

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Research Design for the Multi-Market Study) BO Docket No. 12-30
of Critical Information Needs)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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The National Association of Broadcasters (“NAB”)¹ hereby submits these comments in response to the above-captioned *Public Notice* (“PN”).² The PN states that the Commission seeks to directly or indirectly conduct “research that illuminates the diversity of views available to local communities, the diversity of sources in local markets and the diversity of critical information needs of the American public, including women and minorities.”³ Before doing so, the Commission is calling for comment on the proposed Research Design.

I. INTRODUCTION AND SUMMARY

NAB is pleased to have the opportunity to comment on the proposed research effort, which calls for gathering some data concerning how Americans communicate and share information that may be important to them. As discussed below, it appears that the Commission hopes the results of the proposed “Critical Information Needs” study (“CIN Study”) will be relevant for at least two FCC dockets, including a “future analysis of broadcast ownership

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Commission and other federal agencies, and the courts.

² See *Office of Communications Business Opportunities Announces Release of Critical Information Needs Research Design*, Public Notice, DA 13-1214 (rel. May 24, 2013) (“PN”). The PN was accompanied by a document prepared for the Commission by Social Solutions International, Inc. titled *Research Design for the Multi-Market Study of Critical Information Needs: Final Research Design* (Apr. 2013) (“Research Design”).

³ PN at 2.

issues.”⁴ The research effort also may be a vehicle for a broader analysis of the “flow of information” among regulated and unregulated communications outlets, at least as they exist within six local markets or “media ecologies.”⁵ NAB is concerned that the diffuse, multifaceted focus of the research has the potential to undermine its usefulness for any particular purpose. While reserving judgment on the relevance of the results for any particular Commission proceeding, NAB offers comments intended to highlight certain aspects of the Research Design that could, absent clarification or change, lead to confusion and potentially garbled research results.

Under the Research Design, the CIN Study would contain two major sections: (1) a “Media Market Census,” consisting of a content analysis of news and information available in six as-yet-unchosen local markets of varying sizes, accompanied by interviews with the news media personnel who produced the codified content; and (2) a consumer survey in the same six markets, intended to “measure community members’ actual and perceived critical information needs.”⁶ The objective is “[t]o develop policies that ensure that the critical informational needs of Americans are being met and that would advance the goal of diversity, including the promotion of greater women and minority participation in media....”⁷

Turning first to specifics, NAB has no objection to the general concept of a consumer survey, but we are concerned that the survey instrument may be incorrectly focused. This concern centers primarily on the “scenario” questions in the survey instrument, few of which have any obvious relevance to the role of *mass* media outlets in disseminating information. NAB

⁴ *Id.*

⁵ *Research Design* at 2.

⁶ *Id.* at 3.

⁷ *PN* at 2.

also is concerned that the categories identified as “critical” for the CIN Study’s content analysis may not reflect actual consumer needs and interests.

On a broader note, NAB is concerned that the Research Design authors may not fully appreciate that the Commission faces certain constraints here. The agency is not primarily a research institution; rather, it directly regulates some of the speakers to be analyzed in the CIN Study. That raises some constitutional concerns. Those concerns, coupled with the devotion of significant government resources to this research effort, warrant care with respect to the study design and its operation. Before fully committing to the endeavor, the Commission should have a clear idea as to the CIN Study’s purpose and be able to plainly state how the proposed data collection and analyses will support the identified purpose. The Research Design itself does not do so.

The agency also must remain modest about the government’s ability to fix perceived communication problems that the Research Design authors may hope to detect by examining local “media ecologies.” Effective human communication, whether involving critical information or not, is a considerably more layered activity than the simple consumption of a broadcast, a news article, or a webpage. The Research Design to an extent reflects the understanding that a variety of one-to-one interactions are key factors in a complex process of acquiring “critical information” from a variety of sources, including but not limited to traditional media.⁸ In fact, decades of academic research have shown that many characteristics of the

⁸ See, e.g., *Research Design* at 4 (describing research questions for the “Media Market Census” as covering the types of media in the local “media ecology” and the “flow of information within the ecology”); *id.* at 14 (noting that “interpersonal social networks (both on and offline) are both a structure that provides media content as well as a conduit in the flow of information”). The Commission should be aware that in academic parlance the term “media ecology” refers to a particular communications theory that traces its roots to the work of Canadian scholar Marshall McLuhan in the 1960s. See Richard West & Lynn H. Turner, *INTRODUCING COMMUNICATIONS THEORY: ANALYSIS AND APPLICATION* 428-30 (4th ed. 2010). One of the foundational assumptions of this theory, as it has developed, is that “media fix perceptions and organize our lives.” *Id.* at 431. This media ecology theory is in some tension with other communication theories that place more emphasis on the individual receiver’s personal characteristics and

individual receiver of information (including but not limited to age, education level, and personal interests) affect how that person internalizes the information – and whether and how he or she may act on it.⁹

Finally, NAB suggests that the Commission forego one component of the proposed study. There is no compelling need for the “Qualitative Analysis of Media Providers,” which calls for government-sponsored researchers to question local journalists in the six analyzed markets about their news judgments and editorial decision-making. To the degree that the FCC needs to better understand how individuals react to the news and information available to them, the Research Design’s traditional approach to content analysis, as augmented by a better-framed consumer survey, should suit the purpose. NAB is specifically concerned that the Research Design would have the Commission tread into the constitutionally sensitive area of newsgathering and reporting when the agency itself has taken pains for decades to avoid doing so.¹⁰

II. THE RESEARCH DESIGN SHOULD AVOID CONFLATING THE ROLE OF PROFESSIONAL NEWS AND INFORMATION REPORTING WITH BROADER SOCIOLOGICAL CONSTRUCTS CONCERNING THE “FLOW OF INFORMATION” GENERALLY

The CIN Study apparently aims to serve at least three distinct information-gathering objectives, but the three are not perfectly congruent, and at least two of them cannot be satisfied by the CIN Study alone. According to the *PN*, the research effort is intended to provide input relevant to (1) the Commission’s obligations under Section 257 of the Communications Act and (2) the agency’s quadrennial review of broadcast ownership restrictions, while also (3) affording

how they affect the individual’s receptivity to media messages. *See, e.g., id.* at 393-408.

⁹ For instance, social scientists have been aware of the importance of “opinion leaders” – meaning friends, colleagues, and family – in the formation of opinions and the diffusion/acceptance of ideas since the mid-20th century. *See, e.g.,* Elihu Katz & Paul F. Lazarsfeld, *PERSONAL INFLUENCE: THE PART PLAYED BY PEOPLE IN THE FLOW OF MASS COMMUNICATIONS* 31-34 (Transaction Publishers ed., 2009) (1955). *See also supra* note 8 and *infra* note 17.

¹⁰ *See infra* note 34 and accompanying text.

the agency insights into the process of communication writ large.¹¹ Yet there are obvious disconnections between the FCC’s stated goals for the CIN Study and the Research Design:

- **Input relevant to Section 257** – The statutory provision directs the FCC to identify and, where possible, eliminate market entry barriers for entrepreneurs and other small businesses seeking to participate in the telecommunications services and information services marketplace. But the focus of the CIN Study is on content already being produced and, to some degree, consumer reaction to it. Neither the *PN* nor the Research Design makes clear how the CIN Study data might provide insights into “market entry barriers,” such as access to capital, competitive conditions, and burdensome regulations, which are the most direct obstacles would-be media and telecom entrepreneurs face.
- **Input that might bear on broadcast ownership regulation** – Analyzing the news and information output of a mix of existing professional and amateur sources, including social media and individual social circles, in just six local markets seems unlikely to provide sufficiently robust data to inform broadcast-only ownership regulation nationwide.
- **General sociological insights** – The *PN* plainly states that the CIN Study will sweep broadly beyond FCC-regulated entities to provide “a comprehensive census of the critical information available [to consumers] from various resources” on the government’s chosen topics of interest.¹² NAB understands academic researchers’ interests in tracking “the flow of information within the [media] ecology,”¹³ but notes that the Commission’s ability to engage in pure research efforts and potentially act on the information is constrained in a way that universities and private foundations are not.

In refining the Research Design and actually conducting the CIN Study, the FCC and its researchers must be clearer about which elements of the data collection and analysis are intended to serve which purpose.

One of NAB’s fundamental concerns is that the Research Design largely fails to reflect the clear distinction between the “one to many” nature of the *mass* media and the “one to one”

¹¹ *PN* at 2 n.5 (proposed studies are “not designed to focus on any particular type of media in any particular market. They will, instead, encompass any and all Commission regulated and non-regulated media outlets....”).

¹² *Id.*

¹³ *Research Design* at 2.

exchange involved in individualized, two-way communications.¹⁴ Obviously the latter today may occur via new media while also continuing to spin out through “plain old telephone service” and the even older conduit of simple face-to-face conversation with family, friends, neighbors, co-workers, and other trusted advisors.¹⁵

The Research Design acknowledges that a person’s own “social circles” or “social networks” (both terms are used in the CIN Study’s draft consumer survey) play a vital part in disseminating “significant information” to individuals,¹⁶ as research studies dating back nearly 60 years have confirmed.¹⁷ The Research Design authors should be commended for understanding that personal social networks must be accounted for in the mix.

Nevertheless, the draft consumer survey instrument and government-selected CIN categories, as discussed below, suggest that the Research Design authors may misapprehend the role of the mass media in serving consumers’ information needs.¹⁸ The FCC must take care in

¹⁴ Compare The Missouri Group, NEWS REPORTING AND WRITING 248 (10th ed. 2011) (“NEWS REPORTING 101”); C. Edwin Baker, MEDIA, MARKETS, AND DEMOCRACY 302 (2004) (noting that mass media’s terrain is the “one to many” communications model) with A. Michael Noll, THE EVOLUTION OF MEDIA 59 (2007) (“Interpersonal communication media ... are used for one-to-one communications. The audience for the communication is usually just one other person, and there are two participants in the communications process.”).

¹⁵ See, e.g., Andrew Dedney et al., THE NEW MEDIA HANDBOOK 91 (noting that “[n]ew media is renewing interest[] in one-to-one ... communication”).

¹⁶ *Research Design* at 14.

¹⁷ See *supra* note 9. Researchers also have repeatedly found that demographic factors such as education, age, gender, and income, have a more significant correlation with individual opinion formation and actions based on those opinions, such as voting and other civic activities, than do media-related factors. See, e.g., Rachel M. Sondheimer & Donald P. Green, *Using Experiments to Estimate the Effects of Education on Voter Turnout*, 54 AMERICAN JOURNAL OF POLITICAL SCIENCE 174, 185 (Jan. 2010); Joshua Harder & Jon A. Krosnick, *Why Do People Vote? A Psychological Analysis of the Causes of Voter Turnout*, 64 JOURNAL OF SOCIAL ISSUES 525, 528-41 (2008); K.G. Wilkins, *The Role of Media in Public Disengagement from Political Life*, 44 JOURNAL OF BROADCASTING & ELECTRONIC MEDIA 569, 577 (Fall 2000).

¹⁸ See *Research Design* at 71-77 (Appendix J consumer survey questions); *id.* at 28 (Appendix B listing of CIN categories for TV “Coding Schematic”).

the actual operation of the data gathering and analysis to de-tangle the role and functions of the mass media from the roles and functions of more individualized “flow[s] of information.”¹⁹

A. Relatively Few of the Consumer Survey’s “Scenario” Questions Are Relevant to the Work of Broadcast and Other Professional Journalists

The draft consumer survey instruments attached as appendices to the Research Design open in a traditional and straightforward manner, presenting several pages of questions concerning the individual respondent’s personal demographics and media uses.²⁰ But the draft at Appendix J goes on to posit 17 different “scenarios” that ask respondents to imagine themselves in particular situations in which new information is needed to help address a problem or answer a question. Although these queries may be useful in tracing the sociological workings of the general information marketplace, only five of them seem to implicate the information function that the mass media traditionally serve – and even then, broadcast stations and newspapers would not be the only source for obtaining useful knowledge and insights on those topics.²¹

The remaining 12 scenarios do not appear to involve mass media as information sources.²² For example, one would not expect consumers to turn to newscasts or newspapers for highly individualized information about health insurance availability, specific directions on how

¹⁹ *Id.* at 14.

²⁰ *Id.* at 61-71 (“Community Ecology Study” Appendices H, I, and J).

²¹ *Id.*, Appendix J at 71, 74, & 77 (questions concerning school closings and road conditions following a snowstorm, a police incident at a bus stop, planning for Inauguration attendance, and political candidate information). The Research Design’s insistence that respondents identify only one “best” source of information seems unrealistic and potentially counter-productive; any significant analysis should account for the interplay of the multiple sources through which people routinely obtain news and information. *See* 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 2-3 (Mar. 1, 2010), http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf (finding that on a “typical day,” 92 percent of Americans “use multiple platforms to get news,” with close to half obtaining news “from four to six platforms” and 61 percent obtaining news online). *See also supra* notes 8-9.

²² A broadcast report or newspaper article might be a secondary source of information under some of these scenarios. A few might even prompt calls to local news outlets for the purpose of *publicizing* a problem rather than obtaining specific information about it, such as the scenarios concerning a gas leak or potential water contamination. *See Research Design* at 72-75.

to apply for food stamps, educational programs best suited to serve an individual “gifted” child, directions on creating a non-profit organization with a particularized focus, or specific job training opportunities – either today or in the pre-Internet past. Instead, the likeliest sources for this kind of targeted exchange of information are the relevant public or private service provider (*e.g.*, local government agencies, social service providers, school systems, career service centers), perhaps as mediated by input from trusted advisors in the individual’s own social network (*e.g.*, family, friends, neighbors, employers, local clergy).

Social media and other online conduits may well serve to augment, or perhaps even substitute for, these traditional sources of individualized information. But that potential interplay of old and new information sources does not affect the fundamentally different purposes that the mass media continue to serve. The Research Design fails to explain how the CIN Study will account for this commonsense distinction. The Commission should ensure that the final work product does so. It would be improper for the agency to suggest that broadcast stations and newspapers should serve needs that these professional media providing one-to-many services were never designed to fulfill.²³

²³ To the degree that the Research Design authors – or at least their consumer survey instruments – are conflating the role of the mass media with more intrapersonal communications, they are in tension with the underlying LITERATURE REVIEW’S observations to the contrary. *See* University of Southern California Annenberg School of Communications & Journalism, REVIEW OF THE LITERATURE REGARDING CRITICAL INFORMATION NEEDS OF THE AMERICAN PUBLIC, at viii (July 16, 2012), http://transition.fcc.gov/bureaus/ocbo/Final_Literature_Review.pdf (“LITERATURE REVIEW”) (“Different media platforms definitely appear to serve different social functions, in terms of how they are used by both producers and consumers of information in local communities; and these functions are also likely to change over time.”). *Accord* NEWS REPORTING 101 at 7 (“The differing strengths and limitations of each medium make it more likely that you’ll find a lengthy explanatory story in a newspaper or magazine, while you’re more likely to learn of an event from television, radio or the Internet.”).

B. The CIN Categories Do Not Comport with the Structure of Professional Newsgathering and May Not Reflect the Issues and Interests That Most Concern Consumers

It is difficult to discern precisely how the eight CIN categories – emergency, health, education, transportation, economic opportunities, environment, civic information, and political information – were developed. At points within the relevant documents, the FCC states that the categories were developed by researchers, while the Research Design states that they were “identified” by the FCC.²⁴ Even the related Literature Review is murky on this point. The eight categories seem to be organizational labels created by the Literature Review authors rather than categories directly derived from earlier studies.²⁵

NAB is concerned that the CIN categories apparently were crafted with little or no input from consumers themselves. The FCC should remain modest about its predictive judgments here; government assumptions about consumer information needs do not necessarily correspond to survey results concerning the type of news that actually interest and concern people.²⁶ The CIN categories do seem to reflect government perceptions as to the informational needs of poor and potentially underserved audiences.²⁷ Concern for this subset of the overall American public is understandable, but the Research Design appears to equate that interest with the different,

²⁴ Compare LITERATURE REVIEW at v-vi (listing eight CINs and stating that academic researchers “identified” the list through review of previous studies) with *Research Design* at 2 (“CINs as identified by the FCC”).

²⁵ See LITERATURE REVIEW at v-vi; 4-6.

²⁶ See, e.g., The Pew Research Center for the People & the Press, TRENDS IN NEWS CONSUMPTION: 1991-2012 30 (2012), available at <http://www.people-press.org/files/legacy-pdf/2012%20News%20Consumption%20Report.pdf> (noting that consumer preferences changed little over eight-year period between 2004 and 2012; weather remains most popular news topic by very large margin, followed by crime); The Pew Research Center for the People & the Press, THE NEWS INTEREST INDEX 1986-2007: TWO DECADES OF AMERICAN NEWS PREFERENCES 13 (2007), available at <http://pewresearch.org/files/old-assets/pdf/NewsInterest1986-2007.pdf> (“above-average attention” topics over the 20-year period were war/terrorism, bad weather, man-made disasters, natural disasters, and money/personal finance).

²⁷ See, e.g., *PN* at 2-3 (noting observation in LITERATURE REVIEW that low-income, minority, and marginalized communities “are likely to be systematically disadvantaged” when “information needs lag or go unmet”).

broader focus of most professional *mass* media newsrooms, which aim to serve a general audience with information of wide applicability and interest.

Newsrooms traditionally have been organized around a “beat” structure that reflects journalists’ assessment of the value of particular news sources and topics for the local citizenry at large.²⁸ With the rise of online platforms to complement their traditional media outlets, news organizations are increasingly adept at determining what platform is best suited to deliver more particularized information that not all local consumers may want or need. Newsrooms frequently provide links in online reports to specific sources of additional information that cannot be easily accommodated in reports broadcast over the air or printed on paper.²⁹

It is not at all clear that the *Research Design* appreciates these distinctions. From the professional journalists’ standpoint, several of the CIN categories are either over- or under-inclusive. For example, the very general CIN categories of “civic information” and “political information” likely would account for the most of the content in many broadcast newscasts or

²⁸ NEWS REPORTING 101 at 301-312 (“the most important local beats” include local government, elementary and secondary schools, college-level educational institutions, police, and sports).

²⁹ See NEWS REPORTING 101 at 291 (thanks to online platforms, “[i]ncreasingly, beat reporters tell their audience not only what is happening but also how to get involved. Stories include telephone numbers and e-mail addresses along with the names of decision-makers.”). Scholars also have recognized that the Internet has changed the old “one organization = one platform” paradigm that once prevailed in the media industry. See Pablo J. Boczkowski & Jose A. Ferris, *Cultural Production in a Digital Age: Multiple Media, Convergent Processes, and Divergent Products: Organizational Innovation in Digital Media Production at a European Firm*, 597 ANNALS AM. ACAD. POL. & SOC. SCI. 32, 36 (2005). Examples of news organizations’ routine uses of multiple platforms abound. See, e.g., Mila Mimica, *Southern Prince George’s County Faces Days Without Water*, NBCWashington.com (July 16, 2013), <http://www.nbcwashington.com/news/local/Crews-to-Cut-Off-Water-in-Prince-Georges-Co-for-Several-Days-215597781.html> (webpage providing textual report on water crisis in suburban Washington during heat wave, separate links to lists of related consumer tips and weather report, and streaming video of county government press conference).

Given this reality, NAB is concerned that the *Research Design* may treat broadcast stations and newspapers as outlets distinct from their related websites, although the *Research Design* is ambiguous on this point. See *Research Design* at 9 (discussion of Internet websites includes “TV station websites”). If the *Research Design* truly is proposing this distinction, it is illogical. Professional newsrooms today typically rely on the same journalist to provide coverage of an issue or story across two or more media platforms. See NEWS REPORTING 101 at 189, 291-92 (discussing, e.g., special techniques for “writing for the web,” considerations in augmenting online version of a traditional beat reporter’s story). Failure to treat newsgathering organizations as one enterprise, regardless of platform, may short-shrift the additional information that many newsrooms now offer as electronic complements to their traditional reporting.

newspaper “A sections.” These over-inclusive categories disregard distinctions that matter to professional journalists and the audiences they serve.³⁰ Conversely, a few of the CIN categories, such as “economic opportunities,” are not a routinely frequent focus of newsrooms, at least if this category is principally concerned with information exchanges that lead directly to job opportunities. This kind of individualized information exchange traditionally has been served through other conduits, including newspaper classified ads; local employment services offices; school career services; job fairs; and personal contacts with colleagues, friends, family, and the like – a list that today plainly should begin with online sources, which have nearly supplanted classified advertising and print job postings and in so doing has had a profound impact on newspaper business models.³¹

If the Research Design were to lump much of a newsroom’s output into only a couple of catch-all categories, then treat those categories as no more significant than those focused on individualized information exchanges, the CIN Study would distort the value of the information that professional newsrooms have long provided. The Commission must clarify or revise the

³⁰ The same sort of over-generalization plagued the content category scheme proposed in the pending inquiry on standardizing program reporting requirements. *See* NAB Comments, MB Docket No. 11-189 at 14-16 (Jan. 27, 2012) (“NAB Enhanced Disclosure Comments”). Similarly, it is not clear whether stories that cross CIN categories – such as a city council’s debate about road improvements, which would seem to be both “transportation” and “political information” – will be coded in just one CIN category or not. *See id.* at 14-15 (coverage of city council member up for reelection could be either “local civic/government affairs” or “local electoral affairs”). Because the Research Design proposes to use full stories as coding units (a relatively large measure as opposed to the more granular level of sentences or paragraphs), the coders will face challenges in getting the categorization “right” in the sense of being consistent. Presumably, the Research Design’s proposal for employing and training coders, and instituting cross-checks to maintain consistency throughout the months-long process, will help to address reliability and validity concerns. *Contra* NAB Enhanced Disclosure Comments at 12-13; Appendix A at 2-5.

³¹ The Commission has recognized this seismic shift, noting that classified advertising dropped a precipitous 71%, from \$19 billion to \$5.6 billion, from 2000 to 2010. *See* Steven Waldman and the Working Group on Information Needs of Communities, *THE INFORMATION NEEDS OF COMMUNITIES* 40 (July 2011), http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf. Print advertising revenue sank \$24.6 billion from 2005 to 2010. *Id.* at 39. While online ad revenues have increased by a small margin – an increase of \$207 million in 2011 compared to 2010 – print ad revenues fell by \$2.1 billion, representing an untenable 10 to 1 ratio of print losses to digital gains. *See* Pew Research Center’s Project for Excellence in Journalism, *Newspapers: Building Digital Revenues Proves Painfully Slow in THE STATE OF THE NEWS MEDIA 2012: AN ANNUAL REPORT ON AMERICAN JOURNALISM* (April 11, 2012), *available at* <http://stateofthemedias.org/2012/newspapers-building-digital-revenues-proves-painfully-slow/>.

Research Design’s approach to evaluating the roles of distinctly different information providers that serve different information needs.

III. THE FCC SHOULD RECONSIDER AUTHORIZING THE “QUALITATIVE ANALYSIS” OF JOURNALISTS’ NEWS JUDGMENT AND NEWSROOM MANAGEMENT

The final component of the proposed content analysis is both puzzling and troubling. The Research Design calls for the FCC’s agents to couple a fairly traditional review of media content with an unusual questioning of the journalists who produced that content. Dubbed a “Qualitative Analysis of Media Providers,” this effort would involve “in-depth interviews” of reporters, editors, producers, and higher-level managers and would seek “to ascertain the process by which stories are selected, station priorities (for content, production quality, and populations served), perceived station bias, perceived percent of news dedicated to each of the eight CINs, and perceived responsiveness to underserved populations.”³² The plan for the Qualitative Analysis also calls for the FCC-commissioned researchers to seek personal demographic data about newsroom staffers and higher-level managers.³³

The prospect of government-sponsored researchers querying independent journalists about their news judgment is constitutionally questionable – and wholly unnecessary. For decades, the FCC has repeatedly declined to inquire into the particulars underlying broadcasters’ editorial judgments, often citing First Amendment concerns in rejecting the notion.³⁴ Also for

³² *Research Design* at 11-12.

³³ *Research Design* at 3, 11.

³⁴ *See, e.g., Application of American Broadcast Companies, Inc.; For Renewal of License of Station KGO-TV San Francisco, California*, Memorandum Opinion and Order, 86 F.C.C.2d 3, 11 (1981) (“In view of the freedom accorded the press by the First Amendment to the United States Constitution, we believe that no Government agency can authenticate the news, or should try to do so.”); *TVT License, Inc.; For Renewal of License of Station WTVT(TV)*, Memorandum Opinion and Order, 22 FCC Rcd 13591, 13595-96 (MB 2007) (“With respect to a report’s accuracy in particular, the Commission has stated that it possesses neither the expertise nor the desire to look over the shoulder of broadcast journalists and inquire why a particular piece of information was reported or not reported. To do otherwise would involve the Commission deeply and improperly in the journalistic functions of broadcasters.”) (internal quotations omitted); *The Tri-State “Like It Is” Support Coalition*, Letter, 26 FCC Rcd 362,

decades, researchers have conducted traditional content analyses that do not tread into editorial decision-making but which provide helpful insights nonetheless. The Commission itself is among the government institutions that have relied upon such studies.³⁵

The Research Design's description of the "Qualitative Analysis" suggests that the authors may not yet appreciate either the legal sensitivities or the prospect for public alarm that this activity could trigger. Many professional journalists and their managers are likely to object, some publicly, to government-sponsored questions about such matters as the enterprise's "news philosophy" or "bias," the newsroom's beat structure, and the interplay between reporters and editors or producers in making coverage decisions.

The Research Design authors appear to understand at some level that journalists' personal demographic data, as well as news judgment responses, may be difficult to collect. This might explain why they propose to use both front-door and back-door routes to gathering this information. This "two strategy" formula relies on the FCC-sponsored researchers quietly "reaching out to acquaintances at news media properties" who may be "willing to provide demographic information about their respective property's work force" that the outlet's

364 (MB 2011) ("Because journalistic discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, licensees are entitled to the broadest discretion in the scheduling, selection, and presentation of news programming.").

³⁵ See, e.g., Mara Einstein, Media Bureau Staff Research Paper 2002-5: PROGRAM DIVERSITY AND THE PROGRAM SELECTION PROCESS ON BROADCAST NETWORK TELEVISION (Sept. 2002), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A10.pdf (exploring program diversity on broadcast network television during the implementation and repeal of the fin-syn rules); Tasneem Chipty, FCC Media Ownership Study #5: STATION OWNERSHIP AND PROGRAMMING IN RADIO (June 2007), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A6.pdf (empirical study of the effects of radio ownership structure on content diversity using a dataset that includes detailed content information); Joel Waldfoegel, FCC Media Ownership Study #7: RADIO STATION OWNERSHIP STRUCTURE AND THE PROVISION OF PROGRAMMING TO MINORITY AUDIENCES: EVIDENCE FROM 2005-2009 (July 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308591A1.pdf (examining, among other subjects, the distribution of broadcast formats for minority and non-minority owned radio stations).

management may decline to provide.³⁶ Such an approach is unseemly at best, and there is no reason to believe that it would produce data upon which the FCC could actually rely.³⁷

These sensitive issues prompt obvious questions about why the Commission feels the need to collect this personally intrusive information. The Research Design's only stated justification is "to answer the question of WHY the content analysis says what it says," suggesting that the lack of this additional data might transform the traditional content analysis into "random, arbitrary noise."³⁸ This contention is without merit. The Research Design already proposes a significant analysis of information content (provided by a wide range of conduits) coupled with consumer surveys in the same market – a data-rich construct rarely paralleled by existing research studies.

The Research Design authors cite no specific source for the contention that the government must track the race, ethnicity or gender of individual reporters, editors, producers, and higher-level managers to validate the results of a content analysis.³⁹ Nor is it necessary to probe professional journalists' news judgment to engage in content analysis, as the

³⁶ *Research Design* at 5, 11.

³⁷ Since 2001, Congress has mandated that all federal agencies "ensur[e] and maximize[e] the quality, objectivity, utility, and integrity of information (including statistical information)" used in making reports to lawmakers or for other purposes. *See* Consolidated Appropriations Act of 2001, Pub. L. No. 106-554 § 515, 114 Stat. 2763, 2763A154 (2000) (legislation informally dubbed the "Data Quality Act"). Following the Office of Management and Budget's ("OMB") adoption of peer review requirements for certain types of information products, the FCC has sought peer reviews of studies containing influential information. *See* OMB, Memorandum for Heads of Departments and Agencies: Issuance of OMB's "Final Information Quality Bulletin for Peer Review" (Dec. 16, 2004), <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>; Federal Communications Commission, FCC Peer Review Agenda, <http://transition.fcc.gov/omd/dataquality/peer-agenda.html> (last visited July 16, 2013). In particular, the Media Bureau has sought peer review of numerous studies, including those conducted during past quadrennial ownership reviews. *See* Federal Communications Commission, Peer Review – Media Bureau, http://transition.fcc.gov/mb/peer_review/peerreview.html (last visited July 16, 2013) (listing thirteen studies for which the Media Bureau has requested peer review).

³⁸ *Research Design* at 10.

³⁹ If this notion had any objective merit, logic suggests that the researchers also would have to collect such demographic data about the other sources of news and information to be studied, including website providers, participants in social media, and the individuals within every surveyed consumer's own social circles.

Commission’s own past reliance on traditional studies demonstrates.⁴⁰ The FCC should jettison the Qualitative Analysis as an unnecessary and improper government intrusion into constitutionally protected activities. As the Supreme Court specifically recognized when discussing “journalistic tradition and experience” in the broadcasting context: “For better or worse, editing is what editors are for; and editing is selection and choice of material.”⁴¹

IV. THE RESEARCH DESIGN REFLECTS AN APPROPRIATE REGARD FOR THE RIGORS INVOLVED IN PRODUCING CONTENT ANALYSES

Notwithstanding the flaws in some aspects of the proposal, NAB applauds the Research Design’s effort to incorporate professional safeguards required for collecting and coding content-analysis data in a generally valid and reliable fashion. NAB agrees that such steps must be part of the research approach if the end result is to have any usefulness.

NAB notes with particular interest that the Research Design calls for “training for researchers who will be coding both interview data and media content.”⁴² This training is to incorporate a number of interrelated validity checks,

consist[ing] of guided practice sessions, starting with coders working together and discussing categories, and then progressing to working independently. There also will be training on the database that will be used and an annotated coding manual will be provided. Coders will learn operational definitions of terms and specific interpretations of the indicators to be rated.⁴³

⁴⁰ See *supra* note 35.

⁴¹ *CBS v. Democratic National Committee*, 412 U.S. 94, 127 (1973) (concluding that broadcasters cannot be required to accept editorial advertisements on grounds that such a requirement would result in undue oversight of the “day-to-day operations of broadcasters’ conduct,” including deciding whether individuals or groups have had “sufficient opportunity to present [their] viewpoint[s]” and whether “particular viewpoint[s] ha[ve] already been sufficiently aired”).

⁴² *Research Design* at 21.

⁴³ *Id.*

The Research Design authors explain that this kind of meticulous approach to data codification is designed to “ensure inter-rater reliability, without which data validity is impossible.”⁴⁴ NAB made precisely this point in its 2012 submissions in the FCC’s Standardized Enhanced Disclosure docket.⁴⁵ The Commission will need to ensure that such training occurs so that its research efforts will be able to produce valid results.

The Research Design also plans to rely on “constructed week” samples of content from professional news outlets.⁴⁶ NAB had criticized the proposed use of constructed weeks in the context of the Standardized Enhanced Disclosure docket, pointing out that a random-sampling approach was quite likely to miss at least some of a broadcast station’s most significant issues-responsive programming during a quarter – the very programming at the heart of that reporting obligation.⁴⁷ Here, however, the lack of clarity as to the purpose of the proposed content analysis makes it difficult to discern whether the constructed week approach to sampling will be helpful or not. If the goal is simply a generalized snapshot understanding of news and information available to consumers within a reasonably short period, a constructed week sample may be suitable. The importance of social media and individual social networks in the dissemination of news and information, however, suggests that researchers should consider parallel data pulls from those outlets as well.

⁴⁴ *Id.*

⁴⁵ *See*, NAB Enhanced Disclosure Comments, Appendix A at 2-5. As NAB explained there, a valid and reliable content analysis requires that “each coder . . . use the same methodologies, work from the same set of operating assumptions, and employ a series of other procedural safeguards” such as extensive group training, a study-specific coding protocol, and multi-coder cross-checks through the process to ensure that content is being coded consistently. *Id.* at 13.

⁴⁶ *Research Design* at 5-9 (proposing constructed week sampling for TV news programs, newspapers, radio news and talk programming, and local websites).

⁴⁷ NAB Enhanced Disclosure Comments at 22-25.

If and when the complex CIN Study is executed, the timeline for the project should allow for more than cursory review of the results by independent peer reviewers. This is especially critical if the Commission intends to utilize the results as a basis for adopting new or retaining existing rules or policies. NAB suggests that the agency budget for peer reviews by a team of experienced academics who are not FCC employees. The Commission-chosen peer reviewers for the CIN Study should be afforded access to the underlying data sets, as the agency has provided to peer reviewers of similar studies in the past.⁴⁸ The FCC also should make the data sets available for review and critique by interested third parties, as also has been done in recent years.⁴⁹

V. CONCLUSION

NAB appreciates the Commission's willingness to call for public comment on the CIN Study's Research Design in advance of the government's expenditure of additional time and financial resources on the project. Whether the CIN Study will be able to produce sufficiently valid and reliable data to inform the FCC's broadcast ownership or other policies remains to be seen. The FCC can improve the Research Design as a tool for acquiring an improved understanding of the multi-layered communications environment by revising the consumer survey instrument to better capture the distinctions between mass media communications and interpersonal communications. In addition, categories to be used in the content analysis should

⁴⁸ Peer reviews of the media ownership studies commissioned for the 2006 and 2010 Quadrennial Review proceedings are posted on the FCC's website. *See* Federal Communications Commission, 2010 Media Ownership Studies, FCC Encyclopedia, <http://www.fcc.gov/encyclopedia/2010-media-ownership-studies> (last visited July 19, 2013) (chart providing original studies, peer reviews, and revised studies); Federal Communications Commission, Media Bureau – Peer Review, http://transition.fcc.gov/mb/peer_review/peerreview.html (last visited July 16, 2013) (chart providing, inter alia, original studies, peer reviews and revised studies in 2006 Quadrennial, MB Docket No. 06-121).

⁴⁹ *See, e.g., 2006 Quadrennial Regulatory Review*, Protective Order, 22 FCC Rcd 16593 (MB 2007) (protective order “establish[ing] procedures for review by interested parties of the proprietary data sets created by the authors” of eight media ownership studies).

include topics that reflect consumers' own perceived needs and interests. Finally, the Commission should decline to direct its researchers to probe into either the news judgment of professional journalists or their personal demographics such as race, ethnicity, or gender. These questions raise constitutional implications, and they are not necessary for improving the government's comprehension of the rich array of information available to Americans through many different communication conduits.

Respectfully submitted,

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