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

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review -	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	MB Docket No. 07-294
Promoting Diversification of	)	
Ownership in the Broadcasting Services	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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March 5, 2012

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EXECUTIVE SUMMARY

In these Comments, the National Association of Broadcasters ("NAB") responds to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* ("*NPRM*") to review the broadcast ownership rules as required by section 202(h) of the Telecommunications Act of 1996 ("1996 Act"). Section 202(h) requires the Commission to take a fresh look at these ownership rules every four years and to demonstrate why they should not be repealed or relaxed in light of the increasing competition in the media marketplace. NAB submits that to fulfill its statutory mandate, the Commission must adopt far more significant reforms than those proposed in the *NPRM*.

The rules under review here distort competition in the marketplace and place broadcasters at a severe disadvantage. The rules limit broadcasters' ability to respond to market forces, as cable, satellite and Internet-based media outlets proliferate and compete for audiences and advertising revenues without comparable restrictions. As a result of the market imbalance created by the rules, many broadcast stations struggle to maintain their economic vibrancy and a strong presence in local communities.

Relaxation or repeal of the current broadcast ownership rules will promote the FCC's goals of competition, diversity and localism. The benefits of common ownership have been well-documented. A 2011 study examining the television industry, for example, found that broadcasting generally, and local news production specifically, are subject to strong economies of both scale and scope. Reform of the current broadcast ownership restrictions will allow local stations to tap those efficiencies. The stations can then, in turn, pass the benefits to consumers in the form of enhanced programming, including local news, and other improved services.

Local Television Ownership. The record in this proceeding shows that the Commission should relax its local television ownership restrictions to permit duopolies more freely in markets of all sizes. Competitive pressure, particularly in small and medium-sized markets, has reduced broadcasters' audience shares and advertising revenues. Relaxation of the duopoly rule will enhance stations' abilities to cope with these changes, maintain their competitive standing and permit them to continue serving their local audiences.

With regard to specific elements of the duopoly rule, NAB demonstrates that the eight-voices test and the prohibition on mergers between two of the top-four rated stations in a television market must be eliminated or revised. In many markets, there is no natural "break point" between the audience shares of the top-four rated stations and the other stations. Often, combinations of two lower-rated stations (even if among the top-four rated stations in a market) would create a more viable competitor to the leading television station and other video programming outlets providing service in the market. The eight-voices test similarly fails to take into account marketplace realities. It disproportionately impacts smaller markets, most of which do not have eight stations to begin with, and fails in any case to encourage competition or increase provision of local news and public affairs programming.

The Commission should refrain from changing its long-standing contour overlap approach for determining compliance with local television ownership rule. The digital Noise Limited Service Contour standard was designed to approximate an equivalent level of service to a Grade B contour, and delineates a station's service area more accurately than the use of Designated Market Areas.

The Commission should not alter the duopoly rule or adopt any new rules that would diminish the public interest benefits of multicasting. Multicasting in particular fosters the FCC's diversity goals and enhances service to local audiences, but has no relevance to ownership issues, such as whether the duopoly rule should be modified.

Local Radio Ownership. The Commission should continue the deregulatory process begun by Congress in 1996. The current local radio ownership rules cannot be justified under section 202(h), and no longer serve the FCC's policy goals. Consumers today have numerous choices in audio programming providers and sources. The record in this proceeding demonstrates that reform of the local radio rules not only would enhance broadcasters' ability to compete in today's marketplace, but also would promote continued diversification of programming and service to local listeners, including niche audiences. In particular, NAB submits that eliminating the AM/FM subcaps would provide greater flexibility in radio ownership without increasing the number of stations owned by any single entity.

Newspaper/Broadcast Cross-Ownership. The Commission should repeal the newspaper/broadcast cross-ownership restrictions. The record here again establishes that the assumed harms from common ownership of newspaper and broadcast facilities cannot be proven. Quite the contrary, the record evidence demonstrates that increased cross-ownership produces substantial public interest benefits, as broadcast outlets and newspapers are able to achieve increased efficiencies and devote more resources to serving their local communities. Given that local news production is subject to strong economies of scale and scope, it is unsurprising that numerous studies conducted by (or for) the Commission, industry analysts, academics and others have consistently found over the course of decades that broadcast outlets cross-owned with newspapers offer greater amounts of local news and informational programming.

Radio/Television Cross-Ownership. NAB supports the FCC's proposal to eliminate the radio/television cross-ownership rule. Elimination of the rule will help level the playing field between local broadcast stations and multichannel video and audio distributors and is required under section 202(h). A number of studies demonstrate that increased cross-ownership of radio and television stations furthers localism through additional air-time devoted to news and increases in public affairs coverage.

Diversity of Ownership. NAB supports the adoption of incentive-based means of promoting ownership of broadcast outlets by minorities, women and small businesses. Incentive-based methods, such as tax incentives, waiver/exception programs, establishment of reversionary rights for certain sales, and subchannel licensing programs will be effective in enhancing ownership opportunities for these groups, without restricting broadcast ownership in ways that disadvantage all broadcasters. The Commission should act on the proceedings before it in which these proposals have been advanced. The rules adopted should recognize that it is access to capital that represents the most significant barrier to increasing ownership diversity.

Attribution Matters. The Commission should refrain from adopting a rule that would require attribution of additional types of sharing arrangements. Further regulation in this area would effectively preclude broadcasters from entering into beneficial and cost-saving arrangements in all but the largest markets. Such arrangements do not threaten licensee control over operations and programming decisions, which are the core principles underlying the FCC's attribution policies. In fact, sharing arrangements advance the FCC's localism and diversity goals by facilitating the provision of local news and other programming. The Commission should not adopt any rules that would further inhibit these arrangements, such as making more of these agreements attributable or subject to increased disclosure requirements. The Commission should refrain from addressing here the impact of sharing arrangements on retransmission consent negotiations. Such negotiations are irrelevant to the attribution regime because they do not implicate a station's core operating functions and, in any event, are the subject of another pending Commission proceeding.

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COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these Comments in response to the *NPRM*[2] released by the Federal Communications Commission ("FCC" or "Commission") in the above-referenced proceeding. As required by section 202(h) of the 1996 Act, the Commission seeks comment generally on whether its media ownership rules remain "necessary in the public interest as the result of competition."[3] The Commission also seeks comment on a range of specific issues, including the ownership of broadcast stations by minorities and women,[4] how to reevaluate the goal

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

[2] *In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 09-182, 07-294, Notice of Proposed Rulemaking (rel. Dec. 22, 2011) ("NPRM").

[3] NPRM ¶ 1 (citing Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act").

[4] *See id.* ¶ 18.

of localism to account for changes in the way consumers get news in today's robust information marketplace,[5] and the benefits that would accrue from allowing combinations that currently are impermissible.[6]

In these Comments, NAB responds to the wide range of issues raised in the *NPRM* and discusses how the Commission's competition, diversity, and localism goals would best be served by relaxing or repealing the ownership rules under review here, consistent with section 202(h) of the 1996 Act. Given the vital role broadcasters play in their communities—providing valuable news, information and entertainment to address their audiences' interests free of charge every day—local broadcasters must have the flexibility to form competitively viable ownership structures. Ownership rules limit the ways broadcasters (but not their competitors) can achieve important economies of scale and scope in a multichannel, multiplatform environment, adversely affecting stations' abilities to compete and to serve their diverse audiences and local communities. To this end, NAB demonstrates that the narrow focus of current ownership restrictions renders them increasingly arbitrary as new technologies emerge and proliferate. Accordingly, NAB urges the Commission, consistent with its statutory mandate under section 202(h), to repeal or substantially relax the broadcast ownership rules under review in this proceeding.

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5 *See id.* ¶ 15.
6 *See id.* ¶ 23.

I. THE CURRENT MEDIA OWNERSHIP RULES DO NOT PROMOTE THE COMMISSION'S GOALS OF COMPETITION, LOCALISM, AND DIVERSITY AND SHOULD, CONSISTENT WITH SECTION 202(H), BE REPEALED OR MODIFIED.

As established by the courts, section 202(h) directs the Commission to take a "fresh look"[7] at current broadcast ownership rules and demonstrate with a "reasoned analysis"[8] why they should not be repealed or relaxed.[9] NAB respectfully submits that to fulfill section 202(h)'s mandate to repeal or modify any regulations that are no longer in the public interest as a result of competition,[10] the Commission must implement far more significant reforms than proposed in this *NPRM*.[11] As NAB demonstrates throughout these Comments, relaxation or repeal of the rules would more effectively foster each of the Commission's policy goals of competition, localism and diversity.[12]

As an initial matter, the *NPRM* asks several questions about balancing the costs and benefits of limiting media combinations, including detailed information on cost savings associated with common or cross-ownership where such a combination is not currently permitted.[13] But, as shown below, the benefits of common ownership are well-

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7 *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004) ("*Prometheus I*").

8 *Id.* at 395.

9 *See Prometheus Radio Project v. FCC*, 652 F.3d 431, 445 (3d Cir. 2011) ("*Prometheus II*") (citing *Prometheus I*, 373 F.3d at 395).

10 1996 Act, § 202(h); *see also* 47 U.S.C. § 161 (2006) (directing the Commission to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful competition between providers of such service").

11 *See* H.R. Rep. No. 104-204, at 118 (1995) (finding that "significant changes in local video markets," including increases in multichannel competitors, "require substantial deregulation of local [television] station ownership and greater reliance on marketplace forces to assure vigorous competition and diversity"); *see also Prometheus I*, 373 F.3d at 395 (acknowledging that section 202(h) is "deregulatory" in nature); *Fox TV Stations, Inc. v. FCC*, 280 F.3d, 1027, 1048 (D.C. Cir. 2002) (construing section 202(h) to "carr[y] with it a presumption in favor of repealing or modifying the ownership rules").

12 *See* NPRM ¶¶ 10, 12, 14, 17.

13 *See id.* ¶ 23.

documented.[14] Any undocumented assumption that there are corresponding "costs" that will outweigh these benefits is contrary to the directive of section 202(h).[15] Under section 202(h), the Commission must demonstrate that these "costs" are more than illusory to justify retention of the rules.[16]

It is similarly incorrect merely to assume that any relaxation of the ownership rules will benefit media firms to the detriment of consumers.[17] The interests of local stations and consumers in this regard are not at odds. The efficiencies realized by broadcast outlets will flow to consumers by way of increased quantity and quality of programming including news, enhanced local services, and, in some cases, the ability of local stations to survive or continue to maintain a significant local presence. As a recent paper examining the economies of scale and scope in the television industry explained, because such economies "are associated with falling unit costs of production" (*i.e.*, "with the production of more output at lower average cost"), they "are *prima facie* welfare enhancing."[18] Relaxation of the rules thus will result in substantial benefits to all parties.

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14 *See, e.g.*, *infra* Parts II.A.3; III.B; III.C; IV.B; IV.C; V.B; V.C.

15 In short, the Commission may not "assume[] the need for the rule[s], and then attempt[] to justify [them]." *Sinclair Broad. Grp. v. FCC*, 284 F.3d 148 171 (D.C. Cir. 2002) (Sentelle, J., concurring and dissenting in part).

16 *See Motor Vehicle Mfrs. Ass'n v. State Farm Ins. Co.*, 463 U.S. 29, 43 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'") (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); *HBO v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (per curiam) (stating that a regulation perfectly reasonable and appropriate in the face of a given problem is highly capricious if that problem does not exist); *see also Sinclair Broad. Grp.*, 284 F.3d at 163 (remanding the eight-voices test to the Commission because "[t]he rulemaking record [did] not fill the evidentiary gap").

17 *See, e.g.*, NPRM ¶ 24.

18 *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

A. Broadcasters Struggle to Compete in Today's Marketplace Vis-À-Vis Their Competitors Because the Media Ownership Rules Place Them at a Disadvantage.

Broadcasters face intense and increasing competition for audiences and advertising revenues in the multichannel, multiplatform media environment and, as a result, many broadcast stations struggle to continue providing a strong local presence.[19] As the Commission's Broadband Task Force observed, the FCC's ownership rules have "limited [broadcasters'] flexibility to evolve their business model or industry structure over time in response to changing consumer preferences and habits."[20] Economists have confirmed that "current FCC regulations" limit the "ability of broadcasters to realize beneficial economies of scale and scope, thereby lowering economic returns to broadcasting, depressing investment below the economically optimal level, significantly reducing the output of news programming, and threatening to shrink the size of the industry."[21] Under these regulatory conditions, broadcasters are severely hampered in the marketplace, especially against competitors that are not subject to comparable restrictions.[22]

Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) ("Eisenach Reply Declaration"), in NAB Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011) ("NAB Retrans Reply Comments") (incorporated herein by reference).

19 *See* NPRM ¶ 3.

20 FCC, OBI Technical Paper No. 3, Spectrum Analysis: Options for Broadcast Spectrum 10 (June 2010).

21 Economies of Scale Report, *supra* note 18, at 2-3.

22 For example, multichannel video and audio programming distributors are not subject to any horizontal ownership limits, *see Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009), or vertical ownership limits. *See Time Warner Entm't Co. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001). *See also Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee,* Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348 (2008) (approving the merger of the only two satellite radio operators into a single entity, allowing it to offer hundreds of channels of audio programming in every local market in the country).

The broadcast market is competitive by any measure. Consumers today are obtaining news, information and entertainment from a multitude of platforms, both online and offline, from traditional sources, such as print media and television and radio outlets, to newer sources, such as television and radio satellite services, the Internet, social media networks, and mobile phones.[23] Further, Americans increasingly use all of these platforms.[24] The FCC's recently commissioned studies do not controvert these competitive realities.[25]

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[23] *See* Pew Research Center, Project for Excellence in Journalism, How People Learn About Their Local Community 29 (2011) ("Local Community Study") (finding that almost half of adults get at least some local news and information via their smartphones or tablet computers); Pew Research Center, Pew Internet & American Life Project, How Mobile Devices are Changing Community Information Environments 2 (2011) ("Mobile Devices Study") (reporting that forty-seven percent of adults get some local news and information on their mobile devices); Pew Research Center, Pew Internet & American Life Project, Politics Goes Mobile 3 (2010) (finding that more than a quarter of American adults used their cell phones to learn about or participate in the 2010 mid-term election campaign).

[24] *See* Local Community Study, *supra* note 23, at 3 (showing that sixty-four percent of American adults use at least three different types of media every week to get news and information about their local community, and that fifteen percent rely on at least six different kinds of media weekly).

[25] Because broadcasters provide their programming for free, the Commission concludes that their competitive performance cannot be studied by examining the relationship between price to consumers and marginal cost. Therefore, to assess competition, the FCC commissioned studies for this proceeding using metrics such as consumer satisfaction and the manifestation of innovation. The studies confirmed the competitive nature of the broadcast market because they did not find that market structure adversely affected any of these metrics. The first study, which examined consumer satisfaction through television audience ratings during parts of the day when programming is locally selected, found no significant relationship between variation in viewing and variations in market structure across markets. *See* NPRM ¶ 174 (citing Adam D. Renhoff and Kenneth C. Wilbur, Local Media Ownership and Media Quality 15 (2010) ("Media Ownership Study 1")). Another study examined listening to news radio stations as an indicator of consumer satisfaction, but found no significant correlation between market structure and listening. *See* NPRM ¶ 175 (citing Joel Waldfogel, Station Ownership and the Provision and Consumption of Radio News 17 (2010) ("Media Ownership Study 5")). A third study examined how the structure of the television market has influenced innovation by studying the increase in television stations' use of multicasting, but concluded that market structure does not have a statistically significant impact on either the amount of or intensity of innovation. *See* NPRM ¶ 178 (citing Andrew S. Wise, Broadcast Ownership Rules and Innovation 54 (2010)). Rather, this study found that market size and the number of stations in the market are more significant factors. *Id.*

The *NPRM* recognizes the "dramatic impact" on the media marketplace of these new technologies and entrants,[26] but still declines to propose changes to the current broadcast ownership rules that would fully reflect this impact. While recognizing the proliferation of broadband Internet, the *NPRM* discounts its impact because "new media are not yet available as ubiquitously as traditional broadcast media."[27] Ubiquity is not the proper standard for the Commission's focus in this inquiry, however, as section 202(h) does not require "ubiquitous" availability of competing platforms for the rules to be reformed,[28] nor is ubiquity required for a platform to have a competitive impact. Adoption of broadband in nearly seventy percent of households has real consequences.[29]

Clearly, new media provide significant competition to broadcast outlets in local markets. The *National Broadband Plan*, which the Commission has relied upon in other proceedings, acknowledges that the Internet is "increasingly becom[ing] the standard platform for receiving information."[30] A recent Pew Research Center study confirms this, finding that the Internet is the first or second most important source of *local* news and

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[26] NPRM ¶ 2.

[27] *Id.* ¶ 4.

[28] In particular, *nationwide* ubiquity of new media is not the proper focus, as the *NPRM* reaffirms that the local ownership rules should be analyzed in the context of local markets. *See id.* ¶ 12.

[29] *See* U.S. Dep't of Commerce, Econs. & Statistics Admin. & Nat'l Telecomm. & Info. Admin., Exploring the Digital Nation: Home Broadband Internet Adoption in the United States 1, 5 (2011) ("Broadband Adoption Report"). Counting Internet users who access the Internet outside the home and the small number of households with dial-up Internet access, "[eighty] percent of American households in 2010 had at least one Internet user, up three percentage points from the previous year." *Id.* at 5. The June 2011 report of the Digital Future Project similarly found that eighty-two percent of Americans used the Internet in 2010. *See* USC Annenberg Sch. for Commc'ns & Journalism, The Digital Future Project 2011: Surveying the Digital Future 30 (2011).

[30] *Connecting America: The National Broadband Plan* 303 (2010) ("*National Broadband Plan*").

information for fifteen of the sixteen subject matters examined.[31] Moreover, the ability of consumers to bypass media outlets entirely and obtain significant news and information directly from governmental and other sources, such as political campaigns and candidates, does not merely reflect a change in competition, but a complete change in the manner in which information, including public policy and political information, is both originated and accessed.[32] The record in this proceeding demonstrates that there is more than ample competition in the modern media marketplace and that the ownership rules are distorting competition without producing offsetting public interest benefits.

B. The Media Ownership Restrictions Constrain Broadcasters' Ability to Serve Their Local Communities.

For purposes of section 202(h) analysis, it is significant that broadcasters are statutorily obligated to serve their local communities by providing programming responsive to the needs of those communities.[33] Indeed, in at least one context, the

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[31] *See* Local Community Study, *supra* note 23, at 22 (surveying the nearly eighty percent of Americans who are online about the information sources they rely on to obtain material about sixteen specific local information areas, including weather, politics, crime, arts/cultural events, local businesses, schools, community events, restaurants, traffic, taxes, housing, local governments, jobs, social services, zoning/development, and breaking news). Significantly, this survey defined the Internet as **web-only** sources, such as search engines, specialty-topic websites and social networking sites, and counted reliance on the websites of local newspapers and television stations, not as web sources, but as reliance on the newspaper or television station itself. Thus, the study demonstrates the rapidly growing importance of online sources in local markets.

[32] *See* Pew Research Center, Pew Internet & American Life Project, Government Online: The Internet Gives Citizens New Paths to Government Services and Information 10 (April 27, 2010) ("Government Online Study") (finding that forty-eight percent of Internet users have looked for information about a public policy or issue online with their local, state or federal government).

[33] *See* 47 U.S.C. § 307(b) (requiring the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same"). The Commission has consistently interpreted this to mean that "broadcasters are obligated to operate their stations to serve the public interest—specifically, to air programming responsive to the needs and issues of the people in their communities of license." *Broadcast*

NPRM recognizes that "broadcasters would continue to have the same obligation to serve their local communities in the absence of a radio/television cross-ownership restriction,"[34] and thus the rule is not necessary in the public interest to promote localism. NAB submits that this same logic should apply to reform of other broadcast ownership rules.

Not only are structural ownership limits unnecessary to promote localism, they are actually inconsistent with this goal. Only competitively viable broadcast stations have the resources necessary to provide the type of significant local presence the Commission envisions. As demonstrated below, common and cross-ownership of broadcast outlets leads to increased production of local news and other programming in response to market forces, thereby enhancing localism.[35] By contrast, there is no evidence supporting the contention that common ownership impedes local news production—an unsurprising result, given that local news production in particular "is subject to strong economies of both scale and scope."[36] Simply put, reliance upon "promoting localism" as a kind of talisman cannot justify retention of the current broadcast ownership rules.

C. Market Forces—Not Diffuse Ownership—Drive Diversity

NAB and others (including the authors of FCC commissioned studies) have previously and repeatedly demonstrated that market forces—not ownership structures—

Localism, Report on Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324 ¶¶ 5-6 (2008).

34 NPRM ¶ 127.

35 *See infra* Parts II.A.3; III.B; IV.C; V.C; VII.A.

36 Economies of Scale Report, *supra* note 18, at 2 (explaining further that local news production is a form of investment, and that ownership restrictions that "lower the overall return on investment in broadcasting will thus result in less local news").

drive diversity of media outlets and their content, and that viewpoint diversity is not connected to diffuse ownership. Attachment A provides an illustrative list of numerous studies already in the record that support these conclusions.[37] Most recently, Media Ownership Study 8B addressed whether the structure of television markets impacts viewpoint diversity in local news, and concluded: "We are struck by how little evidence we are able to find for a robust influence of specific elements of market structure on diversity."[38] This study further observes that a common owner has "few[er] incentives to simultaneously broadcast similar content on both stations because the programs will serve a similar audience and cannibalize viewers from one another."[39]

Extensive empirical evidence demonstrates that competitively viable broadcasters have strong business incentives to offer a diverse array of content, regardless of their ownership structure.[40] Indeed, Media Ownership Study 8B

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[37] *See* Attachment A, Illustrative Studies Identified in Previous Proceedings Showing that Forces Other than Ownership Drive Diversity, Including Viewpoint Diversity; *see also* NAB Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 23-31 (filed July 12, 2010) ("NAB NOI Comments"). Several of the FCC's recent ownership studies similarly fail to find a connection between ownership structures and diversity or quality. *See, e.g.,* Media Ownership Study 1, *supra* note 25, at 13 (finding no statistically significant relationship between ownership structure variables and any of its quality measures); Lynn Vavreck, Simon Jackman, and Jeffrey B. Lewis, How the Ownership Structure of Media Markets affects Civic Engagement and Political Knowledge, 2006-2008 2 (2011) ("Media Ownership Study 3") (ownership variables studied, including the number of independent television owners in local markets, had no impact on civic or political engagement or knowledge); Adam D. Renhoff and Kenneth C. Wilbur, Local Media Ownership and Viewpoint Diversity in Local Television News 22 (2011) ("Media Ownership Study 8A") (associations between ownership variables and diversity are "statistically indistinguishable from zero").

[38] Lisa M. George and Felix Oberholzer Gee, Diversity in Local Television News 14 ("Media Ownership Study 8B").

[39] *Id.* at 2, 14-15 (emphasizing the importance of "business-stealing incentives").

[40] *See id.* at 3 (discussing how "[r]egulations designed to foster competition by limiting ownership concentration might [] serve to reduce diversity"); *see also, e.g.,* L. George, What's Fit to Print: The Effect of Ownership Concentration on Product Variety in Daily Newspaper Markets 2 (2001) (finding that ownership concentration was increasing content diversity and benefiting consumers); L. George, *What's Fit to Print: The Effect of Ownership Concentration on*

documented specifically "that increases in ownership concentration often encourage diversity."[41] Most notably, "greater concentration increases the number of politicians that are covered in local news," and "[i]f more extensive coverage leads to better-informed citizens, existing restrictions on ownership concentration are likely to be *welfare-reducing*."[42] And more generally, this study found "no evidence that greater diversity stimulates viewing" and concluded that "changes in diversity have little impact on viewing tendencies."[43] These conclusions clearly undermine one of the fundamental rationales for maintaining local ownership restrictions and support reform of these restrictions to enhance consumer welfare.

II. <u>RELAXING THE LOCAL TELEVISION OWNERSHIP RULE WILL ENABLE BROADCASTERS TO SERVE THEIR LOCAL COMMUNITIES IN TODAY'S COMPETITIVE MEDIA MARKETPLACE.</u>

The *NPRM* tentatively concludes that the existing local television ownership rule ("duopoly rule") is necessary to promote competition.[44] NAB disagrees with this conclusion. Permitting duopolies more freely in markets of all sizes will provide broadcasters with the necessary economies of scale and scope to compete effectively

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Product Variety in Daily Newspaper Markets, 19 Info. Econ. & Pol'y 285 (2007) (updating 2001 study and reaching the same conclusions); Joint Declaration of L. Froeb, P. Srinagesh and M. Williams 1, Comments of Hearst-Argyle Television, Inc. to *Notice of Proposed Rulemaking* in MB Docket 06-121, at Attachment A (filed Oct. 23, 2006) ("[M]edia mergers are more likely to increase diversity and increase consumer welfare" because commonly owned stations have "an incentive to move the merging products further away from one another to avoid cannibalizing each other's sales (or audience), so . . . products are more differential, resulting in greater diversity[.]").

41 Media Ownership Study 8B, *supra* note 38**,** at 18.

42 *Id.* (emphasis added).

43 *Id.* at 17-18. The study notes that "[o]ne view of policy interventions in media markets is that they are necessary to better match the available content to viewer preferences in an industry that is characterized by significant fixed cost and limited competition . . . we find little evidence in support of this view." *Id.* at 18.

44 *See* NPRM ¶ 26.

against multichannel video programming distributors ("MVPDs") and online programming distributors for advertising revenues and audience alike, thereby enhancing their ability to maintain a meaningful local presence and diverse, quality programming. Retention of the current duopoly rule is inconsistent with the public interest because it does not promote competition, localism, or diversity.

A. Substantial Changes in the Competitive Landscape of Local Television Markets Warrant Greater Reform of the Duopoly Rule.

Television stations do not compete solely against each other for audience and advertising, but face a wealth of competition, from cable operators, pay television networks, satellite television and radio, Internet, newspapers, magazines, direct mail, billboards, search engine marketing, social media, and mobile media, among others. As a result, broadcasters, particularly in small and mid-sized markets, face severe economic stresses that hinder their ability to serve their local communities effectively.[45] Empirical evidence and real-world experience demonstrate that common ownership not only facilitates broadcasters' ability to compete in today's media marketplace but also directly advances localism and diversity.

1. <u>Broadcasters Face Increasing Competition from Non-Broadcast Media Outlets for Audience and Advertisers.</u>

Audience fragmentation as a result of increased competition for viewers from cable and satellite providers, Internet-based media companies, and other non-broadcast media outlets has had a significant and negative impact on broadcast audience shares.

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[45] Section III of the recent study on scale and scope in television broadcasting provides a thorough, detailed discussion of how increased competition from newer outlets and the resulting audience fragmentation and reduction of broadcasters' share of local advertising have adversely affected stations' traditional business model. *See* Economies of Scale Report, *supra* note 18, at 16-28. In light of the clear empirical evidence, the Commission cannot credibly maintain that "the impact" of the growth of MVPDs and Internet delivery of video programming on broadcast television "is unclear." NPRM ¶ 34.

Although broadcast television continues to play a vital role in provision of local news and emergency journalism, today's information market is broader and more varied than ever before, and viewers increasingly use a range of media outlets to obtain news, information and entertainment. For example, MVPDs now often offer hundreds of channels of video programming, and this number continues to increase.[46] As a result, over the past decade, there has been a significant decrease in the total viewing shares earned by local television stations, especially as compared to their MVPD competitors.[47]

Similarly, programming alternatives available over the Internet have impacted broadcasters.[48] Several studies demonstrate that consumers utilize the Internet not only for entertainment-related purposes, but also to access local news and political information,[49] as well as to obtain information directly from the government and other sources.[50] It is anticipated that, over the next several years, viewers will continue to substitute freely among media for both news and entertainment purposes.[51]

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46 The number of channels received by the average household rose from 61.4 channels in 2000 to 96.4 channels in 2005, 104.2 channels in 2006, 118 channels in 2007, and 135 channels in 2010. *See* Average U.S. Home Now Receives a Record 104.2 TV Channels, According to Nielsen, PR Newswire, Mar. 19, 2007; Credit Suisse, Convergence 2011: The Future of Video Survey 2011 7 (2011); David Rolsen, Nielsen: Record Number of Channels for Average U.S. Home, SNL Kagan, June 9, 2008.

47 *See* Economies of Scale Report, *supra* note 18, at 21 & fig. 5.

48 *See* NPRM ¶ 133 (observing that consumers are increasingly turning to new media to obtain news and information, and that the public no longer relies solely on local broadcast television as the primary source for news and information).

49 *See, e.g.,* Pew Research Center, Pew Internet & American Life Project, The Internet and Campaign 2010 2, 9 (2011) ("Internet and Campaign Study") (finding that seventy-three percent of adult internet users (fifty-four percent of all U.S. adults) went online to get news or information about the 2010 midterm elections or to get involved in campaigns in one way or another (e.g., watching political videos, sharing election-related content or fact checking political claims) and that one quarter of all adults got *most* of their news about the 2010 elections from the Internet).

50 *See, e.g.*, Government Online Study, *supra* note 32, at 10 (finding that eighty-two percent of Internet users (sixty-one percent of all adults) had visited a government website to obtain information or to complete a transaction in 2009, and nearly half looked for policy or issue

Not surprisingly, as aggregate broadcast viewership has declined, so too have advertising revenues. By 2009, cable and Internet advertising accounted for approximately one-third of the local advertising dollars on which broadcasters traditionally have depended, and these shares are expected to grow.[52] In 2010, local advertising revenues attributable to cable were the equivalent of two to three additional television stations per market, depending upon the market size.[53] New media also will cut into broadcasters' revenues as advertisers allocate more of their budgets to locally targeted digital, mobile, and social media advertisements.[54] The *National Broadband*

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information); Local Community Study, *supra* note 23, at 13 (finding that forty-seven percent of adults get local news weekly from the Internet).

51 *See* Economies of Scale Report, *supra* note 18, at 20-21 & fig. 5 (explaining that broadcast channels have lost viewership share to pay TV networks and that this trend is expected to continue); Local Community Study, *supra* note 23, at 1 (stating that most Americans "use a blend of both new and traditional sources to get their information" and describing the media landscape for local news and information as a "nuanced ecosystem of community news and information").

52 *See* Economies of Scale Report, *supra* note 18, at 22 fig. 7.

53 In 2010, in the ten largest television markets, cable garnered $150 million in local advertising revenues per market ($1.5 billion total), representing an increase in cable's average share of local television advertising revenues from just over eleven percent in 2000 to nearly twenty-five percent in 2010. Similarly, cable's share of local advertising dollars in small television markets has doubled over the past decade. *See* Attachment C, Cable Share of Local TV Revenues, 2000/2005/2010. MVPDs' rising share of local advertising markets is fueled in part by joint advertising sales arrangements that allow MVPDs to compete against broadcasters, but not each other, for advertising market share. For example NCC Media, which is jointly owned by three cable operators (Comcast, Cox, and Time Warner Cable), partners with its head-to-head competitors in local markets, such as Verizon FiOS, AT&T U-Verse, and DIRECTV, to sell local ad spots. *See, e.g.,* Wayne Friedman, NCC's "I+" Extends Cable Ad Reach, Media Daily News, Mar. 7, 2011. Other NCC Media partners include Charter Communications, Inc., Cablevision, CableOne, and Mediacom. *See* NCC Media, Owners and Affiliates, http://nccmedia.com/about/owners-affiliates.

54 For example, it has been estimated that (i) local digital advertising revenues would reach $23.3 billion in 2011; (ii) by 2015, locally targeted mobile advertisements will account for nearly seventy percent of overall mobile advertising budgets; (iii) by 2015, small business will allocate only thirty percent of their advertising budgets to traditional media, such as broadcast television, focusing instead on new media alternatives; and (iv) over the next five years, local social media advertising revenues will grow at an annual compound rate of thirty-three percent. *See* Press Release, BIA/Kelsey, BIA/Kelsey Forecasts U.S. Social Local Advertising Revenues to Reach

Plan recognized that, as consumers increasingly turn to these new platforms, traditional media must be better fortified for the transition or they "will be increasingly weakened."[55]

The record clearly shows that non-broadcast media sources directly compete at the local level with broadcast television for audiences and vital advertising revenues. Nevertheless, the *NPRM* focuses on how the rule impacts competition among local television stations alone.[56] In this multiplatform media environment, however, such a narrow focus is not realistic, as the *NPRM* suggests elsewhere.[57] Cable and satellite operators and new media platforms have incentives to react to competitive changes in local markets to maintain their subscriber levels and attract local advertisers.[58] Given the growing range of media offerings that compete with broadcast stations, the

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$2.3 Billion in 2015 (Nov. 14, 2011); Press Release, BIA/Kelsey, Digital Advertising, Performance and Retention Solutions Will Be 70% of SMB Marketing Budgets by 2015, According to BIA/Kelsey (Aug. 30, 2011); Press Release, BIA/Kelsey, U.S. Local Digital Advertising Revenues Continue Upward in 2011 Despite Slow-Growth Economy, According to BIA/Kelsey (Nov. 7, 2011); Press Release, BIA/Kelsey, U.S. Mobile Local Ad Revenues to Grow From $404 Million in 2010 to $2.8 Billion in 2015, According to BIA/Kelsey (June 23, 2011).

[55] *National Broadband Plan*, *supra* note 30, at 303.

[56] NPRM ¶¶ 33, 35.

[57] Just a few paragraphs after proposing the duopoly remain focused on only "broadcast television stations in local television viewing markets," *id*. at ¶ 33, the *NPRM* proposes to "rely solely on Nielsen DMAs" as the relevant geographic market for the duopoly rule, as DMAs are "consistent with today's marketplace realities" because they "most accurately capture the universe of broadcast and MVPD video programming available to viewers." NPRM ¶ 37. This finding recognizes the relevance of at least some non-broadcast video competitors in local viewing markets, contrary to the *NPRM*'s determination four paragraphs earlier that the duopoly rule should focus only on "broadcast television stations in local television viewing markets." *Id*. ¶ 33.

[58] *See id.* ¶ 33 (proffering that competition between local broadcasters and national programming providers is limited because national programming providers "are not likely to respond to conditions in local markets"). NAB expressly refuted this point in its 2006 ownership comments, pointing out that the FCC's argument confuses program "networks" (many of which, but not all, are national) with "outlets," such as local cable systems, which are franchised locally and compete with local television stations for viewers and advertising dollars. *See* NAB Comments to *Further Notice of Proposed Rulemaking* in MB Docket No. 06-121, at 107-109 (filed Oct. 23, 2006) ("NAB 2006 Comments").

Commission cannot justify under section 202(h) a duopoly rule focused solely on "promoting competition among broadcast television stations."[59]

2. The Severe Economic Stresses Faced By Broadcasters as a Result of Increased Competition Threaten Their Ability to Provide a Strong Local Presence, Particularly in Smaller Markets.

The economic realities facing local television stations as a result of increased competition, combined with the overly-restrictive duopoly rule, threaten the long-term financial viability of many broadcast stations. For example, from 2000-2009, local television stations' advertising revenues decreased by thirty-seven percent, or $9.5 billion.[60] Even by 2015, television station advertising revenues are projected to remain below the levels earned in the mid-2000s.[61] Similarly, broadcasters' total station revenues have decreased significantly in recent years, from $26.3 billion in 2000 to $18.1 billion in 2009.[62] Like revenues, the average pre-tax profits for television stations in all markets have dropped by about fifteen percent from 2000-2010.[63] It is noteworthy

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59 NPRM ¶ 33. To the extent the availability of, and competition for, local news and programming drives the Commission to focus on competition among broadcasters alone, it has been demonstrated that efficient ownership structures facilitate more local news than independent operations, particularly in small and mid-sized markets. *See infra* Parts II.A.3; VII.A. Indeed, by focusing its analysis of the duopoly rule solely on competition among local television stations, the Commission fails to follow its own directive to take into account "new technologies and changing marketplace conditions" in ascertaining whether the rule serves the public interest. NPRM ¶ 1.

60 *See* Eisenach Reply Declaration, *supra* note 18, at 6 ¶ 9.

61 *See* Press Release, BIA/Kelsey, BIA/Kelsey Reports Local Television Revenues Rose 23.2% to $19.4 Billion in 2010, Driven by Political Campaigns and National Advertising (Apr. 29, 2011).

62 Even as the economy rebounded somewhat in 2010, total revenues for local broadcasters remained more than fifteen percent below their peak in 2000. *See* Economies of Scale Report, *supra* note 18, at 23.

63 *See* Attachment B, Television Station Financial Data 2000-2010, Pre-Tax Profits and News Expense, at 2-3.

that stations in the lowest one quarter percentile across all markets suffered not just declining profits but *actual losses* in every year from 2000 to 2010.[64]

Decreases in pre-tax profits are even more significant in small markets (DMAs 150-210), where the average station experienced a more than thirty percent decline in pre-tax profits over the past ten years.[65] Many stations in these smaller markets also have consistently experienced actual losses.[66] As a result of these economic pressures, a number of broadcasters may not have access to sufficient resources to produce and air local news and other programming necessary to maintain a strong community presence.

Studies demonstrate that market size has a direct relationship to a broadcaster's ability to generate adequate advertising revenues to support its operations. Television stations in small and mid-sized markets compete for "disproportionately smaller revenues than stations in large markets."[67] Consequently, "the ability of local stations to compete successfully . . . is meaningfully (and negatively) affected in mid-sized and smaller markets" by an increase in competition from non-broadcast media outlets.[68]

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64 *Id*. at 3.

65 *Id.* at 5-6.

66 *Id*. at 6.

67 *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13698 ¶ 201 (2003) ("*2002 Order*"). For example, in 2010, the two in-market commercial television stations in St. Joseph, MO (DMA 200) competed for approximately 0.3 percent of the total television advertising revenues of the fifteen commercial stations in the New York DMA. *See* Attachment D, 2010 Television Market Revenues. This situation is true even in larger DMAs, such as Jacksonville, Florida (DMA 50), where seven commercial stations competed for less than one-tenth of the advertising revenues available in the New York DMA. *Id.*

68 *2002 Order*, 18 FCC Rcd at 13698 ¶ 201.

Advertisers also pay less on a per household basis for viewers in small markets than for viewers in large markets.[69] Stations in smaller television markets are thus more challenged in the advertising marketplace not only because they serve smaller audiences, but also because the viewers they do have are considered less valuable by advertisers. Smaller television stations are also less able than larger stations to achieve beneficial economies of scale and scope, and thus would particularly benefit from obtaining such efficiencies by forming duopolies.[70] Accordingly, the Commission should reverse the *NPRM*'s tentative conclusion that the current duopoly rule remains necessary to promote competition among local broadcast stations.

3. <u>Common Ownership of Television Stations Promotes the Commission's Localism and Diversity Goals.</u>

In the *NPRM*, the Commission seeks comment on whether retaining the existing duopoly rule will serve its localism and diversity goals. As explained below, the duopoly rule harms localism because it prevents stations from entering into efficient ownership structures that would offset the high costs of offering local news, public affairs programming and emergency information. Similarly, as the Commission has previously concluded, the proposed duopoly rule is unnecessary to foster diversity in local television markets.[71]

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[69] *See* Attachment D, *supra* note 67. In 2010, the average television household in New York, New York was valued at $184 in annual advertising revenue. *Id.* By contrast, an average television household in St. Joseph, Missouri (DMA 200) was valued at only $85. *Id.*

[70] *See* Economies of Scale Report, *supra* note 18, at 3, 10.

[71] *See* NPRM n.48 (citing *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act*, 23 FCC Rcd 2010, 2065-66 ¶ 100 (2006) ("*2006 Order*")); *see also* Media Ownership Study 8B, *supra* note 38, at 17-18 (concluding that "changes in diversity have little impact on viewing tendencies" and therefore suggesting that the pursuit of diversity in the video marketplace for the benefit of viewers may be in vain).

As the Commission has recognized, localism is an expensive value.[72] The provision of local news and emergency journalism is extremely costly and requires the commitment of very substantial resources. Notwithstanding that they face significant financial stresses,[73] television stations have consistently demonstrated their commitment to investing in local news,[74] as news-related expenses have constituted approximately one quarter of total station expenses over the past ten years.[75] Permitting stations the flexibility to form same-market combinations would improve programming generally and increase local news and public affairs programming specifically. For example, LIN Television Corporation ("LIN TV") has explained that commonly owned stations in a market can "produce and air more local programming of a higher quality" than singleton stations.[76] Belo Corp. has reported that duopolies have resulted in initiating daily newscasts in two markets, and an overall expansion of local news and public affairs programming, political coverage and local sports coverage.[77]

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72 *See 2002 Order*, 18 FCC Rcd at 13644 ¶ 75 (citing H. Rep. No. 104-104, at 221).

73 *See* discussion *supra* Parts II.A.1 and II.A.2.

74 *See* Economies of Scale Report, *supra* note 18, at 40-42 (quoting local broadcasters' SEC filings demonstrating their emphasis on providing quality local news programming).

75 *See* Attachment B, *supra* note 63, at 8-9. On average, stations responding to a 2010 NAB survey indicated that they invest over $4 million per year in their news operating budgets and over $700,000 in their news capital budgets. *See* The Economic Realities of Local Television News – 2010: A Report for the National Association of Broadcasters (April 2010), NAB NOI Comments, *supra* note 37, at Attachment B, 12-13; *see also* Economies of Scale Report, *supra* note 18, at 40 (suggesting "that the average station devotes over half its capital budget to news-related investments and over half its station employees to news-related production").

76 LIN Television Corporation Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 3-4 (filed July 12, 2010). For example, prior to its acquisition by LIN TV, WNLO(DT) produced no local news but, in 2009, the station was able to produce over 700 hours of news as a result of the economies of scale resulting from LIN TV's ownership of WNLO(DT) and WIVB-TV, both of which are licensed to the same market. *Id.* at 4.

77 Belo Corp. Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 6-9 (filed July 12, 2010).

Hearst Television, Inc. has had a similar experience, with a duopoly in Sacramento that has enabled the stations to "amortize the high costs of their local news and . . . political coverage across both stations."[78]

These real-world examples are supported by economic studies (including FCC studies), which demonstrate that commonly owned television stations are more likely to carry local news, public affairs or current affairs programming, greater amounts of news programming, and/or programming more valued by consumers.[79] Studies also demonstrate that the acquired stations in duopolies experience increases in their local audience share and revenue share following their acquisition, thereby showing that local combinations enable stations to improve their overall service by offering programming preferred by more local viewers.[80] In light of the high costs of news, it is particularly

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78 Hearst Television Inc. Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 5 (filed July 12, 2010); *see also infra* Part VII.A (explaining that there also are numerous real-world examples of how localism is furthered by same-market television stations that are operated pursuant to joint operating agreements).

79 *See, e.g.,* Bruce Owen *et. al*., Economists Incorporated, Effect of Common Ownership or Operation on Television News Carriage, Quantity and Quality (2002), in Comments of Fox Entertainment Group, Inc. and Fox Television Stations, Inc.; National Broadcasting Co., Inc. and Telemundo Communications Group, Inc.; and Viacom to *Notice of Proposed Rulemaking* in MB Docket No. 02-277, at Economic Study B (filed Jan. 2, 2003); BIA Financial Network, Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity? (2003), in Comments of Coalition Broadcasters to *Notice of Proposed Rulemaking* in MB Docket No. 02-277 (filed Jan. 2, 2003); Michael G. Baumann & Kent W. Mikkelsen, Economists Incorporated, Effect of Common Ownership or Operation on Television News Carriage: An Update (2007), in NAB Reply Comments in MB Docket No. 06-121, at Attachment A (filed Nov. 1, 2007) ("Reply Comments on FCC 2006 Studies"); BIA Financial Network, Economic Viability of Local Television Stations in Duopolies (2006), in NAB 2006 Comments, *supra* note 58, at Attachment H ("Local TV Duopoly Study"); D. Shiman, The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming (2007) ("Shiman Ownership Study"). The Third Circuit in *Prometheus I* specifically cited the 2003 studies when confirming the FCC's finding that common ownership of television stations "can improve local programming." 373 F.3d at 415.

80 A 2006 study found that acquired stations experienced an eleven percent increase in their audience shares and a 15.4 percent increase in their revenue shares from pre-acquisition levels. *See* Local TV Duopoly Study, *supra* note 79.

significant that duopolies allow stations to improve their revenue shares, as empirical research has "found consistently that news output is strongly and positively correlated with station revenues."[81]

Common ownership also promotes diversity. For example, a 2010 analysis of the impact of the duopoly rule on diversity in smaller markets found that "allowing television mergers in small markets is very likely to increase diversity of the airwaves."[82] Even more recently, Media Ownership Study 8B generally found that "ownership concentration tends to increase diversity" and specifically found that greater television ownership concentration "increases the number of politicians that are covered in local news."[83] Accordingly, the local television ownership rule does not serve the public

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Notably, the studies commissioned by the FCC for the instant proceeding do not demonstrate that duopolies negatively impact localism. At most, these studies suggest that there is no significant evidence that common ownership impacts the provision of local programming. Such results lead the authors of Media Ownership Study 1 to urge "experimentation" as "an advisable policy" for local television multiple ownership. Media Ownership Study 1, *supra* note 25, at 16. As a legal matter, in the absence of evidence that common ownership harms localism, retention of the duopoly rule based on a localism rationale would be arbitrary and capricious. *See, e.g.*, *ALLTEL Corp. v. FCC*, 838 F.2d 551, 560 (D.C. Cir. 1988) (concluding that the Commission's facially "plausible claim" that its rules on the costs of local exchange carriers prevented certain abuses ultimately failed to justify the rule because there was "no showing that such abuse" existed and "no showing that the rule target[ed] companies engaged in such abuse").

81 Economies of Scale Report, *supra* note 18, at 4; *see also* Shiman Ownership Study, *supra* note 79, at 21 (finding that the "financial strength of the parent" of a television station, "measured by its revenues, is associated with a larger news output"); Philip Napoli, *Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data*, 6 J. Pol'y, Reg. & Strategy for Telecomms. Info. & Media 112, 119 (2004) ("Napoli Ownership Study") (concluding that stations "in larger markets tend to provide more local news programming than stations in smaller markets," likely due to "the greater revenue potential for stations in larger markets," and that public affairs programming "is a function of station revenues").

82 Matthew Spitzer, *Television Mergers and Diversity in Small Markets*, 6 J. Competition L. & Econ. 705, 754 (2010) (recommending that the FCC "adopt a presumption in favor of allowing jointly owned television stations in small markets").

83 Media Ownership Study 8B, *supra* note 38, at 14-15, 18, 33.

interest because it is not necessary to foster the Commission's goals of competition, localism, or diversity.

B. The Overly-Restrictive Duopoly Rule Proposed in the *NPRM* Cannot Be Justified Under Section 202(h).

Retention of the duopoly rule proposed in the *NPRM*, which effectively prevents the efficient combination of television stations especially in mid-sized and smaller markets, cannot be justified.[84] And it clearly would be contrary to the public interest for the Commission to adopt any duopoly rule inhibiting local stations' ability to multicast diverse programming to local audiences.

1. Retention of the Top-Four Prohibition Against Mergers Does Not Further the Commission's Policy Goals.

The *NPRM* proposes to retain the prohibition against mergers between two of the top-four rated stations in a local television market.[85] This prohibition inequitably constrains broadcasters in today's multichannel media marketplace because it prevents the formation of duopolies in markets with fewer than five television stations, and severely restricts the formation of duopolies in markets with only five or six stations. Even in the largest markets, the top-four prohibition places limits on local broadcasters that are not placed on entities that compete with broadcasters for viewers and advertisers.

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[84] *See supra* Part II.A. Although the Commission should reform the duopoly rule to permit broadcasters to form competitively viable ownership structures in markets of all sizes, NAB agrees that market-size waivers could be an appropriate step, given that, as discussed above, small markets have less revenue potential than large markets and stations in smaller markets are disproportionately impacted by overly restrictive ownership rules. *See* NPRM ¶¶ 52-55. Smaller stations also "face higher average costs than larger stations." Economies of Scale Report, *supra* note 18, at 3.

[85] NPRM ¶ 40.

The Commission explains in the *NPRM* that its decision to retain the top-four prohibition is based upon the rationales in the *2006 Biennial Review Order*.[86] These rationales do not withstand scrutiny, as they are based upon the incorrect belief that there is a natural "break point" between the audience shares of the top four-ranked stations and the audience shares of other stations in most markets.[87] In small and mid-sized markets, one or two stations often have a significant ratings lead, and a very substantial audience share drop-off occurs after the first- or second-ranked station.[88] Even many of the nation's largest markets do not demonstrate the supposedly natural break point after the fourth-ranked station, as there is greater audience share "separation" between the top- and second-ranked stations than between the fourth- and fifth-ranked stations.[89] In other words, the Commission's belief that mergers of stations owned by any of the top four firms "would often result in a single firm obtaining a significantly larger market share than other firms in the market"[90] is simply not supported by the facts. Allowing combinations between two lower-rated stations (even if among the top-four in a market) would enhance competition by creating a more viable competitor to the leading television station and to other video programming outlets.

The top-four prohibition also cannot be justified on the grounds that combinations among the top four would "reduce incentives" for local stations to "improve programming

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86 *Id.*

87 *2006 Order*, 23 FCC Rcd at 2066 ¶ 102.

88 For example, the audience share disparity between the first- or second-ranked stations and all other stations in most smaller markets is so great that, if the third- and fourth-ranked stations were allowed to combine, these stations' combined viewing shares would still be less than or equal to the audience share of the top-ranked station in about eighty percent of these markets. *See* NAB 2006 Comments, *supra* note 58, at 103-104 and Attachment K.

89 *Id.*

90 NPRM ¶ 40.

that appeals to mass audiences."[91] This statement is illogical on its face, as it assumes that an owner of two television stations somehow has less incentive to maximize its audiences and, thus, less incentive to maximize its advertising revenues and its profits.

The top-four prohibition thus not only fails to enhance competition, but also fails to enhance localism. While the top-four ranked stations in large markets may generally offer local news programming, many smaller markets are not served by four separate local news operations because some stations lack the resources for initiating and maintaining costly local news operations. The Commission's own data demonstrates that, in nearly forty-two percent of the nation's television markets, there are not four or more stations providing at least thirty minutes of news each day.[92] Moreover, there are many mid-sized and small markets that have only one to three newscasts,[93] and the Commission itself found that, in markets with six or fewer television stations, only 22.5 percent have four stations providing at least thirty minutes of local news per day.[94] Due to the expense of starting and maintaining a new local news operation and increased competition from non-broadcast sources of news and information, stand-alone stations currently without local newscasts are highly unlikely to initiate them.[95] For these

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[91] NPRM ¶ 40; *2006 Order*, 23 FCC Rcd at 2067 ¶ 102.

[92] *See id.* n.92.

[93] In fact, DMAs 51-210 have, on average, only 2.49 newscasts per market. *Small-Market Angst*, Broadcasting & Cable, July 14, 2003, at 35. For example, several stations in the Eureka, CA DMA (No. 195) are losing money and only one station out of five airs local news programming. *See* Sainte Sepulveda, Inc., Comments to *Notice of Inquiry* in MB Docket No. 09-182 (filed July 12, 2010).

[94] NPRM n.117.

[95] *See* Local TV Duopoly Study, *supra* note 79, at 7-9; Attachment B, *supra* note 63, at 9; The Economic Realities of Local Television News – 2010, NAB NOI Comments, *supra* note 37, at 12-14, 23-25; Smith Geiger, Newsroom Budgets in Midsize (51-100) and Small Markets (101-210) 13-15 (2002).

reasons, retention of the top-four prohibition has a significant negative impact on localism, including the provision of costly local news and emergency journalism.

The *NPRM* further seeks comment on whether to retain the top-four prohibition to promote viewpoint diversity.[96] It is well documented that there are multiple other significant sources of diversity in local markets,[97] and permitting common ownership would not diminish such diversity.[98] Accordingly, the Commission should affirm its conclusion that "the local television ownership rule [is] not necessary to foster diversity because there [are] other outlets for diversity of viewpoint in local markets"[99]—a conclusion upheld by the Third Circuit.[100]

The Commission may not properly rely on Media Ownership Study 9 as evidence that the top-four prohibition is needed on diversity grounds.[101] This study presents a theoretical model on the relationship of market structure to the flow of information and uses an experiment to test this model. The study concludes that a small number of independent firms results in "bias and garbling" which harms consumer welfare, and that the market performs more efficiently with four firms than it does with only two.[102] The Commission states that while it recognizes the limitations of the findings of this study, the study is relevant to retention of the top four-ranked restriction because it

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96 NPRM ¶ 42.

97 *See supra* Part II.A.

98 *See supra* notes 37-43 and accompanying text; Attachment A, supra note 37.

99 NPRM n.48 (citing *2006 Order*, 23 FCC Rcd at 2065-66 ¶ 100).

100 *Prometheus II*, 652 F. 3d at 459.

101 Isabelle Broacas, Juan D. Carrillo, & Simon Wilkie, A Theoretical Analysis of the Impact of Local Market Structure on the Range of Viewpoints Supplied ("Media Ownership Study 9").

102 *Id.* at 3.

"provides some support for maintaining at least four strong independent outlets."[103] However, both the study itself and its potential application to an analysis of the local television ownership rule suffer multiple flaws.

First, nothing in the study specifies that the number of firms must all be local television broadcast stations. Rather, the study states that it is focused on "authoritative and reliable news sources at the local level" including "broadcast television and radio stations, and a dwindling number of print media."[104] Because the study itself is premised on the provision of diverse viewpoints from more than just television outlets, its conclusion that four firms are better than two does not support a top-four prohibition or any other restriction that is particular to local television ownership alone. Second, the study analyzes whether there are consumer welfare benefits from the improved information provided by separate owners, but fails to consider the cost at which such benefits are generated. The only variable it measures is the efficiency of information transmission, not the costs of providing such information, which, if considered, may demonstrate a reduction in overall consumer welfare. Third, this highly theoretical analysis assumes viewpoint "bias" on the part of a media outlet and does not clearly define what is even meant by this supposed "bias." Finally, the study's conclusion merely "suggest[s] that the number of independent voices is a concern" when considering the "FCC's diversity and localism goals."[105] Under section 202(h), the

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[103] NPRM ¶ 42.

[104] Media Ownership Study 9, *supra* note 101, at 7. Given the realities of today's marketplace, the study also could have included online sources of news and information and local/regional cable news networks.

[105] *Id*. at 3.

Commission cannot justify retention of the top-four prohibition based upon a theoretical suggestion that something may be of "concern."

2. The Eight-Voices Test Cannot Be Justified Under Section 202(h) Given the Wide Array of Competition in Local Television Markets.

The *NPRM* proposes to retain the eight-voices test, which counts only in-market broadcast television stations as voices, by assuming that "maintaining a minimum of eight independently owned-and-operated television stations in a market would ensure that each market includes the four major networks (*i.e.*, ABC, NBC, CBS, and Fox) and four independent competitors, and thus would spur competition in program offerings, *including local news and public affairs programming*."[106] This rationale defies the reality of the local television marketplace, as retention of the eight-voices test certainly does not "ensure that each market" includes the four major networks and four other independent competitors. Many small markets do not even have stations affiliated with all of the four major networks, let alone an additional four stations. Moreover, this rationale is inconsistent with the FCC's rationale for maintaining the top-four restriction—that it is primarily the top-four stations in a market (generally affiliates of the four major networks) that originate substantial amounts of local news.[107] Retaining the eight-voices test to ensure an additional four "independent" competitors in program offerings, including specifically local news and public affairs programming, does not further the Commission's goals because relatively few of these "independent" stations unaffiliated with the major networks produce their own local news and public affairs programming.

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[106] NPRM ¶ 46 (emphasis added).

[107] *See id.* ¶ 41.

To comply with its statutory mandate under section 202(h), the record shows that the Commission must significantly relax or eliminate the highly restrictive eight-voices test, which effectively bans common ownership in small and mid-sized markets where there are not eight, independent full-power television stations. Because competition in local television markets is not limited to competition among broadcast stations, it is neither logical nor factually accurate to count only in-market television stations when evaluating the competitive impact of a proposed combination of television stations in a particular DMA.[108] Indeed, the D.C. Circuit specifically pointed out the deficiencies in the Commission's reasoning to only count in-market television stations as "voices" in *Sinclair Broadcast Group v. FCC*, holding that excluding non-broadcast media from the eight-voices exception was not demonstrated to be "necessary in the public interest."[109] As it was then, the eight-voices test is simply outdated in today's multiplatform media environment.

The *NPRM* inquires about replacing the eight-voices test with a six- or seven-voice test. Any relaxation of the current eight-voices test would be an improvement over the current rule. However, NAB is concerned that such changes still would not reach enough smaller markets, which are disproportionately affected by overly restrictive limits. In fact, NAB analyzed the impact of this rule change and found that even a six-voice test would allow the formation of a new local television combination in only *ten*

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[108] As explained above, over the past several years, there has been a dramatic increase in the number of video programming and local news choices available to consumers and advertisers, resulting in substantial erosion of broadcasters' audience share and adverting revenues. *See supra* at Part II.A.1; *see also* Attachment C, *supra* note 53 (showing that local cable's share of local television market advertising doubled in markets of all sizes from 2000-2010).

[109] *Sinclair Broad. Grp.*, 284 F.3d at 162-65.

small markets (DMAs 101-210). And as the Commission has acknowledged, markets with six or fewer stations are less able to support local television news operations.[110] Further reform thus would be needed to promote the provision of local news programming, one of the Commission's long-standing goals.

3. The Commission's Long-Standing Contour Overlap Approach Reflects Technical and Marketplace Realities.

The *NPRM* proposes to eliminate the Grade B contour overlap test—and to rely instead on Nielsen DMAs—for determining compliance with the duopoly rule.[111] Reliance on a geographic market definition as a result of the digital transition is not necessary as a technical matter, however, because the digital Noise Limited Service Contour ("NLSC") was designed to approximate an equivalent level of service to a Grade B contour.[112] Eliminating a contour-based approach, moreover, does not necessarily reflect market realities given that the NLSC contour delineates a station's service area more accurately and precisely than DMAs. In fact, switching to a DMA-based approach may restrict common ownership that currently is permitted under the

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110 NPRM ¶ 53 (citing FCC staff analysis which found that, in nearly ninety percent of markets with seven or more stations, at least four of the stations provide at least thirty minutes of local news per day, as compared to only 22.5 percent of markets with six or fewer stations).

111 *See id.* ¶¶ 36-39.

112 *See id.* n.74; *see also* 47 C.F.R. § 76.54(c) (2010); *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* Report and Order, MM Docket No. 00-39, 16 FCC Rcd 5946, 5956 ¶ 22 (2001) ("*DTV Order*"); *KEYU(TV), Borger, Texas, Application for Assignment of License*, Letter, 25 FCC Rcd 1204, 1204 n.3 (MB 2010) (citing *Report To Congress: The Satellite Home Viewer Extension And Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, ET Docket No. 05-182, 20 FCC Rcd 19504, 19507 ¶ 3 ("For digital television stations, the counterpart to the Grade B signal intensity standards for analog television stations are the values set forth in Section 73.622(e) of the Commission's Rules describing the DTV noise-limited service contour.")).

rules.[113] Given the proven benefits of common ownership, such an approach would contravene the public interest.[114] Rather than eliminate the long-standing contour-based methodology, the Commission should clarify that, in the post-transition era, it will apply the NLSC standard in lieu of the Grade B standard for purposes of determining compliance with the duopoly rule.

4. Multicasting Provides Numerous Public Interest Benefits and the Commission Should Not Adopt Rules That Would Diminish These Benefits.

The *NPRM* specifically seeks comment on the impact of multicasting on the duopoly rule. Multicasting advances the Commission's diversity and competition goals. Broadcasters use multicasting to provide additional programming attractive to viewers, including niche audiences, in their local markets and, thereby, to improve their competitive positions. For example, broadcasters such as Fox Television Stations, LIN TV, Raycom Media and Nexstar have entered into agreements to carry Bounce TV, an over-the-air multicast network targeted to African Americans. As a result of multicasting, broadcasters have introduced a number of new programming networks such as Antenna TV, Live Well, This TV, Me_TV, The Cool TV, The Country Network, and also have been able to provide "Big Four" network programming in numerous small markets where it was not previously available.[115] Multicasting has also resulted in increased ethnic programming, with the number of Spanish-language channels nearly doubling

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113 For example, in hyphenated markets as well as the geographically large markets west of the Mississippi, it is likely that a television station's NLSC contour will be smaller than the geographic area that makes up the station's DMA.

114 *See supra* Part II.A.3.

115 *See* Justin Nielson, TV stations multiplatform analysis '12 update: new digital networks, mobile TV channels expand content options, SNL Financial, Jan. 31, 2012; *see also* Attachment E, Short Markets.

year-to-year.[116] It clearly would be contrary to the public interest to modify the duopoly rule in any manner that would create disincentives for broadcasters to provide this diverse programming, as well as local news.[117]

The ability to send a digital signal simply does not equate to the ownership of an entire separate television broadcast station. The technical capability to provide multiple program streams does not produce the same economic and operational efficiencies associated with common ownership.[118] Notably, many multicast programming streams are not carried by MVPDs—and are not required to be carried. Multicast streams do not generate anywhere near the same level of audience or advertising revenues necessary to sustain a local television station's operations on a standalone basis. In 2010, multicast revenue represented, on average, 0.4 percent of television stations' total net revenue across all markets.[119] Indeed, stations may choose not to multicast at all, but to use their single digital channel to provide high definition programming, mobile DTV or other services. In other words, multicasting results from technological developments and provides benefits to viewers, but has no relevance to ownership or the question of whether the duopoly rule should be modified in any manner.

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[116] *See* Nielson, *supra* note 115 (citing 216 Spanish-language multicast channels). Multicast channels also provide other ethnic-oriented programming, including programming for Vietnamese, Chinese, Korean, Japanese and Middle Eastern populations.

[117] One FCC study found that multicasting significantly increases the amount of local news programming available to television viewers. *See* Jack Erb, Local Information Programming and the Structure of Television Markets 33 (2011) ("Media Ownership Study 4") (stating that "there is approximately [fifty percent] more local news at both the market and station level when multicast programming is included").

[118] Multiple program streams do, however, create costs. *See* NAB NOI Comments, *supra* note 37, at Attachment B, 18-22. For example, any additional programming that a broadcaster would air on multicast streams must be separately produced or procured, in many cases at considerable expense.

[119] *See* Attachment F, Multicast Revenue (showing that stations in markets of all sizes earn very limited revenues from multicasting).

III. <u>THE EXISTING LOCAL RADIO OWNERSHIP RULES ARE NOT NECESSARY TO PROMOTE THE COMMISSION'S GOALS OF COMPETITION, DIVERSITY OR LOCALISM</u>

In this section, NAB shows that retention of the current local radio ownership restrictions on the grounds of competition, localism, or diversity cannot be justified. Recent developments in the audio marketplace have made it competitive by any metric, but certainly in comparison to the less competitive and less diverse marketplace that existed when Congress enacted the restrictions in 1996. In addition, the Commission's own studies demonstrate that the rules do not enhance localism or diversity and, in fact, suggest these goals are inhibited by the rules. Accordingly, the rules are not necessary in the public interest and must be reformed under section 202(h).

A. Competition in The Audio Marketplace Has Rendered the Current Local Radio Ownership Restrictions Obsolete.

The *NPRM* appropriately concedes that the audio marketplace has changed significantly since even the last media ownership review in terms of the number of ways consumers have to access audio programming, the number of audio programming providers, and audio programming choices.[120] Radio broadcasters compete against many broadcast and non-broadcast audio outlets for audience share and advertising revenues and the number of new non-broadcast audio outlets continues to grow. Technologies that did not even exist when Congress set the current radio ownership limits, such as Internet radio, satellite radio, and various mobile devices, have not only emerged as competitors to local radio broadcasters, but now permeate the audio

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[120] *See* NPRM ¶ 68.

marketplace.[121] Despite these acknowledged competitive developments, however, no corresponding reform of the rules is proposed.[122] Such a decision is not only inconsistent with the Commission's stated intention to "take account of new technologies and changing marketplace conditions,"[123] but also cannot be justified under section 202(h).

B. The Local Radio Ownership Restrictions Are Likely Inhibiting Localism.

As shown by a 2010 Government Accountability Office study, radio programming decisions are locally-made, based on the interests and preferences of local listeners, and are not determined by ownership structures.[124] In other words, the current local radio ownership restrictions are unnecessary because, even in their absence, local radio stations will do what they have always done—respond to local listeners.[125]

Studies in fact have shown that local radio restrictions are more likely to inhibit localism than to foster it. A study commissioned by the FCC in 2007 demonstrated that common ownership in a local radio market increases the likelihood a station will air

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[121] Local radio stations compete vigorously against non-broadcast audio outlets, yet local radio stations are the only medium subject to ownership restrictions. NAB urges the Commission to take these sources into account by expanding the relevant market to include these audio technologies.

[122] *Compare Prometheus* I, 373 F.3d at 391 (emphasizing that Congress intended for the Commission to "keep pace with the competitive changes in the marketplace").

[123] NPRM ¶ 1.

[124] U.S. Gov't Accountability Office, GAO-10-369, Media Programming: Factors Influencing the Availability of Independent Programming in Television and Programming Decisions in Radio 28 (March 2010) (finding that, within individual markets, the top radio formats differ from the top radio formats nationally and that, for the top ten national radio station owners in 2009, stations' formats generally were differentiated within individual markets).

[125] Indeed, it is their statutory obligation. *See supra* notes 33-34 and accompanying text.

public affairs programming.[126] Another study commissioned by the FCC in the same proceeding found that "[h]aving a sibling news station in the market appears to increase a [radio] station's propensity to adopt a news format by about [fifty percent]."[127]

Moreover, as listeners, especially younger listeners,[128] increasingly turn to new non-broadcast audio platforms,[129] local radio broadcasters struggle to maintain their audience shares and, thus, their advertising revenue.[130] These decreased revenues, in turn, make it increasingly challenging for local radio broadcasters to continue providing high quality programming and local services. Section 202(h) requires the Commission to consider these technological and marketplace developments (and how they are affecting and will affect local service) in determining whether the local radio ownership restrictions adopted sixteen years ago remain necessary.

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[126] *See* Kenneth Lynch, Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay 27 (2007) ("Lynch Radio Airplay Study") (finding that the quantity of public affairs programming aired by a station increased by eight-to-ten percent if the parent of that station owned another station in the market).

[127] Craig Stroup, Factors that Affect a Radio Station's Propensity to Adopt a News Format 16 (2007) ("Stroup News Radio Study").

[128] *See* Veronis Suhler Stevenson, Communications Industry Forecast 2009-2013, Executive Summary 10 (23d ed. 2009) (noting young listeners prefer to listen to music on social media sites).

[129] *See* Pew Research Center, Project for Excellence in Journalism, 2011 State of the News Media, available at http://stateofthemedia.org/2011/audio-essay/ ("2011 State of the Media Report") (finding that in 2010, for the first time, Americans reported listening more to online-only outlets like Pandora or Slacker Radio than to online streams from AM/FM stations).

[130] Advertising revenues for AM/FM radio stations have rebounded somewhat since the end of the recent severe recession. *See* 2011 State of the Media Report, *supra* note 129. However, the level of revenues earned by the radio industry in 2005 and 2006 will not again be reached even by 2015, according to BIA projections. *See* Press Release, BIA/Kelsey, BIA/Kelsey Revises Radio Industry Revenue Estimates for 2011 and 2012. These projections are evidence of structural change in the audio marketplace.

C. Relaxation of the Local Radio Ownership Restrictions Would Enhance Diversity.

The Commission's studies in this and earlier ownership proceedings measuring diversity similarly support relaxation of the rules. For example, Media Ownership Study 7, commissioned for this proceeding, and a study commissioned by the FCC in 2007, both indicate that "higher concentration [of ownership in a market] promotes variety" in programming.[131] In addition to these studies, NAB previously has identified *eight additional* studies, all finding that common ownership of radio stations results in the offering of more diverse and more targeted programming to audiences.[132]

Empirical evidence further shows the clear trend among radio broadcasters to serve more diverse audiences, including various demographic groups.[133] Since 2000, the number of Spanish-language stations increased over sixty-three percent. Today, forty-eight percent of the Hispanic population in Arbitron markets resides in markets with ten or more Spanish-language stations, with nearly ninety percent located in markets with at least three such stations. Today, almost thirty-eight percent of African-Americans in Arbitron markets reside in markets with five or more Urban radio stations (up from about twenty-six percent in 2000), and there are also eighty-five Urban programmed multicast signals available to listeners. Radio broadcasters have continued to increase

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131 Joel Waldfogel, Radio Station Ownership Structure and the Provision of Programming to Minority Audiences: Evidence from 2005-2009, 25-27 (concluding that stations in large ownership groups tend to attract more listeners than do stations in smaller ownership groups and suggesting that higher concentration of ownership in a market promotes variety); *see also* Tasneem Chipty, CRA International, Inc., Station Ownership and Programming in Radio 44-45 (2007) (finding that "more concentrated markets are associated with more, not less, program variety" and that "consolidation of radio ownership does not diminish the diversity of local format offerings").

132 *See* NAB Comments in MB Docket No. 06-121, at 21-22 (filed Oct. 22, 2007).

133 *See* Attachment G, BIA/Kelsey, Over-the-Air Radio Service to Diverse Audiences – 2012 Update (2012).

the news and information being provided to their local communities, with the number of stations airing news and talk programming growing by 38.4 percent since 2000. More than seven of ten people residing in Arbitron markets are in markets with at least six news/talk stations; only two years ago, that figure was over eleven percentage points lower.[134]

Local stations are now utilizing the capabilities of HD Radio to provide increased service to specific demographic/ethnic groups and groups with particular interests, as demonstrated by the programming offered on multicast streams, ranging from Urban to Spanish, Portuguese to Greek to Polish, Big Band to Gospel. Local audiences in markets across the country now have access to new multicast programming streams with formats ranging literally from A (adult album alternative) to V (variety).[135] Nearly fifty-nine percent of the population in Arbitron markets now has access to ten or more multicast signals, and nearly seventy-nine percent of the population is in markets with at least three multicast signals.[136] And it is clear than multicasting has enhanced substantially the diversity of radio programming available to consumers. For example, of the sixty-four markets with new multicast classical signals, twenty-one formerly had no other classical stations in the market; of the sixty markets with new multicast jazz signals, thirty-one formerly had no other jazz stations in the market; of the twenty-two markets with new blues signals, twenty-one formerly had no other blues stations in the market; and of the forty-one markets with new alternative signals, sixteen had no other

[134] *Id*. at 1, 10.
[135] *Id*. at App. 1.
[136] *Id*. at 1.

alternative stations in the market.[137] To broaden the accessibility of this new and diverse programming, stations stream their multicast signals and utilize FM translators within their markets to rebroadcast multicast programming streams so that non-digital radios can receive them.[138]

The *NPRM* tries to dismiss the relevance of this evidence and the growing diversity of radio programming and content.[139] As an initial matter, this approach is apparently based on an unfounded assumption that viewpoint diversity only flows from separate ownership. Thousands of radio stations are music-oriented stations, and to suggest that the "viewpoint" of an adult contemporary station will be the same as a commonly owned alternative, oldies or gospel station is, on its face, questionable, given the different audiences they serve. Diversity of programming content (or "format") would seem to be the type of diversity most relevant to the considerable majority of radio station listeners. In any event, as shown by the studies discussed above, there has been a substantial increase in the number of news/talk stations (*i.e.*, those most likely to express "viewpoints" as apparently envisioned by the Commission) since 2000, and commonly owned stations appear more likely to be news stations and to air public affairs programming (*i.e.*, the type of programming likely to contain "viewpoints"). NAB further notes that the FCC, in its last quadrennial review, concluded that local radio

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137 *Id*. at 1-2.

138 *Id*. at 13-14. As of February 2012, seventy-nine multicast signals were being rebroadcast on ninety-one translators in the U.S. *Id.*

139 *See* NPRM n.141 (citing previous FCC decision declining to rely on "format diversity" to justify local radio ownership rule and tentatively concluding to focus on "viewpoint diversity").

ownership caps primarily were intended to promote competition and that media other than radio played an important role in dissemination of local news and information.[140]

In sum, given the lack of evidence that restrictions on common ownership promote diversity, and the wealth of evidence supporting the opposite conclusion, the Commission cannot justify retention of the local radio rules on diversity grounds.

D. The AM/FM Subcaps Should Be Eliminated.

The *NPRM* concludes that the AM/FM subcaps are necessary to protect competition in local radio markets because of technical and marketplace differences between AM and FM stations, apparently assuming that AM stations are not competitive.[141] That assumption is not valid. Not only are five AM stations ranked in the top ten radio stations in the country by revenue,[142] but 187 AM stations are ranked in the top five radio stations in their local markets in terms of audience share across the day.[143] Further, recent changes to the FM translator rules[144] and the growth of digital audio broadcasting, HD radio technology, and online streaming[145] all provide new opportunities for AM stations to compensate for technical difficulties relative to FM stations and enhance their already strong presence in the audio marketplace.

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140 *See 2006 Order*, ¶¶ 110, 127.

141 NPRM ¶ 75.

142 *See* Attachment H, BIA Media Access Pro, Top 10 Radio Stations by Revenue.

143 *See* Mark R. Fratrik, BIA/Kelsey, The Importance of AM Stations In Local Radio Markets 2-4 (2010), in Clear Channel Comments to *Notice of Inquiry* in MB Docket No. 09-182, at Attachment D (filed July 12, 2010) ("Clear Channel Comments").

144 *See Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642 (2009) (permitting AM stations to use authorized FM translators to rebroadcast their signals within their AM station's current coverage areas).

145 *See* Clear Channel Comments, *supra* note 143, at 40-41 (noting that these developments provide good solutions for AM stations that must lower power during nighttime hours).

NAB also disagrees with the conclusion that the subcaps increase diversity by promoting new entry into broadcast radio ownership.[146] Elimination of the subcaps could well spur market activity through the divestiture of stations, creating ownership opportunities for new market participants, including small businesses and minority- and women-owned businesses. Removing the subcaps also would enable the growth of financially viable AM station clusters that could focus on serving underserved demographic groups, thereby improving service to these groups.[147] Significantly, elimination of the AM/FM subcaps would provide increased flexibility to stations without increasing the number of stations that a single entity could own in any local market. In sum, eliminating the existing AM/FM subcaps would serve the public interest by providing greater flexibility in radio station ownership.[148]

IV. <u>THE PUBLIC INTEREST WOULD BE BEST SERVED BY ELIMINATING THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RESTRICTIONS.</u>

The *NPRM* proposes generally to retain its restrictions on the cross-ownership of broadcast outlets and newspapers, tentatively concluding that the rules are necessary to promote viewpoint diversity.[149] NAB respectfully disagrees and urges the Commission to repeal this outdated rule.

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[146] NPRM ¶ 75 (including entry by minority- and women-owned businesses).

[147] *See* Multicultural Radio Broadcasting, Inc., Comments to *Notice of Further Notice of Proposed Rulemaking* in MB Docket No. 06-121, at 3-4 (filed Oct. 23, 2006).

[148] Beyond determining whether to eliminate or retain the existing AM/FM subcaps, the Commission must also consider the continuing necessity of the current numerical subcap limits. For instance, in markets with forty-five or more stations, the existing rules limit a single entity to owning up to eight commercial stations, but no more than five can be in the same service (AM or FM). Even if the Commission determines to retain subcaps generally, section 202(h) requires it to explain why five is the appropriate subcap level in the largest markets (rather than, say, six or seven) and why four or three is the proper subcap in smaller markets, given the increasingly competitive audio marketplace.

[149] NPRM ¶ 89.

The *NPRM* also seeks comment on a variety of minor modifications to the rules, including whether it should adopt a bright-line rule, whether it should modify the four factors for deciding whether a newspaper-broadcast combination is in the public interest, and whether Nielsen DMA definitions should determine the relevant market area.[150] NAB believes the minor changes proposed miss the mark because any newspaper/broadcast ownership restrictions will continue to skew the marketplace against broadcasters, making it difficult for them to achieve economies of scale and scope and to compete for advertising dollars and viewers. The evidence clearly shows that newspaper/broadcast combinations make for stronger broadcast stations that devote more resources to news and public affairs programming and better serve their local audiences. Accordingly, consistent with the mandate set forth in section 202(h), the Commission should repeal—rather than relax only slightly—the restrictions on cross-ownership of broadcast outlets and newspapers.[151]

A. The Newspaper/Broadcast Cross-Ownership Rules Cannot Be Justified Under Section 202(h) as Necessary for Competition.

For close to a decade, the Commission has acknowledged repeatedly that cross-ownership of broadcast and newspaper outlets produces public interest benefits.[152] In the *2002 Biennial Review Order* ("*2002 Order*"), the Commission eliminated the newspaper/broadcast cross-ownership ban, finding that such cross-ownership did not

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150 *See id.* ¶¶ 104-16. The FCC also proposes to retain a contour-based approach for purpose of analyzing newspaper/radio combinations but seeks comment on this proposal. *Id*. ¶ 113.

151 *See* NAB NOI Comments, *supra* note 37, at 72-76.

152 *See* NPRM ¶ 89 ("We tentatively affirm our earlier findings that the opportunity to share newsgathering resources and realize other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information . . . ."); *2006 Order*; 23 FCC Rcd 2010; *2002 Order*, 18 FCC Rcd 13620.

harm competition in local media markets.[153] Moreover, the FCC concluded that "newspaper-owned television stations tend to produce local news and public affairs programming in greater quantity and of a higher quality than non-newspaper-owned stations."[154] In other words, the scale and scope efficiencies realized by broadcast outlets and newspapers, when permitted to combine, are passed on to consumers in the form of more and better news coverage, which promotes localism.

In contrast to its findings of benefits from newspaper/broadcast combinations, the Commission since the 1940s has tried and failed to identify specific abuses or other competitive harms arising from common ownership of newspapers and broadcast outlets.[155] After decades of experience with newspaper/broadcast cross-ownership, the Commission has the burden of empirically demonstrating the benefits, if any, which flow from its restriction and cannot rely on speculation, assumptions or unverified predictions to retain the rule.[156]

In today's marketplace, certainly, the case for retaining the newspaper/broadcast cross-ownership rule simply does not exist. The authors of Media Ownership Study 1 directly "question the economic basis" for retaining the restrictions, pointing specifically to declines in newspaper revenues and potential economies of scope that can be

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[153] *2002 Order*, 18 FCC Rcd at 13748 ¶ 330, 13755-62 ¶¶ 347-50, 356-58.

[154] *2006 Order*, 23 FCC Rcd at 2019-20 ¶ 15 (citing *2002 Order*, 18 FCC Rcd at 13753-60 ¶¶ 342-54).

[155] *See* NAB Comments to *Notice of Inquiry* in MB Docket No. 01-235, at 4-7 (filed Dec. 3, 2001) (chronicling the history of newspaper/broadcast cross-ownership policy since the 1930s).

[156] *See Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993) (invalidating FCC criterion for licensing broadcast applicants because, after twenty-eight "years of experience with the policy," the FCC had "no evidence to indicate that it achieve[d]" the "benefits that the Commission attribute[d] to it," and the agency could no longer rely on "unverified predictions").

realized by joint- and cross-ownership.[157] The Commission also has been confronted with yet more evidence of the severe financial challenges faced by newspapers and broadcasters alike.[158] Given the voluminous record evidence to the contrary, the *NPRM*'s proposal to retain significant elements of the restrictions currently in effect, and to permit cross-ownership of newspapers and broadcast outlets in only very limited circumstances, cannot be justified.

B. Increased Competition Has Demonstrated the Newspaper/Broadcast Cross-Ownership Rule To Be Unnecessary to Promote Viewpoint Diversity.

The Commission concluded in the *2002 Order* that a vast array of media outlets was available in many markets.[159] Now, nearly a decade later, even more diverse media sources exist. Despite this trend, the *NPRM* stresses the role that legacy media plays online and points to the popularity of the news websites of television stations and newspapers.[160] It further finds that the reliance by consumers on websites affiliated with traditional media makes the newspaper/broadcast cross-ownership restrictions necessary to protect viewpoint diversity.[161]

The Pew Research Center's recent Local Community Study contradicts these conclusions. The study, which addressed the question of "[h]ow people learn about

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157 Media Ownership Study 1, *supra* note 25, at 3,15.

158 *See* 2011 State of the Media Report, *supra* note 129 (reporting continued revenue declines for newspapers, "an unmistakable sign that the structural economic problems facing newspapers are more severe than those of other media"). This report also found that newspaper newsrooms are thirty percent smaller than in 2000. *Id.*

159 *2002 Order*, 18 FCC Rcd at 13760-62 ¶¶ 355-59.

160 *See* NPRM ¶ 97 (citing Steve Waldman and the Working Group on Information Needs of Communities, FCC, The Information Needs of Communities: The Changing Media Landscape in a Broadband Age 55-56 (2011) and Matthew Hindman, Less of the Same: The Lack of Local News on the Internet 11, 15 (2010) ("Media Ownership Study 6")).

161 NPRM ¶ 89.

their local community," concludes not only that consumers increasingly rely on the Internet to get information about their local communities,[162] but that "websites of traditional local news platforms do not register at major levels on most of the subjects probed in the survey."[163] It found "[t]he picture revealed by the data is that of a richer and more nuanced ecosystem of community news and information than researchers have previously identified."[164] This evidence undermines the Commission's tentative conclusion regarding the need for the newspaper/broadcast cross-ownership restrictions.

The Commission's own studies provide scant evidence that there is any correlation between the ownership of media outlets and the diversity of views presented, thus showing that common ownership of outlets will not adversely affect viewpoint diversity.[165] For example, Media Ownership Study 8A analyzed the impact of

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[162] The Pew study identifies sixteen different local "topics." Local Community Study, *supra* note 23, at 2. Significantly, the study defined the "Internet" as **web-only** online destinations, rather than websites affiliated with traditional media. It states that for the local topics defined in the study, seventy-nine percent of Americans online are going to websites not affiliated with traditional media for fifteen out of sixteen of the topics reviewed in the study as their first or second source. *Id.*; *see also National Broadband Plan*, *supra* note 30, at 303 (recognizing that consumers are increasingly using the Internet as their standard platform for receiving information).

[163] Local Community Study, *supra* note 23, at 27.

[164] *Id.* at 1.

[165] In its examination of the newspaper/broadcast cross-ownership restriction, the *NPRM* refers to Media Ownership Study 6 as support for retaining the rule on the basis of viewpoint diversity. NPRM ¶ 97. Media Ownership Study 6 found few local websites that offered local news that were not affiliated with traditional print or broadcast media. Importantly, this study did not measure usage from mobile devices and could not account for news consumption during business hours at workplace computers. Media Ownership Study 6, *supra* note 160, at 10. This study is also contradicted by the Pew Research Center Local Community Study discussed in detail above. *See generally* Local Community Study, *supra* note 23. It further ignores the fact that consumers are increasingly accessing news and information (including policy and political information) directly from original sources (*e.g.*, government websites and campaign websites), rather than from the websites of media outlets, whether local or national. *See generally* Government Online Study, *supra* note 32; Internet and Campaign Study, *supra* note 49.

a local market's ownership structure on viewpoint diversity in local news programming, and found that variation in television station co-ownership and cross-ownership had negligible effects on viewpoint diversity.[166] Promoting viewpoint diversity through cross-ownership limits generally has been considered important because of its assumed relevance to meaningful participation in civic and political matters.[167] Yet, a study that sought to measure a connection between ownership rules and such participation reported that: "[i]n no case do we find that the ownership structure of the local media market affects levels of civic or political engagement or knowledge."[168] Media Ownership Study 5 additionally found that newspaper/radio cross-ownership had no statistically significant relationship to available variety or listening.[169]

And, as NAB previously discussed in detail, myriad academic and Commission studies have concluded that common and cross-ownership do not present diversity concerns because ownership does not determine the viewpoint or "slant" of media outlets and commonly-owned outlets can and do offer diverse viewpoints.[170] Rather than ownership, a growing number of studies have concluded that market forces—

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[166] Media Ownership Study 8A, *supra* note 37, at 22. This study examined the impacts of the local television ownership limit and cross-ownership limits involving television stations (both newspaper/television and radio/television) on viewpoint diversity in local television news and found that the associations between ownership variables and diversity are "statistically indistinguishable from zero." *Id.*

[167] *See* NPRM ¶ 192 ("Measures of civic engagement also can be used to assess the level of viewpoint diversity in a market. For instance, if media outlets in a market supply programming with a diverse range of viewpoints, consumers may be better informed, which can lead to increased local civic participation.")

[168] Media Ownership Study 3, *supra* note 37, at 2 (analyzing impact of newspaper/broadcast cross-ownership and other local market factors on voter turnout and other indicia of civic/political knowledge and engagement).

[169] *See* Media Ownership Study 5, *supra* note 25, at 17.

[170] *See* Attachment A, *supra* note 37 (identifying eleven illustrative studies cited in previous ownership proceedings); *see also* NAB NOI Comments, *supra* note 37, at 23-31, 74.

specifically the ideology or preferences of the potential audience—drives the political orientation or slant of newspapers and other outlets much more than ownership.[171] The Commission must address this large and growing body of evidence in determining the relevance of diversity concerns in the context of the cross-ownership rules.

C. Increased Cross-Ownership of Newspapers and Broadcast Stations Produces Substantial Public Interest Benefits That Support the Commission's Localism Goals.

The efficiencies and benefits that accrue from cross-ownership are well documented.[172] The Commission has found ample evidence in past proceedings that increased cross-ownership of newspapers and broadcast outlets correlate with increased local news.[173] Several studies conducted in 2007 demonstrated a clear connection between increased cross-ownership and greater local news coverage.[174] These studies were in addition to numerous earlier studies over the course of decades showing that newspaper cross-ownership of broadcast stations in local markets resulted in the production of more and higher quality news and non-entertainment programming

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171 *See* Attachment A, *supra* note 37.

172 *See, e.g.*, NAB NOI Comments, *supra* note 37, at 73-74.

173 NPRM ¶ 98 (citing *2006 Order*, 23 FCC Rcd at 2038 ¶ 36-93 and *2002 Order*, 18 FCC Rcd at 13753-60 ¶¶ 342-54, 356-68).

174 Jeffrey Milyo, The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News 29 (2007) (newspaper cross-owned television stations supply about seven to ten percent more local news than non-cross-owned stations, and, on average, cross-owned stations also provide about twenty-five percent more coverage of state and local politics and candidates); Gregory Crawford, Television Station Ownership Structure and the Quantity and Quality of TV Programming 23, 26 (2007) (television stations owned by a parent that also owns newspaper in same area found to offer more local news programming); *accord* Shiman Ownership Study, *supra* note 79, at 21-22 (finding that television stations provided eleven percent more news programming generally if they were cross-owned with a newspaper); Stroup News Radio Study, *supra* note 127, at 14-15 (finding that a radio station cross-owned with a newspaper is four-to-five times more likely to have a news format than a non-crossed-owned station); Lynch Radio Airplay Study, *supra* note 126, at 18, 23 (concluding that radio stations cross-owned with newspapers were significantly more likely to air news and aired significantly more public affairs programming).

on the broadcast outlets. In fact, in comments in 2007, NAB identified ten such studies conducted by different parties, including the FCC, scholars, industry analysts and research foundations.[175] The latest media ownership studies do not negate this extensive evidence.

Several of the conclusions reached in more recent studies are consistent with the Commission's 2007 and other earlier studies. Media Ownership Study 4, for example, found that "newspaper-TV cross-owned stations (especially grandfathered stations) produce more news than comparable non-cross-owned stations."[176] Specifically, the study showed that cross-owned stations *provide nearly fifty percent more news than the average station* (or 47 more minutes per day).[177] The study also found that "[s]tations that are cross-owned with newspapers are about [eleven percent] more likely to have local news programming than a comparable, non-cross-owned station."[178] In their review of media usage and ownership data, the authors of Media Ownership Study 1 found "no clear evidence that changes in local media ownership produce large changes in media competition or localism."[179] Instead, the authors questioned the basis for the

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175 *See* NAB Reply Comments in MB Docket No. 06-121 (filed Jan. 16, 2007), at 82-84; *see also* Napoli Ownership Study, *supra* note 81, at 112, 119 (concluding that newspaper ownership is "positively related to the provision of local news programming" on television stations).

176 Media Ownership Study 4, *supra* note 117, at 41.

177 *Id.* at 27-28.

178 *Id.* at 47. Although the study finds that the presence of newspaper/broadcast cross-ownership combination in a market does not increase the total number of minutes of local news in the market, it notes that this result "is imprecisely measured and not statistically different from zero." *Id.* at 24.

179 Media Ownership Study 1, *supra* note 25, at 15. Specifically, the authors found no statistically significant relationship between ownership structure variables and any of its quality measures. *Id.* at 13.

newspaper/broadcast cross-ownership restriction.[180] An extensive 2011 study on scale and scope in television broadcasting surveyed the empirical literature on newspaper/television cross-ownership, confirming that cross-ownership is consistently associated with increases in local news programming on commercial television stations.[181] These conclusions demonstrate that restrictions on the cross-ownership of newspapers and broadcast outlets actually harm the public interest by impeding precisely the types of efficient joint operations and combinations that would allow them to devote more resources to news gathering and information.[182]

In the absence of evidence negating the wealth of data showing that increased cross-ownership of newspapers and broadcast outlets produces public interest benefits, and that competition obviates the need for such restrictions, the Commission must re-evaluate its proposal to modify only modestly the newspaper/broadcast cross-ownership restrictions. Instead, consistent with its mandate under section 202(h), the Commission should eliminate the rule entirely.

To the extent that the Commission does not eliminate the newspaper/broadcast cross-ownership restrictions altogether, the rule should be further relaxed rather than made more restrictive. For example, NAB urges the Commission to refrain from adopting a Nielsen DMA definition for triggering application of the rule for newspaper/television combinations, or an Arbitron definition for triggering application of the rule for newspaper/radio combinations. Such changes will result in unnecessary

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180 *Id.* at 3 (suggesting that "allowing mergers between newspapers and television stations could lead to substantial economies of scope and may improve product offerings by enabling cross-media promotions and integrated delivery").

181 *See* Economies of Scale Report, *supra* note 18, at 44-45.

182 *See* NAB NOI Comments, *supra* note 37, at 73-74.

complexity in the rule's application and uncertainty with respect to its prospective application (such as when Nielsen changes its DMA markets, when the Commission modifies a DMA market, or in cases where markets are hyphenated).

Moreover, the use of a geographic market definition, rather than a contour-based approach, will have the effect of making the cross-ownership rule considerably more restrictive. Specifically, in cases where the Nielsen DMA or Arbitron Metro is larger than the station's city grade contour, there will be a greater likelihood that the rule will be triggered than under the current standard. Such a change will further limit broadcasters' flexibility under the cross-ownership rule, rather than relaxing the rule as purportedly proposed in the *NPRM*. NAB analyzed the impact of this proposed change, and identified twenty-four instances in which an existing newspaper/broadcast combination would be in violation of the cross-ownership ban if it were modified to include references to these geographic markets, instead of the current contour-based approach.

For these reasons, to the extent that the Commission ultimately determines to retain the newspaper/television restriction, NAB supports the use of the digital city grade contour for application of the newspaper/television cross-ownership restriction because it most closely approximates the analog city grade coverage contour.[183] Use of the digital city grade contour also would eliminate the potential unintended consequences and difficulties associated with use of the Nielsen DMA, as described above. Similarly, NAB supports the continued use of a contour-based approach for analyzing newspaper/radio combinations.

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183 *See DTV Order*, 16 FCC Rcd at 5946 ¶¶ 25-32.

Finally, if the Commission does not determine to eliminate the cross-ownership rule entirely, NAB supports elimination of the newspaper/radio cross-ownership ban. As discussed in this section, the record is replete with empirical evidence demonstrating the benefits of newspaper/radio cross-ownership, and evidence showing any harm from such combinations is conspicuously absent from the record.

V. <u>THE RADIO/TELEVISION CROSS-OWNERSHIP RULE DOES NOT FURTHER THE COMMISSION'S POLICY GOALS AND SHOULD BE REPEALED.</u>

NAB supports the Commission's proposal to eliminate the radio/television cross-ownership rule based on its conclusions that repeal will not likely increase the consolidation of broadcast facilities and that the rule is not necessary to promote localism or diversity.[184] Elimination of this rule, which primarily serves to limit radio station ownership arbitrarily, will also help level the playing field between local broadcast stations and multichannel video and audio distributors unencumbered by such restrictions.[185]

A. In Today's Marketplace, the Radio/Television Cross-Ownership Rule Is Incompatible With the Commission's Goal of Promoting Competition.

The proposed elimination of the radio/television cross-ownership rule is consistent with the Commission's statutory mandate under section 202(h). As the Commission has acknowledged, consumers are increasingly turning to new media as news sources,[186] and "advertising dollars continue to shift with the changing structure of

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184 *See* NPRM ¶119.

185 NAB NOI Comments, *supra* note 37, at 76-77.

186 NPRM ¶ 133.

the marketplace."[187] Indeed, the marketplace has changed dramatically since the current rule was adopted in 1999.[188] Notably, there are no rules prohibiting a cable operator with a dominant position in the local market from acquiring up to eight radio stations, notwithstanding that the cable operator competes directly with television broadcasters for advertisers and audience.[189] Nor is Sirius/XM limited in acquiring up to eight radio stations in every market of sufficient size, even though it places hundreds of channels of audio programming into every local market. Retention of a cross-ownership restriction that applies only to local television and radio stations distorts competition in favor of other video and audio programming distributors.

B. The Radio/Television Cross-Ownership Rule Does Not Promote Viewpoint Diversity.

There is no record evidence showing that limits on television/radio cross-ownership promote diversity of viewpoints. For example, Media Ownership Study 8B finds that, "[f]or the majority of topics for which [radio-television] cross-ownership is statistically significant, increases in cross-ownership are associated with greater diversity."[190] In addition to finding no meaningful correlation between diversity of ownership and diversity of viewpoints, Study 8B suggests that the Commission's diversity goal itself is not aligned with the needs or desires of media consumers.[191] Given that the rule negatively impacts broadcasters' ability to achieve necessary

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187 *2006 Order*, 23 FCC Rcd at 2025 ¶ 24 (citing satellite radio, multichannel video providers, increasing numbers of broadcast outlets and the Internet).

188 NAB provided extensive documentation of this issue in its comments on the NOI, which it incorporates here by reference. NAB NOI Comments, *supra* note 37, at 63-71.

189 *See supra* Parts II.A.1 and II.A.2; *see also* Attachment C, *supra* note 53 (showing substantial increases over time in local cable's share of advertising revenues available in local television markets).

190 Media Ownership Study 8B, *supra* note 38, at 15.

191 *See id.* at 18.

economies of scale and scope and to compete on a level playing field, but has no offsetting benefit in the form of increased diversity, the Commission must repeal the rule.

C. The Radio/Television Cross-Ownership Rule Is Not Necessary to Promote Localism.

There is no record evidence demonstrating that the radio/television cross-ownership rule promotes localism. Quite the contrary, empirical evidence clearly shows that increased cross-ownership produces significant benefits with respect to localism. For example, Media Ownership Study 4 concludes that, "[r]adio-television cross-ownership . . . has a positive and statistically significant correlation with a television stations' local news minutes. In addition, there appear to be economies of scale as the television stations show further increases in news minutes for each additional radio station they own within a market."[192] These studies provide support for repeal of the rule based on the positive effect increased cross-ownership has on local news production.

The conclusion in Media Ownership Study 4 also is consistent with previous FCC studies demonstrating that radio/television cross-ownership promotes public affairs coverage and news programming.[193] In short, there is ample evidence in the record that radio-television combinations lead to consumer benefits, particularly the increased investment in news coverage by radio and television stations. Accordingly, the

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[192] Media Ownership Study 4, *supra* note 117, at 48-49; *see also* Media Ownership Study 1, *supra* note 25, at 15 (finding that radio-television cross-ownership is associated with higher levels of local news provision within a market).

[193] Shiman Ownership Study, *supra* note 79, at 24; Stroup News Radio Study, *supra* note 127, at 15; Lynch Radio Airplay Study, *supra* note 126, at 19.

Commission has correctly determined that the radio/television cross-ownership rule is no longer necessary in the public interest and, thus, should be repealed.

VI. INCENTIVE-BASED MEANS OF PROMOTING OWNERSHIP OF BROADCAST OUTLETS BY MINORITIES, WOMEN AND SMALL BUSINESSES WILL HAVE THE GREATEST IMPACT.

The Commission seeks comment on how it can enhance diversity of ownership in the broadcast industry, including by increasing ownership opportunities for minorities and women.[194] The court in *Prometheus Radio Project v. FCC* remanded various measures that the Commission previously adopted, which relied upon a race-neutral, revenue-based standard – the "eligible entity" standard.[195] The Commission seeks comment on how it should respond to the remand[196] and on certain specific proposals advanced in earlier proceedings relating to broadcast ownership diversity.[197]

NAB agrees with the Commission's view that expanding opportunities for new entrants, minorities and women is an important part of its mission under the Communications Act.[198] NAB applauds the Commission's efforts to identify and adopt incentive-based methods to promote a more diverse broadcast industry.[199] Such an approach is far superior to restrictive ownership rules that place all broadcasters at a competitive disadvantage versus other media. NAB is an active, longtime supporter of

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194 NPRM ¶ 147.

195 *Id.* (citing *Prometheus II*, 652 F.3d at 472).

196 *Id.*

197 *Id*. ¶¶ 169-170.

198 *Id.* ¶ 148.

199 *See, e.g., id.* ¶¶ 168-69 (seeking comment on reinstatement or adoption of proposals such as the modified equity-debt plus rule, duopoly priority for companies that finance an eligible entity, and structural rule waivers for creating incubator programs).

both industry-based initiatives[200] and legislative/regulatory change to ensure that ownership of communications outlets reflects the demographics of the audiences and communities they serve. NAB has long supported reinstitution of the tax certificate policy, which previously provided tax incentives to those who sold broadcast properties to minority owners.[201] NAB also has previously supported a wide range of proposals establishing incentives to promote diversity in broadcast ownership, some of which were adopted by the Commission and later remanded by the Third Circuit.[202] Other proposals NAB has previously supported that remain before the Commission include:

- Proposals that the Commission adopt a system of waivers/exceptions to its ownership rules for broadcasters taking actions that enhance ownership opportunities for qualifying entities;[203]

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[200] For more than ten years, the NAB Education Foundation ("NABEF") and the Broadcast Education Association ("BEA") have sponsored a variety of programs to provide professionals and students with access to employment in the broadcasting industry, as well as with the tools they need to excel in broadcast management and ownership. *See* NAB NOI Comments, *supra* note 37, at Attachment D. NABEF's flagship program, the Broadcast Leadership Training program, offers MBA-style executive training for station managers and others who aspire to own stations or advance to senior management. To date, thirty graduates of the program currently own (or have owned) broadcast stations and many others have been promoted within their companies or are in various stages of station acquisition.

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

[202] The following proposals were remanded by the Third Circuit: (1) Revision of Rules Regarding Construction Permit Deadlines; (2) Modification of Attribution Rule; (3) Distress Sale Priority for Companies that Finance or Incubate an Eligible Entity; (4) Duopoly Priority for Companies that Finance or Incubate an Eligible Entity; (5) Extension of Divestiture Deadline in Certain Mergers; and (6) Transfer of Grandfathered Radio Station Combinations to Non-Eligible Entities. *Id.* ¶ 168. NAB expressly supported the modified attribution rule and transfer of grandfathered radio combinations. *See, e.g.,* NAB 2007 Comments, *supra* note 201, at 7-8.

[203] *See* NPRM ¶ 169 and n.414 (seeking comment on "Structural Waivers for Creating Incubator Programs"); *see also* NAB Reply Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 23 (filed July 26, 2010) ("NAB NOI Reply Comments") (citing Clear Channel Comments, *supra* note 143 and Diversity and Competition Supporters Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 22-25 (filed July 12, 2010) ("Diversity and Competition Supporters Comments")). Actions that would qualify a broadcaster for such waivers could include, for

- Proposals that the Commission allow sellers of broadcast properties to hold a reversionary interest in properties for certain sales;[204]

- Proposals that the Commission permit the sale of broadcast subchannels to qualifying entities.[205]

NAB also supported several proposals to modify rules governing radio operations advanced in a petition for rulemaking filed by Minority Media and Telecommunications Council ("MMTC").[206] While many of these proposed rule changes are technical in nature and are not specific to ownership, they would reduce entry barriers and promote efficiencies for existing broadcast stations owned by minorities, women and small

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example: (i) sale of a station to a qualified entity; (ii) providing loans or other financial assistance for the ownership or operation of a station by a qualified entity; (iii) contributing a portion of the purchase price of a station to a broadcast education, training, or professional development program; and (iv) leasing an HD channel to a qualified entity at a low cost, etc. *Id.*; *see also* Diversity and Competition Supporters Comments, *supra* ("incubator programs could encompass management or technical assistance, loan guarantees, direct financial assistance through loans or equity investment, training and business planning assistance").

[204] NAB NOI Reply Comments, *supra* note 203, at 23-24 (citing Alliance for Women in Media Comments to *Notice of Inquiry* in MB Docket No. 09-182, at 7-8 (filed July 12, 2010)).

[205] *See* NPRM ¶ 169 (seeking comment on share-time proposals); *see also* NAB NOI Reply Comments, *supra* note 203, at 24. NAB and other supporters of this proposal have noted that obtaining financing for operation of a subchannel pursuant to a local marketing or lease agreement presents additional challenges for minority broadcasters seeking financing due to the temporal nature of these arrangements. Actually holding a subchannel license, by contrast, would better facilitate financing for prospective operators of subchannels. *Id.*; *see also* NAB NOI Reply Comments, *supra* note 203, at 7-8 (urging consideration of the Diversity and Competition Supporters' share-time proposals, but cautioning against imposition of undue restrictions on sales, which will impede the efficacy of these proposals and harm the potential market for secondary channels).

[206] *See Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism*, Petition for Rulemaking, RM-11565, MB Docket No. 09-52 (filed July 19, 2009); *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice (Sept. 23, 2009) (establishing comment and reply comment deadlines for MMTC petition).

entities.[207] More recently, NAB filed comments in support of a recommendation of the Advisory Committee on Diversity for Communications in the Digital Age concerning the potential adoption of a bidding credit in license auctions to persons that have overcome a substantial disadvantage.[208] NAB continues to support the adoption of all of the above-referenced proposals and urges the Commission to move forward on them in connection with this or other proceedings expeditiously.[209]

The Commission asks whether, in addition to developing a new standard(s) designed to promote minority and female ownership, it should reinstate the eligible

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

[208] *See* NAB Comments to *Public Notice* in GN Docket No. 10-244 (filed Feb. 7, 2011). The FCC could also reexamine the effectiveness of its existing bidding credit available to new entrants in broadcast auctions.

[209] While NAB is generally supportive of proposals intended to foster broadcast ownership diversity, the Commission seeks comment on two proposals that NAB has previously opposed. *See* NPRM ¶¶ 169, 170. Because of its potential to cause significant disruption to DTV service and the public interest harms that would result, NAB opposes the reallocation of television Channels 5 and 6 for FM service. *See, e.g.*, NAB Comments to *Third Further Notice of Proposed Rulemaking* in MB Docket No. 07-294, at 6-8 (filed July 30, 2008) ("NAB Diversity NPRM Comments); NAB Reply Comments to *Third Further Notice of Proposed Rulemaking* in MB Docket No. 07-294, at 3-7 (filed Aug. 29, 2008) ("NAB Diversity NPRM Reply Comments"). NAB also opposed some aspects of the proposals of the National Association of Black Owned Broadcasters ("NABOB") and the Rainbow/PUSH Coalition. *See, e.g.*, NAB Diversity NPRM Comments, *supra*. Specifically, NAB opposed the proposed prohibition on grant of temporary ownership rule waivers, noting that such a rule would unduly inhibit the financing and sale of broadcast properties at a time when broadcasters are struggling to compete against other media outlets and attract capital. *Id.* NAB also opposed the NABOB-Rainbow/PUSH proposal to attribute all local marketing agreements (regardless of programming time), explaining that there is no evidence that a party brokering less than fifteen percent of a station's time exerts such control over the brokered station that it should be deemed to have an attributable interest in the station. *Id.*

entity standard as a means of promoting new entry by small businesses.[210] NAB believes that it would be worthwhile to reinstate the eligible entity standard, and the related measures that relied upon that standard,[211] as a means of promoting broadcast ownership by small entities. Promoting broadcast ownership by small entities is also an independently worthwhile goal. Reinstating the eligible entity standard and the measures that relied upon that standard would further the statutory goal of eliminating market barriers for entrepreneurs and small businesses.[212] This standard and the related measures could operate in tandem with newly developed standards designed to promote ownership by women and minorities.

The Commission also seeks comment on how each of its broadcast ownership rules will impact minority and female ownership.[213] In this regard, NAB urges the Commission to ensure that its revisions to specific multiple and cross ownership rules in this proceeding reflect the fact that access to capital represents the most significant barrier to increasing ownership diversity. Overly restrictive ownership limits that reduce economic incentives to invest in broadcasting affect the ability of all existing and aspiring broadcasters to raise capital, but the impact is felt even more strongly by new entrants, small businesses, women and minorities.[214] The Commission also should be skeptical of unproven assumptions about the relationship between relaxation of ownership limits and a reduction in the number of minority-owned broadcast stations.

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[210] *See* NPRM ¶ 161.

[211] *See id.* ¶ 168, *supra* note 202.

[212] 47 U.S.C. § 257(a).

[213] *See* NPRM ¶¶ 20, 59 (local television), 82 (local radio), 117 (newspaper/broadcast cross-ownership), 134 (radio/television cross-ownership).

[214] *See, e.g.,* NAB Opposition to *Petition for Reconsideration* in MB Docket No. 06-121, at 23-24 (filed May 6, 2008).

NAB has refuted certain of these claims in previous proceedings,[215] and has cited evidence of *increases* in the number of stations owned by minorities and women following earlier reforms of the local broadcast ownership restrictions.[216] Revisions to the rules that allow for more efficient and competitively viable broadcast operations will help attract capital to the broadcast industry, to the benefit of both incumbents and newer entrants.

VII. SHARING ARRANGEMENTS PROVIDE TANGIBLE PUBLIC INTEREST BENEFITS AND DO NOT RAISE ATTRIBUTION CONCERNS.

The *NPRM* seeks comment on a number of issues relating to sharing arrangements, such as shared services agreements ("SSAs") and local news service ("LNS") agreements, to determine whether such arrangements are or should be attributable.[217] Sharing arrangements enable broadcasters to create operational efficiencies to provide new or expanded local news and other programming to their communities—programming that many small and mid-sized broadcasters are struggling to offer in today's competitive multiplatform media market. Attribution of sharing arrangements—which would effectively preclude such arrangements in most television

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[215] *See, e.g., id.* at 22-23 (citing Jim Tozzi/Center for Regulatory Effectiveness Reply Comments to *Further Notice of Proposed Rulemaking* in MB Docket No. 06-121, at 4 (filed Oct. 24, 2007) ("CRE Reply Comments") (discussing errors in Consumers Union *et al.* study) and B.D. McCullough, Peer-Review Report on The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006, by Hammond, *et al*. (deeming "fatally flawed" a study purporting to show reductions in minority and female ownership after duopoly rule changes)).

[216] *See id.* (citing NTIA, Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States 38 (2000); Kofi A. Ofori, Radio Local Market Consolidation & Minority Ownership 10-12 (2002) (showing increase in the number of minority owned and controlled radio stations since 1997); CRE Reply Comments, *supra* note 215, at 4 (finding that members of minority groups owned a *greater* number of television stations in 2006 than they did before the FCC modestly relaxed the duopoly rule in 1999)).

[217] *See* NPRM ¶¶ 194-208.

markets—is unwarranted because such arrangements do not provide third parties the ability to exert undue influence over a licensee's programming or other core operating decisions. Nor do SSAs raise attribution concerns in the context of retransmission consent negotiations.

A. Sharing Arrangements Advance Localism and Diversity By Facilitating the Provision of More and Better Local News and Other Programming.

As a result of increased competition by non-broadcast media outlets for audience and advertising, many television broadcasters, especially those in small and mid-sized markets, simply cannot afford to support independent news operations in markets with other competing local news operations.[218] Sharing arrangements, such as SSAs and LNS agreements, create operational efficiencies that enable broadcasters to respond to local market needs. These efficiencies translate into tangible diversity and competition benefits.[219]

For instance, sharing arrangements have enhanced localism by facilitating broadcasters' provision of new and better news and other programming to their communities.[220] An SSA enabled a television station in Wichita, Kansas to launch the

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[218] *See* discussion *supra* Part II.A.1; *see also* Coalition to Preserve Local TV Broadcasting Reply Comments to *Notice of Inquiry* in MB Docket 09-182, at 7 (filed July 26, 2010) ("Local TV Coalition Reply Comments") (observing that, in many small and mid-sized markets "the choice that many Big Four local TV broadcasters face is stark: they can enter into a contractual arrangement with a local competitor or they can cease providing local news").

[219] *See* NPRM ¶ 203.

[220] *See generally* Local TV Coalition Reply Comments, *supra* note 218, at 11-21 (providing over one dozen examples of the way in which joint arrangements have served the public interest); Coalition of Smaller Market Television Stations *Ex Parte* Presentation in MB Dockets 10-71 and 09-182 (filed Dec. 21, 2011) ("Smaller Market TV Stations *Ex Parte*") (describing several markets in which the implementation of SSAs resulted in more news and other programming than would have been available if stations could not realize the operating efficiencies facilitated by the SSA).

state's only Spanish-language local news operation.[221] In Wausau, Wisconsin, an SSA enabled a television station that previously could not afford to produce any local news to launch its own independent news operation.[222] An SSA in the Burlington, Vermont–Plattsburgh, New York market not only enhanced the participating stations' programming, but also facilitated the creation of twenty-eight new local jobs.[223] These are but a few examples of the ways in which SSAs have enabled stations to launch or improve existing news operations, as well as to bring new and diverse programming opportunities to local markets.[224]

In addition, the empirical and real-world evidence shows that sharing arrangements serve the public interest. For example, a recent study on economies of scale and scope in the television broadcast industry found sharing arrangements allow broadcasters, especially in small markets, to reduce their fixed costs and continue to operate where it would otherwise be uneconomic to do so.[225] Similarly, economic data submitted by the Coalition to Preserve Local TV Broadcasting demonstrates how, in the absence of sharing agreements, the high costs of producing local news, coupled with the limited revenue available to small market broadcasters, would result in a net loss to stations and, potentially, to the loss of one or more local newscasts.[226] Without these

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221 Smaller Market TV Stations *Ex Parte*, *supra* note 220, at 2.

222 *Id.* at 3.

223 Local TV Coalition Reply Comments, *supra* note 218, at 12.

224 For example, one broadcast group notes that, as a result of the economies of scale associated with sharing arrangements, broadcasters can invest in new programming opportunities, such as multicasting and mobile video. *See* Gray Television, Inc. Comments to *Notice of Inquiry* in MB Docket 09-182, at 14-15 (filed June 12, 2010).

225 *See* Eisenach Reply Declaration, *supra* note 18, at 11-16 ¶¶ 18-27.

226 *See* Local TV Coalition Reply Comments, *supra* note 218, at 7-10; *see also* Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, Effect of Common Ownership or

sharing arrangements, many stations simply could not finance and maintain their existing levels of local news and programming service. In small and mid-sized markets particularly, not all of the top-four stations are able to offer locally-produced news and lower-rated stations with existing news operations are struggling to maintain them.[227] Because attribution effectively would preclude such arrangements in the considerable majority of markets, treatment of such arrangements as attributable would jeopardize the maintenance of local news operations in these markets and contravene the FCC's goals in this proceeding.[228]

Certain advocates of the attribution of sharing agreements rely in part upon a study by Professor Danilo Yanich.[229] That study, however, has very limited utility in

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Operation on Television News Carriage: An Update, Reply Comments on FCC 2006 Studies, *supra* note 79, at Attachment A, 6-7 (finding that stations commonly owned or operated through joint agreements are 6.2 percent more likely to carry local news and public affairs programming than a station that is not in such a local combination).

[227] *See supra* notes 92-95 and accompanying text.

[228] *Id.* In addition, the FCC should be cautious about involving itself in the details of how stations organize their newsgathering and production operations. Such government intervention into the nature of joint arrangements between broadcasters poses a risk of intruding too far into the details of stations' day-to-day operations and how stations go about gathering and presenting news, raising potential First Amendment issues. *See CBS v. Democratic Nat'l Comm.*, 412 U.S. 94, 120-21 (1973). For instance, it would seem to be outside the purview of the FCC to establish rules as to whether or not stations should be permitted to enter into LNS agreements or other arrangements to "pool" photographers for routine events or to share the costs of purchasing and maintaining expensive equipment such as helicopters or satellite trucks. As a general matter, journalism relies heavily upon shared resources and information, including news agencies like the Associated Press (a cooperative owned by its 1,500 contributing media outlets), or Reuters (a corporation that sells news). The Associated Press has 300 locations around the world. It would be infeasible for every news organization in the world to operate 300 different bureaus to cover news of potential interest to its readers or audiences. LNS arrangements avoid the very same sorts of impracticalities within local markets.

[229] *See* Joint Letter from Representatives of American Cable Association, Dish Network, Free Press, the National Association of Broadcast Employees and Technicians-Communications Workers of America, the Newspaper Guild-Communications Workers of America, and Time Warner Cable, Inc., to Hon. Julius Genachowski, Chairman, FCC (filed Nov. 14, 2011), in MB Docket No. 09-182 (citing Danilo Yanich, Local TV News & Service

analyzing the public interest impact of SSAs or whether they should trigger attribution. Given this study's failure to analyze key factors relevant to its conclusions, small sample, and other deficiencies, the study should not form the basis for any Commission rules or policies. The study sought to compare certain aspects of the news offerings by stations in sharing arrangements (or, in some instances, common ownership) with those of same-market stations that were not in sharing arrangements.[230] Chiefly, it sought to determine the extent of common content in news programming by stations in sharing or common ownership arrangements. The study also evaluated the percentage of stories aired by stations in SSAs or other combinations that it considered "local" as compared to certain other stations in these markets,[231] and the distribution of types of stories by stations in SSAs/combinations and other stations.[232]

Agreements: A Critical Look (2011), in MB Docket No. 09-182 (filed Oct. 24, 2011) ("Yanich Study")).

[230] The Yanich study reviewed a "constructed week" of newscasts of a total of thirty-five stations in eight markets. In each market, there was at least one SSA, LMA, or two stations under common ownership. Yanich Study, *supra* note 229, at 9-16.

[231] The study defines a story as "local" if it "takes place within the physical boundaries of the DMA" in which the station is located. Yanich Study, *supra* note 229, at 16-17. A story also could be deemed local if it "was of at least marginally greater importance to the average individual residing within the DMA." *Id.* Short of an actual survey regarding levels of interest in stories among local viewers in each market, it is extremely difficult to imagine how one could assess which stories fit into this latter category. From the study's description of its methodology, it appears that subjective determinations were made by University of Delaware students who viewed the news stories. As NAB has previously noted, whether a story meets the needs and interests of the local community is a function of assessing the unique facts and circumstances of the station's local community. Communities with a significant population of immigrants, for example, may be particularly concerned about stories that occur in other nations. It is unclear how such a story would be treated by the Yanich Study's "average viewer" standard. Stories appealing to the interests of such niche populations may be excluded by the Yanich Study's approach.

[232] *See* Yanich Study, *supra* note 229, at 15. The story categories were: crime; public issues (such as housing, education, health, environment); government/politics; human interest; and other (including fires and accidents).

First, while the Yanich study purports to present research regarding sharing arrangements, only eight of the twelve station "pairs" involve sharing arrangements. The other pairs are actually commonly owned or treated as commonly owned under the Commission's attribution rules (*i.e.*, attributable LMAs).[233] The actions of stations that *are in fact commonly owned* cannot assist the Commission in evaluating whether stations *that are not* commonly owned should be treated as attributable interests. Second, results varied significantly across the study's small sample of stations.[234] For a duopoly that repurposed its newscasts, one hundred percent of the stories aired on the two stations were the same.[235] By contrast, for one SSA examined, only two percent of the stories aired were the same.[236] There were also wide variations in other findings.[237] It is difficult to identify any trends or generalities across the different markets, possibly because the stations' programming choices have less to do with whether or not they are in an SSA/LMA/duopoly than some other factors that are unique to the market and the interests of its local audiences.

Significantly, the study implicitly assumes that the stations involved in SSAs would be offering the same amount and quality of local news programming absent the

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233 *See id.* at 11-12.

234 The study reviews SSAs involving just seventeen—about one percent—of the 1,387 commercial television stations in the U.S, and only six of the 210 DMAs. Even including stations that already are commonly owned or attributed, the study involves a mere twenty-five stations in eight markets. Regardless of its substantive flaws, the study's size alone makes it ill-suited for broader determinations about SSAs.

235 *See* Yanich Study, *supra* note 229, at 99.

236 *See id.* at 92.

237 For example, in some markets, the sharing stations were less likely to air more "local" stories than other stations. But in one market, the percentage of so-called local stories aired by sharing and non-sharing stations was identical, and in another market, the sharing stations aired significantly more local stories (eighty-seven percent) than the non-sharing stations (seventy percent). *Id.* at 28, 49.

agreement. Because the study does not examine whether the stations were offering local news or public affairs programming (or if they were, how much) prior to entering sharing agreements, it cannot credibly conclude that the "obvious and unambiguous result" of the SSAs "was a reduction in the number of separate news voices in the markets." This conclusion cannot be reached without analyzing what news offerings existed prior to stations' entry into joint arrangements, or whether they would have continued local news offerings absent the joint arrangement.[238] The study also ignores relevant findings and variables, such as ratings of the stations' news programming[239] and the news offerings of other stations in the market,[240] which would present a more complete picture of whether the markets in the study can economically support additional news offerings without the efficiencies of joint arrangements.[241] In light of its unfounded assumptions, small sample, and other failings, the Yanich Study offers little

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[238] Contrary to the study's conclusion, there is already evidence in the record in this proceeding that at least one of the SSAs in the study was, prior to entering the SSA, "struggling due to . . . the economic struggles of . . . the market's major employer and a pillar of the local advertising market." Smaller Market TV Stations *Ex Parte*, *supra* note 220, at 3. While the station might otherwise have forced the station to underinvest in, reduce or even eliminate local news, the SSA enabled the station to *enhance* its local news operations, including adding an evening local interview/public affairs program. *Id.*

[239] Reviewing the ratings for each station's news programming shows that, operating alone, the sharing stations would struggle to sustain a local news offering, if they were able to offer news at all. In six of the eight markets, one of the sharing stations is the lowest rated station in terms of news programming. In the other two, a sharing station is second-lowest in terms of ratings. Operating alone, these stations would have a difficult time making a news operation successful, particularly in the smaller markets.

[240] The study samples only certain non-sharing stations in the subject markets. However, in each of these markets, there are additional stations that were not reviewed, some of which do not offer local news.

[241] The study also assumes that similar news programming is limiting the variation in the programming viewers can watch. Yet, even if the programming were completely identical, this would be of limited relevance to television viewers because of when they watch news. In seven of the eight markets in this study, the SSA/LMA/duopoly stations are not airing their news programming at the same time. From the perspective of a viewer who chooses from among 10 PM news programs, it is irrelevant whether the same news was aired on a different station at 5 PM (while that viewer may have been commuting from work).

insight into the public interest impact of SSAs or news sharing arrangements, and certainly cannot form the basis for Commission rules or policies.

B. Sharing Arrangements Do Not Provide the Opportunity to Exert Significant Influence Over Another Licensee's Programming Or Core Operating Functions.

The attribution rules "seek to identify those interests in licensees that confer on their holders a degree of influence or control" such that the holders have a realistic potential to affect licensees' programming decisions or other core operating functions.[242] As explained below, and as has been consistently recognized by the Media Bureau,[243] attribution of sharing arrangements that do not reach the well-established thresholds to indicate control is not warranted.[244]

Sharing arrangements represent a wide range of contractual relationships between licensees designed to gain some economies of scale and scope (and the resulting efficiencies) for both stations. Obtaining some level of economic scale and scope is especially vital for smaller stations, which "face higher average costs than larger stations."[245] SSAs generate these necessary economies through a variety of

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242 NPRM ¶ 194.

243 *See In re KHNL/KGMB License Subsidiary, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability of Forfeiture, 26 FCC Rcd 16087 (MB 2011); *Chelsey Broad. Co. of Youngstown, LLC*, Letter, 22 FCC Rcd 13905 (MB 2007); *Nexstar Broad., Inc.*, Letter, 23 FCC Rcd 3528 (MB 2008); *Malara Broad. Grp. of Duluth Licensee LLC*, Letter, 19 FCC Rcd 24070 (MB 2004).

244 The *NPRM* also asks whether and how grandfathering should be applied if it changes its attribution rules in this proceeding. NPRM ¶ 205. Notwithstanding NAB's position that such attribution would be unwarranted and contrary to the public interest, NAB believes that, if the Commission does attribute any form of sharing arrangement, existing agreements should be grandfathered. *See, e.g.*, NPRM ¶¶ 39, 100 (proposing grandfathering in certain circumstances to avoid compulsory divestiture, which is disruptive to the industry and a hardship for individual owners).

245 Economies of Scale Report, *supra* note 18, at 3*; see also id*. at 10 (stations with larger operations generate more output per worker and more profit per unit of output).

ways, from the sharing of costly newsgathering equipment or operations to back-office accounting and administrative and sales support.[246] Joint news ventures enabled by LNS agreements may involve the "pooling" of photographers for certain assignments or the sharing of news helicopters and satellite trucks or footage of commodity news events.[247] In short, sharing arrangements permit stations to deploy increasingly scarce resources more efficiently, thereby saving resources for highly demanded enterprise journalism, without providing a third party the ability to unduly influence a licensee's decisions regarding core operating matters.[248]

Sharing arrangements do not impact the core operating functions that give rise to attribution, namely, programming decisions, personnel issues, and financial matters.[249] For instance, SSAs that involve programming limit the amount of provided programming to no more than fifteen percent of the licensee's weekly schedule.[250] Licensees are

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[246] Often, there may be "little functional difference" between entering into an SSA with another station and entering into a similar agreement with a non-broadcast vendor, such as contracting with a third party to handle payroll functions. *See* Joint TV Broadcasters Comments to *Further Notice of Proposed Rulemaking* in MM Docket No. 00-168, at 12-13 (filed Dec. 22, 2011).

[247] For example, LNS agreements have allowed two or more stations to cover court hearings and other venues where only one camera is permitted.

[248] Broadcasters are not alone in recognizing the efficiencies that can be realized through joint arrangements that involve local news. *See, e.g.,* Diana Marszalek, WXLV, TWC Share And Share (News) Alike, TV NewsCheck (Feb. 21, 2012) (describing an agreement under which Time Warner Cable's statewide 24-hour North Carolina news channel will produce three newscasts a day to be aired on Station WXLV-TV Greensboro, North Carolina and executives expect to increase the respective viewers for the station and subscribers for the cable operator).

[249] It has been long recognized that joint arrangements focusing on day-to-day operational and administrative matters simply do not raise attribution concerns. *See Nexstar Broad., Inc.*, 23 FCC Rcd at 3535.

[250] The Commission has repeatedly held non-attributable arrangements covering no more than fifteen percent of a station's weekly broadcast programming hours. *See, e.g.*, *In re Shareholders of the Ackerley Group, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 10828, 10842 (2002) ("*2002 Ackerley Order*"); *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559 (1999) ("*1999 Attribution Order*"), recon. granted in part, Memorandum Opinion and

responsible for determining the manner in which the remaining eighty-five percent or more of program time is utilized.[251] In addition, SSAs commonly contain express provisions that restrict the programming provider from exercising undue influence over programming decisions such that the station providing programming to another, same-market licensee can make programming decisions only to the extent consistent with the licensee's direction.[252] In short, the party providing programming under an SSA does not "have a realistic potential to affect the programming decisions of licensees."[253]

Similarly, SSAs limit the ability of a third party to unduly influence personnel issues and financial matters. From a financial perspective, SSAs (and any accompanying agreements, such as advertising representation agreements) commonly are structured to specify a flat fee to be paid by the licensee in exchange for services, as well as to provide that the licensee will retain the majority of the station's advertising revenues.[254] This financial structure ensures that the licensee retains economic incentives to control the station.[255] Likewise, with regard to personnel, SSAs typically

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Order on Reconsideration, 16 FCC Rcd 1097 (2001), stayed, Order, 16 FCC Rcd 22310 (2001); *Malara Broad. Grp.*, 19 FCC Rcd at 24075. As a practical matter, this limited amount of programming may often consist of local news or other informational programming, which, as described above, likely would be unavailable in the absence of the sharing agreement.

[251] *See*, *e.g.*, *KHNL/KGMB License Subsidiary, LLC*, 26 FCC Rcd at 16089.

[252] For example, the licensee remains responsible for all programming decisions, including, the right to supervise the production of any programming to be aired on the licensee's station, the discretion to reject any programming provided pursuant to an SSA and the right to establish policies for the content, format, length, and other specifications for such programming. *See, e.g.*, FCC File No. BALCT-20040504ABU, Attachment 12, Shared Services Agreement Draft, § 3.3; FCC File No. BALCT-20070205ACH, Attachment 12, Shared Services Agreement, § 2(b).

[253] NPRM ¶ 194 (citing *1999 Attribution Order*, 14 FCC Rcd at 12560 ¶ 1).

[254] *See, e.g.*, *KHNL/KGMB License Subsidiary, LLC*, 26 FCC Rcd at 16088.

[255] *2002 Ackerley Order*, 17 FCC Rcd at 10841 (concluding that attribution was appropriate where licensee did not retain economic incentives with respect to programming provided by a broker). Indeed, the Media Bureau has consistently approved the use of SSAs structured as described herein, finding that this structure "is markedly different from that considered in the

state that any shared employees providing services for the licensee remain subject to the direction and control of the licensee, thereby ensuring that sharing arrangements do not usurp the licensee's ability to direct the services performed by shared personnel.[256] Accordingly, there is no need to modify the attribution rules with respect to sharing arrangements because, as a legal and practical matter, these arrangements do not enable a third party to exercise undue influence over programming or other core operating functions of a television station.[257]

C. Public Disclosure of Non-Attributable Sharing Arrangements Is Unnecessary and Would Provide No Discernable Public Interest Benefit.

The Commission also seeks comment on whether it should modify its rules to require disclosure of sharing arrangements if it determines that such arrangements do not constitute attributable ownership interests.[258] As an initial matter, it would be arbitrary and capricious to adopt disclosure requirements relating to sharing arrangements given the absence of any clearly identifiable public interest benefit supporting disclosure, especially when such requirements likely would result in

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2002 Ackerley Order, and does not support a finding of attribution." *Nexstar Broad., Inc.*, 23 FCC Rcd at 3536.

[256] The Commission has expressly recognized that separately owned stations can share personnel without raising attribution concerns. *See KHNL/KGMB License Subsidiary, LLC*, 26 FCC Rcd at 16094 (stating that, with respect to the sharing arrangement at issue, "there is a permissible sharing of personnel with regards to the production of news programming").

[257] Rather, the Commission should continue its existing practice of evaluating any concerns raised with respect to such agreements on a case-by-case basis.

[258] *See* NPRM ¶ 205. The Commission already has an open rulemaking proceeding in which it sought comment on this exact issue. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement For Children's Television Programming Report (FCC Form 398)*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd 15788 (2011).

increased costs and burdens to broadcasters alone.[259] NAB notes that sharing arrangements are frequently executed and filed in connection with transactions that require prior Commission approval under section 310(d) of the Communications Act and, thus, are already available for public review.[260] With respect to sharing arrangements not executed in connection with a 310(d) transaction, disclosure is unwarranted in the absence of a specific finding that such arrangements affect control of the station and programming, or raise other public interest concerns. Indeed, the viewing public's interest in the details of arrangements governing a station's operational activities would appear to be quite limited. Rather, disclosure of non-attributable sharing agreements would effectively serve as a fishing expedition into a station's day-to-day operations.[261]

D. Retransmission Consent Negotiations Are Irrelevant to the Attribution Regime Because They Do Not Implicate a Station's Core Operating Functions.

In the *NPRM*, the Commission asks whether it should consider the impact of sharing arrangements on retransmission consent negotiations in evaluating the merits of attribution.[262] The short answer is no. The Commission already has before it in another proceeding a complete record on the impact of joint sharing arrangements on retransmission consent negotiations, such that there is no need to consider the same

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[259] *See*, *e.g.*, NAB Reply Comments to *Further Notice of Proposed Rulemaking* in MM Docket Nos. 00-168, 00-44, at 28 (filed Dec. 22, 2011) (explaining that public file disclosure of SSAs would impose substantial burdens on licensees). Notably, under the proposal in the *NPRM*, no other program distributor would be required to disclose similar agreements aimed at achieving operational efficiencies, such as those facilitated by SSAs or LNS agreements.

[260] *See supra* note 243.

[261] *See supra* note 228 (discussing First Amendment implications of government intervention into day-to-day station operations).

[262] *See* NPRM ¶ 207.

matter in the instant proceeding.[263] In any event, joint retransmission consent negotiations do not affect control or otherwise provide a station with undue influence over the core operating functions of another station.[264] Specifically, the terms and conditions of the retransmission of broadcast signals by MVPDs do not impact a licensee's programming decisions (*e.g.*, what programming the station airs), personnel decisions (*e.g.*, the hiring, firing, and compensation of employees), or financial control (*e.g.*, the payment of significant station expenses) and thus do not constitute the kinds of "core operating functions" which give rise to attribution. As a result, the ability of a station to negotiate retransmission consent on behalf on another station under separate ownership and control—whether pursuant to a sharing arrangement or otherwise—is simply irrelevant from an attribution perspective.[265] NAB believes that the Commission should be particularly wary of the efforts of MVPDs to raise retransmission consent issues in the context of the FCC's attribution and ownership rules and should reject

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[263] *See Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 (2011). As has been demonstrated in the Commission's retransmission consent proceeding, joint negotiations by non-commonly owned broadcasters serve the public interest by increasing efficiencies in the negotiation process and leveling the playing field between broadcasters and MVPDs. *See*, *e.g.*, NAB Comments to *Notice of Proposed Rulemaking in* MB Docket No. 10-71, at 23-33 (filed May 27, 2011); NAB Retrans Reply Comments, *supra* note 18, at 47-53; NAB NOI Reply Comments, *supra* note 203, at 23. Indeed, permitting joint negotiations pursuant to an SSA is especially important given the increase in clustering and negotiating leverage among cable operators. *Id.* Not only did Congress specifically intend for parties to choose how to negotiate, no credible evidence has been provided to suggest that joint negotiations by broadcasters result in delays or other complications warranting intervention in the retransmission consent marketplace. In short, there is no legal or public policy basis to prohibit joint negotiations. *Id.*

[264] *See*, *e.g.*, NAB Retrans Reply Comments, *supra* note 18, at 52-53; NAB NOI Reply Comments, *supra* note 203, at 23.

[265] If the Commission were to deem the ability to negotiate retransmission consent agreements to be an attributable ownership interest, then a law firm engaging in retransmission consent negotiations on behalf of a client station would be regarded as an attributable owner of that station—a clearly erroneous position that is wholly inconsistent with the way in which the Commission defines attribution.

suggestions that joint retransmission consent negotiations facilitated by SSAs have any impact on attribution matters.[266] This is especially the case since any attribution rules that would effectively restrict the ability to jointly negotiate retransmission consent would apply to broadcasters alone.[267]

VIII. CONCLUSION

Given the technological and marketplace developments that have dramatically altered the media landscape since the broadcast ownership rules were adopted, the Commission must seriously consider whether its current local broadcast ownership rules are necessary in the public interest. NAB believes that they are not. Local broadcasters should not be subject to a regulatory regime applicable only to them and not their competitors, as such a regime only diminishes broadcasters' ability to achieve needed scale and scope economies and continue providing the type of services their audiences expect and deserve. For all the reasons set forth in detail above, the

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[266] While Time Warner Cable and Bright House Networks have called for attribution of certain sharing arrangements involving broadcasters, they refuse to even provide more than a cursory description of their own multiple joint marketing and other joint agreements signed in connection with the proposed assignment of wireless licenses held by Cox TMI Wireless, LLC and SpectrumCo (which is jointly owned by Comcast Corp.("Comcast"), Time Warner Cable Inc. ("Time Warner Cable") and Bright House Networks, LLC ("Bright House")) to Verizon Wireless, contending that the agreements are not subject to Commission review or approval in connection with their proposed transaction. *See Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses,* File No. 0004993617, Description of Transaction and Public Interest Statement, at 23-24 (filed Dec. 16, 2011); *Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses,* File No. 0004996680, Description of Transaction and Public Interest Statement, at 20-21 (filed Dec. 21, 2011) (stating that the cable companies "have each entered into separate commercial agreements with Verizon Wireless, *which are not subject to Commission review . .* under which the cable companies and Verizon Wireless will sell each other's services on a market-standard commission basis, with the new subscribers becoming customers of the other service provider") (emphasis added).

[267] *See* NAB Retrans Reply Comments, *supra* note 18, at 47-53 (explaining that it is MVPDs—and not consumers—that stand to benefit from one-sided regulations prohibiting only broadcasters from negotiating jointly or deeming joint negotiations an attributable interest).

Commission should repeal or relax the existing ownership rules. Ensuring that local broadcasters are not hampered by outmoded regulation in their efforts to serve their audiences in today's digital, multichannel environment is clearly in the public interest.

Respectfully submitted,

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March 5, 2012

ATTACHMENT A

ILLUSTRATIVE STUDIES IDENTIFIED IN PREVIOUS PROCEEDINGS SHOWING THAT FORCES OTHER THAN OWNERSHIP DRIVE DIVERSITY, INCLUDING VIEWPOINT DIVERSITY

1. Matthew Gentzkow & Jesse M. Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers*, 78 Econometrica 35, 38, 64 (2010) (finding “little” or “no evidence” that “variation in slant has an ownership component”; rather, “[v]ariation in slant across newspapers is strongly related to the political makeup of their potential readers,” implying that newspapers have an “economic incentive” to “tailor their slant to the ideological predispositions of consumers”).

2. Matthew L. Spitzer, *Television Mergers and Diversity in Small Markets*, 6 J. Competition L. & Econ. 705 (2010) (concluding that allowing jointly owned television stations in small markets will produce viewpoint diversity in local news and public affairs programming).

3. Daniel Ho and Kevin Quinn, *Viewpoint Diversity and Media Consolidation: An Empirical Study*, 61 Stanford L. Rev. 781, 786, 860 (2009) (empirical study of newspaper mergers did not support assumption that common ownership automatically reduces viewpoint diversity, thus challenging “one of the basic assumptions of federal media ownership regulations”).

4. David Pritchard, *One Owner, One Voice? Testing a Central Premise of Newspaper-Broadcast Cross-Ownership Policy*, 13 Comm. L. & Pol’y 1, 22-24 (2008) (reviewing media slant during 2004 presidential campaign and finding it “difficult, if not impossible, to distinguish between cross-owned and similar non-cross-owned media outlets . . . merely by looking at the slant of their coverage,” and also noting the “growing body of research” connecting “audience preferences” and other economic factors, such as cost of production, to the content of news).

5. Jeffrey Milyo, The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News 28-29 (2007) (FCC-commissioned study concluding that “there is little consistent and significant difference in the partisan slant of [newspaper] cross-owned stations and other major network-affiliated stations in the same market,” and also finding evidence that “partisan slant in local television news coverage is determined at least in part by market forces,” specifically the “partisan voting preferences in the local market”).

6. Sendhil Mullainathan & Andrei Shleifer, *The Market for News*, 95 Am. Econ. Rev. 1031 (2005) (finding that newspapers cater to their readers’ biases and that diversity in media coverage arises from readers, not owners).

7. Mara Einstein, *The Financial Interest and Syndication Rules and Changes in Program Diversity*, 17 J. Media Econ. 1, 16 (2004) (concluding that structural regulation of television industry "is ineffective in producing diversity" and suggesting that "economic factors" may determine the diversity of programming product).

8. David Pritchard, Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign (2002) (FCC-commissioned study finding that common ownership of a newspaper and a television station in a community did "not result in a predictable pattern of news coverage and commentary on important political events between the commonly-owned outlets").

9. David Pritchard, *A Tale of Three Cities: 'Diverse and Antagonistic' Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 Fed. Comm. L.J. 31 (2001) (studying Presidential campaign coverage in 2000 and finding "substantial diversity in the news and commentary offered by each of the three newspaper/broadcast combinations" under consideration and finding "no evidence of ownership influence on, or control of, news coverage" by the cross-owned media properties in the three markets).

10. Benjamin M. Compaine, *The Impact of Ownership on Content: Does It Matter?*, 13 Cardozo Arts & Ent. L.J. 755, 770-71 (1995) (surveying literature and scholarship and yielding no evidence of positive correlation between ownership limits and diverse content, including "issue" diversity).

11. Ronald Hicks & James Featherston, *Duplication of Newspaper Content in Contrasting Ownership Situations*, 55 Journalism Q. 549, 550-51, 553 (1978) (study comparing content of commonly owned newspapers found no duplication in "opinion content" among the papers and concluded that it was possible "to have real competition in a local, jointly owned situation").

ATTACHMENT B

ATTACHMENT B

Television Station Financial Data 2000-2010

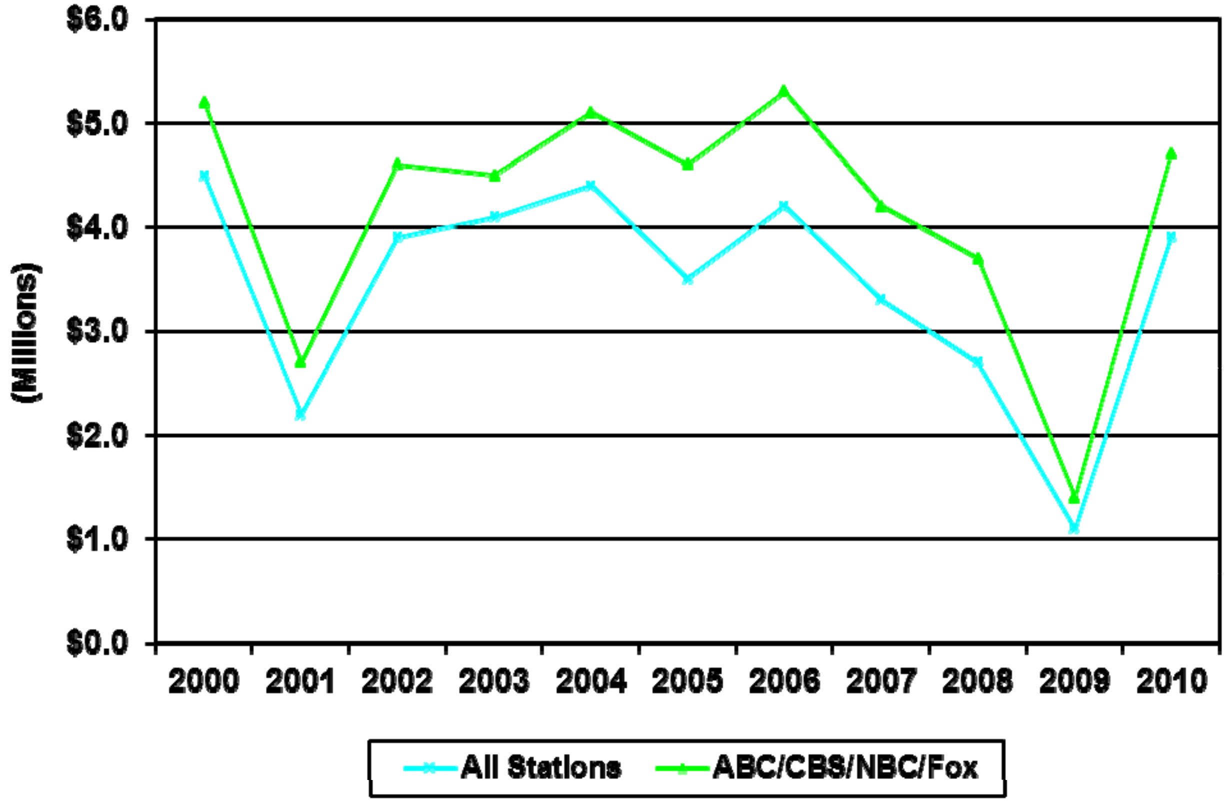
Pre-Tax Profits and News Expense

Source: NAB Television Financial Surveys: 2001-2011

Pre-Tax Profit

Television Station National Averages

(Data detail contained in the next two charts)



	Percent Change 2000-2010	***CAGR 2000-2010***
All Stations	(14.9%)	(1.6%)
ABC/CBS/NBC/Fox	(9.1%)	(1.0%)

Source: NAB Television Financial Surveys: 2001-2011

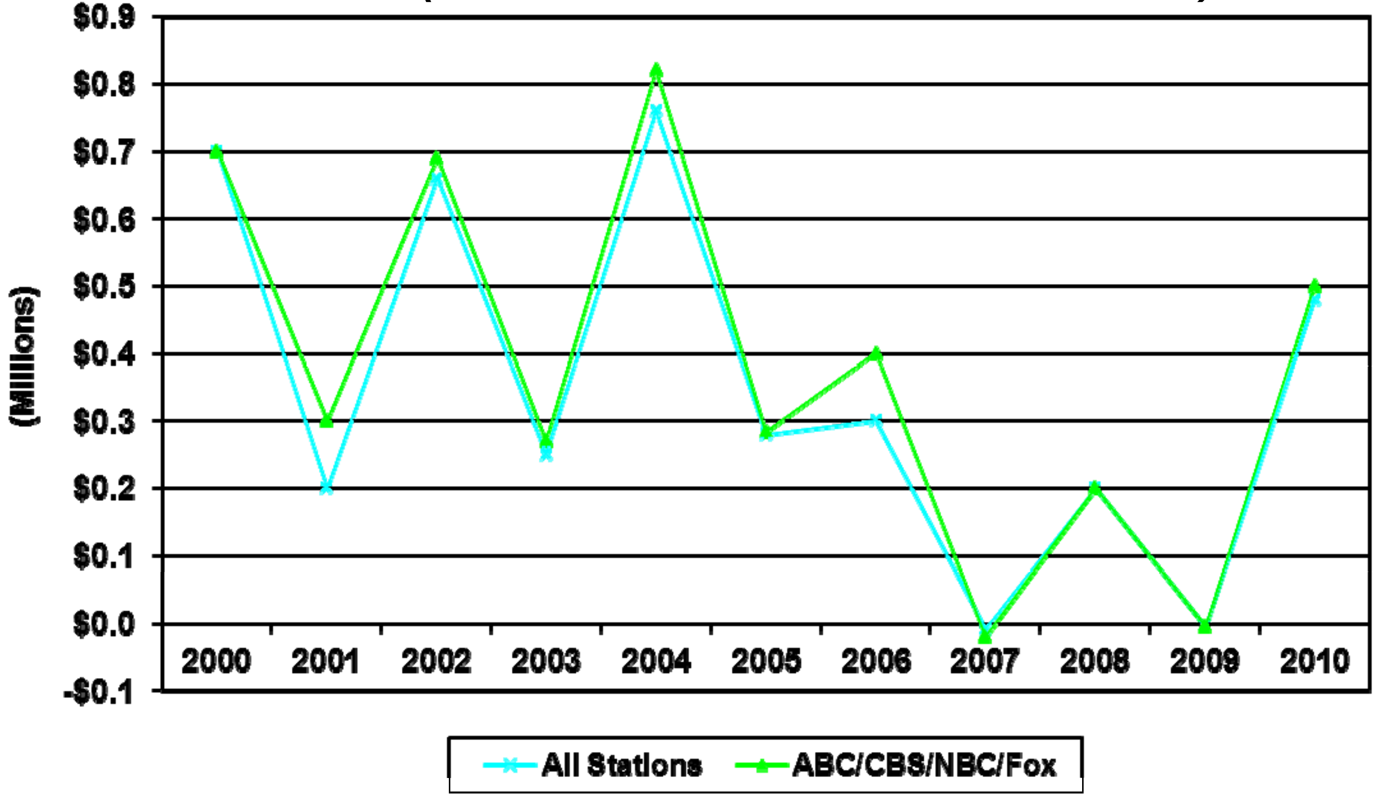
Pre-Tax Profits Average All Markets All Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
2000	$4,537,894	($584,884)	$1,113,634	$4,596,413
2001	$2,171,188	($1,445,544)	$67,067	$2,575,895
2002	$3,858,644	($451,601)	$911,827	$4,188,476
2003	$4,073,056	($458,512)	$464,019	$3,344,000
2004	$4,442,379	($158,079)	$1,128,782	$4,686,237
2005	$3,512,208	($512,639)	$670,946	$3,426,952
2006	$4,210,359	($305,161)	$1,120,443	$4,154,310
2007	$3,320,667	($454,837)	$520,164	$3,446,126
2008	$2,686,481	($750,149)	$630,300	$3,178,780
2009	$1,125,630	($1,091,315)	$129,506	$2,000,715
2010	$3,863,197	($116,451)	$1,135,668	$4,284,833
Percent Change 2000-2010:	(14.9%)			
CAGR 2000-2010:	(1.6%)			

Pre-Tax Profits Average All Markets ABC/CBS/NBC/Fox Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
2000	$5,191,611	$20,640	$1,476,582	$4,806,008
2001	$2,714,160	($1,010,131)	$275,077	$2,876,357
2002	$4,591,075	$23,658	$1,580,710	$4,598,100
2003	$4,524,942	($209,253)	$846,973	$3,787,402
2004	$5,148,287	$267,750	$1,702,493	$5,426,739
2005	$4,606,835	($69,096)	$1,033,987	$4,406,915
2006	$5,268,941	$187,536	$1,717,122	$5,303,542
2007	$4,168,157	($189,446)	$828,947	$4,112,912
2008	$3,700,547	($220,863)	$1,067,431	$4,394,017
2009	$1,417,390	($771,092)	$398,145	$2,468,999
2010	$4,717,149	$246,198	$1,716,301	$5,451,460
Percent Change 2000-2010:	(9.1%)			
CAGR 2000-2010:	(1.0%)			

Pre-Tax Profit Average

Markets: 150-210

(Data detail contained in the next two charts)



	Percent Change 2000-2010	***CAGR 2000-2010***
All Stations	(30.1%)	(3.5%)
ABC/CBS/NBC/Fox	(31.2%)	(3.7%)

Source: NAB Television Financial Surveys: 2001-2011

Pre-Tax Profits Average Markets: 150-210 All Stations				
		---------------*Percentiles*---------------		
Year	***Average***	***25%***	***50%***	***75%***
2000	$692,252	($306,089)	$343,555	$1,418,240
2001	$211,897	($333,000)	$40,585	$976,871
2002	$659,568	($93,736)	$244,200	$,161,363
2003	$253,964	($342,021)	$10,334	$519,772
2004	$758,398	($176,831)	$379,601	$1,126,003
2005	$278,977	($363,518)	$180,000	$659,742
2006	$343,423	($176,368)	$347,253	$1,137,005
2007	($14,339)	($322,410)	$139,787	$526,494
2008	$213,643	($362,945)	$170,993	$790,257
2009	($4,815)	($591,965)	$3,885	$407,280
2010	$483,589	($231,378)	$292,483	$942,165

Percent Change 2000-2010:	(30.1%)
CAGR 2000-2010:	(3.5%)

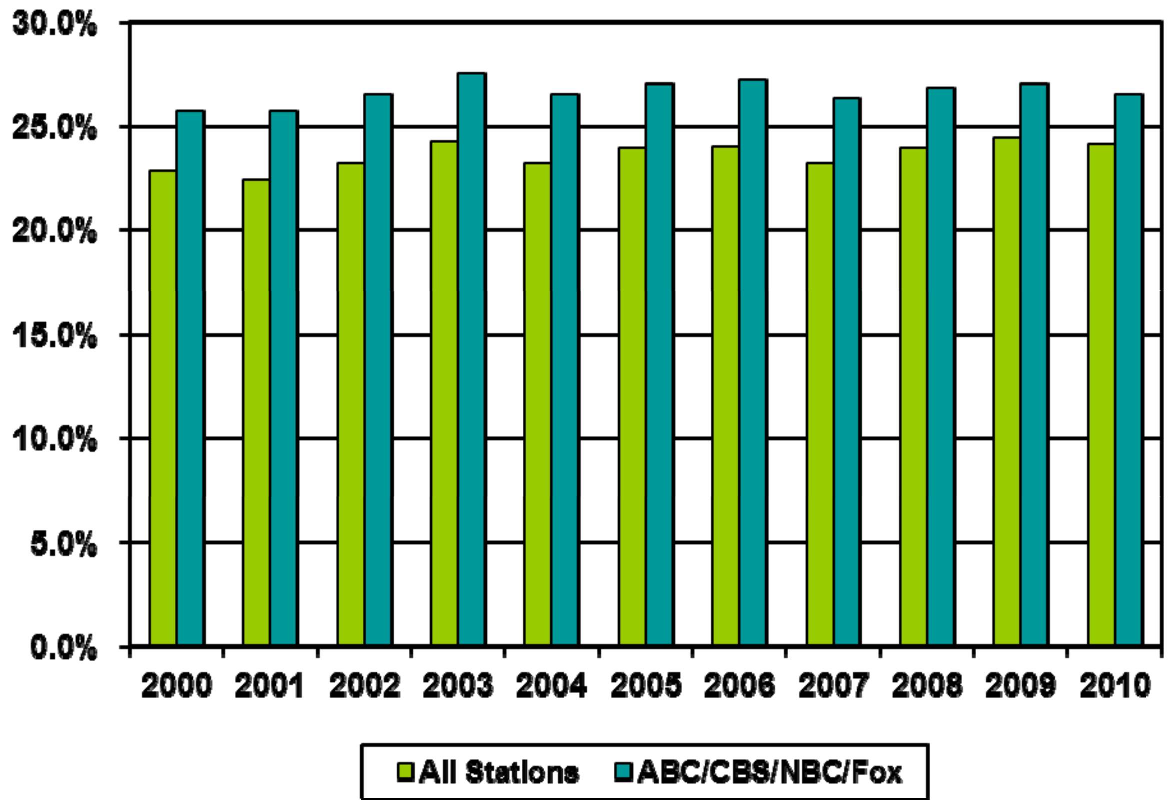
Pre-Tax Profits Average Markets: 150-210 ABC/CBS/NBC/Fox Stations				
		---------------Percentiles---------------		
Year	***Average***	***25%***	***50%***	***75%***
2000	$727,182	($299,919)	$410,450	$1,424,435
2001	$287,471	($302,689)	$59,611	$1,020,006
2002	$687,329	($83,144)	$269,990	$1,240,392
2003	$265,410	($342,021)	$13,500	$610,591
2004	$820,554	($223,029)	$470,191	$1,301,608
2005	$283,212	($399,474)	$182,278	$800,538
2006	$351,282	($180,902)	$382,644	$1,182,908
2007	($18,578)	($323,296)	$141,282	$558,096
2008	$216,860	($372,482)	$176,621	$819,475
2009	($5,078)	($606,500)	$0	$408,352
2010	$500,531	($229,814)	$304,396	$951,124

Percent Change 2000-2010:	(31.2%)
CAGR 2000-2010:	(3.7%)

News Expense:

% of Total Expenses

(Data detail contained in next chart)



Source: NAB Television Financial Surveys: 2001-2011

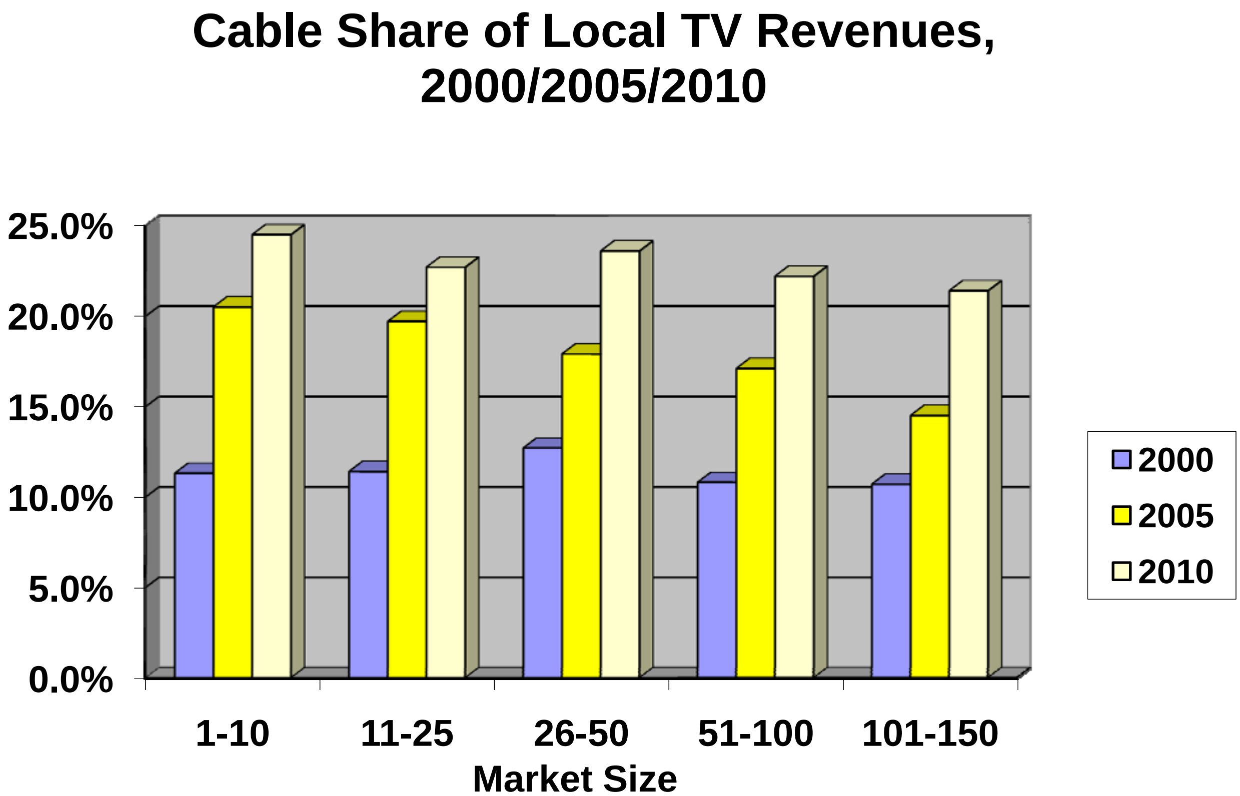
News Expense: % of Total Expenses		
Year	**All Stations**	**ABC/CBS/NBC/Fox Stations**
2000	22.8%	25.7%
2001	22.4%	25.7%
2002	23.2%	26.5%
2003	24.2%	27.5%
2004	23.2%	26.5%
2005	23.9%	27.0%
2006	24.0%	27.2%
2007	23.2%	26.3%
2008	23.9%	26.8%
2009	24.4%	27.0%
2010	24.1%	26.5%

Definitions

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

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

ATTACHMENT C



Source: Analysis of data estimates from *The Television Industry: A Market by Market Review*, 2001, 2006 and 2012 eds.

GROWTH OF CABLE SHARE OF LOCAL TELEVISION AD REVENUES

As demonstrated in the chart above, local cable made significant gains between 2000 and 2010 in its share of local television market advertising. In Top 10 Nielsen markets, the average share of local television advertising garnered by local cable grew from approximately 11.3 percent of market TV ad revenues in 2000, to 24.5 percent in 2010—or approximately $1.5 billion in total local cable ad revenues in these markets in 2010. To put this figure into context, the average of $150 million per market in local cable ad revenues is the equivalent of nearly three additional television stations in each market, based on 2010 average station ad revenues* in these markets.

Comparable situations also have occurred in smaller markets. For instance, in markets ranked 11 through 25, local cable's average share of the television ad pie increased nearly as much as it did in the Top 10 markets, rising from 11.4 percent of local market TV ad revenues in 2000 to 22.7 percent in 2010. Local cable advertising's annual revenues of approximately $50 million per market in DMAs 11-25 represents roughly the equivalent of nearly two additional television stations in each of these markets, based on average annual station revenues. Likewise, local cable's average market share nearly doubled in Markets 26 through 50. This trend continues into the smaller markets where cable's share doubled in both Markets 51 through 100 and Markets 101 through 150**.

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

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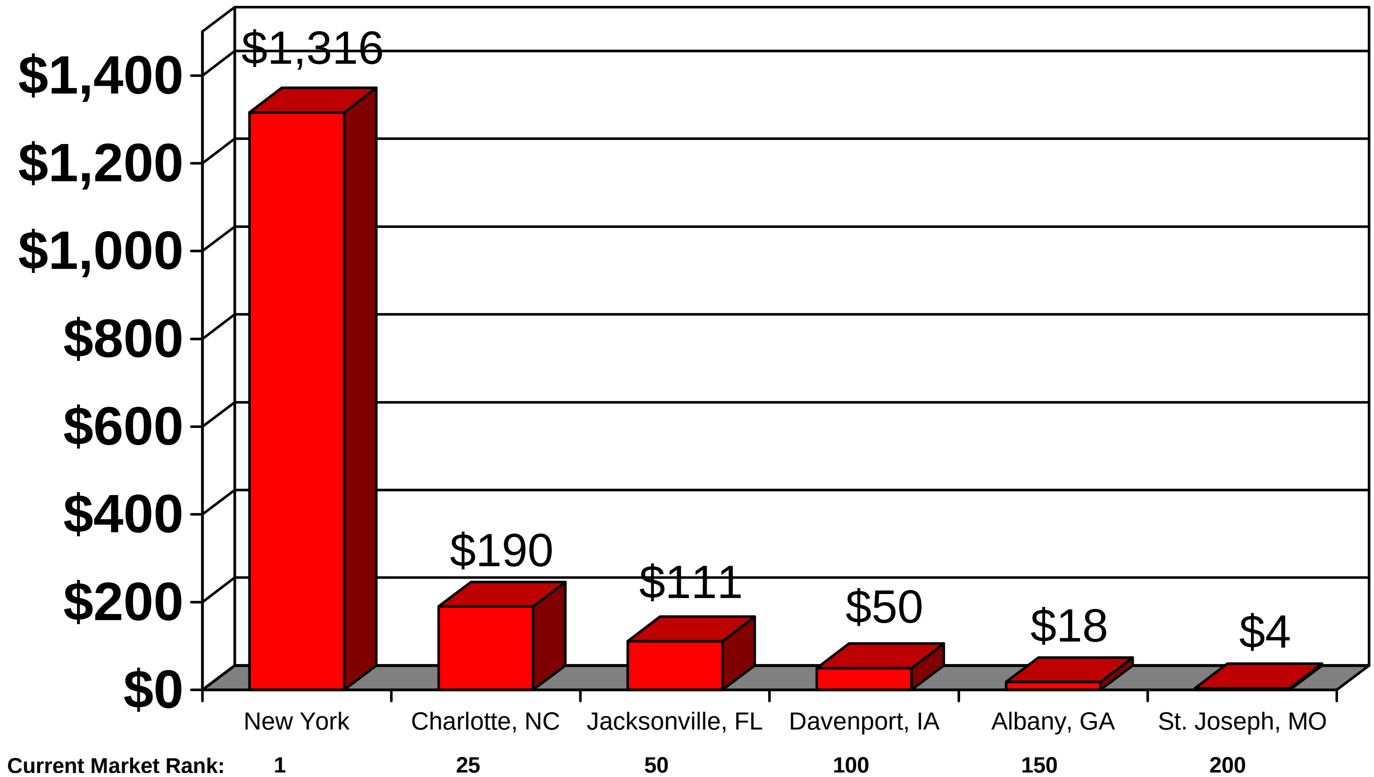
* Source: BIA Media Access Pro.

**There was insufficient data available for markets 151-210. Therefore, these markets are excluded from this analysis.

ATTACHMENT D

2010 Television Market Revenues
(in millions)



Source: BIA Media Access Pro.

	New York	Charlotte, NC	Jacksonville, FL	Davenport, IA	Albany, GA	St. Joseph, MO
No. of Commercial Stations	15	8	7	5	4	2
Avg. Revenue per Station (in 000)	$87,740	$23,706	$15,907	$9,980	$4,544	$2,000
Avg. Revenue per TV HH in Market	$184	$170	$167	$164	$125	$85

THE RELATIONSHIP BETWEEN MARKET SIZE AND ADVERTISING REVENUE PER TVHH

The chart above illustrates the importance of market size to the ability of television stations to attract advertising revenues. For instance, New York is the largest TV market in the U.S., at nearly 7.2 million TV Households. Based on the New York DMA's total 2010 broadcast television advertising revenues of $1.316 billion, the average TV Household in the market was worth $184 in annual revenue. In contrast, the average TV Household in Charlotte, North Carolina, the number 25-ranked TV market, was worth only $170 in annual revenue. The value of TV households continues to decline in a manner directly related to market size, from market number 50 Jacksonville, Florida (annual revenues of $167 per TVHH), to market number 100 Davenport, Iowa–Rock Island-Moline, Illinois ($164/TVHH), to market number 150 Albany, Georgia ($125/TVHH), to market number 200 St. Joseph, Missouri ($85/TVHH). In other words, not only are smaller TV markets more challenged in the advertising marketplace simply because they have fewer eyeballs to sell to prospective advertisers, but also, the viewers they do have are valued less by advertisers on a per household basis than are those in larger markets.

ATTACHMENT E

Short Markets

(excluding Big 4 Multicast Affiliations)

As of Jan. 3, 2012

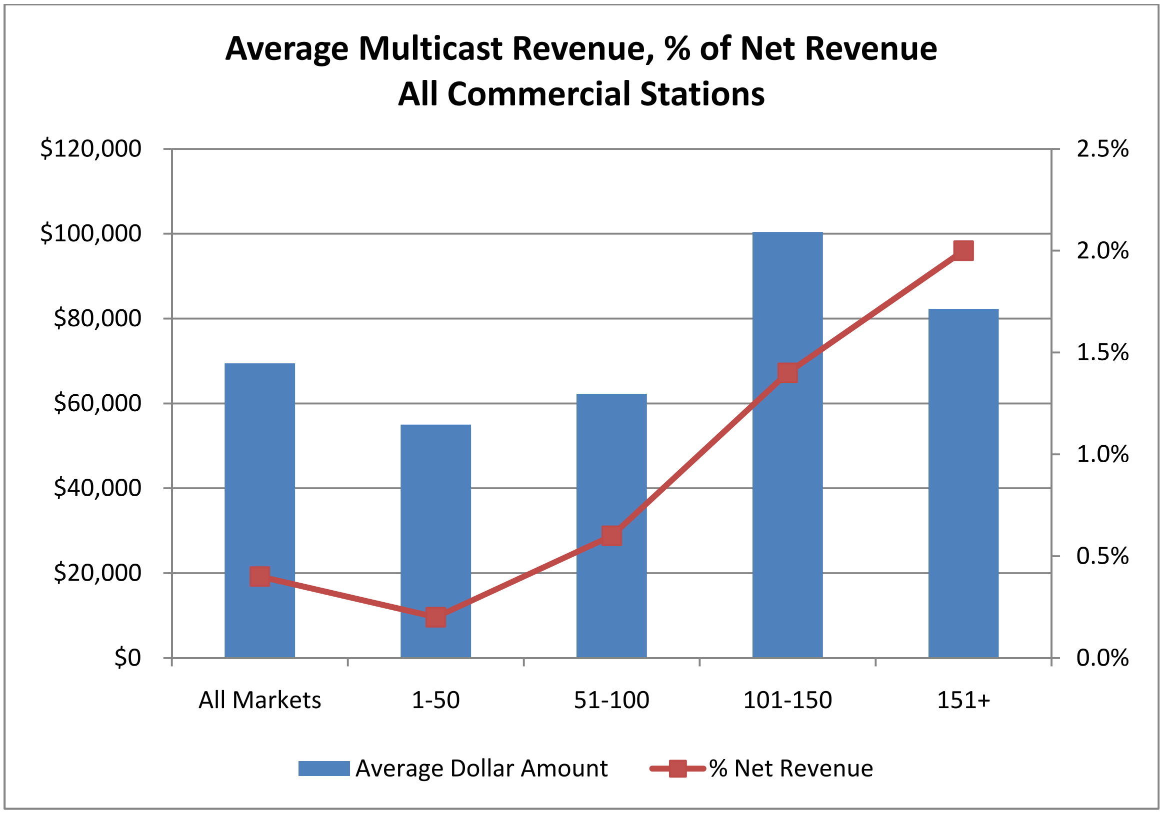
Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
104	Evansville, IN	Fox	FOX
109	Ft. Wayne, IN	Fox	
114	Springfield-Holyoke, MA	CBS, Fox	FOX
118	Macon, GA	ABC	ABC
124	Lafayette, LA	NBC	
125	Monterey-Salinas, CA	ABC	ABC
132	Wilmington, NC	ABC	
141	Beaumont-Port Arthur, TX	NBC	NBC
144	Salisbury, MD	NBC, Fox	FOX
150	Albany, GA	ABC	ABC
154	Terre Haute, IN	Fox	FOX
156	Bluefield-Beckley-Oak Hill, WV	Fox	FOX
158	Wheeling, WV- Steubenville, OH	ABC, Fox	ABC, FOX
159	Panama City, FL	CBS	
161	Sherman, TX - Ada, OK	ABC, Fox	ABC, FOX
162	Biloxi-Gulfport, MS	CBS, NBC	
166	Yuma, AZ-El Centro, CA	ABC	ABC
167	Hattiesburg-Laurel, MS	ABC, Fox	
169	Dothan, AL	NBC	
170	Clarksburg-Weston, WV	ABC	ABC
171	Quincy, IL-Hannibal, MO-Keokuk, IA	ABC, Fox	ABC, FOX
172	Utica, NY	CBS	
174	Elmira, NY	CBS	CBS
175	Lake Charles, LA	ABC, CBS	
176	Jackson, TN	CBS, NBC	
177	Watertown, NY	NBC	
178	Harrisonburg, VA	CBS, NBC, Fox	FOX
179	Alexandria, LA	CBS	CBS
180	Marquette, MI	Fox	FOX
181	Jonesboro, AR	CBS, NBC, Fox	
182	Bowling Green, KY	CBS, Fox	CBS, FOX
184	Grand Junction-Montrose, CO	Fox	
185	Laredo, TX	ABC	
186	Meridian, MS	Fox	FOX
187	Greenwood-Greenville, MS	Fox	FOX

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
188	Lafayette, IN	ABC, NBC, Fox	
189	Butte-Bozeman, MT	Fox	FOX
190	Great Falls, MT	Fox	FOX
192	Parkersburg, WV	ABC,CBS, Fox	FOX
198	Mankato, MN	ABC,NBC, Fox	FOX
199	Ottumwa, IA-Kirksville, MO	CBS, NBC	CBS
200	St. Joseph, MO	CBS, NBC, Fox	
201	Lima, OH	CBS, Fox	CBS, FOX
203	Zanesville, OH	ABC, CBS, Fox	
204	Victoria, TX	CBS	
205	Presque Isle, ME	ABC, NBC, Fox	FOX
206	Helena, MT	Fox	FOX
207	Juneau, AK	Fox	
208	Alpena, MI	ABC, NBC, Fox	FOX
209	North Platte, NE	CBS, NBC	
210	Glendive, MT	ABC, NBC, Fox	NBC

ATTACHMENT F

Multicast Revenue

Market Size	Multicast Revenue[1] 2010 Average Dollar Amount All Commercial Stations	% of Net Revenue[2]
All markets	$69,456	0.4%
1-50	$55,006	0.2%
51-100	$62,273	0.6%
101-150	$100,414	1.4%
151+	$82,303	2.0%



[1]Data derived from the 2011 NAB Television Financial Survey database. Multicast revenue is defined as any revenue that is derived directly from a station's subchannels.

[2]Net revenues is defined as the total of gross advertising revenues, plus network compensation plus trade-outs and barter plus multicast revenue plus other broadcast related revenues minus agency and rep commissions.

ATTACHMENT G

OVER-THE-AIR RADIO SERVICE TO DIVERSE AUDIENCES – 2012 UPDATE

Mark R. Fratrik, Ph.D.

Vice President

BIA/Kelsey

February 22, 2012

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Executive Summary

Local radio stations today must examine every opportunity for competing more effectively in their increasingly competitive local markets. To compete against the growing audio options available to consumers and the growing number of alternative advertising options available to advertisers, local radio stations continue to refine the programming they offer to local audiences. This refinement leads many local radio stations to provide more diverse programming to targeted demographic groups located in their local markets.

This paper builds upon earlier research on the diverse programming being offered by local radio stations in their efforts to compete. In addition to updating some of the results showing that diverse programming, this paper will add additional information on the programming services provided by local radio stations through their digital multicast signals, as well as through the rebroadcast of those multicast signals via FM translators to reach a broader local audience.

The results in this latest update clearly show that local radio stations are continuing to increase the diversity of programming available to local audiences:

- ❖ The number of Spanish-language stations has dramatically increased, with the number having grown by over 63% since 2000.
- ❖ Forty-eight percent of the Hispanic population in Arbitron markets now resides in markets with 10 or more Spanish-language stations, with nearly 90% located in markets with at least three such stations. Over four-fifths (81.3%) of the Hispanic population located in Arbitron markets receive six or more Spanish programmed stations.
- ❖ Today, 37.6% of those African Americans in Arbitron markets reside in markets with five or more Urban radio stations (up from 25.5% in 2000) and nearly 62% reside in markets with three or more Urban stations. There are also 85 Urban programmed multicast signals available to listeners.
- ❖ Over seven of ten people residing in Arbitron markets are in markets with at least six news/talk stations, and over three-quarters are in markets with at least five news/talk stations. Nearly half (49.4%) of Americans in Arbitron markets reside in markets with 10 or more news/talk stations. Since 2000, the number of news/talk stations has increased 38.4%, and there are an additional 159 multicast signals offering news/talk programming.
- ❖ The number of radio stations broadcasting in digital has increased dramatically to over 2,100, with 1,411 additional multicast programming streams now being provided.
- ❖ Nearly three-fifths (58.6%) of the population located in Arbitron markets are in markets with 10 or more digital multicast signals (an increase of 4.7% since 2010), and nearly four-fifths (78.6%) are in markets with at least three.
- ❖ Multicast signals are bringing more diverse programming into local markets. For example, of the 64 markets with new multicast Classical signals, 21 had no other Classical stations in the market; similarly, of the 60 markets with new multicast Jazz

signals, 31 had no other Jazz stations in the market; of the 41 markets with new Alternative signals, 16 had no other Alternative stations in the market; of the 22 markets with new Blues signals, 21 had no other Blues stations in the market.

- Multicast signals are also being rebroadcast on FM translators broadening the reach of this new and diverse programming. There are presently 79 multicast signals being rebroadcast on 91 translators.

LOCAL RADIO SERVICE TO DIVERSE AUDIENCES – 2012 UPDATE

Introduction

Local radio stations today face more competition for audiences and advertisers than ever before. Competing for audiences are other local radio stations, other radio stations streamed online, national satellite delivered audio programming, personal audio devices (IPods), and now personal radio stations (e.g., Pandora). Competing for advertisers are those other local radio stations, local over the air television stations, local cable systems, local out-of-home services (e.g., billboards), online services, and others including local print media.

To compete against these other audio options and advertising opportunities, local radio stations continue to differentiate their programming to appeal to audiences that will be attractive to local and national advertisers. These stations not only provide this differentiated programming on their main signals, but also through use of multicast streams and streaming on the internet. Multicasting continues to increase, and many radio stations are utilizing local translators to broaden access to that differentiated digital programming.

This paper will examine the extent of that differentiated programming being provided by local radio stations. In several earlier papers[1] the level of differentiation was clearly shown to be

[1] Mark R. Fratrik, *Over-the-Air Radio Service to Diverse Audiences*, October 23, 2006, submitted as Appendix G, NAB Comments in MB Docket 06-121; Mark R. Fratrik, *Local Radio Service to Diverse Audiences – An Update*, April 28, 2008, submitted as Appendix E, NAB Comments in MB Docket 04-233; and Mark R. Fratrik, *Over-The-Radio Service to Diverse Audiences – A Further Update,* April 30, 2010, submitted as Attachment A, NAB Comments in GN Docket 10-25.

increasing as radio stations responded to their new competition with differentiated and varied programming. The results shown in those papers will be updated here and the increased reliance on digital radio services, through the use of multicast streams and FM translators to expand the reach of those streams, will be detailed.

This most recent survey of the extent of differentiated programming offered by local radio stations reconfirms those earlier studies. Continued growth in various types of differentiated programming in the past few years suggests that this trend will continue.

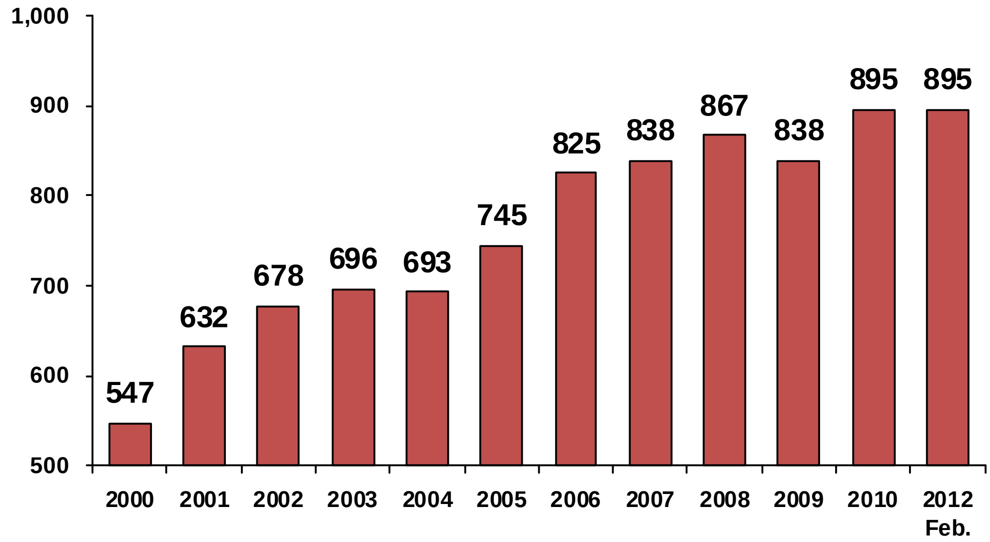
Specific Programming to Diverse Audiences

The diverse programming specifically examined here includes Spanish language, Urban, and News/Talk. In addition to the numbers of stations airing this programming, the coverage of those stations, in terms of the populations reached by varying numbers of stations, will be reported.

Spanish-Language Programming

The number of radio stations airing this type of programming continues to increase. As the Hispanic population grows faster than the overall market, more local radio stations are airing diverse types of Spanish-language programming to serve those growing communities. Figure 1 below the number of U.S. full-power radio stations providing Spanish-language programming since 2000.

Figure 1 – Number of U.S. Hispanic Radio Stations



Since 2000, the number of number of Spanish-language radio stations has increased by 63.6%.[2] These Spanish-language radio stations are offering a varied amount of different types of programming including Mexican, Tejano, Tropical, Grupero, Norteno, and News/Talk. Additionally, there are 52 multicast streams with Spanish-language programming being offered throughout the U.S.[3]

Another measure of the service of these Spanish-language radio stations is the extent of service being provided to the Hispanic community. Specifically, it is interesting to examine the numbers of stations in each market providing Spanish-language programming, and the percentage of the Hispanic population in those markets. Figure 2 shows the percentage of the

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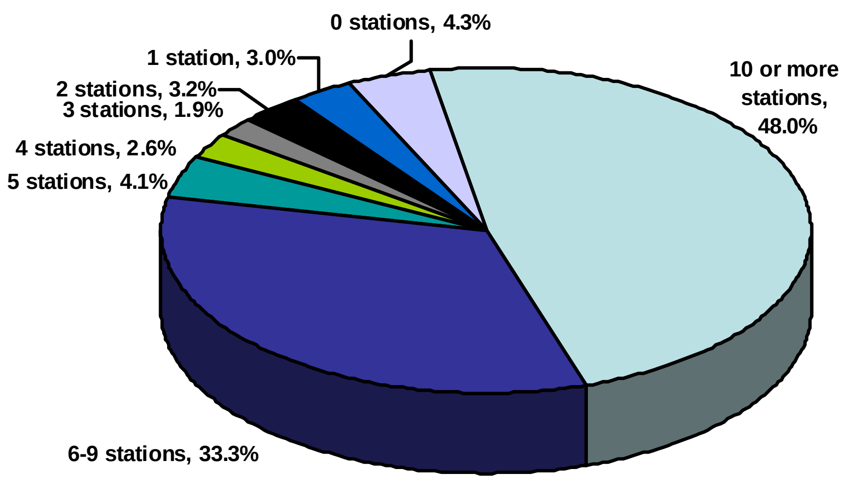
[2] These totals actually understate the number of Spanish-language radio stations serving the U.S. population as there are many Mexican radio stations located near the border that reach several U.S. markets, with several of them attracting measurable audiences.

[3] Media Access Pro™, BIA/Kelsey.

Hispanic population in all of the Arbitron markets that are being served by varying numbers of Spanish-language radio stations.

Figure 2 – Percentage of Hispanic Population Receiving Spanish-Language Stations



The percentage of Hispanic population being served by more Spanish-language radio stations continues to increase. Now, over 81% of the Hispanic population in Arbitron markets is being served by six or more Spanish-language radio stations, up 4% since the most recent study in 2010.[4] Nearly 90% of the Hispanic population in Arbitron markets is served by at least three Spanish-language radio stations.

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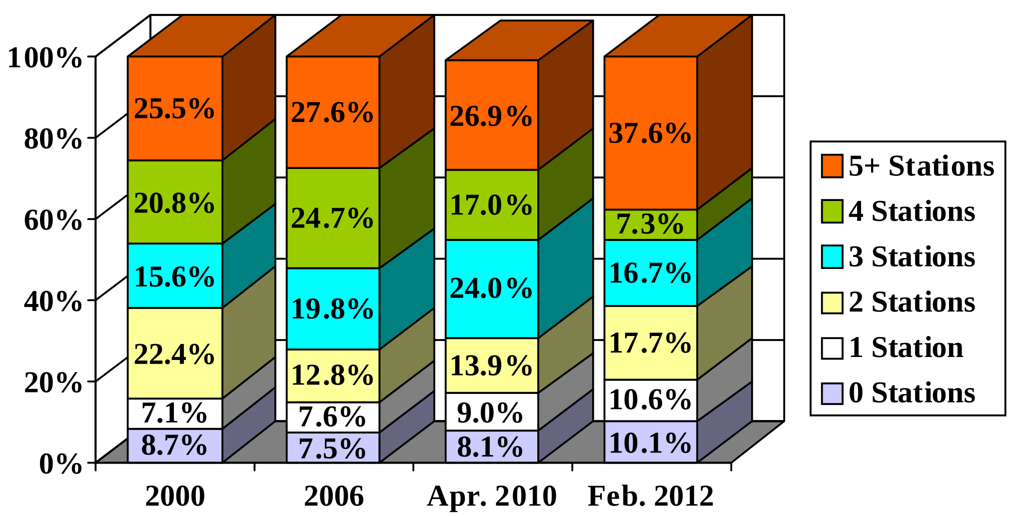
4 See Figure 2, *Over-the-Air Radio Service to Diverse Audiences – a Further Update*, April 30, 2010, p. 6.

Urban Programming

Similarly, the African American population continues to be served by radio stations providing Urban programming of different types.[5] As of February 2012, there were 382 different full-power radio stations in the U.S. providing one type of Urban programming.[6] In addition, 85 multicast signals now air this type of programming.[7]

Figure 3 shows the percentage of African Americans within Arbitron radio markets that are being served by varying numbers of Urban programmed stations for 2000, 2006, 2010 and 2012.

Figure 3 – Percentage of African American Population Receiving Urban Programmed Stations



5 Urban programming encompasses many different types of programming, ranging from Urban/Talk to various diverse music formats including Urban AC, Urban CHR, Urban/Jazz, Rhythm and Blues and Urban/Gospel.

6 Media Access Pro™, BIA/Kelsey.

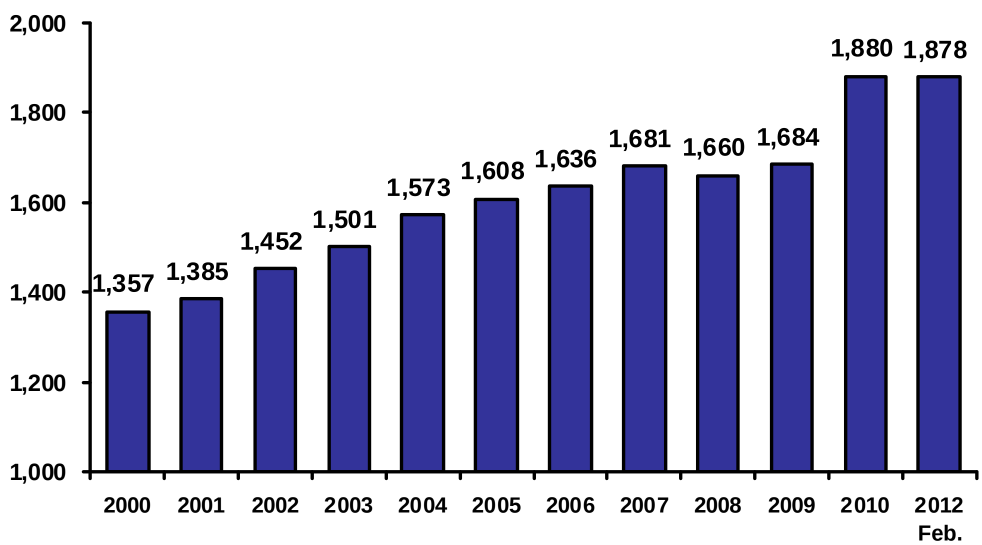
7 Ibid.

As shown, there has been an increase in the percentage of the African American population receiving five or more Urban radio stations (increasing from 26.9% to 37.6% just since 2010). At present, about 45% of the African American population in Arbitron markets resides in markets with four or more Urban radio stations and nearly 62% in markets with three or more Urban stations.

News Talk Programming

In addition to increased provision of the diverse programming discussed above, many radio stations are increasing their provision of news and information to their local communities. Figure 4 shows the number of U.S. news/talk radio stations since 2000.[8]

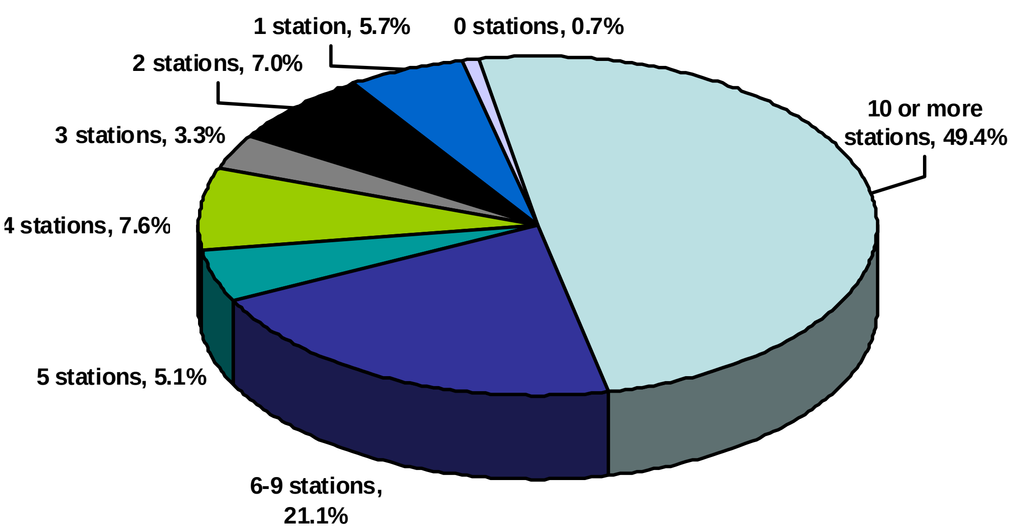
Figure 4 – Number of U.S. News/Talk Formatted Radio Stations



Even after several years of steady growth, there was a notable increase in the number of full power radio stations airing news/talk programming in 2010 and that level has been maintained today. Since 2000, there has been a 38.4% increase in the number of radio stations airing this type of programming. Additionally, there are 159 multicast streams carrying some type of news/talk programming.[9]

While the absolute number of radio stations airing this type of programming is very impressive, even more impressive is the number of news/talk stations available, and providing diverse viewpoints, to the U.S. population. Figure 5 shows the percentage of the U.S. population in Arbitron markets in which there are different numbers of news/talk stations on air.

Figure 5 – Percentage of Population Receiving News/Talk Programmed Stations



With the increase in the total number of news/talk stations, there has been a corresponding increase in the number of people residing in markets with multiple news/talk

[8] These numbers do *not* include any radio stations that are either sports or sports/talk stations.

[9] Media Access Pro™, BIA/Kelsey.

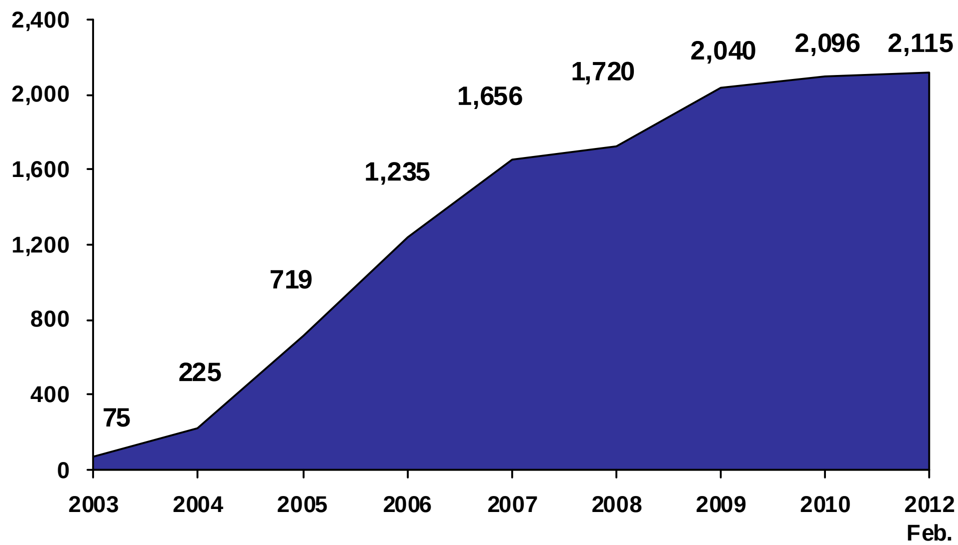
stations. Today, nearly half (49.4%) of Americans in Arbitron markets reside in markets with 10 or more news/talk stations, up from only 31.5% in 2010. Over seven of ten people (70.5%) are in markets with at least six news/talk radio stations. Only two years ago that figure was over 11 percentage points lower.[10]

HD Radio™ Service

In addition to stations providing the diverse programming described above, many local radio stations also have made considerable investments to provide the new digital radio service, HD Radio™. Even when few consumers had radio receivers able to pick up these new digital signals, radio stations made the necessary investments to improve their signals and provide additional streams of programming through the multicasting opportunities afforded by this new technology. Figure 6 shows the number of digital radio stations on air for the last ten years.

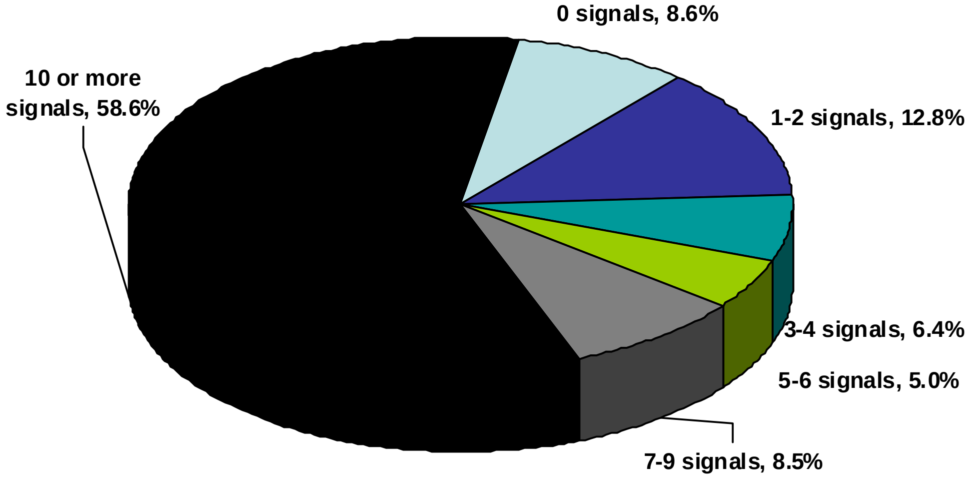
[10] See *Over-the-Air Radio Service to Diverse Audiences – a Further Update*, April 30, 2010, p. 9.

Figure 6 – Number of HD Radio Stations



Over time, radio stations have increased the amounts of programming they provide through multicasting. As of February 2012, 1,411 multicast streams of programming were being provided to audiences throughout the U.S. Demonstrating the importance of this added programming, Figure 7 shows the percentage of population residing in Arbitron markets with varying numbers of multicast signals.

Figure 7 – Percentage of Population Receiving Multicast Signals



Close to three-fifths (58.6%) of the population in Arbitron markets reside in markets with 10 or more multicast signals, an increase of 4.7% since April 2010. Over three-quarters (78.6%) of the population in Arbitron markets have are in markets with three or more multicast signals, a small increase from 2010.

These multicast signals often provide increased diversity of programming. Appendix 1 identifies the wide range of programming services being provided to listeners on multicast signals. After examining the varied types of programming provided via multicast signals on a market basis, it is clear that multicast signals greatly expand the choices available to local audiences. For example:

- Of the 64 markets with 109 new multicast Classical signals,[11] 21 had no other Classical stations in the market;
- Of the 60 markets with 75 new multicast Jazz signals,[12] 31 had no other Jazz stations in the market;
- Of the 41 markets with 44 new Alternative signals, 16 had no other Alternative stations in the market;
- Of the 22 markets with new Blues signals, 21 had no other Blues stations in the market;
- Of the 14 markets with new Comedy signals, 13 had no other Comedy stations in the market;
- Of the 5 markets with new International signals, all 5 had no other International stations in the market.

Finally, in the past few years, a number of multicasting radio stations have tried to make their multicast signals more available to local audiences while the roll out and consumer adoption of HD Radio™ receivers continue. Many of these radio stations steam their multicast signals. Additionally, radio stations are beginning to utilize FM translators within their markets to rebroadcast multicast programming streams so that non-digital radios can receive them. As of February 2012, there were 79 multicast signals being rebroadcast on 91 translators in the U.S., several of which are in smaller markets where there are fewer full-power radio stations. For

[11] Note that there are an additional 31 multicast signals airing Classical programming outside of any Arbitron market.

example, in Montgomery, AL (market rank 152), WQKS-HD2 and WQKS-HD3 are being rebroadcast on two different translators bringing Soft Adult Contemporary and Urban Oldies programming to that market, which previously did not have stations providing these program services. Another example is in Chattanooga, TN (market rank 108), where WPLZ-HD2 is being rebroadcast on a translator bringing Oldies programming to that market, which did not have another station airing that type of programming.

Conclusions

Local radio stations are in a daily battle to attract listeners who enjoy more options today for audio entertainment and information than ever before. Stations are also battling with many different and new advertising vehicles available to local and regional businesses. As a result of both of these types of competition, local radio stations are always seeking ways to attract local audiences, particularly through the types of programming they provide. This competition often results in stations providing diverse programming targeted to specific demographic groups.

With the new HD Radio™ technology, local radio stations can provide increased programming intended to serve specific demographic groups. Given the economics of this new technology, these radio stations can now provide programming targeted to smaller groups of listeners, which previously would not have been economically viable. While consumer adoption of digital receivers continues, local radio stations are providing these new programming services through streaming and utilization of local FM translators.

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[12] Note that there are an additional 5 multicast signals airing Jazz programming outside of any Arbitron market.

This expansion of diverse programming through local stations' main signals as well as through their multicast streams will continue as it has in the past few years. The significant competition that radio stations face will provide the economic incentive for this expansion of their programming services.

Appendix 1 – Types of Programming Being Offered Via Multicast Signals

70&80/90&20
70&80/ClRck
70&80/Rk&Rl
70&80/VarHt
70Hts/80&90
70s Hits
70s Oldies
80&90/90&20
80&90/AC
80&90/CHR
80s Hits
90s & 2000s
AAA
AAA/Altve
AAA/Amr/Alt
AAA/ClRck
AAA/Clscl
AAA/Ecltc
AAA/Folk
AAA/MdRck
AAA/News
AAA/NPR
AAA/Publc
AAA/Rck/Amr
AAA/Urban
AAA/Varty
AC
AC/7&8/8&9
AC/70&80
AC/AAA
AC/CCtmp
AC/Chrst
AC/ClHts
AC/ClRck
AC/Cntry
AC/Cst/Inf
AC/Cty/Old
AC/FuSvc
AC/HotAC
AC/HpHop
AC/LtRck
AC/News
AC/Nws/Inf
AC/Nws/Old
AC/Nws/Spt
AC/Nws/Tlk
AC/Old/Bch
AC/Oldes
AC/Rhymc
AC/SftRk
AC/Sprts
AC/Spt/Nws
AC/Talk
AC/Top40
AC/Varty
AdCHR/CCtmp
AdCHR/MdRck
AdHts/AC
AdHts/Jack
AdHts/Top40
AdHts/Varty
Adlt Stndrd
AdRck/ClRck
AdStd/BgBnd
AdStd/Cntry
AdStd/Lt AC
AdStd/MOR
AdStd/News
AdStd/Nstlg
AdStd/Oldes
AdStd/Sprts
AdStd/Talk
Adult CHR
Adult Hits
Adult Rock
Alt/AAA/Nws
Alt/Jaz/Var
Alt/Pgv/Var
Alt/T40/Rym
Alt/Var/Tlk
Alternative
Altve/AOR
Altve/ClHts
Altve/ClRck
Altve/Dance
Altve/Ecltc
Altve/Educa
Altve/MdRck
Altve/News
Altve/NwRck
Altve/Oldes
Altve/R&BOd
Altve/Rock
Altve/Talk
Altve/Urban
Altve/Varty
Amerc/AAA
Amerc/Cntry
Americana
Amr/AAA/Blu
Amr/AAA/Flk
Amr/Ecl/Nws
Amr/R&R/Blu
AOR
AOR/AAA
AOR/ClRck
AOR/Rock
Asian
Asian/Talk
ASt/AC/Old
ASt/Esy/Eth
ASt/Nws/Spt
ASt/Nws/Tlk
ASt/Spt/Nws
ASt/Tlk/Nws
Bch/Old/Cty
Beach/Oldes
BgBnd/AdStd
BgBnd/News
BgBnd/Nstlg
BgBnd/Sprts
BGs/Gsp/Cty
BGs/Tlk/Nws
Big Band
BkGsp/Cntry
BkGsp/Educa
BkGsp/Inspr
BkGsp/Sprts
BkGsp/Talk
BkGsp/UrbAC
Black Gospl
Black/HpHop
BlGrs/Amerc
BlGrs/Gospl
Blk/Tlk/Inp
Blu/CRk/Tlk
Blue Grass
Blues

Blues/Oldes
Bob
Bob/AdHts
Bright AC
BrtAC/Top40
Btfl Music
BtfMs/Relgn
Bus News
BusNw/Sprts
BusNw/Talk
CCt/AC/CHt
CCt/Cst/Tlk
CCtmp/AC
CCtmp/Gospl
CCtmp/Inspr
CCtmp/News
CCtmp/Rock
CCtmp/SGspl
CCtmp/Talk
CCtmp/Varty
Charlie
Children
CHR
CHR/AC
CHR/Dance
CHR/Educa
CHR/HotAC
CHR/HpHop
CHR/HtA/T40
CHR/News
CHR/Pop
CHR/Rhymc
CHR/Rym/T40
CHR/Span
CHR/Top40
CHR/Urb/HHp
CHR/UrCtp
CHR/Varty
Christian
ChrsContemp
Chrst/AC
Chrst/Altve
Chrst/BkGsp
Chrst/CCtmp
Chrst/CHR
Chrst/Cntry
Chrst/Educa
Chrst/Gospl
Chrst/HpHop
Chrst/Info
Chrst/Inspr
Chrst/Prgsv
Chrst/Relgn
Chrst/Rock
Chrst/Talk
Chrst/UrbAC
Chrst/Varty
CHt/7&8/8&9
CHt/Nws/Spt
CHt/Old/Tlk
Classical
ClHts/70&80
ClHts/AAA
ClHts/AC
ClHts/Chrst
ClHts/ClRck
ClHts/Cntry
ClHts/Gospl
ClHts/NwRck
ClHts/Oldes
ClHts/RckAC
ClHts/Talk
ClHts/Top40
ClRck/AAA
ClRck/AC
ClRck/Cntry
ClRck/HotAC
ClRck/MdRck
ClRck/NwRck
ClRck/Oldes
ClRck/SmJaz
ClRck/Sprts
ClRck/Varty
Cls/BBd/Old
Cls/Btf/Nws
Cls/Cty/Gsp
Cls/Flk/Jaz
Cls/Flk/Nws
Cls/Jaz/Ecl
Cls/Jaz/NPR
Cls/Jaz/Nws
Cls/Jaz/Var
Cls/NPR/Var
Cls/Nws/AAA
Cls/Nws/Inf
Cls/Nws/Jaz
Cls/Nws/NPR
Clsc Hits
Clsc Rock
Clscl/AAA
Clscl/Chrst
Clscl/Jazz
Clscl/News
Clscl/NPR
Clscl/R&BOd
Clscl/Top40
Clscl/Varty
Cntry/AC
Cntry/Amerc
Cntry/BlGrs
Cntry/Chrst
Cntry/ClHts
Cntry/ClRck
Cntry/Divrs
Cntry/FuSvc
Cntry/Gospl
Cntry/Info
Cntry/Mexcn
Cntry/News
Cntry/Oldes
Cntry/Relgn
Cntry/Rock
Cntry/Span
Cntry/Sprts
Cntry/Talk
Cntry/Top40
Cntry/Urban
Cntry/Varty
Comedy
Country
CRk/Cty/T40
CsMOR/Oldes
Cst/CCt/Tlk
Cst/CHR/Rck
Cst/Cty/SGp
Cst/Edu/Tlk
Cst/HHp/Urb
Cst/Nws/Tlk

Cst/Tlk/CCt
Cst/Tlk/Edu
Cst/Tlk/Gsp
Cst/Tlk/Inp
Cst/Tlk/Nws
Cst/Tlk/Rlg
Cst/Tlk/Spt
Cty/BGs/Gsp
Cty/Gsp/BGs
Cty/Gsp/Tlk
Cty/Nws/Inf
Cty/Nws/Old
Cty/Nws/Spt
Cty/Nws/Tlk
Cty/Pop/Rck
Cty/SGp/Tlk
Cty/Spn/Var
Cty/Spt/Inf
Cty/Spt/Nws
Cty/Spt/Tlk
Cty/SRk/R&R
Cty/Tlk/Nws
Cty/Tlk/Spt
Dance
Dance Olds
Dance/CHR
Dance/Top40
Diverse
Divrs/Ethnc
Divrs/Gospl
Easy
Easy/Chrst
Easy/Inspr
Easy/MOR
Easy/Relgn
Easy/Rock
Ecl/Nws/Inf
Eclectic
Ecltc/AAA
Ecltc/Altve
Ecltc/Jazz
Ecltc/News
Ecltc/PubSv
Ecltc/Varty
Edu/Nws/NPR
Educa/Amerc
Educa/Ecltc
Educa/Info
Educa/NPR
Educa/Oldes
Educa/PubSv
Educa/Relgn
Educa/Talk
Educa/Varty
Educational
Esy/Spn/Var
Eth/Pub/Var
Eth/Tlk/MOR
Ethnc/Chrst
Ethnc/Cntry
Ethnc/Gospl
Ethnc/Intnl
Ethnc/Japns
Ethnc/News
Ethnc/Portg
Ethnc/Relgn
Ethnc/Span
Ethnc/Talk
Ethnc/Top40
Ethnc/Varty
Ethnic
Family Hits
Famly/Talk
Fch/CRk/Pop
Fch/Nws/Inf
Folk
Frnch/CCtmp
Frnch/CHR
Frnch/Clscl
Frnch/HotAC
Frnch/News
Frnch/SftAC
FSv/Tlk/Nws
FullService
FuSvc/AC
FuSvc/Chrst
FuSvc/ClHts
FuSvc/Oldes
FuSvc/Talk
Gospel
Gospl/BlGrs
Gospl/Blues
Gospl/CCtmp
Gospl/Chrst
Gospl/Cntry
Gospl/Ethnc
Gospl/Inspr
Gospl/Jazz
Gospl/News
Gospl/Relgn
Gospl/RhyBl
Gospl/Rhymc
Gospl/SGspl
Gospl/Sprts
Gospl/Talk
Gospl/Urban
Greek
Grp/Nrt/Tej
Grupero
Grupr/Nrtno
Grupr/Varty
Gsp/8Ht/Spt
Gsp/BGp/Inp
Gsp/BGs/Cty
Gsp/Cst/Rlg
Gsp/Cty/BGs
Gsp/Inp/Tlk
Gsp/Nws/Tlk
Gsp/R&B/Old
Hawaiian
HHp/Rym/CHR
Hip Hop
Hot AC
HotAC/AC
HotAC/CHR
HotAC/Top40
HpHop/Nstlg
HpHop/R&BOd
HpHop/RhyBl
HpHop/Rhymc
HpHop/Top40
HpHop/Urban
Hwain/AC
Hwain/CHR
Hwain/HotAC
Hwain/Varty
Inf/Nws/Cty
Inf/Tlk/Old

Info/Altve	Lite Rock	News/Talk
Info/Educa	LtRck/Talk	News/Varty
Info/Inspr	MdRck/Altve	Norteno
Info/News	MdRck/ClRck	Nostalgia
Info/Sprts	MdRck/Jazz	NPR
Info/Talk	Mex/Nrt/Tej	NPR/AAA
Information	Mex/Rch/Old	NPR/AAA/Jaz
Inp/Cty/SGp	Mex/Tej/Nrt	NPR/Amerc
Inp/LtA/Gsp	Mex/Tej/SpA	NPR/Cls/Jaz
Inp/Nws/Tlk	Mexcn/Ethnc	NPR/Clscl
Inspiration	Mexcn/Grupr	NPR/Divrs
Inspr/Chrst	Mexcn/Latno	NPR/Ecltc
Inspr/Gospl	Mexcn/Nrtno	NPR/Ethnc
Inspr/Lt AC	Mexcn/Oldes	NPR/Inf/Cls
Inspr/SGspl	Mexcn/Pop	NPR/Jaz/Cls
Inspr/Talk	Mexcn/Rncha	NPR/Jazz
Internat'l	Mexcn/SpnAC	NPR/News
Intnl/Talk	Mexcn/Tejno	NPR/Nws/Cls
Intnl/Top40	Mexcn/Trpcl	NPR/Nws/Inf
Jack	Mexcn/Varty	NPR/Nws/Jaz
Japanese	Mexican	NPR/Nws/SAC
Japns/Pop	Mix AC	NPR/Nws/Tlk
Jaz/Blu/Flk	Mix/CHR/Old	NPR/Nws/Var
Jaz/Blu/NPR	Mix/Cty/CHt	NPR/RhyBl
Jaz/Flk/Nws	MixAC/Varty	NPR/SJz/Gsp
Jaz/HHp/Int	Modern AC	NPR/Talk
Jaz/Nws/Tlk	Modern Rock	NPR/Tlk/AAA
Jaz/R&B/NPR	MOR	NPR/Tlk/Inf
Jaz/R&B/Urb	MOR/AC	NPR/Varty
Jaz/Tlk/Inf	MOR/Cty/ASt	Nrt/Tej/Mex
Jazz	MOR/Nstlg	Nrtno/Mexcn
Jazz/80Hts	MOR/Oldes	Nstlg/AdStd
Jazz/Blues	MOR/Talk	Nstlg/SmJaz
Jazz/Clscl	Motivationl	Nstlg/Sprts
Jazz/Easy	NAC/SmJaz	NwRck/Altve
Jazz/News	New Rock	NwRck/HpHop
Jazz/NPR	News	Nws/Cls/Ecl
Jazz/Oldes	News/AAA	Nws/Cls/Jaz
Jazz/Rock	News/Altve	Nws/Cls/Var
Jazz/Talk	News/Clscl	Nws/Cst/Tlk
Jazz/Varty	News/Cntry	Nws/Cty/CRk
Korea/Pop	News/Info	Nws/Cty/Spt
Korean	News/Jazz	Nws/Inf/AC
Latino	News/Mexcn	Nws/Inf/Jaz
Latno/AdHts	News/Oldes	Nws/Inf/Old
Lite AC	News/Sprts	Nws/Inf/Spt

Nws/Inf/Tlk	Oldes/AdStd	Ranchera
Nws/Jaz/Inf	Oldes/Beach	Rck/Alt/Cst
Nws/Jaz/NPR	Oldes/BlGrs	Rck/Cls/Jaz
Nws/PBS/SpN	Oldes/ClHts	Rck/Dnc/Var
Nws/Spt/AC	Oldes/ClRck	Rck/Old/Jaz
Nws/Spt/CHt	Oldes/Cntry	Regat/HpHop
Nws/Spt/Inf	Oldes/FuSvc	Reggaeton
Nws/Spt/Old	Oldes/Gospl	Relgn/Chrst
Nws/Spt/Tlk	Oldes/News	Relgn/Educa
Nws/Tlk/7&8	Oldes/Nstlg	Relgn/Ethnc
Nws/Tlk/AC	Oldes/Rk&Rl	Relgn/Gospl
Nws/Tlk/Alt	Oldes/Rock	Relgn/Inspr
Nws/Tlk/Amr	Oldes/SftAC	Relgn/News
Nws/Tlk/ASt	Oldes/Sprts	Relgn/NwAge
Nws/Tlk/BNw	Oldes/Talk	Relgn/RlgMs
Nws/Tlk/CHt	Oldes/Top40	Relgn/Span
Nws/Tlk/Cls	Oldes/Varty	Relgn/Talk
Nws/Tlk/Cst	Oldies	Relig Music
Nws/Tlk/Cty	Pgv/Tlk/Nws	Religion
Nws/Tlk/Ecl	Polish	RhyBl/BkGsp
Nws/Tlk/FSv	Pop	RhyBl/Gospl
Nws/Tlk/Gsp	Pop/CHR	RhyBl/HpHop
Nws/Tlk/Inf	Portg/Chrst	RhyBl/Oldes
Nws/Tlk/Inp	Portg/Ethnc	RhyBl/UrbAC
Nws/Tlk/Int	Portg/Span	Rhymc/AC
Nws/Tlk/Jaz	Portg/Varty	Rhymc/CHR
Nws/Tlk/NPR	Portuguese	Rhymc/Dance
Nws/Tlk/Nst	Prd/HtA/CHR	Rhymc/Ethnc
Nws/Tlk/Old	Prgsv/ClRck	Rhymc/HotAC
Nws/Tlk/Pgv	Prgsv/Ecltc	Rhymc/HpHop
Nws/Tlk/Pka	Prgsv/Talk	Rhymc/Oldes
Nws/Tlk/Rlg	Prgsv/Varty	Rhymc/R&BOd
Nws/Tlk/SAC	Pride	Rhymc/Top40
Nws/Tlk/Spt	Progressive	Rhymc/Urban
Nws/Tlk/Var	Pub/Nws/Jaz	Rhymc/UrCHR
Old/AC/Cty	Pub/Nws/Var	Rhythm/Blue
Old/CHt/Bch	Publc/Varty	Rhythmic
Old/NPR/Tlk	Public	Rlg/Cst/Tlk
Old/Nws/Spt	R&B Oldies	Rlg/Tlk/CCt
Old/Nws/Tlk	R&B/HHp/Urb	RlgMs/AdStd
Old/Pka/Nws	R&B/Jaz/Gsp	RlgMs/Chrst
Old/SJz/Gsp	R&B/Spn/Gsp	RlgMs/Educa
Old/Tlk/Spn	R&B/Tlk/Gsp	RlgMs/Talk
Old/Tlk/Spt	R&BOd/Blues	Rmn/Pop/Mex
Oldes/70sOd	R&BOd/Gospl	Rmn/Spn/Nws
Oldes/AC	R&BOd/HpHop	Rmntc/Pop

Rmntc/Talk
Rncha/Mexcn
Rock
Rock & Roll
Rock AC
Rock/80Hts
Rock/Altve
Rock/ClRck
Rock/Cntry
Rock/Oldes
Rock/Pop
Rock/Span
Rock/Urban
Rock/Varty
Romantic
Sam
SftAC/News
SftAC/Talk
SftRk/Talk
SGp/Cst/Tlk
SGspl/BlGrs
SGspl/CCtmp
SGspl/Chrst
SGspl/Gospl
SGspl/News
SJz/NAC/Old
SmJaz/AC
SmJaz/Gospl
Smooth Jazz
Soft AC
Soft Hits
Soft Rock
Sothn Gspel
SpA/Rlg/Var
Span/80&90
Span/80Hts
Span/AdCHR
Span/AdHts
Span/AOR
Span/Asian
Span/CCtmp
Span/CHR
Span/Chrst
Span/Clscl
Span/Dance
Span/Educa
Span/Ethnc
Span/Gospl
Span/HotAC
Span/Inspr
Span/Intnl
Span/Jazz
Span/News
Span/Nstlg
Span/Oldes
Span/Pop
Span/Relgn
Span/RlgMs
Span/Rock
Span/Sprts
Span/Talk
Span/Top40
Span/Trpcl
Span/Urban
Span/VarHt
Span/Varty
Spanish
Spanish AC
Spn/7&8/9&2
Spn/CCt/Edu
Spn/CCt/Var
Spn/Cst/Edu
Spn/Cst/Tlk
Spn/Cst/Var
Spn/Edu/PbS
Spn/Edu/Var
Spn/Grk/Eth
Spn/NPR/Inf
Spn/Nws/CCt
Spn/Nws/Mex
Spn/Nws/Nrt
Spn/Nws/Spt
Spn/Nws/Tlk
Spn/Nws/Var
Spn/Old/Rlg
Spn/PBS/Eth
Spn/Pop/Mex
Spn/Pop/Rck
Spn/Pop/T40
Spn/Pub/Grp
Spn/Pub/Var
Spn/Rck/Nws
Spn/Rlg/Cst
Spn/Rlg/Var
Spn/RMs/Edu
Spn/RMs/Var
Spn/Spt/Eth
Spn/Spt/Nws
Spn/Spt/Tlk
Spn/T40/Old
Spn/T40/Tlk
Spn/T40/Var
Spn/Tlk/Mex
Spn/Tlk/Nws
Spn/Tlk/Old
Spn/Tlk/Pub
Spn/Tlk/Rlg
Spn/Tlk/Rmn
Spn/Tlk/Spt
Spn/Tlk/Var
Spn/Var/CHt
Spn/Var/Nws
Spn/Var/Ptg
Spn/Var/Tej
Spn/Var/Tlk
Spn/Var/Trp
Spn/VHt/Tlk
SpnAC/AC
SpnAC/Intnl
SpnAC/News
SpnAC/Oldes
SpnAC/Regat
SpnAC/Rhymc
SpnAC/SftRk
SpnAC/Top40
SpnAC/Trpcl
SpnAC/Varty
SpNws/Sprts
SpNws/Talk
SpNws/Varty
Sports
Sprts/Cntry
Sprts/Gospl
Sprts/News
Sprts/Span
Sprts/Talk
Spt/Nws/Tlk
Spt/Tlk/Inf

Talk
Talk/AC
Talk/AdStd
Talk/BkGsp
Talk/BusNw
Talk/Chrst
Talk/ClHts
Talk/Clscl
Talk/Cntry
Talk/Gospl
Talk/Info
Talk/Motvl
Talk/News
Talk/Oldes
Talk/Prgsv
Talk/R&BOd
Talk/RhyBl
Talk/SftAC
Talk/Sprts
Talk/Varty
Tejano
Tejno/News
Tejno/Varty
Tlk/AC/Old
Tlk/Inf/Cdy
Tlk/Jaz/Gsp
Tlk/Nws/Cst
Tlk/Nws/Inf
Tlk/Nws/Spt
Tlk/Old/Eth
Tlk/Old/Var
Tlk/Spt/Nws
Top 40
Top40/CHR
Top40/Dance
Top40/HotAC
Top40/Regat
Top40/Rhymc
Top40/Varty
Tropical
Trpcl/News
Trpcl/Pop
Trpcl/SpnAC
Trpcl/VarHt
Trpcl/Varty
UCH/HHp/Var
Urb/Gsp/R&B
Urb/Gsp/SpA
Urb/HHp/Gsp
Urb/HHp/Jaz
Urb/HHp/R&B
Urb/Old/Gsp
Urb/R&B/Gsp
Urb/R&B/HHp
Urb/Tlk/Gsp
Urb/Tlk/Nws
UrbAC/Gospl
UrbAC/R&BOd
UrbAC/Top40
Urban
Urban AC
Urban CHR
Urban Cntmp
Urban/AC
Urban/BkGsp
Urban/Educa
Urban/Gospl
Urban/HpHop
Urban/Inspr
Urban/Jazz
Urban/Oldes
Urban/RhyBl
Urban/Talk
UrCtp/RhyBl
Var/HHp/Rck
Var/Nws/Tlk
Var/Spt/Nws
Var/Tlk/Spt
VarHt/Ethnc
VarHt/HotAC
VarHt/Oldes
Variety
Variety Hit
Varty/AdHts
Varty/Altve
Varty/Ecltc
Varty/Educa
Varty/Ethnc
Varty/Gospl
Varty/Jazz
Varty/News
Varty/NPR
Varty/Oldes
Varty/RhyBl
Varty/RlgMs
Varty/Span
Varty/SpNws
Varty/Talk

ATTACHMENT H

Top 10 Radio Stations by Revenue*					
Revenue Rank	**Calls**	**AM or FM**	**Format**	**2010 Revenue (000s)**	**Market**
1	WTOP	FM	News	$57,225	Washington, DC
2	KIIS	FM	Contemporary Hit Radio	$54,000	Los Angeles, CA
3	WCBS	AM	News	$49,000	New York, NY
4	KFI	AM	News/Talk	$46,000	Los Angeles, CA
5	WLTW	FM	Lite AC	$44,300	New York, NY
6	WHTZ	FM	Contemporary Hit Radio	$43,000	New York, NY
7	WBBM	AM	News	$42,500	Chicago, IL
8	WINS	AM	News	$41,000	New York, NY
9	WFAN	AM	Sports/Talk	$40,500	New York, NY
10	KROQ	FM	Alternative	$39,000	Los Angeles, CA

* *Source: BIA Media Access Pro*