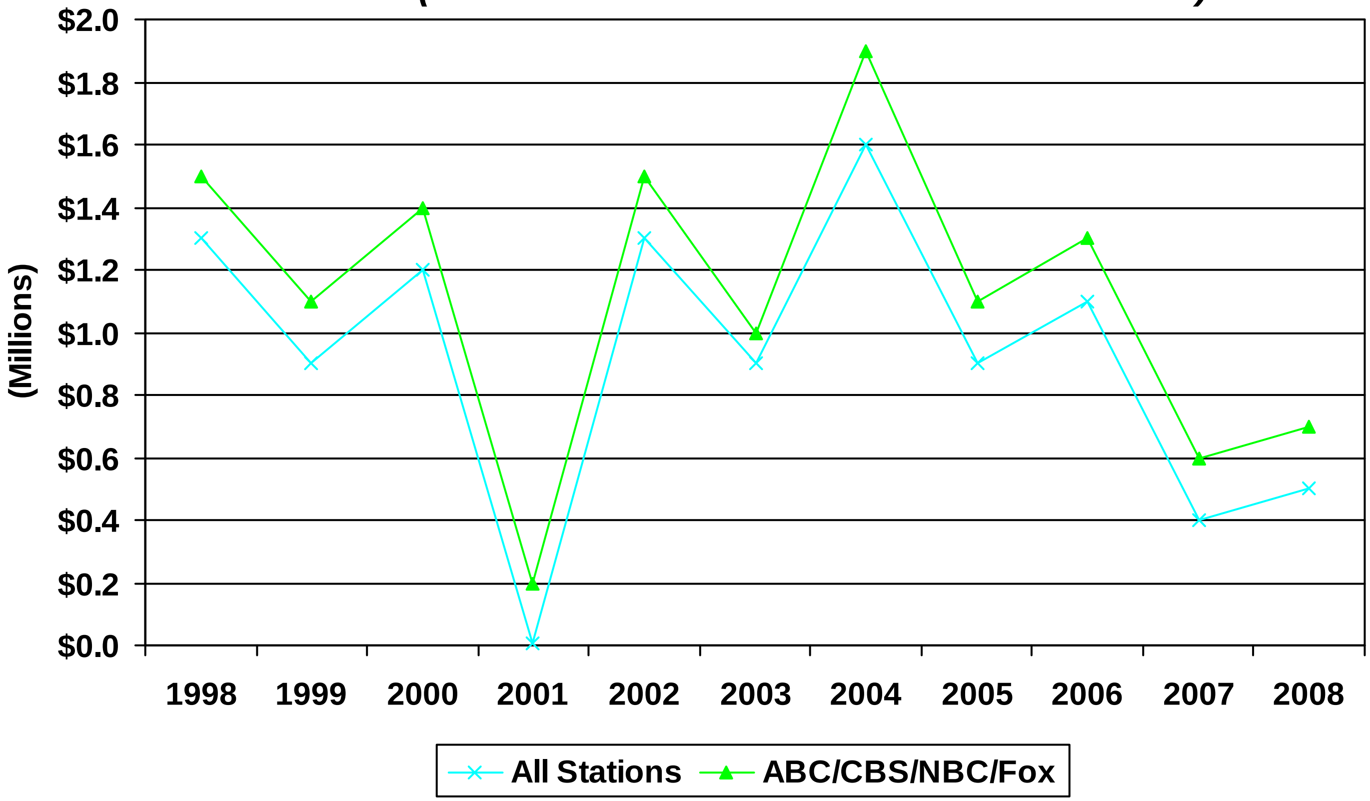
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$575,753	($92,120)	$503,929	$1,237,583
1999	$575,253	($134,854)	$325,234	$1,114,479
2000	$692,252	($306,089)	$343,555	$1,418,240
2001	$211,897	($333,000)	$40,585	$976,871
2002	$659,568	($93,736)	$244,200	$,161,363
2003	$253,964	($342,021)	$10,334	$519,772
2004	$758,398	($176,831)	$379,601	$1,126,003
2005	$278,977	($363,518)	$180,000	$659,742
2006	$343,423	($176,368)	$347,253	$1,137,005
2007	($14,339)	($322,410)	$139,787	$526,494
2008	$213,643	($362,945)	$170,993	$790,257
Percent Change 1998-2008:	(62.9%)			
CAGR 1998-2008:	(9.4%)			

Pre-Tax Profits Average Markets: 150-210 ABC/CBS/NBC/Fox Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$575,753	($92,120)	$503,929	$1,237,583
1999	$575,253	($134,854)	$325,234	$1,114,479
2000	$727,182	($299,919)	$410,450	$1,424,435
2001	$287,471	($302,689)	$59,611	$1,020,006
2002	$687,329	($83,144)	$269,990	$1,240,392
2003	$265,410	($342,021)	$13,500	$610,591
2004	$820,554	($223,029)	$470,191	$1,301,608
2005	$283,212	($399,474)	$182,278	$800,538
2006	$351,282	($180,902)	$382,644	$1,182,908
2007	($18,578)	($323,296)	$141,282	$558,096
2008	$216,860	($372,482)	$176,621	$819,475
Percent Change 1998-2008:	(62.3%)			
CAGR 1998-2008:	(9.3%)			

Pre-Tax Profit Average

Markets: 50-210

(Data detail contained in the next two charts)



	Percent Change 1998-2008	***CAGR 1998-2008***
All Stations	(63.7%)	(9.6%)
ABC/CBS/NBC/Fox	(52.9%)	(7.2%)

Source: NAB Television Financial Surveys: 1999-2009

Pre-Tax Profits Average Markets: 50-210 All Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$1,337,459	($269,859)	$837,828	$2,483,749
1999	$908,462	($601,340)	$459,871	$2,217,697
2000	$1,158,747	($441,800)	$707,730	$2,595,927
2001	$9,426	($1,379,567)	($55,989)	$1,226,440
2002	$1,321,800	($408,698)	$662,564	$2,475,608
2003	$859,309	($510,777)	$210,500	$1,694,630
2004	$1,566,372	($97,116)	$841,950	$2,692,097
2005	$872,360	($513,000)	$383,397	$1,792,464
2006	$1,056,903	($354,437)	$696,942	$2,362,563
2007	$426,644	($561,750)	$274,509	$1,385,949
2008	$486,163	($681,268)	$375,674	$1,653,518
Percent Change 1998-2008:	(63.7%)			
CAGR 1998-2008:	(9.6%)			

Pre-Tax Profits Average
Markets: 50-210
ABC/CBS/NBC/Fox Stations

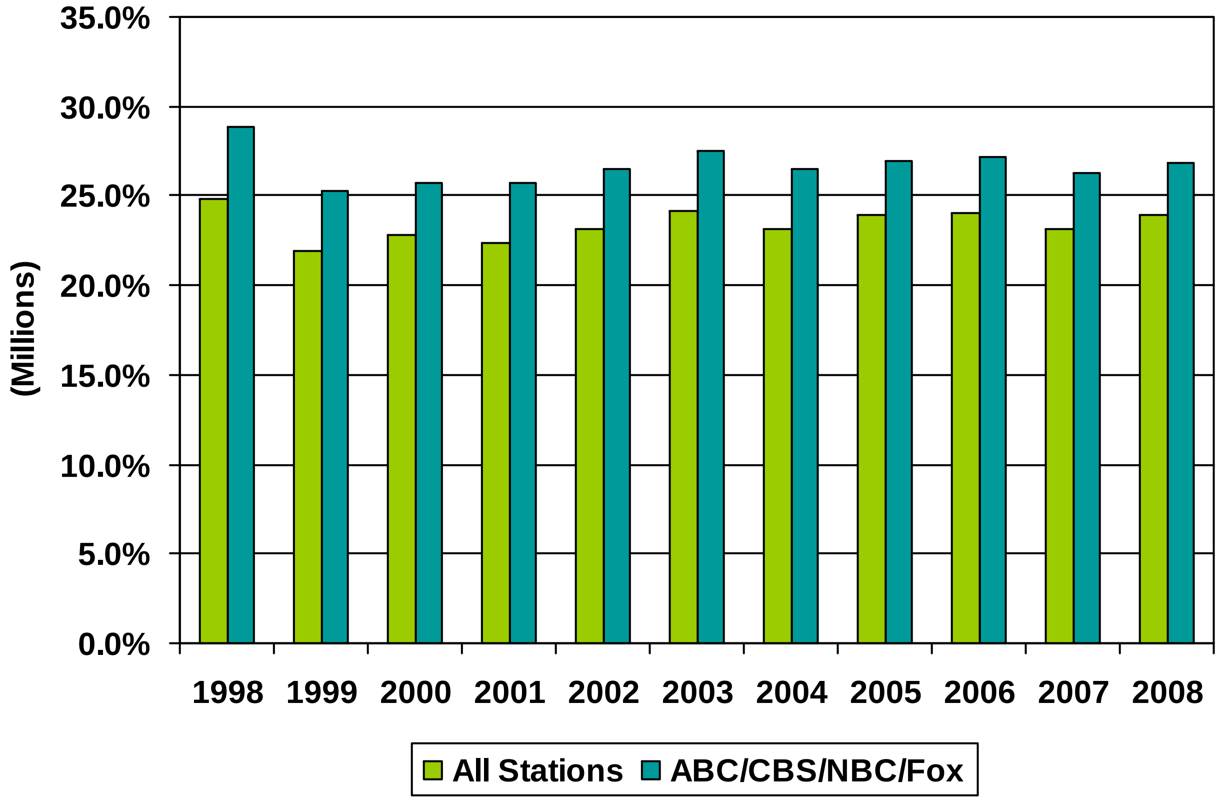
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
1998	$1,495,629	($91,962)	$976,150	$2,591,764
1999	$1,096,054	($297,763)	$710,881	$2,374,554
2000	$1,366,816	($136,046)	$932,941	$2,869,060
2001	$158,135	($1,216,481)	$36,464	$1,426,126
2002	$1,520,384	($77,848)	$900,314	$2,801,227
2003	$987,956	($328,281)	$360,805	$1,974,788
2004	$1,856,973	$83,870	$1,140,392	$2,907,824
2005	$1,076,981	($327,515)	$518,184	$2,039,546
2006	$1,327,500	($26,639)	$963,444	$2,589,755
2007	$569,951	($403,340)	$429,455	$1,729,721
2008	$705,130	($535,215)	$517,602	$2,052,326

Percent Change 1998-2008:	(52.9%)
CAGR 1998-2008:	(7.2%)

News Expense:

% of Total Expenses

(Data detail contained in next chart)



Source: NAB Television Financial Surveys: 1999-2009

News Expense:
% of Total Expenses

Year	All Stations	ABC/CBS/NBC/Fox Stations
1998	24.8%	28.8%
1999	21.9%	25.3%
2000	22.8%	25.7%
2001	22.4%	25.7%
2002	23.2%	26.5%
2003	24.2%	27.5%
2004	23.2%	26.5%
2005	23.9%	27.0%
2006	24.0%	27.2%
2007	23.2%	26.3%
2008	23.9%	26.8%

Definitions

- **CAGR (Compounded Annual Growth Rate)**: Annualized growth rate over a given period of time.

- **Percentiles:** The 50th percentile or median represents the mid-point of the range of figures reported for that line item with one-half of the stations reporting figures above it and one-half below. The 75th percentile case is equal to or greater than 75% of the responding stations. Thus, 75% of the responding stations reported a value lower than this case and 25% reported a value higher. Likewise, the 25th percentile case is equal to or less than 25% of the responding stations. Meaning, 25% of the responding stations fall below the reported figure and 75% of them fall above. Taken together the 25th percentile and the 75th percentile represent the "middle range." This represents the values of the middle 50% of stations when figures for a given item are arranged numerically from lowest to highest.

Attachment D


Strengthening the
Future of Broadcasting
NAB
EDUCATION FOUNDATION


ViewSonic

NAB EDUCATION FOUNDATION

EMPOWERING BROADCASTERS TO SERVE, LEAD AND ACHIEVE

Founded by the National Association of Broadcasters (NAB) in 1994, the NAB Education Foundation (NABEF) is a nonprofit organization dedicated to serving broadcasters and the public interest by supporting and advocating community service, diversity, education and other broadcasting initiatives. NABEF is the only foundation in America that provides support, programs and resources for broadcasters at every career level and in every job function of the broadcasting industry. Led by a volunteer board of directors, the foundation receives contributions from industry and philanthropic sources, which are matched by NAB.

Expanding diversity in broadcasting is at the heart of our mission. Graduates of our career advancement programs increasingly fill positions in broadcasting from entry level to executive level, and several have become station owners.

We are equally committed to promoting public service and honoring local stations for the extraordinary ways they serve their communities. Collectively, the value of public service broadcasters provide on an annual basis has exceeded $10 billion in a single year. We work to ensure that the next generation of broadcasters carries on this legacy.

EXPANDING DIVERSITY

To keep pace with the changing needs and sensibilities of an increasingly diverse population, NABEF has designed a career advancement educational pipeline for women and people of color from entry-level to station ownership.

The **NABEF Media Sales Institutes (MSI)** is a 10-day intensive sales training program for recently graduated college communications students. The program is taught by industry professionals at three universities: Howard University, Florida A&M University and the University of North Texas. On the last day of the program, students make sales presentations to recruiting companies looking to fill entry-level positions. A vast majority of MSI graduates are hired for media sales positions. Today, the Media Sales Institutes are a nationally recognized model for establishing partnerships between educational institutions and the media industry.

> *"By learning from my mentor's experiences, it helps and motivates me even more to grow in this business."*
>
> **– Justin Thwaites,**
> **WHUR 96.3 FM, Washington, DC**

The **Connections Mentoring Initiative** is a premier leadership development and mentoring fellowship program created to prepare talented and diverse broadcasters for the next phase of their careers. Connections links senior level broadcast mentors with women and people of color who are their companies' emerging leaders. Protégés work with their mentors to create a career development strategy, which they implement over the course of a year. They also expand their industry knowledge and receive career development advice from their mentors. In turn, the mentors gain insight into the issues facing the protégés while contributing to the future of the industry.

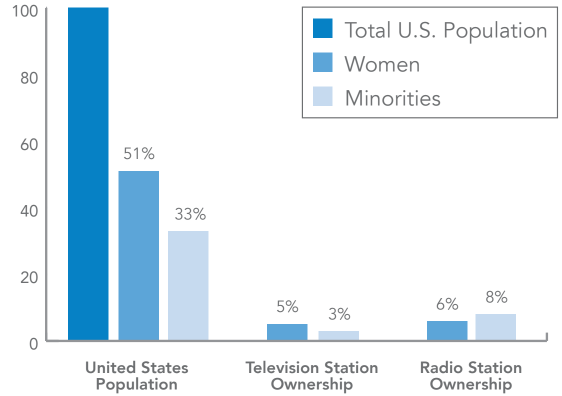
The **NABEF Professional Fellowship** program awards eight fellowships each year to women and people of color to attend the NAB Executive Development Seminar – a course designed to increase managerial effectiveness and help broadcast managers and executives advance in their careers. The fellowships are awarded to individuals who have demonstrated promise for future advancement in the industry.

The **Broadcast Leadership Training (BLT)** program is the nation's only executive MBA-style program designed to enable talented senior level broadcast executives who aspire to advance as group executives or station owners – particularly women and people of color – to be exposed to the fundamentals of purchasing, owning and successfully operating radio and television stations.

The curriculum is tightly focused on broadcast station ownership and operation. Topics include developing a business plan, securing financing, identifying and evaluating stations, negotiating the deal, closing/takeover, working effectively with the Federal Communications Commission (FCC), performance management and operating for success. The prestigious BLT faculty includes broadcasters, FCC staff, leading communications attorneys, members of the Wall Street and banking communities and academic faculty from leading universities.

The program celebrated its tenth anniversary in 2010 with 169 graduates, 29 of whom are currently or have been station owners and more than 60 who have been promoted to more senior executive positions.

Women and minorities comprise 51 percent and 33 percent respectively of the U.S. population, yet few own radio or television stations. The NABEF BLT program is directly addressing this issue.



Source: United States Government Accountability Office

PROMOTING AND HONORING COMMUNITY SERVICE

Every day, local radio and television stations raise money for, and awareness about, people in need and charitable causes. From hurricane relief efforts to blood drives to children's reading programs, stations provide a lifeline to their communities. On one special night each year, NABEF honors broadcast stations for their outstanding public service and highlights their efforts before members of Congress, the FCC, corporations and radio and television executives from across the nation.

NABEF's highly coveted **Celebration of Service to America Awards** are presented in various categories and not only honor stations for bettering the lives of others, but also establish incentives for stations to work even harder to meet the overwhelming needs of people in their local communities.

In addition to recognizing stations for community service, a Leadership Award is presented to a public figure outside the broadcast industry in recognition of their humanitarian work. Past Leadership Award recipients have included former U.S. presidents and first ladies, as well as other high profile figures such as Quincy Jones and Sir Elton John. A Samaritan Award is also given to public figures within the broadcast community. Proceeds from the annual event support NABEF's educational programs and fellowships.

INSPIRING STUDENTS TO SERVE

NABEF also kindles the humanitarian spirit of college communications students so that future broadcasters will continue the long tradition of making a difference one community at a time.

The **Call to Service Collegiate Competition** challenges college students to develop a community service initiative and partner with a local broadcaster to execute it. Students whose projects are judged to have provided the greatest service are awarded scholarships and funding for a charity of their choice. Participants of the winning initiative, including broadcast partners, are widely recognized for their efforts.

PROMOTING THE FIRST AMENDMENT

The First Amendment is the bedrock of broadcasting, and we believe it is important to remind America's journalism students of the importance of free speech at the beginning of their careers. Each year, NABEF's **Freedom of Speech PSA Contest** challenges students to create public service announcements (PSAs) for radio and television that

highlight the freedom of speech. Hundreds of students from across the country participate in the contest each year and produce creative PSAs to remind us of the importance of this fundamental freedom.

Student winners are awarded scholarships and their winning entries are distributed to radio and television stations nationwide for airing.

BUILDING CAREERS

NABEF **Career Fairs** offer college students and entry-level job seekers opportunities to meet with recruiters from top media companies.

The foundation hosts an annual spring Career Fair during the NAB Show in Las Vegas in partnership with the Broadcast Education Association (BEA) and the Radio Television Digital News Association (RTDNA). A second career fair is held each fall during the Radio Show.

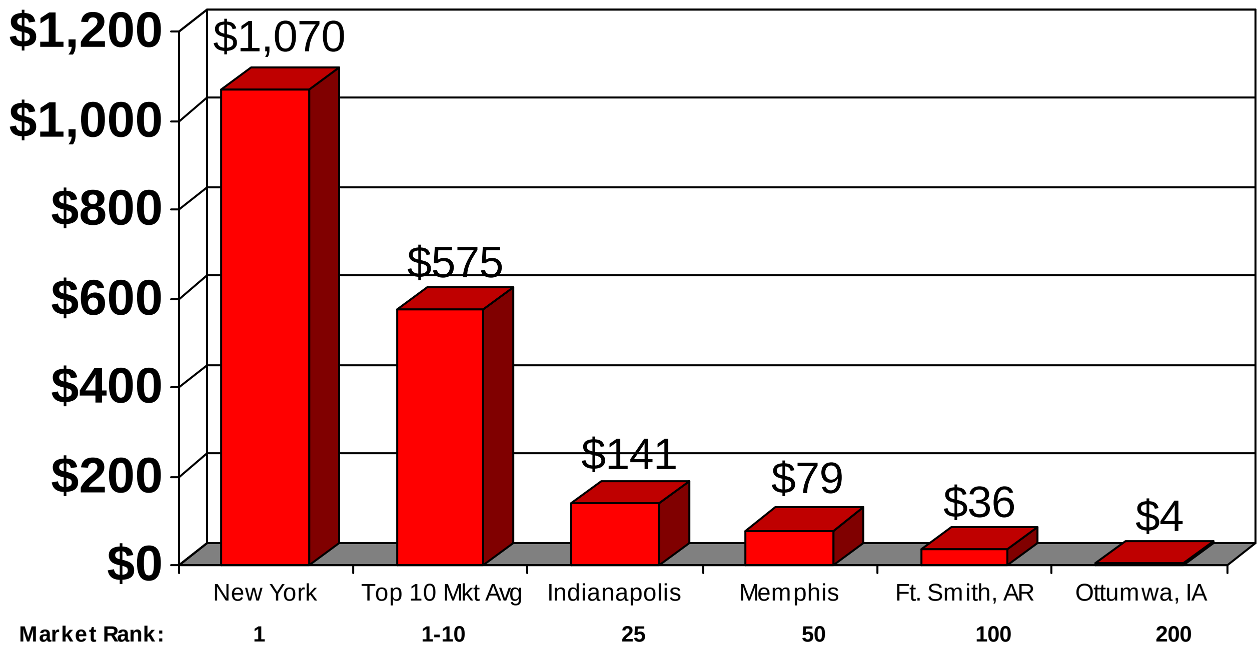
Job seekers may also post their resumes free of charge at NABEF's job databank, the **NABEF Broadcast Career Link.**

NAB EDUCATION FOUNDATION

1771 N Street NW
Washington DC 20036 2800
Phone 202 429 5428 Fax 202 429 3930
www.nabef.org

Attachment E

2009 Television Market Revenues
(in millions)



Source: BIA Media Access Pro.

No. of Commercial Stns.:	16	15.1	10	7	6	2
Avg. Revenue per Station (in 000s):	$ 66,875	$ 37,907	$ 13,955	$ 11,339	$ 5,370	$ 2,175
Avg. Revenue per TVHH in Market:	$ 147	$ 175	$ 126	$ 120	$ 115	$ 85

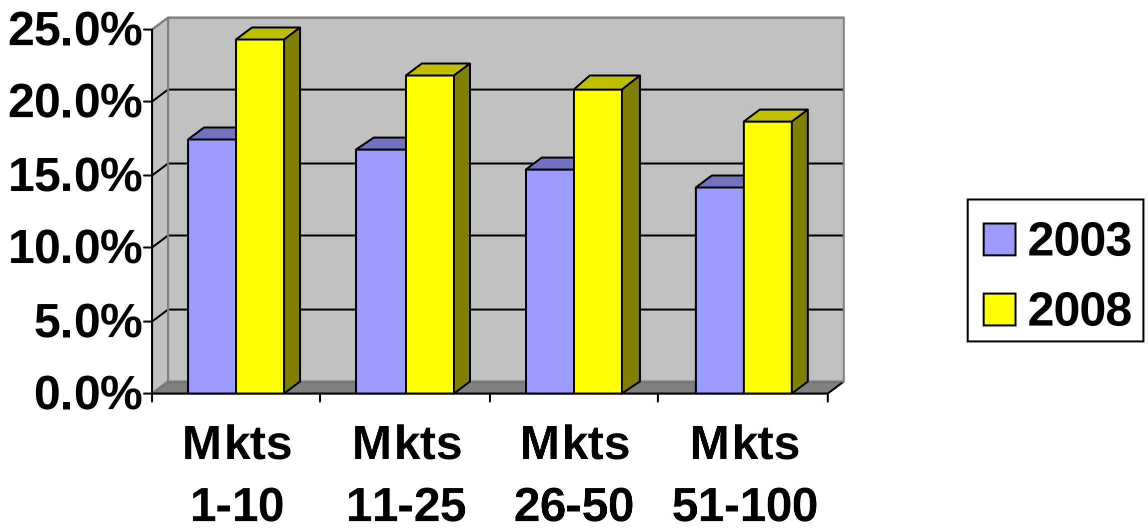
<u>The Relationship between Market Size and Advertising Revenue per TVHH</u>

The chart above illustrates the importance of market size to the ability of television stations to attract advertising revenues. For instance, New York is the largest

TV market in the U.S., at approximately 7.3 million TV Households. Based on the New York DMA's total 2009 broadcast television advertising revenues of $1.070 billion, the average TV Household in the market was worth $147 in annual revenue. In contrast, the average TV Household in Indianapolis, the No. 25-ranked TV market, was worth only $126 in annual revenue, and this figure continues to decline in a manner directly related to market size, from No. 50 Memphis (annual revenues of $120 per TVHH), to No. 100 Fort Smith-Fayetteville-Springdale-Rogers, AR ($115/TVHH), to No. 200 Ottumwa, IA – Kirskville, MO ($85/TVHH).

In other words, not only are smaller TV markets more challenged in the advertising marketplace simply because they have fewer eyeballs to sell to prospective advertisers, but also, the viewers they do have are valued less by advertisers on a per household basis than are those in larger markets.

Cable Share of Local TV Revenues, 2003 vs. 2008



Source: Analysis of data estimates from *The Television Industry: A Market by Market Review*, 2004 and 2010 eds.

Growth of Cable Share of Local Television Ad Revenues

As demonstrated in the chart above, local cable increased between 2003 and 2008 in its share of local television market advertising. In Top 10 Nielsen markets, the average share of local television advertising garnered by local cable grew from approximately 17.4 percent of market TV ad revenues in 2003, to 24.3 percent—or approximately $1.5 billion in total local cable ad revenues in these markets—in 2008. To put this figure into context, the average of $150 million per market in local cable ad revenues is the equivalent of more than two additional television stations in each market, based on 2008 average station ad revenues* in these markets.

Comparable situations also have occurred in smaller markets. For instance, in markets ranked 11 through 25, local cable's average share of the television ad pie increased nearly as much as it did in the Top 10 markets, rising from 16.7 percent of local market TV ad revenues in 2003 to 21.8 percent in 2008. Similar to the Top 10 markets, local cable advertising's annual revenues of approximately $50 million per market in DMAs 11-25 represents roughly the equivalent of an additional 1.5 television stations in each of these markets, based on average annual station revenues. Likewise, local cable's average market share also grew by approximately one-third in Markets 26 through 50, and Markets 51 through 100.

In short, these figures point to an ongoing erosion of advertising market share from local broadcast stations to local cable in recent years, a circumstance that further challenges the financial health of local television broadcasting.

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* Source: BIA Media Access Pro.