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

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 14-16
Competition in the Market for the	)	
Delivery of Video Programming	)	

To: The Commission

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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EXECUTIVE SUMMARY

As the video marketplace continues to rapidly change, free over-the-air local television stations are evolving, innovating and expanding their service to the public. The comments that follow discuss developments over the past year to help inform the Commission's annual report on the status of video competition. One of the most significant changes discussed herein is increasing consumer reliance on broadcast television services. Free over-the-air broadcast television is now the primary video programming delivery method for 19.3 percent of U.S. television households, representing 22.4 million households (or 59.7 million consumers). These households are remarkably diverse – in fact, a disproportionate number of them have an Asian-American, Hispanic, or African-American head of household, or a younger head of household (aged 18-34).

Free over-the-air broadcast television enhances the quantity, quality and diversity of video programming available to all American television households. Viewers accessing broadcast signals over-the-air, online, or from pay television services are all benefiting from exponential increases in the amount and types of available broadcast programming. Today's broadcasters are investing heavily in their local news operations, including high-definition ("HD") upgrades. An estimated 80 percent of broadcasters in the top 100 markets are now airing local news in HD. The number of multicast channels skyrocketed to an estimated **5,511 channels** as of February 2014. Much of that growth was fueled by the launch of entirely new broadcast networks, including a significant number targeting Spanish-speaking and other diverse audiences.

With recent developments in mobile TV, more than 150 stations in 31 states now make available significant amounts of programming via handheld mobile devices.

Broadcasters' ability to innovate and invest in new and expanded services in the future depends upon their ability to compete on a more level playing field. By improving their service offerings, broadcasters have continued to play an important role in today's competitive video marketplace, despite a regulatory regime that limits their ability to develop efficient combinations and attract capital. The Commission should consider regulatory relief with regard to its ownership and attribution rules to permit broadcasters to realize reasonable economies of scale and scope and obtain sufficient investment.

Broadcasters also must be able to control the distribution of their signals and to negotiate for compensation from both traditional multichannel video providers and online video distributors seeking to retransmit such signals. Continued control of their signals will enable local stations to make the substantial investments needed to maintain high-quality, costly programming, including news, and to enhance their HD, multicast, and other current and future service offerings that will benefit consumers. Specifically, the ability of broadcasters to fairly negotiate for compensation and carriage of their broadcast signals through the retransmission consent process is crucial. As the competitive landscape of local markets continues to change, retransmission consent is a critical part of broadcasting's ability to provide relevant, top-quality content for viewers.

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The National Association of Broadcasters ("NAB")[1] submits these comments in response to the *Notice of Inquiry* requesting data and information on the status of competition in the market for the delivery of video programming through December 31, 2013.[2] Through this *Notice*, the Commission seeks comment on consumer reliance on broadcast television services and developments in the broadcast television industry, among other inquiries. Today, free over-the-air broadcast television is the primary video programming delivery method for millions of American consumers – and that number is on the rise. Since the FCC's last inquiry, local broadcasters have continued to innovate and expand upon their longstanding roles as leading providers of news, information and

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

[2] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Notice of Inquiry, MB Docket No. 14-16, FCC No. 14-8 (rel. Jan. 31, 2014) ("*Notice*").

entertainment. Through expansion of high definition ("HD") offerings, additional programming on multicast streams and mobile TV, local broadcast stations are increasing the quantity, quality and diversity of their services. Television broadcasting also remains an unconcentrated and competitive sector of the video marketplace, particularly as compared to multichannel video programming distributors ("MVPDs").

I. Data Show that Free Over-the-Air Broadcasting Plays an Increasingly Important Role in the Video Marketplace

A. A Trend of Increasing Over-the-Air Reliance Continues

The *Notice* seeks comment on the number of households relying on over-the-air broadcast television, either exclusively or supplemented with online video distribution ("OVD") service, as well as the number of MVPD households that also rely on over-the-air service for one or more of their television sets not connected to their MVPD service.[3] According to GfK Media & Entertainment's most recent report,[4] of the 116.3 million television households in the United States, 19.3 percent – a total of 22.4 million households (or 59.7 million consumers) – rely solely on over-the-air broadcast television.[5] This represents a significant increase over GfK's 2012 survey, when 17.8

[3] *Notice* at ¶ 28.

[4] *See* GfK, *Home Technology Monitor 2013 Ownership Survey and Trend Report* (Spring 2013-March 2013) ("*Home Technology Monitor Survey*"). The *Home Technology Monitor*™ is an independent syndicated research service that tracks both ownership of over 100 media technology devices and services and the ways that people are using those devices in everyday life. The *2013 Ownership Survey and Trend Report* is based on a survey, fielded in March and April 2013, comprised of interviews with a total of 3,106 households, including representative proportions of cell-phone-only, non-Internet and Spanish-speaking homes. *See also National Association of Broadcasters, Over-the-Air TV Renaissance Continues as Pay-TV Cord-Cutting Rises*, Press Release (June 21, 2013), *available at* https://www.nab.org/documents/newsroom/pressRelease.asp?id=3168.

[5] *Home Technology Monitor Survey.*

percent of U.S. television households were broadcast-only,[6] and continues a trend of growth from 2011, when 15 percent of households were reliant exclusively on over-the-air television.[7] There are approximately 45.9 million sets in over-the-air television households.[8] An additional 35.6 million television sets in 19.9 million MVPD households remain unconnected to MVPD service.[9] Thus, a total of approximately 81.5 million television sets currently are not connected to any MVPD service and receive all broadcast signals over-the-air.[10] All of these figures have also increased on a year-over-year basis for several years in a row.[11]

As NAB has observed in response to past video competition inquiries, households relying solely on over-the-air broadcasting are predominantly lower income.[12] While nationwide approximately 19.3 percent of television households are broadcast-only, approximately 30 percent of television households with incomes under $30,000 annually are broadcast-only (up from 26 percent in 2012 and 23 percent in

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[6] *See* Comments of the National Association of Broadcasters in MB Docket No. 12-203 (Sept. 10, 2012) at 2, citing GfK-Knowledge Networks, *Home Technology Monitor 2012 Ownership Survey and Trend Report* (Spring 2012-March 2012).

[7] Comments of NAB in MB Docket No. 07-269 (Jun. 8. 2011) at 5-6 (citing Knowledge Networks, Press Release, "Over-the-Air TV Homes Now Include 46 Million Consumers" (June 6, 2011)).

[8] *Home Technology Monitor Survey.*

[9] *Id.*

[10] *Id.*

[11] *See* Comments of the National Association of Broadcasters in MB Docket No. 12-203 (Sept. 10, 2012) at 2 (citing GfK-Knowledge Networks, *Home Technology Monitor 2012 Ownership Survey and Trend Report* (Spring 2012-March 2012)) (reporting 41.2 million sets in broadcast-only households and additional 32.5 million sets in MVPD households that are unconnected to MVPD service, for a total of 73.7 sets not connected to MVPD service); Comments of NAB in MB Docket No. 07-269 (Jul. 29. 2009) at 5-6 (citing Knowledge Networks/Statistical Research, Inc., Home Technology Monitor Ownership Survey (Spring 2009)) (reporting 35.1 million sets in broadcast-only households and an additional 16.7 million television sets in 11.8 million MVPD households that are unconnected to MVPD service, for a total of 51.8 million sets not connected to any MVPD service).

[12] *Notice* at ¶ 28 (requesting information on demographic characteristics of over-the-air television households).

2011).[13] In contrast, only 11 percent of the households with annual incomes exceeding $75,000 depend solely on over-the-air broadcasting to receive video programming.[14] Broadcast-only households in the United States include a disproportionate number of viewers who would be least able to afford a subscription television service.

Broadcast-only households continue to include relatively greater numbers of racial/ethnic minorities. For example, while 18 percent of television households with a white head of household nationwide are broadcast-only, approximately 23 percent of Asian-American, 25 percent of Hispanic and 22 percent of African-American television households rely completely on over-the-air broadcasting.[15] Homes headed by younger adults are also more likely to access television programming exclusively through broadcast signals. Twenty-eight percent of homes with a head of household aged 18-34 are broadcast-only (up from 24 percent in 2012), compared with 19 percent of homes in which the head of household is 35-49, or 17 percent of homes in which the head of household is 50 years of age or older.[16]

Over-the-air television households are distinct in other ways, such as their use of consumer premises equipment.[17] For example, only four percent of over-the-air households have digital video recorders ("DVRs") compared with 35 percent of all

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[13] *See Home Technology Monitor Survey, supra* note 4; Comments of the National Association of Broadcasters in MB Docket No. 12-203 (Sept. 10, 2012) at 3 (citing GfK-Knowledge Networks, *Home Technology Monitor 2012 Ownership Survey and Trend Report* (Spring 2012-March 2012)); Comments of NAB in MB Docket No. 07-269 (Jun. 8. 2011) at 7 (citing Knowledge Networks, Press Release, "Over-the-Air TV Homes Now Include 46 Million Consumers" (June 6, 2011)).

[14] *Id.* This figure has remained consistent since NAB's last filing regarding video competition. *See* Comments of the National Association of Broadcasters in MB Docket No. 12-203 (Sept. 10, 2012) at 3.

[15] *Id*.

[16] *See Home Technology Monitor Survey, supra* note 4.

[17] *Notice* at ¶¶ 64-67 (seeking comment on consumer premises equipment that facilitates delivery of video programming).

television households and 42 percent of MVPD households.[18] In light of the lack of DVRs in broadcast-only households, the airing of programming at different times of day (or time-shifting) becomes particularly important. Adoption of DVRs appears to be significantly correlated with household income. Only 19 percent of households with incomes below $35,000 have DVRs, while 53 percent of households with incomes of $75,000 or more have DVRs.[19]

The *Notice* also seeks comment on the trend away from subscribing to MVPD service – the rise of "cord-cutters," "cord-shavers" and even "cord-nevers."[20] Nearly 70 percent of broadcast-only households report that they have never subscribed to MVPD service.[21] Recent survey data indicate that six percent of television households have stopped subscribing to MVPD service at some point in the past.[22] Two-thirds of television households that stopped pay television service cited overall cost cutting as their reason for stopping service.[23] Over four in ten (41 percent) also said they stopped pay television service because it did not offer enough value for the cost.[24] Among pay TV households that kept their service, 15 percent decreased services, with 69 percent of these cutting back on the number of program tiers purchased.[25] Although quarterly declines in MVPD subscribership have been seen before, MVPDs posted their first ever

[18] *See Home Technology Monitor Survey, supra* note 4.

[19] *Id.*

[20] *Notice* at ¶¶ 68-69.

[21] *See Home Technology Monitor Survey, supra* note 4.

[22] *Id.*

[23] *See Home Technology Monitor Survey, supra* note 4.

[24] *Id*.

[25] *Id*.

full-year decline in subscriptions at year-end 2013.[26] MVPDs collectively shed 251,000 subscribers in 2013, with cable as the biggest loser.[27] Analysts observe that this decline "illustrates longer-term downward pressure even as economic conditions gradually improve."[28] Available data thus show that American television viewers increasingly recognize the value provided by free digital broadcast services.

Some over-the-air households supplement their viewing of television broadcast signals with video content from online video distributors ("OVDs").[29] Recent data show that 35 percent of over-the-air only households watch streaming video on a computer using the Internet.[30] This figure is very close to the percentage of MVPD households that use streaming video (34 percent) and the percentage of all television households that use streaming video (also 34 percent), suggesting that OVD use is equally common across various types of television households.[31]

The emergence of OVDs can enhance consumer choice and provide opportunities for video programming providers, including local television broadcast stations, to reach more local viewers. It is critically important, however, that alternative platforms not be permitted to expropriate broadcast signals at will.[32] Broadcasters must continue to have the right to control the distribution of their signals via all platforms and to negotiate for compensation from both OVDs and traditional MVPDs seeking to

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[26] Ian Olgeirson, Tony Lenoir, Chris Young, *Multichannel Video Subscription Count Drops in 2013*, SNL Kagan (Mar. 13, 2014).

[27] Ian Olgeirson, Tony Lenoir, Chris Young, *Multichannel Video Subscription Count Drops in 2013*, SNL Kagan (Mar. 13, 2014). The cable industry reportedly lost two million subscribers in 2013. *Id*.

[28] *Id.*

[29] *Notice* at ¶¶ 47-58 (seeking comment on OVD structure, conduct and performance).

[30] *See Home Technology Monitor Survey, supra* note 4.

[31] *Id.*

[32] *See* NAB Comments in MB Docket No. 12-83 (May 14, 2012).

retransmit such signals.[33] Continued control of their signals will enable local stations to make the substantial investments needed to maintain high-quality, costly programming, including news, and to enhance their HD, multicast, and other current and future service offerings that will benefit consumers. Moreover, a balanced and symmetrical regulatory regime applicable to all video service providers seeking to retransmit local broadcast signals will best promote competition in the video marketplace.

B. Viewers Enjoy an Ever-Increasing Array of Diverse Digital Content from Broadcast Television Stations

Local television broadcast stations offer a community-specific mix of news, information, and entertainment that is not otherwise available to viewers of video programming. Broadcasters have continued to innovate and expand upon their strengths, with the past year marked by a dramatic rise in such offerings as news programming, HD content, multicast programming, and mobile TV. Key developments in these areas are discussed below.[34]

Broadcast Television Viewership Trends. Despite rising competition for viewers from multiple outlets, broadcasters remain a leading source of news, information and entertainment. During the 2012-2013 television season, broadcast television shows again dominated the list of top-rated programs. Of the top 100 television programs among adults 25-54, 96 aired on broadcast stations.[35] Broadcast

[33] *See* 47 U.S.C. § 325(b). *See also* S. Rep. No. 92-102 at 34, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1167 (1991) ("broadcasters [must be allowed] to control the use of their signals *by anyone engaged in retransmission by whatever means*.")(emphasis added).

[34] *See Notice* at ¶¶ 33-41 (seeking information on broadcaster business models and competitive strategies).

[35] Television Bureau of Advertising, "The 2012/2013 Television Season: The More Things Change …," available at: http://www.tvb.org/measurement/2012-13_Season_Recap (visited Mar. 11, 2014) ("TVB

television also is the leading source of local and national news. According to a recent Pew Research Center Survey, 71 percent of American adults watch local TV news.[36] Additionally, 65 percent of American adults watch network TV news on their local TV stations.[37] Another recent study on news consumption placed the figures even higher, reporting that 82 percent of Americans turn to their local TV stations for news.[38] This compares with just 38 percent of American adults that regularly watch cable TV news.[39] For local TV stations, this translated into higher ratings for local news in 2013, as all three major time slots saw an increase in viewership, including a six percent jump in the morning (5-7 a.m.) and a three percent jump in the early evening (5-7 p.m.).[40] Local television stations continue to be a highly trusted source of news, with a recent study finding that "Americans report that they trust the information they get from local TV news stations to a greater degree than any other source of news."[41]

Investing in Local News. To meet the needs and high expectations of their viewers, local television stations invest heavily in their local news operations. After a

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2012-13 Season Recap"). Even when the ranking was extended to 200 programs, 182 of the top shows appeared on broadcast TV.

[36] *See* Kenneth Olmstead, Mark Jurkowitz, Amy Mitchell and Jodi Enda, "How Americans Get TV News at Home," Pew Research Journalism Project (Oct. 11, 2013), available at: http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/.

[37] *Id.*

[38] *See* "The Personal News Cycle," The Media Insight Project, (rel. March 17, 2014), at 11-12, *available at:* http://www.americanpressinstitute.org/publications/reports/survey-research/personal-news-cycle/ ("Personal News Cycle") (Behind local news, broadcast national network news was cited in the survey as the second most consumed source of news, with 73 percent of Americans having watched a network news program each week).

[39] *See* Kenneth Olmstead, Mark Jurkowitz, Amy Mitchell and Jodi Enda, "How Americans Get TV News at Home," Pew Research Journalism Project (Oct. 11, 2013), available at: http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/.

[40] *See* Katrina-Eva Matsa, "Local TV Audiences Bounce Back," Pew Research Center (Jan. 28, 2014), *available at:* http://www.pewresearch.org/fact-tank/2014/01/28/local-tv-audiences-bounce-back/.

[41] *See* "The Personal News Cycle," The Media Insight Project, (rel. March 17, 2014), at 11-12, *available at:* http://www.americanpressinstitute.org/publications/reports/survey-research/personal-news-cycle/ ("Personal News Cycle").

strong rebound year in 2011 when local TV stations added 1,131 jobs, total TV news staff held steady for 2012, dropping just 48 jobs (or 0.17%) for a total of 27,605 full time staff.[42] The vast majority of stations surveyed either increased or maintained their news budgets over the past year, with 49 percent reporting an increase over the previous year, and another 38 percent reporting that their budgets had remained the same. Just six percent of stations reported a decrease in their news budgets for 2012.[43]

The latest Radio Television Digital News Association/Hofstra University Survey showed slight changes in the amounts of local news offered by television broadcast stations on weekends and weekdays, resulting in a combined "small, overall increase."[44] After four years of record-breaking increases in weekday local news, the amount of weekday news declined by about six minutes per weekday, with the median amount of weekday local news remaining at five hours per station.[45] At the same time, the survey showed an increase in the amount of local news aired on weekends--an average of 12 additional minutes on Saturdays and six additional minutes on Sundays, and a median increase of half an hour per day.[46] Generally, the bigger the market and the bigger the news staff, the more news a station is likely to run.[47] Overall, 40 percent of all TV

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[42] Bob Papper, RTDNAHofstra University, "Newsroom Staffing Stagnates," *available at* http://www.rtdna.org/article/newsroom_staffing_stagnates#.Ux94qT9dXng ("2013 RTDNA/Hofstra Staffing Study").

[43] 2013 RTDNA/Hofstra Staffing Study.

[44] Bob Papper, RTDNA/Hofstra University, "Survey Shows Near-Record Year for Local News," available at: http://www.rtdna.org/article/survey_shows_near_record_year_for_local_news#.Ux48bD9dWSp ("RTNDA/Hofstra News Survey").

[45] *Id*. at 1.

[46] *Id*. at 2.

[47] *Id.*

stations reported increasing the amount of news they offered, and few stations reported cutting back.[48]

There is little doubt that both the Internet and mobile devices are having a profound impact on video competition and news consumption. Research indicates that consumers are using the Internet and mobile devices both as a partial replacement, but also as a supplement, to their traditional media consumption.[49] As this trend continues, local broadcasters across the country have been positioning themselves where consumers want and need them the most. For years now, broadcasters have provided local news content on the Web. Further, to take advantage of the so-called "second screen phenomenon," local stations are, more and more, reaching their viewers directly through mobile applications and social media.[50] Platforms like Facebook, Twitter and Vine give stations the ability to reach consumers with news relevant to them, quickly and comprehensively. Local TV reporters use these platforms to enhance and expand upon local stories.[51] For consumers of news, these investments provide invaluable and always available access to important local news, and this can be especially important

[48] *Id.* Only six percent of TV news directors said they cut a newscast in 2012. *Id.* at 3.

[49] Jane Sasseen, Kenny Olmstead and Amy Mitchell, "Digital: As Mobile Grows Rapidly, the Pressures on News Intensify," Pew Research Center's Project for Excellence in Journalism, The State of News Media 2013, *available at:* http://stateofthemedia.org/2013/digital-as-mobile-grows-rapidly-the-pressures-on-news-intensify/ ("Most mobile news users are not replacing one platform with another; they are consuming more news than they had in the past.").

[50] Deborah Potter, NewsLab, Katerina-Eva Matsa & Amy Mitchell, Pew Research Center Project for Excellence in Journalism, *The State of the News Media 2013* ("State of the News Media 2013"), "Local TV By The Numbers," *available at:* http://stateofthemedia.org/2013/local-tv-audience-declines-as-revenue-bounces-back/local-tv-by-the-numbers/. *See also* Kevin Downey, *Everybody's Working on TV Everywhere*, TVNEWSCHECK (Jan. 27, 2014), available at: http://www.tvnewscheck.com/article/73623/everybodys-working-on-tv-everywhere#. With viewers expecting to watch television wherever they are, "we have launched 68 applications in just the last year" says Post-Newsweek Stations, Inc. CEO Emily Barr. *Id.* The mobile apps focus on news, weather, and special local events. *Id.*

[51] *See* Diana Marszalek, *Status of Social Media Rising At TV Stations*, TVNEWSCHECK (Apr. 24, 2012), *available at:* http://www.tvnewscheck.com/article/58947/status-of-social-media-rising-at-tv-stations.

during emergencies, when broadcasters are usually the best source for up-to-date information.

HD Programming. Local broadcasters have, by and large, made high definition programming – including high definition news – the standard for consumers. SNL Kagan data show that 85.7 percent of all full-power television stations were broadcasting in HD as of February 2014.[52] Significantly, in addition to airing HD network and syndicated programming, numerous stations have invested in new cameras, new video processing and storage equipment, updated studios and staff training to produce their own HD content. According to a 2013 survey, newscasts aired in HD are the norm. In the top 100 markets, more than 80 percent of TV stations producing local news do so in HD.[53] And even in the smallest markets, where stations struggle to make costly upgrades to their facilities, more than 40 percent of newscasts are now broadcast in HD.[54]

Multicast Programming. Broadcasters have utilized the upgrade to digital distribution to massively increase the amount and diversity of channels available to consumers free, over-the-air. Today, the total number of live over-the-air broadcast channels aired by full-power, Class A and low power television stations is an estimated 5,511 channels – up from 4,552 channels in 2012, and only 2,518 channels at year-end 2010.[55] Nearly every consumer in the country that receives programming over-the-air

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[52] *See* Justin Nielson, SNL Kagan TV Stations Multiplatform Analysis 2014 (Mar. 12, 2014), *available at:* http://www.snl.com/interactivex/article.aspx?id=27207377&KPLT=6 (reporting that 1,517 stations are broadcasting in HD) ("Kagan Multiplatform Analysis 2014").

[53] *See* Bob Papper, "Newsroom Technology, Partnerships Stabilize," Hofstra University/RTDNA (June 4, 2013), *available at*: http://www.rtdna.org/article/newsroom_technology_partnerships_stabilze.

[54] *Id.*

[55] Kagan Multiplatform Analysis 2014.

can now receive more programming – in many case on orders of magnitude – than they could before the DTV transition.

Broadcasters have collaborated with a growing panoply of multicast networks that appeal to niche and ethnic audiences. Networks like This TV and Me TV now appear in more than 125 markets, while Bounce TV, designed to appeal to African-American audiences, is now on the air in 75 markets nationwide.[56] Spanish-language programming has blossomed on over-the-air television thanks in large part to networks like V-ME (55 channels), LATV (36 channels) and the newly launched MundoFox (30 channels).[57] There are now 366 Spanish-language channels operating on multicast streams across the United States, a 30 percent increase over January 2013.[58] Spanish-language multicast networks, including Estrella and MundoFox, offer early and late evening news and want to increase their news offerings.[59] Multicast streams are a rich proving ground for a multitude of other new programming entrants – many of whom could not afford a full-power TV station or gain access to pay TV distribution. These include several Asian-interest programmers, religious, music, sports, weather, and children's programming.[60]

Moreover, for small underserved markets that for years had no access to the full complement of national network programming, multicasting has allowed local stations to carry missing networks on their second channel. FOX network programming is

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[56] Kagan Multiplatform Analysis 2014.

[57] *Id.*

[58] *Id.*

[59] Michael Malone, *Multicasting Goes Multicultural*, BROADCASTING AND CABLE (Mar. 10, 2014).

[60] Kagan Multiplatform Analysis 2014.

available, for example, in 56 markets as a multicast stream.[61] ABC and CBS are available in 25 markets each.[62] Nearly five years after the completion of the DTV transition, the emergence of these numerous, diverse secondary over-the-air channels has benefited television viewers, new programming entrants, and broadcasters.

Mobile TV. Broadcasters nationwide continue to roll out mobile TV service – a spectrally efficient, robust over-the-air service that provides viewers with access to local news and other popular video content on-the-go. Unlike other mobile video services, mobile TV does not rely on the wireless carriers' one-to-one architecture, in which each additional mobile video user requires the use of additional capacity or incurs additional data charges. Instead, mobile TV provides clean, clear, uninterrupted service even when wireless providers' networks go down. Today, more than 150 stations in 31 states have commenced providing mobile TV service,[63] and are offering 165 channels of programming.[64]

II. Broadcasting is a Highly Competitive Segment of the Video Marketplace, Especially as Compared to the MVPD Industry

Television broadcasters compete with a wide range of other outlets and platforms in the delivered video programming market. Today, broadcasting's leading competitors for advertisers and viewers are MVPDs and nonbroadcast programming networks. These competitors enjoy distinct advantages over their broadcast rivals because they are subject to significantly fewer structural regulations, allowing them to realize efficient

[61] Kagan Multiplatform Analysis 2014.

[62] *Id.*

[63] The number of mobile TV stations and states is based on NAB staff analysis of Open Mobile Video Coalition station/market database as of August 2013.

[64] Kagan Multiplatform Analysis 2014.

horizontal and vertical combinations that broadcasters cannot achieve. As NAB and other broadcasters have explained in other proceedings,[65] the FCC's rules should allow broadcasters greater flexibility in establishing ownership structures that permit them to achieve economies of scale and scope. Additionally, as discussed further below, the Commission should carefully examine its statutory obligations to monitor and promote competition in the MVPD market.

A. Industry Structure: Horizontal and Vertical Relationships

Horizontal Concentration. The MVPD segment of the delivered video programming market is highly horizontally concentrated at the national, regional and local levels, and this concentration is on the rise.[66] For example, in 2002, the ten largest MVPDs controlled 67.4 percent of the MVPD market nationally (measured in terms of subscribers).[67] By 2010, the top ten MVPDs controlled nearly 90 percent of the market,[68] and today, the ten largest MVPDs control 91.7 percent of the nationwide MVPD market.[69] Indeed, the four largest MVPDs alone currently serve 67.7 percent of MVPD subscribers nationally, a dramatic increase from their collective 51.5 percent share of the market in 2002.[70]

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[65] *See* NAB Comments in MB Docket No. 09-182 (Mar. 5, 2012); NAB Reply Comments in MB Docket No. 09-182 (April 17, 2012).

[66] *Notice* at ¶¶ 18-19 (seeking comment on horizontal concentration in the MVPD industry).

[67] *See* Declaration of Jeffrey A. Eisenach and Kevin W. Caves at 6 (May 27, 2011) ("*Eisenach 2011 Declaration*") (citing SNL Kagan data), attached to NAB Comments in MB Docket No. 10-71 as Attachment A.

[68] *Id.*

[69] *See 2013 SNL Kagan Media Census Estimates,* Third Quarter 2013.

[70] *2013 SNL Kagan Media Census Estimates,* Third Quarter 2013; *Eisenach 2011 Declaration* at 6.

Similarly, at the regional and local levels, cable multiple system operators ("MSOs") have increased their market shares through clustering.[71] Clustering reduces the number of individual systems in each local market, thereby increasing the clustered MSOs' ability to compete with local television stations for local advertising revenues and the MSOs' relative bargaining power against local television stations in retransmission consent negotiations.[72] Until recently, the Commission's video competition proceedings monitored developments with regard to regional clustering, but this information was absent from the *Fifteenth Annual Video Competition Report*[73] and was not sought as part of the *Notice.*[74] Information on regional concentration and clustering among MVPDs is relevant to a variety of competitive and other marketplace analyses. The Commission should modify its future notices of inquiry and return to its past practice of seeking information on MVPD concentration at the local and regional levels. The Commission should specifically explore whether the cable industry's regional and local

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[71] The Commission has described clustering as "an increase over time in the number of cable subscribers and homes passed by a single MSO in particular markets (accomplished via internal growth as well as by acquisitions)." *See Revision of the Commission's Program Access Rules*, Notice of Proposed Rulemaking, 27 FCC Rcd 3413, 3472 n.75 (2012).

[72] The number of clustered cable systems (cable systems under the same ownership serving the same local market area or region) serving over 500,000 subscribers rose from 29 in 2005, covering 29.8 million subscribers, to 36 at the end of 2008, covering 36.7 million subscribers. *See Eisenach 2011 Declaration* at 8 (citing SNL Kagan, Broadband Cable Financial Databook (2009)). Unfortunately, SNL Kagan is no longer tracking regional clusters.

[73] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Fifteenth Report, 28 FCC Rcd 10496 (2013).

[74] *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 24 FCC Rcd 750, 765 ¶ 34 (2009) ("We continue to monitor the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data and comment on its effect on competition in the video programming distribution market. How many transactions resulted in an MSO establishing a presence in a new area versus adding to an existing cluster? As cable operators eliminate headends and more closely integrate their systems, what regulatory and technical issues arise that can affect competition? What effect does clustering have on economies of scale and scope?"). *See also Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 21 FCC Rcd 12229, 12241-42 (2006); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 20 FCC Rcd 14117, 14127-28 (2005) (making similar inquiries). No such information was requested in this proceeding.

consolidation contributes to its consistent practice of raising consumer subscriber rates well above the rate of inflation.[75]

As NAB and other broadcasters have noted in previous proceedings, local markets are frequently dominated by a single MVPD. For example, Time Warner Cable, Inc. ("TWC") enjoys a 60 percent or greater share of the entire MVPD market in nine DMAs, including Honolulu, HI (90.2 percent) and Rochester, NY (76.2 percent).[76] CableOne, Inc., which may consider itself a "smaller" cable operator, controls 64.1 percent of the MVPD market in the Biloxi, MS DMA.[77] Suddenlink controls 61.6 percent of the MVPD market in the Victoria, TX DMA and 56 percent in the Parkersburg, WV DMA.[78] The chart that follows provides several additional examples.

[75] According to the FCC's most recent report on cable prices, the average price of expanded basic service grew at a compound annual rate of 6.1 percent over the 17-year period from 1995-2012, compared to a 2.4 percent annual increase in general inflation as measured by the Consumer Price Index over the same period. Report on Cable Industry Prices, DA 13-1319 (MB June 7, 2013) at ¶ 16.

[76] *See 2013 SNL Kagan MediaCensus, Estimates—3rd Quarter 2013.*

[77] *Id.*

[78] *Id.*

Examples of MVPD Market Dominance

MVPD	Market	Share of Market
Time Warner	Honolulu	90.2%
Time Warner	Rochester, NY	76.2%
Time Warner	Albany, NY	68.5%
Time Warner	Syracuse, NY	67.7%
CableOne	Biloxi, MS	64.1%
Suddenlink	Victoria, TX	61.6%
Suddenlink	Parkersburg, WV	56.0%
Bright House	Tampa, FL	55.6%
Bright House	Orlando, FL	55.2%
Charter	Cheyenne, WY	58.5%
Charter	Grand Junction, CO	54.9%
Charter	Alpena, MI	54.9%
Charter	Casper, WY	54.1%
Charter	Marquette, MI	54.1%
Charter	Helena, MT	53.0%

Source: *2013 SNL Kagan MediaCensus, Estimates—3rd Quarter 2013*

In all, NAB counts 57 DMAs in which a single MVPD enjoys a share of 50 percent or more of the MVPD market as a whole, even taking direct broadcast satellite and other MVPD subscribers into account.[79] Unsurprisingly, the courts have recently recognized the continuing dominant position of cable operators in local markets.[80]

In short, although there has been some increase in the *types* of MVPDs serving each market, the number of MVPDs serving each local market has generally declined over time due to continuing consolidation in the cable industry. Consequently, the video

[79] *Id.*

[80] *Time Warner Cable, Inc. v. FCC*, 729 F.3d 137, 161-163 (D.C. Cir. 2013). The court found that "cable operators continue to hold more than 55% of the national MVPD market and to *enjoy still higher shares in a number of local MVPD markets*." *Id.* at 161 (emphasis added). The court could not "overlook record evidence that cable operators maintain a more than 60% market share in certain MVPD markets." *Id.* at 163.

programming distribution market (both nationally and locally) continues to be dominated by a few large MVPDs. There are currently no regulatory constraints on MVPDs' ability to consolidate their operations, despite the mandate in the Cable Television Consumer Protection and Competition Act of 1992 that the Commission adopt such regulations. Specifically, there are no limits on the numbers of subscribers that can be served by any MVPD in a local market or at the regional or national levels.[81] By contrast, television broadcast station ownership is capped at both the national[82] and local[83] levels.

While the MVPD market remains highly concentrated, the market for television programming is increasingly competitive. MVPDs now offer dozens and often hundreds of channels of video programming, which compete with local broadcast stations for viewership and advertising dollars. Broadcasters also are competing with an increasing amount and variety of their own programming because of the rise of multicasting (discussed above). A recent economic analysis found that, unlike the MVPD industry, "the broadcasting industry is not highly concentrated."[84] Among other things, this analysis relied upon data demonstrating that, in 2010, the top four station owners (by advertising revenue) in the 25 largest markets earned only 19.5 percent of the total

[81] In 2009, a court vacated the national cable horizontal ownership cap. *See Comcast Corp. v. FCC,* 579 F.3d 1 (D.C. Cir. 2009). In 2001, the Commission's horizontal and vertical cable ownership limits were remanded. *Time Warner Entm't Co. v. FCC,* 240 F.3d 1126 (D.C. Cir. 2001). These cable horizontal and vertical limits were mandated by Congress in 1992. 47 U.S.C. § 533(f). However, because of court reversals, vacatur, and remands, the limits have been invalid for a longer period of time than they have actually been in effect.

[82] *See* 47 C.F.R. § 73.3555(e) (a single entity cannot own stations with a combined national audience reach of more than 39 percent of U.S. television households).

[83] *See* 47 C.F.R. § 73.3555(b) (a single entity cannot acquire a second television broadcast station in the same local market unless: (1) the stations' contours do not overlap; or (2) (a) at least one station is not ranked among the top four in terms of audience share and (b) there will remain at least eight independently owned television "voices" post-acquisition. As a practical matter, this restriction prevents an entity from owning more than one station in most local markets. Television broadcasters also face limits on their ownership of newspapers, 47 C.F.R. 73.3555(d), and radio stations, 47 C.F.R. 73.3555(c).

[84] *Eisenach 2011 Declaration* at 8.

broadcast and cable television advertising revenues in these markets. Even the top ten station owners in the 25 largest markets accounted for only 31.2 percent of the advertising revenues in these markets.[85] By year-end 2011, broadcasters' shares of advertising revenue had further declined, with the top four station owners in the top 25 markets earning only 16.6 percent of the total broadcast and cable television advertising revenues, and the top ten owners earning 26.5 percent of the revenues in those markets.[86]

A few years later, advertising revenue shares are even more fragmented. In 2013, the top four station owners collectively earned only 14.9 percent of advertising revenues in the 25 largest markets, and the top ten station owners earned only 24.5 percent of ad revenues (chart below).[87]

[85] *Id*. (showing that even the top broadcast television station groups do not earn large shares of the advertising market).

[86] NAB Comments in MB Docket No. 12-203 (Sept. 10, 2012) at 18.

[87] To capture broadcast stations' market shares accurately, each station owner's advertising revenues are expressed as a fraction of total estimated net advertising revenues earned by both broadcast and cable networks in the top 25 markets.

Advertising Shares of Top 10 US Broadcast Station Owners
Top 25 Markets (2013)

Rank	Station Owner	Market Share
1	Twenty-First Century Fox, Inc.	4.8%
2	CBS Corporation	3.6%
3	NBC/Comcast	3.6%
4	Gannett Co., Inc.	2.8%
Top 4		**14.9%**
5	Tribune Company	2.5%
6	Walt Disney Company	2.5%
7	Univision Communications, Inc.	1.8%
8	Cox Enterprises, Inc.	1.0%
9	Hearst Corporation	0.9%
10	E.W. Scripps Company	0.8%
Top 10		**24.5%**

Sources: SNL Kagan, TV Station Database; SNL Kagan "TV Network Industry Benchmarks (Broadcast Networks)" (2013); SNL Kagan, "TV Network Industry Benchmarks (Basic Cable Networks)" (2013).

Vertical Integration. MVPDs also enjoy the benefits of vertical integration, giving many the incentive and ability to favor their own programming over that of others who seek carriage on their platforms.[88] In its *Fifteenth Annual Video Competition Report*, the Commission stated that 99 national video programming networks were owned by or affiliated with the top five cable operators and another 62 such networks were owned by or affiliated with the two DBS providers (who were also the second and third largest MVPDs).[89] The Commission no longer provides an estimate of the total number of national video programming networks, but its most recent estimate was 800 networks.[90] If this estimate remains accurate, 161 of the 800 national programming

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[88] *See, e.g.,* S. Rep. No. 92-102 at 24-25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 (1991) (*Senate Report*) ("vertical integration gives cable operators the incentive and ability to favor their affiliated programming service").

[89] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Fifteenth Report, 28 FCC Rcd 10496 ¶ 39 (2013).

[90] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Annual Report, 27 FCC Rcd 8610 (2012) ("*Fourteenth Annual Video Competition Report*") at n. 96 ("Because of the difficulty we find in identifying all networks, we are not

networks, or 20 percent, remain vertically integrated with the seven largest MVPDs. This figure has remained relatively static over the last five years.[91] Additionally, seven of the top 20 national programming networks (as ranked by subscribership or prime time ratings) are vertically integrated with cable operators.[92] As the U.S. Court of Appeals for the D.C. Circuit recently concluded in upholding the Commission's program access rules, based on the levels of vertical integration in the marketplace, "the FCC could reasonably conclude that cable operators continue to 'have the incentive and ability to favor their affiliated programming vendors in individual cases, with the potential to unreasonably restrain the ability of an unaffiliated programming vendor to compete fairly.'"[93] Overall, the MVPD industry remains characterized by significant vertical integration.

The *Notice* in this proceeding asks questions about vertical integration in the broadcast industry.[94] As NAB observed in response to similar questions in a previous video competition proceeding, some of these inquiries do not actually concern vertical integration.[95] Ownership of a television broadcast station and a cable network, for example, does not relate to vertical integration because cable network programming is

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providing this information in our 14th Report. However, we believe the number of networks is approximately 800.")

[91] *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Report, 24 FCC Rcd 542 ¶ 184 (2009) (107 of the 565 national networks—or 18.9 percent—were vertically integrated with the seven largest MVPDs); *Fourteenth Annual Video Competition Report* at ¶ 44 (181 of approximately 800 national networks—or 22.6 percent—were vertically integrated with the seven largest MVPDs).

[92] *See Revision of the Commission's Program Access Rules*, Notice of Proposed Rulemaking, 27 FCC Rcd 3413 (2012) at Appendix B, Table 1.

[93] *Time Warner Cable, Inc. v. FCC*, 729 F.3d 137, 162 (D.C. Cir. 2013) (quoting *Revision of the Commission's Program Carriage Rules*, 26 FCC Rcd 11494 ¶ 33 (2011)).

[94] *See Notice* at ¶ 30.

[95] *See* Comments of the National Association of Broadcasters in MB Docket No. 12-203 (Sept. 12, 2012) at 19-20.

not distributed by television broadcast stations (nor is television broadcast station programming generally carried by cable networks). Because neither of these video products are used as an upstream input into the other's downstream offering, ownership of broadcast stations and cable programming networks does not implicate vertical integration analyses or concerns.[96] To some extent, a broadcast station's over-the-air signal can be viewed as an input into an MVPD's downstream product. Thus, a vertical relationship can arise where a cable operator also owns a broadcast station in the same market. This remains relatively uncommon, however, with only two entities owning both a broadcast station and a cable system in the same market.[97] Overall, the broadcast television industry is not characterized by significant vertical integration.

B. Promoting the Public Interest Through Sharing Arrangements

The Commission also seeks comment on the nature of joint sales agreements ("JSAs"), shared services agreements ("SSAs") and local marketing agreements ("LMAs"), as well as various questions about how these agreements affect competition and the provision of service to the public.[98] As NAB and many broadcasters have demonstrated in other contexts, these agreements are often critical to a broadcaster's ability to improve the quality and quantity of available programming and to remain financially viable in the face of rising competition. Economies of scale afforded by

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[96] *See* Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* (Addison Wesley 4th ed. 2005), at 395 ("A firm that participates in *more than one* successive stage of the production or distribution of goods and services is vertically integrated.") (emphasis added).

[97] *Fifteenth Annual Video Competition Report* at ¶ 165. Comcast Corporation and Cox Communications, Inc. each own a cable system and a broadcast station in the same market. NAB knows of no transactions since the release of the *Fifteenth Annual Video Competition Report* that have resulted in common ownership of a broadcast station and a cable operator in the same market.

[98] *Notice* at ¶¶ 29, 39, 44.

JSAs, SSAs, and LMAs have allowed broadcasters to maintain and even expand local news on many stations, even during a period of declining advertising revenue.[99]

The ability to realize operational efficiencies can be particularly important to broadcasters that are contributing new and diverse voices to the television marketplace. For example, NAB recently learned that two of the three remaining African-American television station owners are parties to JSAs. This includes Armstrong Williams, the sole owner of Howard Stirk Holdings, LLC ("HSH"), the parent company of the licensees of Stations WEYI-TV, Saginaw, Michigan, and WWMB-TV, Florence, South Carolina,[100] and Tougaloo College, an historically African-American college, licensee of Station WLOO, Jackson, MS.[101] Both licensees have discussed the benefits that these JSAs have afforded their communities in the record in other FCC proceedings.

In light of NAB's extensive comment on the benefits of sharing arrangements including JSAs and SSAs in other pending proceedings, NAB incorporates by reference certain other filings.[102] Additionally, NAB wishes to make the following points:

- Sharing arrangements are important to local station operations because television broadcasting generally, and local news production specifically, are subject to strong economies of scale and scope.[103]

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[99] Pew Project for Excellence in Journalism, *The State of the News Media 2013: An Annual Report on American Journalism* (2013), available at http://stateofthemedia.org/2013/local-tv-audience-declines-as-revenue-bounces-back/local-tv-by-the-numbers/#economics (visited Mar. 11, 2014)(the estimated on-air advertising revenue of local television stations declined by 9 percent from 2007 to 2012).

[100] *See* Letter from Colby May, Counsel for HSH, to Marlene H. Dortch, FCC Secretary in MB Docket Nos. 09-182 and 07-294 (Mar. 7, 2014).

[101] *See* Letter from Jennifer A. Johnson, Counsel for Station WLOO, to Marlene H. Dortch, FCC Secretary in MB Docket Nos. 09-182 and 07-294 (Feb. 28, 2014).

[102] *See* Comments of NAB in MB Docket No. 04-256 (Oct. 27, 2004); Comments of NAB in MB Docket Nos. 09-182 and 07-294 at 34-45 (Mar. 5, 2012); Reply Comments of NAB in MB Docket Nos. 09-182 and 07-294 at 57-69 (Apr. 17, 2012); Letter from Jane Mago, NAB to Marlene H. Dortch, FCC Secretary in MB Docket Nos. 09-182 and 07-294 (Feb. 18, 2014).

[103] *See* Jeffrey A. Eisenach & Kevin W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting 1 (2011) ("Economies of Scale Report"), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) ("*Eisenach 2011 Reply Declaration*") in NAB

- Placing undue limitations on broadcasters' ability to achieve economies of scale and scope "result[s] in higher costs, lower revenues, reduced returns on invested capital, lower output and, potentially, fewer firms."[104]

- Sharing arrangements "allow broadcasters, especially in small markets, to reduce their fixed costs – i.e., to realize economies of scale and scope – and thus continue to operate where it would otherwise be uneconomic to do so."[105]

- Depriving stations, "especially smaller ones, of the ability to engage in [sharing agreements] could have a significant impact on both the production of local news and on the stations' ultimate financial viability."[106]

The Commission's rules should recognize the programming and services that sharing arrangements bring to local communities and their continuing value to American viewers.

C. Promoting New Entry in Broadcasting

The *Notice* also seeks comment on issues affecting entry into the broadcast industry.[107] NAB has previously explained that ownership restrictions reduce economic incentives to invest in broadcasting in general, making it more difficult for both existing and aspiring broadcasters to raise capital.[108] Outdated limitations that contribute to an undercapitalized and less competitive broadcast sector do not benefit any broadcasters,

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Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011) (incorporated herein by reference). Scale economies arise because broadcast operations require large capital investment in equipment, production facilities, FCC licenses, and "first copy" intellectual property costs. *Id.* Economies of scope arise from the potential to use assets to create multiple products (e.g., a single transmitter can broadcast multiple digital programming streams). *Id.*

[104] Economies of Scale Report at 2.

[105] *Eisenach 2011 Reply Declaration* at ¶ 26.

[106] *Id.*

[107] *Notice* at ¶ 31-32.

[108] *See* NAB Comments in MB Docket 09-182, at 56-57 (Mar. 5, 2012). *See also* NAB Reply Comments in MB Docket No. 06-121, at 33-38 (Nov. 1, 2007).

including new entrants and small businesses that face increased challenges in obtaining needed investment. In past proceedings, NAB has described its own efforts to encourage new entry into broadcast ownership,[109] and also has supported the Commission's adoption of a wide range of incentive-based programs designed to encourage media ownership by women and minorities.[110] As NAB and other broadcasters have observed, improving access to capital through modifications to ownership and attribution rules would be a significant catalyst for increased ownership diversity, while existing asymmetric ownership restrictions serve to disadvantage broadcasters in today's media marketplace.

[109] *See, e.g.,* NAB Comments in MB Docket No. 09-182 (Mar. 5, 2012) at 53 (discussing NAB's partnerships with the NAB Education Foundation and the Broadcast Education Association, both of which offer programs designed to provide professionals and students with access to employment in the broadcasting industry, as well as with the tools they need to excel in broadcast management and ownership).

[110] *See* NAB Comments in MB Docket Nos. 09-182 and 07-294 (Dec. 26, 2012) at 7-8; NAB Reply Comments in MB Docket Nos. 09-182 and 07-294 at 3-4 (Jan. 4, 2013); Joint Ex Parte of the Minority Media & Telecommunications Council ("MMTC") and NAB in MB Docket Nos. 07-294, 09-182 (Jan. 30, 2013)(providing outline for incubator proposal with overcoming substantial disadvantages standard). Specifically, NAB has urged the FCC to: (i) sponsor primers on investment and financing of broadcast enterprises for smaller and regional lenders so that they may be better informed about the industry and more willing to make loans to new owners; (ii) adopt an incubator or waiver program that would give broadcasters incentives to finance qualifying businesses and to ensure that ownership of communications outlets reflects the demographics of the audiences and communities they serve; (iii) adopt subchannel licensing programs that would permit the sale of broadcast subchannels to qualifying entities to facilitate better opportunities for prospective subchannel operators by making it easier to obtain financing; (iv) modify its rules to allow sellers to hold a reversionary interest in broadcast licenses pursuant to certain guidelines to incentivize sellers to be more willing to finance a station purchased by a new owner by retaining the ability to reacquire the station in the event of a default; (v) reinstate a relaxed attribution standard for qualifying entities to improve their ability to attract financing; (vi) reinstate the policy that permitted the transfer of grandfathered radio station combinations to any entity so long as the buyer assigns the excess stations to a qualifying business within one year; (vii) urge Congress to provide tax incentives to station owners who sell broadcast properties to qualifying owners; (viii) modify certain rules governing radio operations advanced in an MMTC petition for rulemaking; (ix) offer structural rule waivers for financing construction of a qualifying entity's unbuilt station; (x) develop an online resource directory to enhance recruitment, advancement, and diversity efforts; (xi) consider proposals for legislative recommendations to establish targeted loan programs; and (xii) grant the request for clarification regarding foreign ownership restrictions filed by the Coalition for Broadcast Investment. The Commission has since granted the requested clarification regarding foreign ownership. *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, FCC No. 13-150 (rel. Nov. 14, 2013). All of the other proposals remain pending.

D. The Importance of Retransmission Consent to Local Broadcast Operations

The viability of local broadcast stations and their continued local service are closely tied to their ability to negotiate for fair value and carriage of their signals through the retransmission consent process.[111] In today's competitive video market, retransmission consent compensation enables broadcasters to deliver free, locally-oriented programming and services. Broadcasters who receive retransmission consent compensation are able to defray some of the high costs associated with the production of local news and other programming valued by their viewers. Because today's viewers now use a combination of media platforms to obtain news, information, and entertainment,[112] broadcasters must increasingly rely on non-advertising revenue sources to support their local news budgets.[113] NAB anticipates that retransmission consent fees will continue to play a critical role in ensuring the ongoing vitality of local television services, including news, in the future.

NAB sought to assess the impact of retransmission consent on broadcasters' ability to deliver the content and services viewers have come to expect through a detailed analysis of the economics of television broadcasting.[114] This analysis determined that retransmission consent revenue plays an important role in stations' financial viability.[115] Notably, the analysis also observed that, because "retransmission

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[111] *Notice* at ¶¶ 34, 44 (seeking data and information concerning retransmission consent fees).

[112] FCC, Steve Waldman and the Working Group on Information Needs of Communities, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age* (June 2011), *available a*t: www.fcc.gov/infoneedsreport, at 15.

[113] *See, e.g., id* at 299 (the president of Gannett Co., Inc.'s broadcasting division observed that "[i]f [broadcasters] can't use retransmission consent [to fund news budgets], local news will die.").

[114] *See* Economies of Scale Report.

[115] *See Eisenach 2011 Reply Declaration* at ¶¶ 9-13; Economies of Scale Report at Section III.

consent fees are used by broadcasters to pay for inputs that increase the quantity and quality of television broadcast content," depriving stations of retransmission consent revenue would result in a reduction in the quantity and quality of available programming, including local news, as well as, in the long run, "significant exit from the industry."[116] The ability of broadcasters to negotiate freely with MVPDs for retransmission consent is critical to broadcasting's ability to compete in the marketplace and continue to offer highly relevant, top quality content for viewers.

III. Conclusion

Free over-the-air broadcast television improves the quantity, quality and diversity of video programming available to all American television households. An increasing number of households rely exclusively on free broadcast signals for news, weather, emergency information and entertainment. A disproportionately high number of these are low income and minority households. Viewers are benefiting from exponential increases in the amount and types of available of broadcast programming, an expanding array of HD content, and the delivery of broadcast signals to portable handheld devices. The retransmission consent process helps ensure that consumers benefit from broadcasters' programming services, including these developing digital services. By improving their service offerings, broadcasters continue to play an important role in today's competitive video marketplace, despite a regulatory regime that limits their ability to develop efficient combinations and attract capital. The Commission should consider regulatory relief with regard to its ownership and attribution rules to

[116] *Eisenach 2011 Reply Declaration* at ¶¶ 14-15 (explaining how a lack of retransmission consent compensation would reduce the median station's future profit margins and lower its rate of return below its cost of capital).

permit broadcasters to realize economies of scale and scope, and obtain needed investment.

Respectfully submitted,

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