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

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

NATIONAL ASSOCIATION OF BROADCASTERS
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Executive Summary

The National Association of Broadcasters ("NAB") hereby submits these comments on the ten research studies on media ownership conducted for and by the Commission to inform its pending quadrennial review of the broadcast ownership rules. Overall, these new studies, consistent with other surveys of the media marketplace including several previous Commission ownership studies, support the case for reforming outmoded ownership restrictions that only apply to local broadcast stations.

As shown in detail in our comments, the Commission's studies generally demonstrate the lack of harm, and, indeed, the benefits that would be gained, from allowing local broadcasters to adopt more economically viable ownership structures. In particular, the various studies show that the cross-ownership of broadcast stations with newspapers, and the common ownership of broadcast stations in the same market, promote the Commission's traditional goals of competition, diversity and localism and serve the public interest. The public interest benefits derived from common ownership specifically include, *inter alia*, the offering of greater amounts of news programming, including local news. In light of such demonstrated benefits, the Commission should act promptly to complete the statutorily-mandated quadrennial review of the broadcast-only local ownership restrictions, and reform those rules to serve the public interest in light of competition.

Beyond examining the impact of common ownership on news and other programming, the studies conducted for and by the Commission confirm the continued growth in competitive media, outlets and providers offering diverse sources of information, opinion and entertainment to consumers. This continuing proliferation of outlets and rapid pace of technological change in the media marketplace further underscores the need for Commission action to update its ownership rules. The real threat today to locally-oriented services, including costly services such as local news, is not the joint ownership of broadcast stations (which the Commission's studies show promotes such services), but the stations' continuing challenge to maintain their economic vibrancy in the face of multichannel and other competitors that are not constrained by restrictions on local ownership structure. Only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively and provide a significant local presence. The Commission should also address the under-representation of minorities and women in the broadcast industry through public/private partnerships and market-based stimulants, including tax incentives, which will promote entry and long-term viability of minority and female entrants in a competitively vibrant broadcast industry.

Because a degree of common ownership of media outlets in local markets allows local stations to remain competitive in today's multichannel marketplace and enhances their ability to serve local communities and diverse audiences, NAB again urges the Commission to repeal the restrictions on cross-ownership of broadcast stations and newspapers; reform the television duopoly rule to allow more freely the formation of duopolies in markets of all sizes; and reject calls to reduce the current ownership levels in local radio markets and instead continue the relaxation of such limits.

TABLE OF CONTENTS

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	)	
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To: The Commission

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments on the Commission's ten research studies on media ownership conducted in this proceeding.[2] The Commission intends these studies to inform its pending quadrennial review of the broadcast

[1] NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

[2] Public Notice, *FCC Seeks Comments on Research Studies on Media Ownership*, DA 07-3470 (rel. July 31, 2007).

ownership rules,[3] as well as its consideration of the issues raised by the United States Court of Appeals for the Third Circuit in *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004).[4] Section 202(h) of the Telecommunications Act of 1996 ("1996 Act") requires the Commission to review its broadcast ownership rules every four years and determine whether these rules remain "necessary in the public interest as the result of competition."[5]

Overall, these new studies, consistent with other surveys of the media marketplace including several previous FCC ownership studies, support the case for reforming outmoded ownership restrictions that only apply to local broadcast stations. As discussed in detail below, the Commission's studies generally demonstrate the lack of harm, and, indeed, the benefits that would be gained, from allowing local broadcasters to adopt more economically viable ownership structures. In particular, the various studies show that the cross-ownership of broadcast stations with newspapers, and the common ownership of broadcast stations in the same market, promote the Commission's traditional goals of competition, diversity and localism and serve the public interest. The public interest benefits derived from common ownership specifically include, *inter alia*, the offering of greater amounts of news programming, including local news.

In light of such demonstrated benefits, as well as the continuing proliferation of outlets and the rapid pace of technological change in the media marketplace, the Commission should act promptly to complete the statutorily-mandated quadrennial review of the broadcast-only local ownership restrictions, and reform those rules to serve the public interest in light of competition.

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[3] *See 2006 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006).

[4] In *Prometheus*, the Third Circuit affirmed some of the Commission's decisions made in its 2002 review of the ownership rules and remanded other decisions for further agency justification or modification.

[5] Pub. L. No. 104-104 § 202(h), 110 Stat. 56 (1996), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

Because the common ownership of media outlets in local markets enhances the ability of broadcast stations to serve their local communities and diverse audiences in today's digital, multichannel marketplace, NAB again urges the Commission to repeal the restrictions on cross-ownership of broadcast stations and newspapers; reform the television duopoly rule to allow more freely the formation of duopolies in markets of all sizes; and reject calls to reduce the current ownership levels in local radio markets and instead continue the relaxation of such limits.

I. The Commission's Studies Overall Show That The Public Will Benefit From Reform Of Outdated Restrictions On Local Broadcast Stations.

A. Multiple Studies Demonstrate that Permitting Cross-Ownership of Television Stations, Radio Stations and Newspapers Promotes the Public Interest.

Adopted in 1975 in a media marketplace with only a small number of analog broadcasters, the newspaper/broadcast cross-ownership rule prohibits the common ownership of a radio or television station and a daily newspaper in the same local market. Over four years ago, the Commission, after an extensive review beginning in 2001, concluded that (1) the cross-ownership ban cannot be sustained on competitive grounds; (2) the rule is not necessary to promote localism and may in fact harm localism; and (3) most media markets are diverse, obviating a need for a blanket ban on newspaper/broadcast combinations.[6] Accordingly in 2003, the Commission repealed the ban, replacing it with new newspaper, radio and television cross-media limits.[7]

[6] *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13748 (2003) ("*2002 Biennial Review Order*").

[7] *See id*., 18 FCC Rcd at 13798-804; 47 C.F.R. § 73.3555(c). These revised cross-media limits also replaced the existing radio/television cross-ownership rule, which limited the number of radio stations that could be owned in conjunction with television stations in local markets.

On review, the Third Circuit Court of Appeals agreed with the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership no longer served the public interest. *Prometheus*, 373 F.3d at 398. The Court concluded that "newspaper/broadcast combinations can promote localism," and agreed with the Commission that a "blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity." *Id*. at 398-99. However, the Court concluded that the Commission had failed to provide reasoned analysis to support the specific cross-media limits that it chose to replace the ban, *id*. at 401-402; as a result, the complete prohibition on newspaper/broadcast cross-ownership still remains in force.[8]

In light of the new studies clearly reconfirming earlier studies demonstrating that public interest benefits flow from the cross-ownership of broadcast outlets with newspapers, the Commission must reaffirm its repeal of the newspaper/broadcast ban. As discussed below, these studies – both old and new – show that the prohibition on newspaper cross-ownership harms localism and is not needed to promote diversity. Moreover, as NAB and other commenters in this proceeding have shown, given the continuing financial struggles of the newspaper industry and the financial challenges facing local television stations, the reform of restrictions that shackle television, radio and print news providers, but not their competitors, is needed to allow them to maintain their competitiveness in the Internet age.

1. Numerous Studies Unequivocally Demonstrate that Newspaper/Broadcast Cross-Ownership Benefits Local Viewers and Listeners.

[8] Also as a result of the Third Circuit's remand of the new cross-media limits, the previous version of the radio/television cross-ownership rule, which was adopted in 1999, still remains in effect. *See* 47 C.F.R. § 73.3555(c) (2002).

Several recent studies conducted by academics and by Commission economists clearly demonstrate that common ownership of newspapers and broadcast outlets benefits viewers and listeners in local communities. These studies only serve to reinforce numerous earlier studies conducted by the Commission and by a variety of scholars, which similarly showed the public interest benefits stemming from the joint ownership of daily newspapers and broadcast stations in local markets.

In one of the studies recently conducted for the Commission, Dr. Jeffrey Milyo of the Universities of Kansas and Missouri examined the effects of newspaper cross-ownership on the content of the newscasts of local television stations.[9] Specifically, Dr. Milyo surveyed the late evening local news broadcasts for every newspaper cross-owned television station and for other major network-affiliated stations in the same markets to estimate the effects of such cross-ownership, while controlling for other station characteristics. This analysis revealed that local newscasts for cross-owned television stations contained about 1-2 minutes more total news coverage overall, or 4%-7% more than the average for non-cross owned stations. *Milyo Cross-Ownership Study* at 18. Cross-owned television stations also aired about 80-100 seconds of increased *local* news content (including sports and weather), or about 6%-8% more compared to the average for non-cross-owned stations. *Id*. at 19. With regard to political news coverage specifically, the Milyo study found that cross-owned stations offered about 30% more coverage of state and local candidates and devoted about 40% more time to candidates speaking for themselves. *Id*. at 20.

[9] Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News* (June 13, 2007) ("*Milyo Cross-Ownership Study*").

Another study conducted for the Commission confirms Dr. Milyo's findings about the positive connection between newspaper/television cross-ownership and news programming. Dr. Gregory Crawford of the University of Arizona examined the relationship between television station ownership structure and the quantity and quality of seven types of television programming.[10] Utilizing programming information about every broadcast television station for each of two weeks per year (in May and November) for four years (from 2003-2006), Dr. Crawford related measures of the amounts and popularity of these various programming types to the ownership structure of the television stations. Interestingly, this study found that the effects of ownership structure on a number of programming types and on outcomes in the advertising market were "either economically insignificant, statistically insignificant, or differ in their predicted effects according to the method of analysis." *Crawford Television Programming Study* at 26. Despite this lack of effect of ownership structure on programming in many instances, this study did find that "[t]elevision stations owned by a parent that also owns a newspaper in the area offer (3.0 percentage points) more local news programming." *Id*. at 23. Indeed, this was the "strongest finding[]" in the study. *Id*. at 26. Taken together, the Milyo and Crawford studies establish that allowing joint ownership of newspapers and television stations serves the interests of local viewers.

Moreover, these independent studies are entirely consistent with cross-ownership studies conducted by the Commission itself in 2002 and 2007. In 2002, the Commission found that network affiliated television stations co-owned with newspapers received higher ratings for their

[10] These types of programming include: (1) local news and public affairs; (2) minority; (3) children's; (4) family; (5) indecent/adult; (6) violent; (7) and religious. Gregory Crawford, *Television Station Ownership and the Quantity and Quality of TV Programming* (July 23, 2007) ("*Crawford Television Programming Study*").

local news programs, aired more hours of local news, and received a higher number of awards for local news than other network affiliates.[11] The Commission's most recent study also found that television stations provided 18 minutes per day, or 11% more, news programming generally if they were cross-owned with a newspaper.[12] And, as previously pointed out by NAB, a number of studies over the past several decades have consistently shown that television stations commonly owned with newspapers offered more and higher quality news programming and more local programming generally than other stations.[13] Thus, evidence spanning decades clearly supported repeal of the ban on newspaper/television cross-ownership.[14]

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[11] Federal Communications Commission, Thomas Spavins, Loretta Denison, Scott Roberts and Jane Frenette, *The Measurement of Local Television News and Public Affairs Programs* (2002).

[12] Federal Communications Commission, Daniel Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* (July 24, 2007) ("*Shiman Ownership Structure Study*").

[13] *See* NAB, Reply Comments in MB Docket No. 06-121 at 82-84 (filed Jan. 16, 2007) (describing multiple studies since 1973) ("NAB Reply Comments").

[14] One study by Michael Yan conversely purported to find that the cross-ownership of television stations by newspapers had no meaningful impact on the quantity of news provided by the stations. Michael Yan, *Newspaper/Television Cross-Ownership and Local News and Public Affairs Programming on Television Stations: An Empirical Analysis* (Oct. 17, 2006) (submitted as Comments of the Donald McGannon Communication Research Center in this proceeding). This study, however, was criticized on a number of grounds by commenters in this proceeding. *See, e.g.*, NAB Reply Comments at 85-87 (explaining that Yan's methodology improperly minimized effects of cross-ownership by "masking" its impact into other factors.) Dr. Milyo also found that the Yan study fell "short in its statistical methods," as it made "nonsensical modeling assumptions" and failed "to control for market fixed effects." *Milyo Cross-Ownership Study* at 3. In any event, as the FCC has recognized, the Yan study actually found that cross-owned television stations were more likely to provide "some local news" than non-cross-owned stations and, thus, "his results showed that cross-owned stations provided more news compared to all other stations." *Shiman Ownership Structure Study* at I-28. Thus, the Yan study provides no support for those wanting to retain the outmoded ban on newspaper/television cross-ownership.

The Commission's recent studies similarly show that newspaper/radio cross-ownership promotes the provision of news programming. The cross-ownership of a radio station with a newspaper in the same market significantly increases the likelihood that a radio station will be a news station. In fact, 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.[15] Another Commission study found that radio stations cross-owned with newspapers were significantly more likely to air news and aired significantly more public affairs programming.[16]

In sum, it is clear that newspaper/broadcast cross-ownership benefits local viewers and listeners by promoting the provision of news programming generally and local news specifically. Multiple recent studies moreover demonstrate that such common ownership does not present diversity concerns. Specifically, the available empirical evidence shows that ownership does not determine the viewpoint or political "slant" of media outlets and that commonly-owned outlets can and do offer diverse viewpoints. The *Milyo Cross-Ownership Study* specifically examined the partisan slant of television news coverage, finding that there is no difference between newspaper cross-owned stations and other major network-affiliated stations in the same market.[17] Dr. Milyo further examined whether the editorial slant of the cross-owned newspaper influenced local television news coverage, and whether differences in campaign contributions tied to the

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[15] Federal Communications Commission, Craig Stroup, *Factors that Affect a Radio Station's Propensity to Adopt a News Format* at III-14-15 (2007) ("*Stroup News Radio Study*").

[16] Federal Communications Commission, Kenneth Lynch, *Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay* at II-18, II-23 (July 30, 2007) ("*Lynch Radio Airplay Study*") However, given the small number of radio/newspaper combinations, the author cautioned that this data was "essentially anecdotal." *Id*. at II-18.

[17] To reach this determination, Dr. Milyo examined differences in (i) speaking time allowed to candidates; (ii) candidate coverage; (iii) partisan issue coverage; and (iv) opinion polls favoring one party or the other. *See Milyo Cross-Ownership Study* at 21-22.

corporate ownership of each television station had any effect on partisan slant. Again, the results suggested "that cross-ownership is largely unrelated to partisan slant in local television news coverage." *Milyo Cross-Ownership Study* at 23. To the contrary, the Milyo study found that the partisan slant of local television news in each market is associated with average partisan voting preferences in the local market. *Id*. at 24.

Dr. Milyo's conclusions are consistent with other research in this area. A survey of news coverage of the 2000 presidential campaign by cross-owned newspaper/television combinations in ten different cities concluded that common ownership of these outlets did not result in a predictable pattern of news coverage and commentary about political events in the commonly-owned outlets.[18] In this proceeding, an examination of 2004 presidential endorsements similarly found no pattern among the endorsements made by commonly owned newspapers, with newspapers owned by the same company frequently endorsing different candidates.[19]

Other recent academic studies of the partisan slant of newspapers concluded that "ownership does not account for any of the variation in measured slant."[20] Instead, consistent with the *Milyo Cross-Ownership Study*, the *Gentzkow Media Slant Study* concluded that the political orientation of newspapers is driven more by the ideology of the targeted market than by

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[18] David Pritchard, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002).

[19] *See* Comments of Media General in MB Docket No. 06-121 at Appendix 6 (filed Oct. 23, 2006). *See also* Ronald Hicks and James Featherston, *Duplication of Newspaper Content in Contrasting Ownership Situations*, 55 Journalism Q. 549, 553 (1978) (study comparing the content of newspapers in contrasting ownership situations found that commonly-owned newspaper in the same market did not duplicate content, and concluded that the type of ownership made little difference and that it was possible "to have real competition in a local, jointly owned situation").

[20] Matthew Gentzkow & Jesse M. Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers* at 5 (Nat'l Bureau of Econ. Research, Working Paper No. 12707, 2006) ("*Gentzkow Media Slant Study*").

ownership. In fact, Dr. Gentzkow found that "newspapers' actual slant is close to the profit-maximizing level." *Gentzkow Media Slant Study* at 4, 43-44. Given that "market forces," rather than ownership, "determine the political slant of local news coverage," *Milyo Cross-Ownership Study* at 24, there should be no concern that the common ownership of newspaper and broadcast outlets will somehow decrease the diversity of viewpoints available in local markets.

In light of this overwhelming evidence that the prohibition on newspaper/broadcast cross-ownership harms localism and is not needed to promote diversity, the Commission must reaffirm its 2003 decision to eliminate the ban. This decision would also promote the Commission's competition goals by allowing entities producing local news to form more viable ownership structures. The past several months have seen numerous additional reports about the continued financial struggles of the newspaper industry.[21] These reports only reinforce extensive evidence presented by commenters in this proceeding about the competitive challenges facing newspapers in the Internet age,[22] and make clear the urgency with which the Commission should act to repeal a rule that harms the public interest and the financial vibrancy of local news outlets.[23]

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[21] *See, e.g.*, Seth Sutel, *Newspaper Ads Fall 8.6 Percent in 2Q*, Yahoo! Finance (Aug. 31, 2007); Mark Fitzgerald, *Fitch: Newspaper Industry Doing Worse Than We Expected In '07*, Editor & Publisher (Aug. 29, 2007); Rueters, *June Newspaper Help—Wanted Ads Dip to 49-Yr Low*, nytimes.com (July 26, 2007); Emily Steel, *Newspapers' Ad Sales Show Accelerating Drop*, Wall Street Journal at A4 (July 18, 2007); Richard Perez-Pena, *Newspaper Circulation in Steep Slide Across Nation*, nytimes.com (May 1, 2007); Frank Ahrens, *Newspaper Report Drop in Ad Revenue*, Washington Post at D03 (April 20, 2007); Robert MacMillan, *Classified Ad Decline Weighs on U.S. Newspapers*, reuters.com (April 19, 2007); Katharine Q. Seelye, *Drop in Ad Revenue Raises Tough Question for Newspapers*, nytimes.com (March 26, 2007).

[22] *See, e.g.*, NAB, Comments in MB Docket No. 06-121 at 116-17 (filed Oct. 23, 2006) ("NAB Comments"); NAB Reply Comments at 89-90; Comments of the Newspaper Association of America in MB Docket No. 06-121 at 41-45 (filed Oct. 23, 2006).

[23] One of the Commission's newspaper-related studies would appear to have no bearing on any decision about the newspaper cross-ownership rule. This study examining a sample of newspapers in the 60 largest DMAs found that newspapers co-owned with other newspapers

2. Empirical Studies Also Show that Radio/Television Cross-Ownership Benefits Local Listeners and Viewers.

Similarly, several of the Commission's recent studies demonstrate the localism benefits of the cross-ownership of radio and television stations. One study found that, 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 three minutes more per day (a 15% increase) in public affairs programming on television stations. *Shiman Ownership Structure Study* at I-24.[24] 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,[25] and (2) increased the quantity of news programming

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within the same Metropolitan Statistical Area were associated with a 5% drop in the absolute amount of news, but found that co-owned newspapers outside the market had no effect on news operations. Federal Communications Commission, Pedro Almoguera, *The Effect of Ownership and Market Structure on News Operations* (2007). These findings have little practical relevance for the Commission, as the agency's ownership rules do not, and cannot, reach the merger of newspapers alone. In any event, other studies have found that concentration in the newspaper industry increases diversity. One survey of 207 newspapers markets between 1993 and 1999 found that a "decrease in the number of owners in a market lead[] to an increase in separation between" the newspaper products and that "the number of topical reporting beats covered per market also increase[d] with ownership concentration." Accordingly, this study concluded that "concentration appears to increase total content variety," providing "evidence that newspaper consolidation can benefit readers." Lisa 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 2-3, 28 (2001).

[24] With regard to news programming specifically, the *Shiman Ownership Structure Study* found, in one model, that there was a statistically significant and positive relationship between cross-ownership with radio stations and the amount of news provided by television stations. *See id*. at I-22. This finding with regard to news, however, may be less robust because, in another model controlling for network affiliation, cross-ownership with radio stations had no significant impact on the news amounts provided by television stations. *See id*. at I-21.

[25] *Stroup News Radio Study* at III-15 (radio stations cross-owned with television stations were about "twice as likely to be news stations than non-cross-owned stations").

on the commonly-owned radio station.[26] 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. *See* NAB Comments at 120-124.

B. Studies Consistently Demonstrate that Permitting Television Duopolies Promotes the Pubic Interest.

As adopted in 1999, the television duopoly rule allows an entity to own two television stations in the same DMA only if at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned and operating commercial and noncommercial full power television stations would remain in the DMA after the combination (the "top four/eight voices" test). In 2002, the U.S. Court of Appeals for the District of Columbia Circuit found this duopoly restriction to be arbitrary and capricious because the Commission had failed to justify its exclusion of nonbroadcast media, including cable television, from the rule's eight voice threshold. *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 165, 169 (D.C. Cir. 2002).

In its subsequent review, the Commission concluded that the top four/eight voices standard did "not promote, and may even hinder, program diversity and localism," but retained a revised duopoly restriction to "promote competition." *2002 Biennial Review Order,* 18 FCC Rcd at 13668. On review, the Third Circuit agreed with the Commission that media other than broadcast television contributed to viewpoint diversity in local markets, and agreed that common ownership of television stations "can improve local programming." *Prometheus,* 373 F.3d at 414-15. However, the Court remanded the numerical limits in the revised duopoly rule for

[26] *Lynch Radio Airplay Study* at II-19 (cross-ownership increased expected quantity of news programming by almost two minutes or 38% in a two-hour period).

further consideration; as a result, the top four/eight voices duopoly standard remains in force even thought the D.C. Circuit found that rule arbitrary and capricious over five years ago.

The Commission's duopoly study conducted in this proceeding only reconfirms its earlier conclusions that localism and diversity benefits flow from the common ownership of television stations in local markets. Specifically, the Commission's examination of the impact of ownership structure on televisions stations' informational programming concluded that the co-ownership of television stations in the same market "has a large, positive, statistically significant impact on the quantity of news programming." *Shiman Ownership Structure Study* at I-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*.[27]

The Commission's recent study only adds to the weight of empirical evidence demonstrating the benefits to be gained from allowing common ownership of television stations in local markets. As the Commission recognizes, the "presence of co-owned stations in the same market" should "increase specialization of the programming of these stations," leading to greater program diversity. *Shiman Ownership Structure Study* at I-11.[28] This observation has been confirmed by two earlier studies demonstrating that the acquired stations in duopolies experience

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[27] *See also* Bruce Owen, Kent Mikkelsen, Rika Mortimer, and Michael 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 Telemundo Communications Group, Inc., and Viacom in MB Docket No. 02-277 (filed Jan. 2, 2003) (finding that television stations part of a local duopoly or local marketing agreement are "significantly more likely to carry local news than other stations").

[28] *See also* Joint Declaration of Luke Froeb, Padmanabhan Srinagesh and Michael Williams at 1 attached to Comments of Hearst-Argyle Television, Inc. in MB Docket No. 06-121 (filed 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.").

increases in their local audience share and revenue share following their acquisition.[29] As this evidence makes clear, the formation of a duopoly allows the acquired station to offer programming more attractive to viewers and to improve its financial performance.

The fact that the formation of duopolies enables stations to improve their financial position is particularly significant because only financially viable stations can sustain costly local services, including news and other local programming.[30] The Commission's examination of ownership structure found that the "financial strength of the parent" of a television station, "measured by its revenues, is associated with a larger news output." *Shiman Ownership Structure Study* at I-21. This empirical finding is consistent with previous research linking station profitability and the provision of news and other non-entertainment programming. For example, one recent independent study found that television stations 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.[31] *Accord Crawford Television Programming Study* at 23 (finding that "larger markets tend to devote a greater share of minutes to local news"). With regard to local public affairs programming specifically, the Napoli study expressly

[29] *See* NAB Comments at Attachment H, BIA Financial Network, *Economic Viability of Local Television Stations in Duopolies* (Oct. 23, 2006); Comments of Coalition Broadcasters, MB Docket No. 02-277 (filed Jan. 2, 2003), at Attachment A (BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?*).

[30] NAB has previously documented the substantial costs of local news programming, which stations must bear at a time of increasing financial pressures and the decline of network compensation payments. *See* NAB Comments at 89-98; NAB Reply Comments at 63-70.

[31] *See* 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 (2004) ("*Napoli Analysis of FCC Data*").

concluded that public affairs programming "is a function of station revenues." *Napoli Analysis of FCC Data, Conclusion Section*.[32]

In contrast to the positive effects that duopoly status and newspaper cross-ownership have on the provision of news programming on television stations, the Commission found that the effects of ownership structure on a number of other programming types or outcomes in the advertising market "are either economically insignificant, statistically insignificant, or differ in their predicted effects according to the method of analysis." *Crawford Television Programming Study* at 26. For instance, the Crawford study expressly found that the amount of violent programming "does not appear to be correlated in an economically and statistically significant way with ownership structure." *Id.*[33] NAB observes that these conclusions are hardly

[32] These recent findings by the FCC and other researchers only confirm earlier studies linking station profitability and the provision of news and other non-entertainment programming. *See, e.g.,* Raymond Carroll, *Market Size and TV News Values*, 66 Journalism Quarterly 49, 55-56 (1989); R.E. Park, Rand Corp., *Television Station Performance and Revenues*, P-4577 (Feb. 1971).

[33] NAB notes that the author experienced difficulty defining "violent" programming as well as other types of programming. Dr. Crawford observed that there were "many possible definitions of violent programming," and the definitions selected can be questioned. For example, several specific categories of programming from Tribune Media Services ("TMS") schedule data were allocated into a "violent" category; these categories included "horror" and "terror" but also "pro wrestling." *Crawford Television Programming Study* at 14. The Crawford study also defined violent programming as any program with certain television content ratings. The peer reviewer of this study noted that "the threshold" definition of violence based on ratings was "set rather low, at TV-PG-V," a "category that includes many nature and anthropological programs." Letter from Lisa M. George, Assistant Professor of Economics, City University of New York to Michelle Connolly, Chief Economist, FCC at 2, 5 (Aug. 30, 2007). Given this "low" threshold definition of violence, the Crawford study likely overstated the amount of violent programming on television. Indecent programming was defined as "adult" programming, which included programming with television content ratings of TV-MA-S or TV-MA-L, movies with a rating of NC-17, and all programming on certain cable networks showing programming with strong sexual content. These definitions are not consistent with the FCC's own definition of indecency, and Dr. Crawford observed that "others may have other definitions." *Crawford Television Programming Study* at 13. NAB notes that the Crawford study, when presenting its analysis of

surprising. Given "recent research suggest[ing] that media content is driven much more by demand considerations (i.e. consumer preferences) than supply factors (i.e. owner preferences),"[34] it would in fact be surprising if ownership structures – especially *local* structures – had significant impact on a broad range of television programming content, which of course includes national network programming.[35]

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the effects of ownership structure on various types of programming, apparently makes no reference to indecent/adult programming. *See id*. at 23-25; Tables 17-26.

[34] Arie Beresteanu and Paul B. Ellickson, *Minority and Female Ownership in Media Enterprises* at 13 (June 2007).

[35] NAB notes that the Crawford study focuses only on programming aired between 6:00 pm and 12:00 am Eastern Time, which includes prime time. As a result, this study likely understates the diversity of programming offered by local stations throughout the day. This study also likely understates the effects of local "demand considerations" on certain types of programming content by failing to consider local demographic information. For example, the study does not take into account the percentage of minority populations in local television markets, even though it attempts to judge the effect of ownership structure on minority programming. It seems probable that television stations would adjust their programming to respond to local market conditions, including offering more minority-oriented programming, such as Spanish or other foreign language, in markets with large minority populations. As a result, the Crawford study may shed relatively little light on the factors that actually drive the offering of certain types of programming, including minority-oriented. More seriously, the definition of minority programming utilized in the study clearly resulted in an undercount of the amount of programming, especially broadcast programming, serving minority audiences. Programming with a "Spanish" or "Pelicula" program type/category on schedule data from TMS was defined as targeting Latino/Spanish-speaking audiences. In addition, *cable* networks targeting minority audiences (such as Black Entertainment Television) were included as minority programming. The study noted that this definition was "unfortunately crude" as "programming offered on other (including broadcast) networks clearly targets minority audiences." *Crawford Television Programming Study* at 13. Apparently, broadcast programming featuring performers representing different minority populations and targeted or appealing to minority audiences, including major network programs such as *Ugly Betty* or *The George Lopez Show,* was simply not counted under this study's definition. NAB also questions the conclusion that because certain types of programming, including minority and children's, receive lower ratings, then that programming is assumed to be lower quality. *See Crawford Television Programming Study* at 2, 26. While NAB does not dispute that there is some connection between program ratings and quality, with higher quality programming generally receiving higher ratings, programs that appeal to broader demographic groups also generally receive higher ratings than programs that primarily appeal to narrow demographic groups, such as minority groups or children. Thus, the

In light of these numerous studies by the Commission and other researchers showing the public interest benefits derived from common ownership of television stations in local markets, continuing to retain the top four/eight voices duopoly restriction – which a federal appeals court found arbitrary and capricious five years ago – cannot be justified. The current rule prevents the formation of even a single duopoly in many mid-sized and smaller markets, where the need for television stations to form more competitively viable ownership structures is the most acute. As the Commission previously recognized, "the ability of local stations to compete successfully" in the video marketplace has been "meaningfully (and negatively) affected in mid-sized and smaller markets," in large part because "small market stations are competing for disproportionately smaller revenues than stations in large markets." *2002 Biennial Review Order*, 18 FCC Rcd at 13698. *Accord Crawford Television Programming Study* at 25 (finding that larger markets "have statistically and economically significantly higher advertising prices"). Commenters in this proceeding have submitted further information demonstrating "the different economics of station ownership depending on market size." *2002 Biennial Review Order*, 18 FCC Rcd at 13698.[36] Given both the need for stations, particularly in smaller markets, to form more financially

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lower ratings earned by minority- and child-targeted programming likely stem in large part from the more narrow demographic appeal of such programming, not merely from the quality of that programming,

[36] *See, e.g.*, NAB Comments at Attachment F, *Local Television Market Revenue Statistics*; NAB, *Ex Parte* in MB Docket No. 06-121 (filed Sept. 25, 2007) at Attachments E & F, *Annual Television Financial Surveys* and Attachment B, *The Declining Financial Position of Television Stations in Medium and Small Markets* (Sept. 2007); Comments of Gray Television, Inc. in MB Docket No. 06-121 at 12-15 (filed Oct. 23, 2006); Comments of Smaller Market Television Stations in MB Docket No. 06-121 (filed Oct. 23, 2006); Comments of Gannett Co., Inc. in MB Docket No. 06-121 at 39-45 (filed Oct. 23, 2006); Comments of Granite Broadcasting Corp. in MB Docket No. 06-121 (filed Oct. 23, 2006); Comments of Hoak Media LLC in MB Docket No. 06-121 (filed Oct. 23, 2006); Comments of Nexstar Broadcasting, Inc. in MB Docket No. 06-121 (filed Oct. 23, 2006).

sustainable ownership structures and the demonstrated positive effects of common ownership on "program diversity and localism," *id*. at 13668, reform of the television duopoly rule would clearly benefit the public interest.

C. Empirical Studies Show No Basis for Stricter Limits on Local Radio Ownership But in Fact Support Continued Relaxation of These Limitations.

The ownership changes that have occurred in the radio industry since 1996 have enabled the industry to regain economic viability, as Congress intended when it passed the 1996 Telecommunications Act. In the early 1990s, more than half of all commercial radio stations were losing money; hundreds of stations had ceased broadcasting, and the outlook for small stations was "particularly bleak."[37] In fact, the Commission concluded in 1992 that economic stress "substantially threatened" the industry's ability to serve the public interest, and determined that relaxing the then very strict radio ownership restrictions would help improve radio stations' "competitive standing" and "ability to function in the public interest." *1992 Radio Ownership Order*, 7 FCC Rcd at 2760-61.

In 1996, Congress appropriately reformed the limits on local radio ownership so as "to preserve and to promote the competitiveness of over-the-air broadcast stations."[38] Section 202(b)(1) of the 1996 Act established the number of radio stations that could be commonly owned in local markets of varying size. As Congress intended, and as the Commission has recognized, the changes in ownership structures made possible by the 1996 Act have "enable[d]

[37] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992), *recon. granted in part, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd 6387 (1992) ("*1992 Radio Ownership Order*").

[38] H.R. Rep. No. 204, 104th Cong., 2d Sess. at 48 (1995). 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." *Id*. at 54-55.

radio owners to achieve significant efficiencies" and have "brought financial stability" to the "radio industry." *2002 Biennial Review Order*, 18 FCC Rcd at 13733.

Given empirical findings in studies conducted by and for the Commission in this proceeding that common ownership of radio stations promotes programming diversity and does not harm competition, the Commission must consider continued relaxation of the restrictions set by Congress more than a decade ago in a less competitive and diverse marketplace. In any event, the Commission must conclude that these studies -- consistent with a number of previous studies -- certainly provide no basis for the calls by some to cut back on the levels of local radio ownership expressly approved by Congress in 1996.

For example, the *Stroup News Radio Study* 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%." *Id*. at III-16. The *Lynch Radio Airplay Study* concluded that radio stations "owned by parents having more pervasive radio operations are more likely to air informational programming." *Id.* at II-1. 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." *Id.* at II-22. Specifically, "an additional in-market station owned by the parent increased the quantity of public affairs programming" by "about 10%." *Id*. at II-23.[39]

A remarkably detailed and thorough paper on radio programming conducted for the Commission by Tasneem Chipty of CRA International, Inc. further demonstrates that common

[39] The relationship between the pervasiveness of radio operations and the provision of news programming appears more complex, however. Neither the number of in-market and out-of-market stations owned by the parent had a significant effect on the count of news intervals among stations that might air news. But the ownership of additional in-market stations had a significant positive effect on the probability of airing news. *See Lynch Radio Airplay Study* at II-17.

ownership of radio stations enhances programming diversity and thus benefits listeners in local markets.[40] This study evaluated the effects of ownership structure on programming, advertising prices and listenership for terrestrial radio, and its results are "consistent with the previous literature that finds more concentrated markets are associated with more, not less, program variety." *Chipty Radio Programming Study* at 45. Utilizing a combination of analyses, this study found that "consolidation of radio ownership does not diminish the diversity of local format offerings." Indeed, "[i]if 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." *Id.* at 44.[41] In addition, the Chipty study concluded there were "no significant differences in the effects of consolidation in radio across big and small markets." *Id*. Clearly, these results do not support claims that increases in common ownership have had deleterious effects on programming content.

Notably, the Chipty study reaches these conclusions about programming despite significantly *understating* the level of diversity and competition in local radio markets. The "analysis of the effects of consolidation focuses on in-market, commercial stations only." *Id*. at 16. Because a number of out-of-market stations compete with in-market stations for listenership, the author of this study recognized that such focus "will overstate concentration and understate

[40] Tasneem Chipty, CRA International, Inc., *Station Ownership and Programming in Radio* (June 24, 2007) ("*Chipty Radio Programming Study*").

[41] Beyond examining format offerings, this study also surveyed the effects of ownership structure on other measures of programming content, such as the amounts of local, network/syndicated, live, advertising, talk, music and news. Generally, ownership structure did "not have much of an effect, either statistically or in terms of practical magnitude, on programming content," with one exception (owners with several local stations offered longer, uninterrupted blocks of sports programming in the evening, with corresponding reductions in other types of programming). *Chipty Radio Programming Study* at 44.

the number of stations and owners offering radio programming to listeners in local markets." *Id*. Indeed, NAB has shown that, on average, just over two-thirds (67.2%) of the listening within a market is attributable to commercial radio stations listed by Arbitron as being "home" to that market, and the levels of in-market listening have declined by 4.5-5.0% since the late 1990s. Moreover, the level of listening to in-market radio stations decreases with market size, so that, in markets 101+, "home" market stations receive only 64.3% of the listening. In other words, over one-third of the listening in smaller Arbitron markets is attributable to out-of-market sources – sources which are not taken into account by the *Chipty Radio Programming Study*.[42] The focus on commercial stations only further understates the competition and diversity available in local radio markets. Many radio markets have multiple noncommercial stations, which often are highly rated. These non-commercial stations clearly compete with commercial radio stations for listeners and add diversity to the news and informational and entertainment offerings available in local radio markets.[43]

The Chipty study's conclusions connecting common ownership with greater diversity are consistent with previous studies showing that common ownership of radio stations in local markets leads to greater programming diversity. An independent 1999 study concluded that, "[b]etween 1993 and 1997 ownership concentration and the programming variety available in local radio markets both increased substantially," consequently "suggest[ing] that the increased

[42] *See* NAB Comments at 10-11 (discussing Attachment C, BIA Financial Network, *A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance* at 5-7 (Oct. 23, 2006)).

[43] According to the FCC, there were 2873 noncommercial educational FM stations licensed as of September 30, 2007. *See* FCC News Release, *Broadcast Station Totals as of September 30, 2007* (Oct. 18, 2007).

concentration has been good for listeners."[44] This study also found that "increased concentration *caused* an increase in available programming variety." Berry and Waldfogel, *Mergers* at 25 (emphasis added). A number of other empirical studies similarly concluded that the post-1996 ownership changes in the radio industry have resulted in the offering of more varied and more targeted programming to diverse audiences.[45] The new *Chipty Radio Programming Study* thus reconfirms that common ownership promotes the Commission's diversity goals.

The Commission's recent review of the radio industry examined the number of radio formats available in Arbitron metro markets from 1996-2007.[46] This review found that, while the average number of formats nationwide has held steady, the number of formats has apparently declined slightly in some of the larger markets while increasing in most of the smaller ones. *FCC Radio Industry Review* at 8. This finding for the largest markets likely resulted from the study's use of BIA's limited number of general format categories, which the author recognized "may not be the best proxy for capturing the diversity of programming." *Id.* at 8-9. For

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[44] Steven Berry and Joel Waldfogel, *Mergers, Station Entry, and Programming Variety in Radio Broadcasting*, National Bureau of Economic Research, Working Paper 7080 at 25-26 (April 1999). *Accord* Steven Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting*, 116 Q. J. Econ. 1009 (Aug. 2001).

[45] *See, e.g.*, Comments of NAB in MM Docket No. 99-25, Attachment B, *Format Availability After Consolidation* (filed Aug. 2, 1999); Statement of Professor Jerry A. Hausman at 2-3, 11-14, Exhibit 3 to Comments of Clear Channel Communications, Inc., in MM Docket Nos. 01-317 and 00-244 (filed March 27, 2002); BIA Financial Network, *Has Format Diversity Continued to Increase?*, Attachment A to NAB Comments in MM Docket Nos. 01-317 and 00-244 (filed March 27, 2002); Bear Stearns Equity Research, *Format Diversity: More from Less?* (Nov. 2002); NAB Comments at Attachment G, BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences* at 5, 7 (Oct. 23, 2006); Statement of Professor Jerry A. Hausman at 2-4, 10, Exhibit 2 to Comments of Clear Channel Communications, Inc. in MB Docket No. 06-121 (filed Oct. 23, 2006).

[46] Federal Communications Commission, George Williams, *Review of the Radio Industry, 2007* ("*FCC Radio Industry Review*").

example, utilizing BIA's set of 19 general format categories, all Spanish language programming formats, which range from news/talk to diverse types of music such as Tejano, Tropical and Ranchero, are all treated as a single general format. Similarly, the Urban general format includes a broad range of programming, from Urban/Talk to Urban/Jazz, Rhythm and Blues, and Urban/Gospel. Examining the specific formats of radio stations therefore better reflects the true diversity of programming available to listeners.[47] A 2006 study by BIA Financial Network found that, since 1996, the number of general and specific types of programming offered by stations in the average Arbitron market has increased by 16% and 36.4%, respectively.[48] Beyond examining general or specific programming formats, the FCC's previous study on playlist diversity additionally "suggest[ed] that diversity has grown significantly among stations *within* the same format and within the same city," and stated that stations with the *same* "formats competing within the same market appear to differentiate themselves to appeal to their listeners"; thus, "listeners in local radio markets may have experienced increasing song diversity" since 1996.[49] Clearly, the owners of local radio groups make every effort to differentiate themselves in the marketplace, thereby resulting in increasing diversity for listeners.[50]

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[47] Specific formats are those actually used by stations in characterizing their formats. These specific formats reflect how stations classify and distinguish themselves from other stations in their local marketplaces.

[48] NAB Comments at Attachment G, BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences* at 5, 7 (Oct. 23, 2006). Given the growth of specific formats, the diversity of programming available in local markets today is truly impressive. For example, on average in the ten largest Arbitron markets, radio stations air 45.4 specific programming formats per market. *Id*. at 7.

[49] Federal Communications Commission, George Williams, Keith Brown and Peter Alexander, *Radio Market Structure and Music Diversity* at 16, 18 (Sept. 2002).

[50] An empirical study by Department of Justice economists concluded that format changes often effectively improve radio station performance, with major format changes able to "yield

Claims that commonly-owned radio stations are somehow less likely to serve their listening audiences are also refuted by the analysis of listenership in the *Chipty Radio Programming Study*. Based upon both market level and station level analyses, this study concluded that "consolidation in local radio has no statistically significant effect on average listening." *Id*. at 42. In fact, listeners "served by large radio groups, as measured by the number of commercial stations owned nationally by in-market owners, listen more." *Id*. Moreover, "stations operating in markets with other commonly owned stations achieve higher ratings" than "independent stations." *Id*. at 43.[51] Assertions by supporters of increased regulation that common ownership in local radio markets results in inferior programming (and thus lower listening) are not supported by this study.[52]

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substantial listening share gains" and minor format changes used as tools for "differentiating a station's offerings in a crowded market space." Charles Romeo and Andrew Dick, *The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes*, 27 Rev. Ind. Org. 351, 357 (2005).

[51] Cross-ownership with local newspapers was found to have a statistically significant positive effect on listenership as well. *Chipty Radio Programming Study* at 43.

[52] Although common ownership of radio stations has not caused declines in listenership, it seems clear that competition from other sources has resulted in audience fragmentation and decreases in audience share for local terrestrial radio stations. *See FCC Radio Industry Review* at 5, 14-15 (reporting a 6.6% drop in the average number of radio listeners per quarter hour from 1998-2006, with a "substantial dip" during 2005, even though most consolidation took place between 1996-2000 and there has been little increase in consolidation since 2002). The fact that listening levels have declined to the greatest extent among younger listeners – those who use the Internet more and are more likely to have iPods or other MP3 players -- further indicates that competitive factors, and not the joint ownership of stations, has caused the recent declines in radio listenership. *See* NAB Comments at 74; Bear, Stearns & Co. Inc., *Radio 2007: The Year of No Excuses?* at 8 (Jan. 5, 2007). The financial market performance of the radio industry also demonstrates that the industry faces significant competition, rather than enjoying a position of market dominance. *See, e.g., FCC Radio Industry Review* at 13-14 (discussing that the market value of radio companies relative to book value has declined relative to the S&P 500 and that radio companies seem to have underperformed the S&P 500 since 2004).

Beyond confirming that common ownership promotes increased programming diversity that benefits radio listeners, the *Chipty Radio Programming Study* shows that common ownership of radio stations has not harmed competition in advertising markets. Specifically, this study concluded that "consolidation in local radio has no statistically significant effect on advertising prices." *Id*. at 40. National ownership in fact has a "statistically significant, negative effect on advertising prices." *Id*. at 41. The study found no differential effects of local radio consolidation of ownership across big and small markets. *Id*. NAB notes that the results of this study are consistent with several previous studies of the radio industry.[53] Thus, the Commission cannot decline to relax the restrictions set in 1996 on local radio ownership due to concerns that common ownership of radio stations has led to competitive harms in the advertising marketplace. To the contrary, the diversity benefits stemming from common ownership compels the Commission to consider continuing the relaxation of these limits.

D. Empirical Studies Do Not Show that Small Locally Owned Station Groups Generally Provide Superior Service Compared to Larger Non-Local Groups

NAB also notes that the studies conducted by and for the Commission do not support the claims made by some opponents of ownership reform that small locally-owned stations or groups provide consistently superior service to their viewers and listeners as compared to larger and/or non-local groups. For example, the *Milyo Cross-Ownership Study* found that parent companies of television stations with "greater household coverage also provide significantly more state and

[53] For example, a recent academic study concluded that ownership changes after 1996 have not caused increases in advertising pricing. *See* Joel Waldfogel & Julie 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) (while observing increases in radio ad prices, the study could attribute *no* portion of the change in prices to increased concentration). *See also* NAB Comments at 74-76 (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).

local political news." *Id*. at 19. One of the Commission's own studies concluded that local ownership of television stations was associated with six minutes *less* news programming per day (a 4% decrease). *Shiman Ownership Structure Study* at I-21.[54] Clearly, the relationship between ownership and programming outcomes is more complex than some vocal proponents of "localism" would admit.[55]

In any event, concerns expressed about the disappearance of small and/or locally-based owners are overstated. According to the Commission, the number of locally owned television stations increased approximately 3% from 2002-2005.[56] In 2005, 6,498 radio stations (out of 13,590) were locally owned. *FCC Media Robustness Study* at 11. As of 2006, nearly 37% of all radio stations in Arbitron markets were either standalone (*i.e.*, the only station owned within its

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[54] *See also* Project for Excellence in Journalism, *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality* 1, 4 (April 29, 2003) (finding that locally-owned television stations were "below average when it comes to overall quality" and local ownership was found to offer "little protection against newscasts being very poor"). The *Crawford Television Programming Study* (at 23) found that locally owned stations did air more public affairs programming, although it also found, consistent with other studies, that locally owned stations offered less local news, at least under some models. *Id*.

[55] *See, e.g.*, *Stroup News Radio Study* at III-17 (finding that radio stations with owners in the same DMA were "no more likely to be news stations than others," but radio stations with owners in the same state appeared to be "significantly more likely to be news stations"). The Commission may not properly rely on a 2004 draft agency study purporting to show that locally-owned broadcast stations provide more local news. This draft study has been strongly criticized by a number of commenters because it, *inter alia*, defined localism arbitrarily and used biased measures of localism. *See, e.g.*, Letter from Jim Tozzi, Center for Regulatory Effectiveness to FCC, MB Docket No. 06-121 (May 3, 2007).

[56] Federal Communications Commission, Kiran Duwadi, Scott Roberts and Andrew Wise, *Ownership Structure and Robustness of Media* at 5, 11 (2007) ("*FCC Media Robustness Study*") (reporting 439 locally owned television stations in 2005).

market by its station owner) or part of a duopoly (*i.e.*, part of a two-station group within that local market).[57]

NAB continues to believe that localism is best sustained by permitting broadcasters to compete effectively in the digital multichannel marketplace. The real threat today to locally-oriented services, including costly services such as local news, is not the joint ownership of broadcast stations, but the stations' inability to maintain their economic vibrancy in the face of multichannel and other competitors that are not constrained by restrictions on local ownership structure. Only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively and provide a significant local presence.

Given that healthy advertising revenues are vital for maintaining free over-the-air broadcast programming, NAB takes issue with the assumption that any increase in advertising time means that program quality has fallen. *See Crawford Television Programming Study* at 18. Indeed, as the peer reviewer of the Crawford study points out, higher quality television programs (like higher quality products generally) cost more than lower quality products, which would logically lead to a higher number of commercials to pay for that higher quality programming.[58] Dr. George goes so far as to state that "the assumption that advertising is inversely related to quality cannot be justified in light of existing economic theory." *George Peer Review* at 3.

Assertions that only small locally-owned broadcast stations are capable of providing quality programming and other services to viewers and listeners are not, as shown above,

[57] NAB Comments at Attachment B, *Independent Radio Voices in Radio Markets* (Aug. 2006).

[58] *See* Letter from Lisa M. George, Assistant Professor of Economics, The City University of New York to Michelle Connolly, Chief Economist, FCC at 3 (Aug. 30, 2007) ("*George Peer Review*").

supported by empirical evidence.[59] Rather than locally-based ownership, the broadcast "industry's ability to function in the 'public interest, convenience and necessity'" is in fact "premised on its economic viability." *1992 Radio Ownership Order*, 7 FCC Rcd at 2760. As discussed above, the Commission's new studies and a number of earlier studies reconfirm the connection between financial standing and service to local communities in the form of news and informational programming. *See supra* Section I.B. Thus, empirical evidence, as well as common sense, suggest that financial and competitive vibrancy – rather than merely the location of a station's owner – are more significant in determining whether broadcast stations have the resources to provide high quality programming, including local programming, and other services such as emergency information, support for local organizations and causes, and public service announcements on important local and national issues. *See* NAB Comments at 57-71.

II. The Commission's Studies Confirm Continued Growth in Competitive Media Outlets, Providers and Services

As NAB and other commenters have already demonstrated, the local broadcast ownership rules were originally adopted in a very different media environment. Technological developments, the growth of multichannel video and audio outlets and the Internet, and an expansion in the number of broadcast outlets in the past several decades have altered the media marketplace in two fundamental ways. First, consumers nationally and in local markets of all sizes now have access to a wide array of information and entertainment from broadcast and nonbroadcast outlets. Second, due to this explosion of outlets, traditional broadcasters are

[59] *See also Bechtel v. FCC*, 10 F.3d 875, 879-80 (D.C. Cir. 1993) (court invalidated FCC's licensing policy favoring owners that participated in station management/operations, despite FCC's assertion that these "integrated" owners were more likely to respond to community needs and were better able than absentee owners to gather information about satisfying community needs, because Commission had no evidence showing that its policy actually achieved these benefits).

struggling to maintain their audience and advertising shares in a vastly more competitive media marketplace. The more recent development of broadband and new video and audio Internet applications have exponentially increased the number of sources for information, opinion and entertainment, and have created new and growing competitors for the advertising support that is crucial to free over-the-air media. Several new studies conducted by the Commission and other parties reflect these changes in the media marketplace.

For example, despite the maturity of the broadcast industry, the *FCC Radio Industry Review* (at 5) reports a 6.8% increase in the number of commercial radio stations between March 1996 and March 2007 – and there was a higher percentage increase in the number of noncommercial radio stations. *See FCC Media Robustness Study* at 5, 7 (reporting a 15% increase in noncommercial radio stations and a 1.4% increase in the number of both commercial and noncommercial television stations just between 2002-2005). The longer 1986-2006 period saw an average increase of 39.0% and 42.3% in the number of full power television and radio stations, respectively, in 25 randomly selected DMAs of various sizes.[60] Multichannel outlets grew even more impressively during this period. On average across these 25 DMAs, multichannel video program service penetration increased more than 34 percentage points (52.0% to 86.5%) from 1986-2006. The average number of cable channels in use grew from 31.7 channels in 1986 to 283.3 channels in 2006, a percentage increase of 793% over twenty years. *BIA Media Availability Study* at 9, 11.

Despite exaggerated claims by some about the extent of common ownership, there also remain thousands of individual owners of broadcast stations nationwide and impressive numbers

[60] *See* NAB Comments at Attachment A, BIA Financial Network, *Media Outlets Availability by Markets* at 4, 6 (Oct. 23, 2006) ("*BIA Media Availability Study*").

of individual owners in local markets. Nationwide, there were, as of 2005, 4,412 unique radio station owners and 480 television station owners.[61] A 2006 survey of 25 DMAs showed that, on average, there were 8.8 different owners of the 11.7 full power television stations, and 37.6 different owners of the 73 radio stations, in these markets.[62] And although there was an (expected) increase in common ownership, especially of radio stations, following the 1996 Act, such an increase clearly has not lead to a dearth of separate owners or to a lack of competition within the broadcast industry. Indeed, the Commission in 2002 compared the availability and ownership of media (specifically, broadcast outlets, cable and DBS systems and daily newspapers) in ten Arbitron markets in 1960, 1980 and 2000. The Commission found that the number of media outlets increased almost 200% across all ten markets and the number of owners increased on average 140%, despite post-1996 growth in common ownership.[63] Given these large numbers of separate owners, it is hardly surprising that radio and television station

[61] *FCC Media Robustness Study* at 11. These figures do not even include the additional owners of thousands of low power television and low power FM stations.

[62] *BIA Media Availability Study* at 4, 6. Even in the smaller Arbitron markets, the number of different owners of just commercial radio stations range from "6.5 in the smallest Metro markets (ranks 101-299) to a high of 23.9 in the top 10 Metro markets." The average number of owners of commercial radio stations across all Metro markets was 9.4. *FCC Radio Industry Review* at 8.

[63] Federal Communications Commission, Scott Roberts, Jane Frenette and Dione Stearns, *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)* (Sept. 2002). And the FCC's more recent studies have found that broadcast ownership generally "remained relatively stable between 2002 and 2005," *FCC Media Robustness Study* at 10, and that radio consolidation specifically has increased little since 2002. *FCC Radio Industry Review* at 5, 7 (noting that "four-firm concentration radio shows no substantial changes between March 2002 and March 2007").

ownership is less concentrated than other media sectors[64] and less concentrated than other leading industries.[65]

Even beyond this robust competition among broadcasters, competition between broadcasters, multichannel video and audio programming providers, and a host of Internet-based media services has increased exponentially in recent years. Although the Commission found "no major changes in media ownership from 2002 to 2005," it noted continued growth in cable, DBS, Internet and broadband penetration. *FCC Media Robustness Study* at 10. In other words, there has been continued growth by the multichannel and Internet competitors to free over-the-air broadcasting.[66] NAB in particular wishes to note recent growth in Internet and broadband penetration and in video and audio Internet applications.[67]

According to the Pew Internet & American Life Project, as of early 2007, 71% of all adults used the Internet, with 47% of adults having a broadband connection at home.[68] Nielsen

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[64] See NAB Comments at Attachment E, *Percentage of Industry Revenues Earned by Top 10 Firms in the Sector* (Oct. 2006).

[65] *See, e.g.*, Adam Thierer, *Media Myths: Making Sense of the Debate Over Media Ownership* at 58 (2005) (noting that "entertainment and media are still fragmented compared with other industries").

[66] *See* Nielsen Media Research, Inc., *Federal Communications Commission Telephone Study May 7-27; May 29-31; June 1-3, 2007* at Tables 004, 005 ("*Nielsen Media Usage Survey*") (reporting that 89.5% of respondents subscribe to either cable or satellite television).

[67] The *FCC Media Robustness Study* (at 11) cites Internet and broadband penetration rates from 2005, which are now out-of-date.

[68] John Horrigan and Aaron Smith, Pew Internet & American Life Project, *Home Broadband Adoption 2007* at 1-2 (June 2007) ("*Pew 2007 Broadband Report*"). Internet usage appears higher when persons 12 and older are surveyed. *See, e.g.*, Bill Rose and Joe Lenski, *Internet and Multimedia 2006: On-Demand Media Explodes*, Arbitron/Edison Media Research at 10 (2006) (81% of Americans ages 12 and older are online). The gap in broadband adoption between white and African American consumers has also narrowed dramatically since 2005. *See Pew 2007 Broadband Report* at 4-5 (as of 2007, 40% of African-Americans have broadband at home, compared to 48% for whites).

Media's telephone survey, conducted for the Commission in May-June 2007, reported even higher levels of Internet access. Only 20.3% of respondents stated they had no access to the Internet, with 75.1% reporting home Internet access. *Nielsen Media Usage Survey* at Table 009. Of those respondents with home Internet access, 76.7% stated that had either broadband cable or DSL service. *Id*. at Table 010.

With regard to Internet usage, obtaining news and information (along with sending or reading e-mail) continues to be the most popular on-line activities. As of early 2007, 72% of all Internet users (and 79% of home broadband users) report that they "get news" online, with 37% of all Internet users (and 45% of home broadband users) reporting that they got news "yesterday" online. *Pew 2007 Broadband Report* at 11-12.

Thirty-one percent of all Americans (and 46% of Internet users) used the Internet during the 2006 campaign to obtain political news and information and discuss the races through e-mail.[69] Fifteen percent of all American adults reported that the Internet was the "primary source for campaign news" during the 2006 mid-term elections, up from only 7% in the 2002 mid-term elections. *Pew 2006 Election Report* at i. Broadband users under age 36 said that the Internet was a "more important political news source than newspapers." *Id*. at ii. Clearly, the number of Americans relying on most traditional media, such as newspapers, magazines and television, for political/election news has declined significantly since 1992.[70]

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[69] Lee Rainie and John Horrigan, Pew Internet & American Life Project, *Election 2006 Online* at ii (Jan. 17, 2007) ("*Pew 2006 Election Report*").

[70] In 1992, 82% of Americans reported relying on television, 57% on newspapers, 12% on radio and 11% on magazines for political news. In contrast, by 2006, 69% of Americans reported relying on television, only 34% on newspapers, 17% on radio and just 2% on magazines. *Pew 2006 Election Report* at i. Nielsen's recent survey on media usage conducted for the FCC

Online video, including news videos, now reach a mainstream audience, with 57% of online adults using the Internet to watch or download video and nearly one-fifth (19%) doing so on a "typical day."[71] More than three in four (76%) young adult Internet users (ages 18-29) report online consumption of video, with 31% watching or downloading some type of video on a typical day. News content is the most popular type of online video overall and with every age group, except for the youngest. Overall, 37% of adult Internet users report watching news videos. *Pew Online Video Report* at i-ii.

The Internet has clearly emerged as a major source of news, information and opinion for consumers, and as a major competitor of traditional electronic and print media for consumers' time and attention, as well as advertising dollars. In fact, respondents to the *Nielsen Media Usage Survey* report spending more time using the Internet than watching television per week. *See id*. at Tables 001, 011.[72] But as recognized by the studies in this proceeding, the Internet

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confirmed lower usage of newspapers than other media. *See Nielsen Media Usage Survey* at Tables 016, 022.

[71] Mary Madden, *Online Video*, Pew Internet & American Life Project at i (July 25, 2007) ("*Pew Online Video Report*").

[72] As discussed in detail in NAB's comments in this proceeding, studies have confirmed marketplace evidence that the Internet has had a significant displacement effect on broadcast television and newspapers for daily news specifically. *See* NAB Comments at 49-54. Unfortunately, the Commission did not undertake an updated study expressly focused on consumer substitution among various types of media. *See* Joel Waldfogel, *Consumer Substitution Among Media* (Sept. 2002) (study conducted for FCC in 2002 examined extent to which consumers found different types of media to be substitutable for news and entertainment purposes, and finding clear evidence of substitution between Internet and broadcast television especially, both overall and for news). But even if the Internet were merely regarded as a complement to traditional sources of news and information 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 MVPDs, diversity- and competition-related concerns raised by the common ownership of broadcast outlets must necessarily be lessened.

further enables "an ever increasing number of people and perspectives" to gain "an active voice, along with an extremely efficient means for connecting with an ever expanding audience."[73] With the "extremely low" entry costs for Internet media, "people who are interested in serving even the smallest segments of the population can gain easy access to a broad platform." *Beresteanu Minority Ownership Study* at 14. Thus, technology has not only provided individuals vastly increased sources of information and entertainment, but also "command over how he or she consumes information" as well as the ability to speak to whomever may choose to listen.[74]

NAB agrees with other commenters in this proceeding who have argued that local broadcasters remain important providers of news and content even in today's much more competitive and diverse media landscape.[75] Consumers continue to rely on broadcast stations for information and entertainment, even as they also increasingly utilize multichannel outlets and the Internet. The *Nielsen Media Usage Survey* shows that consumers use cable/satellite television channels and the Internet to obtain many types of information, including national and international news, weather, local news and current affairs, opinion and commentary, and sports. In fact, they regard these media as the leading sources for certain content, such as "breaking news" and "in-depth information" on specific news and current affairs topics. *See* Tables 007, 012, 031, 033.

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[73] Arie Beresteanu and Paul B. Ellickson, *Minority and Female Ownership in Media Enterprises* at 14 (June 2007) ("*Beresteanu Minority Ownership Study*").

[74] Project for Excellence in Journalism, *The State of the News Media 2007: An Annual Report on American Journalism, Overview* at 2-3 (2007) (concluding that, due to technological developments, the "press is no longer gatekeeper over what the public knows").

[75] *See Nielsen Media Usage Survey* at Tables 002, 026 (showing types of information respondents obtain from broadcast television and radio).

Thus, it is clear that consumers today use a variety of media to obtain news, information and opinion, as well as entertainment. Indeed, even several years ago, the Third Circuit agreed with the FCC that "cable and the Internet contribute to viewpoint diversity." *Prometheus*, 373 F.3d at 399-400. It would be arbitrary and capricious for the Commission to ignore the new and unprecedented opportunity for individual citizens and small groups, including minority and non-mainstream groups, to both obtain and to offer information and entertainment to the world at large via the Internet and other outlets, as the agency reevaluates the need for regulating ownership of broadcast outlets.

III. The Commission Should Address The Under-Representation Of Minorities And Women In The Broadcast Industry

As found by the *Beresteanu Minority Ownership Study* (at 2), minorities and women are underrepresented in almost all major industries in the economy, including the radio, television and newspaper industries, relative to their proportion of the U.S. population. And as the Commission has previously recognized, a primary cause of this under-representation is access to capital. *Id*. In a number of previous proceedings, NAB has agreed that the lack of access to capital inhibits small and minority- and female-owned businesses from entry into the broadcasting and other communications-related industries. NAB has accordingly long supported the reinstatement of a tax incentive program as the most effective way to promote diversity of ownership in broadcasting.[76]

As recently discussed in greater detail in this ownership proceeding, NAB and its education foundation NABEF administer and finance an array of programs designed to promote

[76] *See, e.g.*, Comments of NAB in MB Docket No. 04-228 (filed Oct. 12, 2004); Comments of NAB in MB Docket No. 06-121 (filed Oct. 23, 2006).

diversity at all levels of the broadcast industry – employment, management and ownership.[77] NAB also supports a range of other proposals, including a number of proposals by the Minority Media and Telecommunications Council, to promote the entry and participation of minorities and women in broadcasting.[78] NAB urges the Commission to encourage Congress to reinstate a tax incentive program and to address in a timely manner various other proposals to promote the participation of minorities and women in the radio and television and other communications industries

NAB also questions the assumption by some that permitting the common ownership of broadcast stations automatically has a deleterious effect on minority participation in the broadcast industry. The study conducted for the Commission purporting to find that the limited relaxation of the duopoly rule in 1999 had a negative impact on minority and female ownership of television stations,[79] for example, was found to be "fatally flawed" by the peer reviewer of that study.[80] Other commenters have also criticized the *Hammond Duopoly Study* for its "non-transparent, biased methodology" and its "unsupported conclusions and biased statements," and argued that the Commission cannot use or rely upon that study.[81]

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[77] *See* Comments of NAB in MB Docket No. 06-121 (filed Oct. 1, 2007).

[78] *See id.*; *see also* Comments of NAB, RM No. 11388 (filed Sept. 5, 2007).

[79] Allen S. Hammond, *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006* (2007) ("*Hammond Duopoly Study*").

[80] 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.* (finding that the *Hammond Duopoly Study* failed to consider or control for economic, demographic or other differences in television markets and that such errors "pervade[] every aspect of the analysis").

[81] Comments and Data Quality Petition of The Center for Regulatory Effectiveness in MB Docket No. 06-121 (Oct. 2007).

The Commission should evaluate carefully any data purporting to link common ownership with a decline in minority and female ownership. Indeed, NAB notes that earlier studies found that "minority groups increased their radio ownership" after 1996.[82] As explained in our earlier comments, NAB continues to believe that the best way to promote greater participation by minorities and women in the broadcast industry is through public/private partnerships and market-based stimulants, including tax incentives, that will promote entry and long-term survival of minority and female entrants in a competitively vibrant broadcast industry.

IV. Conclusion

The ten studies conducted by and for the Commission in this proceeding overall provide significant further support for reforming the outmoded ownership restrictions that apply only to local broadcast stations. As described in detail above, the Commission's studies demonstrate the lack of harm to competition and the benefits to diversity and localism that would be gained from allowing local broadcasters to adopt more economically viable ownership structures. Localism, diversity and competition will be best sustained by permitting broadcasters to compete effectively against multichannel and Internet-based programming providers for viewers, listeners and vital advertising revenues. NAB therefore urges the Commission to reform the ownership

[82] National Telecommunications and Information Administration, *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States* at 38 (Dec. 2000). *See also* 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 (filed March 27, 2002) (showing increase in the number of minority owned and controlled radio stations since 1997).

restrictions that apply to local broadcasters but not to their consolidated multichannel and other competitors.

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