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

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming	)	MB Docket No. 15-158
	)	
	)	

To: The Commission

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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EXECUTIVE SUMMARY

Today, free over-the-air broadcast television is the preferred video programming delivery method for millions of American consumers. Millions of households rely partially or exclusively on free over-the-air broadcast signals for news, weather, emergency information and entertainment. Since the FCC's last inquiry, local broadcasters have continued to innovate and expand upon their longstanding roles as leading providers of news, information and entertainment. The comments that follow discuss the expansion of high definition (HD) offerings—including HD local news—that complement a rising number of households with HD sets; additional programming on multicast streams, including a broad array of programming geared towards racially and ethnically diverse audiences; and an increasing amount of local news available on the air, online, and through social media platforms. In markets of all sizes, local broadcast stations are increasing the quantity, quality and diversity of their services to the benefit of American viewers.

By improving their service offerings, broadcasters continue to play a critically important role in today's competitive video marketplace, despite a regulatory regime that impedes their ability to develop efficient combinations and attract capital. As explained further herein, broadcasters compete head-to-head with the increasingly consolidated pay TV industry and growing numbers of online video providers for viewers, advertising dollars, and investment capital. The Commission should take immediate steps to update its ownership and attribution rules to permit broadcasters to realize economies of scale and scope, and obtain needed investment. It also should look closely at horizontal concentration and clustering in the MVPD industry, including in regional and local markets, to determine whether continuing MVPD consolidation is threatening competition in the video marketplace or harming consumers.

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The National Association of Broadcasters (NAB)[1] submits these comments in response to the *Public Notice* requesting data and information on the status of competition in the market for the delivery of video programming through December 31, 2014.[2] Through this *Notice*, the FCC seeks comment on consumer reliance on broadcast television services and developments in the broadcast television industry, among other inquiries.

As discussed in detail below, free over-the-air broadcast television remains a vital video programming delivery platform for American consumers. Since the FCC's last inquiry, local broadcasters have continued to innovate and expand upon their longstanding roles as leading providers of news, information and entertainment. By expanding high definition (HD) offerings, programming on multicast streams, and news programming, including online, local

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

[2] *Media Bureau Seeks Comment on the Status of Competition in the Market for the Delivery of Video Programming,* Public Notice, MB Docket No. 15-158, DA No. 15-748 (rel. Jul. 2, 2015) (*Notice*).

broadcast stations are increasing the quantity, quality and diversity of their services. To ensure that local television stations can continue to serve their audiences and compete against nationally, regionally and locally consolidated multichannel video programming distributors (MVPDs), NAB again urges the Commission to reform its outdated and inequitable broadcast ownership and attribution rules.

I. DATA DEMONSTRATE THE IMPORTANCE OF FREE OVER-THE-AIR BROADCASTING IN THE VIDEO MARKETPLACE

A. Over-the-Air Reliance and Cord-Cutting Trends Continue

The *Notice* seeks comment on the number of households relying on over-the-air broadcast television, either exclusively or supplemented with online video distribution (OVD) service, as well as the number of MVPD households that also rely on over-the-air service for one or more of their television sets not connected to their MVPD service.[3] According to GfK Media & Entertainment's most recent report,[4] of the 119.5 million television households in the United States, 21 percent – a total of 25.1 million households (or 66 million consumers) – are "broadcast-any" households (i.e., households that have at least one set with broadcast reception).[5]

As NAB has observed in response to past video competition inquiries, households relying partially or completely on over-the-air broadcasting are predominantly lower income.

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[3] *Notice* at 9-10.

[4] *See* GfK, *Home Technology Monitor 2015 Ownership Survey and Trend Report* (Spring 2015) (*Home Technology Monitor Survey*). The *Home Technology Monitor*™ is an independent syndicated research service that tracks both ownership of over 100 media technology devices and services and the ways that people are using those devices in everyday life. The *2015 Ownership Survey and Trend Report* is based on a survey, fielded in March and April 2015, comprised of interviews with a total of 3,122 households.

[5] *Home Technology Monitor Survey.* Additionally, 14.7 percent of households rely solely on over-the-air broadcast television, which equates to 17.6 million households or approximately 46.2 million viewers.

While nationwide approximately 21 percent of television households are broadcast-any, approximately 28 percent of television households with incomes under $30,000 annually are broadcast-any.[6] In contrast, only 17 percent of the households with annual incomes exceeding $75,000 rely on over-the-air broadcasting to receive video programming.[7] Broadcast-any households in the United States thus include a disproportionate number of viewers who would be least able to afford a subscription television service.

Broadcast-any households include relatively greater numbers of racial/ethnic minorities. For example, while 20 percent of television households with a white head of household nationwide are broadcast-any, approximately 24 percent of Asian-American, 26 percent of Hispanic and 21 percent of African-American television households rely on over-the-air broadcasting.[8] Homes headed by younger adults are also more likely to access television programming through broadcast signals. Twenty-five percent of homes with a head of household aged 18-34 are broadcast-any, compared with 20 percent of homes in which the head of household is 35-49, and 19 percent of homes in which the head of household is 50 years of age or older.[9]

Broadcast-any television households are distinct in other ways, such as their use of consumer premises equipment.[10] For example, only 21 percent of broadcast-any

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

[7] *Id.*

[8] *Id*.

[9] *See Home Technology Monitor Survey, supra* note 4. Broadcast-only households also tend to be more diverse and younger than MVPD households. For example, 14% of television households with a white head of household are broadcast-only, compared to 20.6% of Hispanic and 17% of Asian-American households. *Id.* Eighteen percent of households headed by 18-34 year-olds are broadcast-only, compared with 15.6% aged 35-49 and 12.5% of those aged 50 and up. *Id.*

[10] *Notice* at 17-18 (seeking comment on consumer premises equipment used to watch video content).

households have digital video recorders (DVRs) compared with 39 percent of all television households and 47 percent of MVPD households.[11] In light of the lack of DVRs in broadcast-any households, the airing of programming at different times of day (or time-shifting) becomes particularly important. Adoption of DVRs also appears to be significantly correlated with household income. Only 27 percent of households with incomes below $30,000 have DVRs, while 52 percent of households with incomes of $75,000 or more have DVRs.[12]

The *Notice* also seeks comment on the trend away from subscribing to MVPD service – the rise of "cord-cutters," "cord-shavers" and even "cord-nevers."[13] Recent survey data indicate that eight percent of television households have stopped subscribing to MVPD service in their current home, up from seven percent in 2014 and six percent in 2013.[14] High cost and insufficient value are the leading reasons for terminating MVPD service, with content available on the Internet as a third leading factor. Specifically, three-quarters of television households that stopped pay television service cited overall cost cutting as their reason for stopping service, up from two-thirds in 2013.[15] Over half (54 percent) said they stopped pay television service because it did not offer enough value for the cost (up from 41 percent in 2013).[16] Television households increasingly report that they stopped service because they can watch what they want over the Internet—26 percent as compared with only 16 percent in 2014.[17] Seventeen percent of current household cord cutters report that

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

[12] *Id.*

[13] *Notice* at 8-9.

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

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

[16] *Id*.

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

they dropped pay TV because they can watch what they want using over-the-air broadcast service.[18] Among pay TV households that kept their service, 15 percent decreased services.[19] A majority of cord cutter (52%) and cord-never (59%) homes report that they do not ever expect to subscribe to traditional MVPD service.[20] Available data thus show that American television viewers increasingly recognize the value provided by free digital broadcast services.

Broadcast-any households supplement their viewing of television broadcast signals with video content from online video distributors (OVDs).[21] Recent data show that 46 percent of broadcast-any households watch streaming video on the Internet using a computer or other device.[22] This figure is very close to the percentage of MVPD households that use streaming video (45 percent) and the percentage of all television households that use streaming video (also 45 percent), suggesting that OVD use is equally common across various types of television households.[23]

The emergence of OVDs will increase competition in the video marketplace and provide opportunities for video programmers, including local television broadcast stations, to reach more local viewers and evolve with the changing media consumption habits of Americans. Broadcasters have made substantial efforts to increase their online presence, and engage with a variety of new distribution partners.[24] Additionally, NAB supported the

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[18] *Id.*

[19] *Id*.

[20] *Id.*

[21] *Notice* at 13-17 (seeking comment on OVD structure, conduct and performance).

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

[23] *Id.*

[24] *See, e.g.,* Michael Malone, *CBS Affiliates Board, Network Agree on All Access OTT Terms*, Broadcasting & Cable (Mar. 3, 2015).

Commission's effort to "modernize its rules to account for the rise of video programming distribution over the Internet."[25] We agreed with the Commission's interpretation of "MVPD" as a more technology neutral definition.[26]

As more consumers use OVDs as their primary video consumption method, it remains critically important that these alternative platforms not be permitted to expropriate broadcast signals at will. To that end, we also agreed with the Commission that broadcasters must continue to have the right to control the distribution of their signals via all platforms and to negotiate for compensation from both OVDs and traditional MVPDs seeking to retransmit such signals.[27] Continued control of their signals will enable local stations to make the substantial investments needed to maintain high-quality, costly programming, including news, and to enhance their HD, multicast, and other current and future service offerings that will benefit consumers. Moreover, a balanced and symmetrical regulatory regime applicable to all video service providers seeking to retransmit local broadcast signals will best promote competition in the video marketplace.[28]

B. Broadcasters Invest Heavily in Diverse News and Entertainment Content for Television Viewers

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[25] *See* NAB Comments in MB Docket No. 14-261 (Mar. 3, 2015).

[26] *Id.* at 6 (supporting the Commission's proposal to include within the scope of the term "MVPD" those services that "make available for purchase, by subscribers or customers, multiple linear streams of video programming, regardless of the technology used to distribute the programming.").

[27] *Id.* at 12-13 (citing 47 U.S.C. § 325(b)). *See also* S. Rep. No. 92-102 at 34, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1167 (1991) ("broadcasters [must be allowed] to control the use of their signals *by anyone engaged in retransmission by whatever means*.")(emphasis added).

[28] In our comments, NAB agreed with the Commission that both the obligations and benefits of retransmission consent and good faith negotiation requirements should apply to OVDs, and offered several practical proposals to implement good faith negotiating procedures. To promote critical congressional and Commission policy goals of competition, diversity and localism, NAB also proposed that certain requirements currently applicable to cable and DBS also apply to OVD operations, including program exclusivity and carriage requirements comparable to the "carry-one, carry-all" model for DBS. NAB Comments in MB Docket No. 14-261 (Mar. 3, 2015).

Local television broadcast stations offer a community-specific mix of news, information, and entertainment that is not otherwise available to viewers of video programming. Broadcasters have continued to innovate and expand upon their strengths, with the past year marked by a significant rise in such offerings as news programming, HD content, multicast programming, and mobile TV. Key developments in these areas are discussed below.[29]

Viewership Trends. Despite increasing competition for viewers from multiple outlets, broadcasters remain a leading source of news, information and entertainment. During the 2014-2015 television season, broadcast television shows again dominated the list of top-rated programs. Of the top 100 television programs among adults 25-54, 93 aired on broadcast stations.[30] Broadcast television also is the leading source of local and national news. According to a recent survey on news consumption, 82 percent of Americans turn to their local TV stations for news.[31] Broadcast national network news was cited as the second most consumed source of news, with 73 percent of Americans having watched a network news program last week.[32] National cable network news experienced viewership declines in 2014.[33] Local TV stations enjoyed slightly higher ratings for local news in 2014, with a two

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[29] *See Notice* at 11 (seeking information on broadcast station business models and competitive strategies, including information on multicasting, HD content, mobile TV, and station websites).

[30] Television Bureau of Advertising, "Competitive Media," available at: http://www.tvb.org/research/184839. Even among the top 200 programs, 182 appeared on broadcast TV. *Id.*

[31] *See* American Press Institute, *The Personal News Cycle: How Americans Choose to Get Their News - Social and Demographic Differences in News Habits and Attitudes* (Mar. 17, 2014), http://www.americanpressinstitute.org/publications/reports/survey-research/social-demographic-differences-news-habits-attitudes/ (API Personal News Cycle Study).

[32] *Id.*

[33] *See* Jesse Holcomb, State of the Media 2015, *Cable News: Fact Sheet*, Pew Research Center (Apr. 29, 2015), http://www.journalism.org/2015/04/29/cable-news-fact-sheet/ (Pew State of the Media

percent increase in the morning and three percent jump in the early evening time slots.[34] Stations also are experimenting with news at different timeslots and successfully attracting viewers at less traditional times, including 7:00 PM newscasts (up ten percent over the previous year), news at midday (by up eight percent) and very early morning (4:30 AM) newscasts (up six percent).[35]

Investing in Local News. To meet the needs and high expectations of their viewers, local television stations invest heavily in their local news operations. The total number of local TV news staff rose by just over one percent in 2014 to 27,600—the third highest level on record.[36] The vast majority of stations surveyed either increased or maintained their news budgets over the past year.[37]

The latest Radio Television Digital News Association (RTDNA)/Hofstra University Survey shows that the amount of local news offered by television broadcast stations remains close to the highest levels on record, at an average of 5.3 hours per weekday and two hours per day on weekends, with the average amount of local news on Sundays increasing by six minutes.[38] Generally, the bigger the market and the bigger the news staff,

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Cable News Fact Sheet)(reporting declines in total median viewership in prime time and other dayparts).

[34] *See* Katrina-Eva Matsa, "Local TV News: Fact Sheet," Pew Research Center (Apr. 29, 2015), *available at:* http://www.journalism.org/2015/04/29/local-tv-news-fact-sheet/. Late night news experienced a slight decline of 1 percent. *Id.*

[35] *Id.*

[36] Bob Papper, RTDNA Hofstra University, *Newsroom Employment Rises* (July 27, 2015), http://rtdna.org/article/rtdna_research_newsroom_employment_rises (2015 RTDNA/Hofstra Staffing Study)(comparing results of RTNDA newsroom staffing surveys from 2000 to the present).

[37] Bob Papper, RTDNA Hofstra University, *The Business of News* (June 1, 2015), http://www.rtdna.org/article/the_business_of_news (2015 RTDNA/Hofstra News Study).

[38] Bob Papper, RTDNA Hofstra University, *Research: Tracking Local News* (June 15, 2015), http://www.rtdna.org/article/research_tracking_local_news (2015 RTDNA/Hofstra Amount of News Study).

the more news a station is likely to run.[39] Nearly 30 percent of all TV stations surveyed reported adding a local newscast, and very few stations reported cutting back.[40]

The Internet and mobile devices are having a profound impact on video competition and news consumption. Consumers use the Internet and mobile devices both as a partial replacement, but also as a supplement, to their traditional media consumption. As this trend continues, local broadcasters across the country have been increasingly engaging with their viewers via websites, social media, and mobile applications.

According to a recent report by RTDNA, *every television station that provides local news also has a website that provides local news.*[41] Those websites are becoming increasingly dynamic as local stations and their news directors see their websites not as ancillary to their core business, but as an integral part of their connection with viewers. For example, in addition to the text, photos and video clips that have been staples of local news offerings on TV stations' websites for several years, more stations are streaming, both live and recorded, the entirety of their local newscasts. For example, in the top 100 TV markets, about 70 percent of local news stations provide live newscasts on their websites.[42] Substantial numbers of stations include more information online than they do on-air –

[39] *Id.*

[40] *Id.*

[41] Bob Papper, *Tracking what's new online*, RTNDA (Apr. 20, 2015) (RTNDA Online Study) (also showing that more than 75 percent of radio stations in markets of all sizes that air local news also include local news on their websites), http://www.rtdna.org/article/research_tracking_what_s_new_online#.VUfg-dJVhBc. With only a few exceptions, the local news on stations' websites is freely available. *See id*. (only four TV stations in the country that responded to the survey reported including some content behind a paywall).

[42] RTNDA Online Study. In markets 1-25, 70 percent of stations' websites include live newscasts; in market 25-50, 82.5 percent of websites have live newscasts; and in markets 51-100, 67.9 percent do so.

including blogs from local reporters, podcasts, event calendars, live camera access, and more.[43]

Viewers have responded favorably to these increased online offerings. According to the RTNDA Online Study, page views and unique visitors to TV station websites soared in the last year, almost doubling overall.[44] In the top 25 markets, for example, TV stations reported an average of more than 2.5 million unique visitors last year. Even smaller market TV stations (markets 51-100) reported an average of about 588,000 unique visitors in the last year.[45]

Local broadcasters have increased their employment of staff devoted to maintaining and updating their websites and presence on social media platforms. The average station in 2014 employed 2.6 full-time and 0.9 part-time web staffers—representing a significant increase over the previous year.[46] The additional staffing supported broadcasters' ongoing innovation and expansion in this area, with 72.4 percent of news directors reporting that they "did something new" in social media in 2014.[47] Local broadcasters actively use Facebook—99.3 percent of TV stations report having a page for their station, newsroom or

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43 *Id.*

44 *Id.*

45 *Id.* Looking at the top ten largest TV station group websites, SNL Kagan reported that from January 2013 to January 2014 the number of unique viewers grew 30.9 percent, from 17.5 million to 23 million total monthly unique viewers. Justin Nielson, SNL Kagan TV Stations Multiplatform Analysis 2014 (Mar. 12, 2014), *available at:* http://www.snl.com/interactivex/article.aspx?id=27207377&KPLT=6 (Kagan Multiplatform Analysis 2014).

46 2015 RTDNA/Hofstra Staffing Study (reporting an increase of an average of approximately 0.5 full-time staff from the previous year).

47 Bob Papper, RTDNA Hofstra University, *Research: Tracking Local News* (June 15, 2015), http://www.rtdna.org/article/research_stations_grow_in_social_mobile (2015 RTDNA/Hofstra Social/Mobile Study).

both.[48] Similarly, 67.4 percent of newsrooms report having a "constant" presence on Twitter, while 93.7 percent use Twitter at least periodically.[49]

Social media outreach is critical to connecting with younger audiences. A study of the news engagement habits of college students at the University of South Carolina, for example, showed that students were most likely to first read breaking news on Twitter or Facebook.[50] And after hearing about breaking news via a 140-character message on Twitter or a status update on Facebook, students turn to local news websites and broadcasts for more in-depth information.[51] Contrary to conventional wisdom, this study showed that 61 percent of college students surveyed watch a local TV newscast at least once a week,[52] and nationwide, 48 percent of 18-29 year olds watch online news videos.[53]

With smartphone penetration in the United States now at 77 percent,[54] local broadcasters are increasingly investing in mobile applications (apps) to connect with their viewers. One study found that 87.8 percent of stations reported having at least one app, with the average station having 1.8 apps.[55] The vast majority of local TV apps (85.7%) are

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[48] *Id.*

[49] *Id.*

[50] Raycom Media, The University of South Carolina, and Nielsen, *Engagement with Local News Among University Students* (2015).

[51] *Id.* at 15.

[52] *Id.* at 20.

[53] Kenneth Olmstead, Amy Mitchell, Jesse Holcomb, and Nancy Vogt, Pew Research Center Project for Excellence in Journalism, The State of the News Media 2014, *News Video on the Web* (Mar. 26, 2014) http://www.journalism.org/2014/03/26/news-video-on-the-web/.

[54] Comscore, *March 2015 U.S. Smartphone Subscriber Market Share* (May 7, 2015) https://www.comscore.com/Insights/Market-Rankings/comScore-Reports-March-2015-US-Smartphone-Subscriber-Market-Share.

[55] 2015 RTDNA/Hofstra Social/Mobile Study.

available for free.[56] Clearly, broadcasters are transforming themselves to ensure their valuable local content is available when and where consumers want to watch.

HD Programming. Local stations in markets of all sizes have made high definition programming—including HD local news—the standard for consumers. SNL Kagan data show that 87 percent of all full-power television stations were broadcasting in HD as of December 2014,[57] up from 85.7 percent just a few months earlier.[58] Increasing availability of HD content has been accompanied by—or perhaps has fueled--significant and rapid increases in the number of U.S. households with HD sets. Today, 81 percent of U.S. households have at least one HDTV set, up from only 46 percent just five years ago.[59] Fifty-two percent of households have more than one HD set—up from 17 percent five years ago.[60] In addition to airing HD network and syndicated programming, many stations continue to invest in new cameras, new video processing and storage equipment, updated studios and staff training to produce their own HD content. Across all markets, 83.3 percent TV stations producing local news now do so in HD.[61] Even in the smallest markets, where stations often struggle to afford costly facility upgrades, 69.6 percent of newscasts are now broadcast in HD, up from

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[56] 2015 RTDNA/Hofstra Social/Mobile Study.

[57] SNL Kagan, Analysis of HDTV Broadcasting (Dec. 1, 2014).

[58] *See* Kagan Multiplatform Analysis 2014.

[59] Press Release, *HDTV Sets Now in Over 80% of U.S. Households*, Leichtman Research Group (Mar. 13, 2015).

[60] *Id.*

[61] *See* Bob Papper, "Research: Technology in the News," RTDNA/Hofstra University (May 8, 2015), *available at*: http://www.rtdna.org/article/research_technology_in_news (2015 RTDNA/Hofstra Technology Study).

40 percent just two years ago.[62] Stations producing local news also overwhelmingly gather (92.6%), edit (97.5%) and air news video digitally (95.9%).[63]

Multicast Programming. Broadcasters have utilized the upgrade to digital multicasting to dramatically increase the amount and diversity of channels available to consumers. As of December 2014, the total number of live over-the-air broadcast channels aired by full-power, Class A and low power television stations is an estimated 6,431 channels[64] – up from 5,511 in February 2014, and just 2,518 channels at year-end 2010.[65] Nearly every consumer in the country can access exponentially more programming over-the-air than they could before the DTV transition.

Over-the-air multicast channels serve as a platform to launch and grow a panoply of networks that appeal to niche and ethnic audiences. As of December 2014, Me-TV was available in 167 markets,[66] up from 143 markets in early 2014.[67] Bounce TV, designed to appeal to African-American audiences, was available in 102 markets,[68] up from 75 markets earlier that year.[69] New networks are constantly being developed, including Grit (featuring action and western films) and Escape (designed to appeal to women aged 25-54) – both

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[62] *See* Bob Papper, "Newsroom Technology, Partnerships Stabilize," Hofstra University/RTDNA (June 4, 2013), *available at*: http://rtdna.org/article/newsroom_technology_partnerships_stabilze; 2015 RTDNA/Hofstra Technology Study (discussing upgrades in markets 151 and higher).

[63] 2015 RTDNA/Hofstra Technology Study.

[64] *See* Justin Nielson, SNL Kagan TV Stations Multiplatform Analysis Update: Digital Multicast Offerings Continue to Expand with New Network Offerings (Dec. 23, 2014), *available at:* https://www.snl.com/interactivex/article.aspx?id=30173047&KPLT=6 (Kagan Multiplatform Update Year-End 2014).

[65] Kagan Multiplatform Analysis 2014.

[66] Kagan Multiplatform Update Year-End 2014.

[67] Kagan Multiplatform Analysis 2014.

[68] Kagan Multiplatform Update Year-End 2014.

[69] Kagan Multiplatform Analysis 2014.

launched in August 2014 – and Heroes and Icons, launched in September 2014.[70] Spanish-language programming has flourished on over-the-air television, including networks like V-ME (57 channels), LATV (44 channels), 3ABN Latino (33 channels), MundoFox (30 channels)[71] and the newly launched TeleXitos (16 channels).[72] As of December 2014, there were 382 Spanish-language channels operating on multicast streams across the United States.[73] Multicast network programming also is sometimes combined with local production to bring new, targeted local news and public affairs programming to viewers. For example, Station WBTV, Charlotte, NC produces and airs three hours of daily news geared toward African-American audiences on its Bounce-affiliated multicast channel.[74]

Multicast streams are a rich proving ground for a multitude of new programming entrants – many of whom could not afford a full-power TV station or gain access to pay TV distribution. These include networks geared towards Asian-American audiences, and networks featuring religious, music, sports, weather, and children's programming.[75] Multicasting also addresses a problem affecting small, underserved markets that previously

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[70] Kagan Multiplatform Update Year-End 2014. Another three multicast networks launched in the first few months of 2015, including "Decades" and "Justice Network," both launched in January 2015, and "LAFF," launched in April 2015. *Id.*

[71] SNL Kagan, Digital Multicast TV Networks (Dec. 1, 2014).

[72] *See Telemundo Station Group Launches TeleXitos Multicast Net*, BROADCASTING AND CABLE (Dec. 1, 2014).

[73] SNL Kagan, Digital Multicast TV Networks (Dec. 1, 2014).

[74] *See* Nancy Vogt, "African-American Media: Fact Sheet," Pew Research Center (Apr. 29, 2015), *available at:* http://www.journalism.org/2015/04/29/african-american-media-fact-sheet/. The station airs a 7-9 AM morning news program and a one-hour 8 PM newscast featuring two African-American news anchors. *Id. See also See* Diana Marszalek, *Black-Oriented TV News: Has Its Time Come?* TVNewsCheck (Apr. 29, 2015), *available at:* http://www.tvnewscheck.com/article/75924/blackoriented-tv-news-has-its-time-come.

[75] SNL Kagan, Digital Multicast TV Networks (Dec. 1, 2014)(identifying 419 religious multicast channels carrying 34 different networks; 99 "ethnic/foreign" channels carrying 46 networks; and 749 educational and public channels carrying 37 networks).

lacked the full complement of national broadcast network programming – now, viewers can access that programming on secondary channels. FOX network programming is available, for example, in 61 markets as a multicast stream.[76] ABC is available via multicast channels in 40 markets, CBS in 35 markets, and NBC in 25 markets.[77] The emergence of numerous, diverse secondary over-the-air channels has significantly benefited television viewers, new programming entrants, and broadcasters.

Mobile TV. Broadcasters nationwide continue to provide mobile TV service – a spectrally efficient, robust over-the-air service that provides viewers with access to local news and other popular video content on-the-go. Unlike other mobile video services, mobile TV does not rely on the wireless carriers' one-to-one architecture, in which each additional mobile video user requires the use of additional capacity or incurs additional data charges. Instead, mobile TV provides clean, clear, uninterrupted service even when wireless providers' networks go down. As of December 2014, there were 145 mobile TV stations covering 55 markets with a total of 160 live mobile channels.[78]

II. REFORM IS NEEDED TO PLACE BROADCASTING ON MORE EQUAL FOOTING WITH THE HIGHLY CONCENTRATED–AND LESS REGULATED–MVPD INDUSTRY

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

[76] SNL Kagan, Digital Multicast TV Networks (Dec. 1, 2014).

[77] *Id.*

[78] Kagan Multiplatform Update Year-End 2014.

vertical combinations that broadcasters cannot achieve. As NAB and other broadcasters have explained in other proceedings,[79] the FCC's rules should allow broadcasters greater flexibility in establishing ownership structures that permit them to achieve economies of scale and scope. Additionally, as discussed further below, the Commission should carefully examine its statutory obligations to monitor and promote competition in the MVPD market.

A. MVPD Industry Structure: A Web of Horizontal and Vertical Relationships

Horizontal Concentration. The MVPD segment of the delivered video programming market is highly horizontally concentrated at the national, regional and local levels, and this concentration is on the rise.[80] For example, in 2002, the four largest MVPDs controlled 50.5 percent of the MVPD market nationally (measured in terms of subscribers).[81] Today, with the recent merger of AT&T Inc. (AT&T) and DIRECTV, the top four MVPDs alone serve 71 million subscribers, or 73 percent of the nationwide MVPD market.[82] The top ten MVPDs in 2002 served less than 85 percent of all MVPD subscribers.[83] Today, the top ten MVPDs control 93 percent of the nationwide MVPD market.[84] Horizontal concentration will increase even more if the Commission approves the proposed merger of Charter Communications Inc. (Charter)

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[79] *See, e.g.,* NAB Comments in MB Docket No. 14-50 (Aug. 6, 2014); NAB Reply Comments in MB Docket No. 14-50 (Sept. 8, 2014); NAB Comments in MB Docket No. 14-90 (Sept. 16, 2014).

[80] *Notice* at 5 (seeking comment on horizontal concentration in the MVPD industry).

[81] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Ninth Report, 17 FCC Rcd 26901, 26958 ¶ 132 (2002).

[82] *See 2015 SNL Kagan Media Census Estimates,* First Quarter 2015 (figure relies upon Q1 2015 Kagan data, but combines the subscribership of AT&T Inc. and DIRECTV).

[83] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Ninth Report, 17 FCC Rcd 26901, 26958 ¶ 132 (2002).

[84] *See 2015 SNL Kagan Media Census Estimates,* First Quarter 2015 (figure relies upon Q1 2015 Kagan data, but combines the subscribership of AT&T Inc. and DIRECTV).

and Time Warner Cable, Inc. (TWC).[85] According to the August 17 edition of *Multichannel News*, the largest MVPD today (the combined AT&T-DIRECTV) has 26.3 million subscribers, while in 1985, 1995 and 2000, the largest MVPD had only 3.7 million, 13.3 million, and 16.4 million subscribers, respectively.[86] Indeed, the 26.3 million subscriber level of AT&T-DIRECTV alone exceeds the subscribership of the *top 25 MVPDs combined* in 1985 (which totaled only 24.05 million).

At the regional and local levels, moreover, cable multiple system operators (MSOs) have increased their market shares through clustering.[87] Clustering reduces the number of individual systems in each local market, thereby increasing the clustered MSOs' ability to compete with local television stations for local advertising revenues and the MSOs' relative bargaining power against local television stations in retransmission consent negotiations.[88]

Clustering also causes consumer harm. "Empirical research on cable industry prices demonstrates that large, highly clustered cable companies generally charge higher prices

[85] *Application of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Transfer of Control of License and Authorizations*, MB Docket No. 15-149 (Jun. 25, 2015).

[86] *See* Mike Farrell, *Eat or Be Eaten: Consolidation Creates a Top-Heavy List of the 25 Largest MVPDs*, Multichannel News at 8-10 (Aug. 17, 2015).

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

[88] The number of clustered cable systems (cable systems under the same ownership serving the same local market area or region) serving over 500,000 subscribers rose from 29 in 2005, covering 29.8 million subscribers, to 36 at the end of 2008, covering 36.7 million subscribers. *See* Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) in NAB Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011) at 8 (citing SNL Kagan, Broadband Cable Financial Databook (2009)). Unfortunately, SNL Kagan no longer tracks regional clusters.

than small, unclustered cable companies."[89] Specifically, economic studies have found that higher consumer prices result from cable system clustering because clustering deters the entry of overbuilders into the market, the presence of which constrains the pricing decisions of incumbent cable MSOs.[90]

While the Commission's video competition proceedings previously monitored regional and local clustering,[91] this information has been absent from recent video competition reports[92] and was not sought as part of the *Notice.* The *Notice*, however, seeks comment on "other measures of horizontal concentration [the Commission] should consider."[93] Because information on regional concentration and clustering among MVPDs is highly relevant to the Commission's analysis of competition in the video marketplace, it should modify future requests for comment by seeking information on MVPD concentration at the local and

[89] Philip Reny and Michael Williams, *The Deterrent Effect of Cable System Clustering on Overbuilders*, 35 Economics Bulletin 519 (Mar. 2015).

[90] *Id*.; Hal J. Singer, *Does Clustering by Incumbent Cable MSOs Deter Entry by Overbuilders?* (2003), available at http://ssrn.com/asbtract=403720

[91] *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 24 FCC Rcd 750, 765 ¶ 34 (2009) ("We continue to monitor the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data and comment on its effect on competition in the video programming distribution market. How many transactions resulted in an MSO establishing a presence in a new area versus adding to an existing cluster? As cable operators eliminate headends and more closely integrate their systems, what regulatory and technical issues arise that can affect competition? What effect does clustering have on economies of scale and scope?"). *See also Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 21 FCC Rcd 12229, 12241-42 (2006); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 20 FCC Rcd 14117, 14127-28 (2005) (making similar inquiries).

[92] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 14-16, FCC No. 15-41 (Apr. 2, 2015) (*Sixteenth Report*); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Fifteenth Report, 28 FCC Rcd 10496 (2013) (*Fifteenth Report*).

[93] *Notice* at 10.

regional levels. The Commission should specifically explore whether the cable industry's regional and local consolidation contributes to its practice of raising consumer subscriber rates well above the rate of inflation and other customer abuses.[94]

As NAB and other broadcasters have noted in previous proceedings, local MVPD markets are frequently dominated by a single cable operator—even taking direct broadcast satellite (DBS) and other MVPDs into account. For example, TWC enjoys a 60 percent or greater share of the entire MVPD market in eight DMAs, including Honolulu, HI (79.5 percent) and Utica, NY (74.9 percent).[95] Charter controls 58.7 percent of the MVPD market in the Grand Junction-Montrose, CO DMA, and 56.6 percent in the Cheyenne, WY-Scottsbluff, NE DMA.[96] These figures do not account for further regional consolidation that may result from Charter's proposed merger with TWC.[97] Suddenlink controls 61.5 percent of the MVPD market in the Victoria, TX DMA and 60.9 percent in the Parkersburg, WV DMA.[98] Without accounting for either recently approved or pending MVPD mergers, NAB counts 96 DMAs in which a single MVPD enjoys a market share of 40 percent or higher—including 49 DMAs in

[94] According to the FCC's most recent report on cable prices, the average price of expanded basic service grew at a compound annual rate of 5.9 percent over the 19-year period from 1995-2014, compared to a 2.4 percent annual increase in general inflation as measured by the Consumer Price Index over the same period. *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment; Implementation of Section 3 of the Cable TV Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, 29 FCC Rcd 14895, 14903 ¶ 17 (2014). *See also* Opposition of NAB to Mediacom Petition for Rulemaking, RM-11752 (Aug. 14, 2015).

[95] *See 2015 SNL Kagan MediaCensus, Estimates—1st Quarter 2015.*

[96] *See 2015 SNL Kagan MediaCensus, Estimates—1st Quarter 2015.*

[97] *Application of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Transfer of Control of License and Authorizations*, MB Docket No. 15-149 (Jun. 25, 2015).

[98] *See 2015 SNL Kagan MediaCensus, Estimates—1st Quarter 2015.*

which a single MVPD enjoys a share of 50 percent or more.[99] Unsurprisingly, courts recognize the continuing dominant position of cable operators in local markets.[100]

In short, although there has been some increase in the *types* of MVPDs serving each market, the number of MVPDs serving each local market has generally declined over time due to continuing consolidation among MVPDs. Consequently, the subscription video programming distribution market (both nationally and locally) continues to be dominated by a few large MVPDs. There are currently no regulatory constraints on MVPDs' ability to consolidate their operations, despite the mandate in the Cable Television Consumer Protection and Competition Act of 1992 that the Commission adopt such regulations. Specifically, there are no FCC rules limiting the numbers of subscribers that can be served by any MVPD in a local market or at the regional or national levels.[101]

Vertical Integration. MVPDs also enjoy the benefits of vertical integration, giving many the incentive and ability to favor their own programming over that of others seeking carriage on their platforms.[102] In its *Sixteenth Annual Video Competition Report*, the Commission stated that, as of June 2014, 98 national video programming networks were owned by or

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[99] *Id.*

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

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

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

affiliated with the top five cable MSOs and another 62 such networks were owned by or affiliated with the two DBS providers (who were also among the largest MVPDs).[103] The Commission no longer provides an estimate of the total number of national video programming networks, but its most recent estimate was 800 networks.[104] Using that estimate, then 20 percent (or 160 of the approximately 800 national programming networks) remain vertically integrated with the seven largest MVPDs. As the U.S. Court of Appeals for the D.C. Circuit concluded in upholding the Commission's program access rules, based on the levels of vertical integration in the marketplace, "the FCC could reasonably conclude that cable operators continue to 'have the incentive and ability to favor their affiliated programming vendors in individual cases, with the potential to unreasonably restrain the ability of an unaffiliated programming vendor to compete fairly.'"[105] Overall, the MVPD industry remains characterized by significant vertical integration.

B. Consolidation of MVPD Advertising Reach

Last year, the Commission exacerbated the current unfair and anticompetitive regulatory asymmetry in ownership regulation by also strictly limiting the joint sale of advertising time by two television stations in the same market.[106] In sharp contrast, the Commission has permitted all major pay TV providers – large cable operators, both satellite

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[103] *See Sixteenth Report* ¶ 34.

[104] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Annual Report, 27 FCC Rcd 8610 (2012) (*Fourteenth Annual Video Competition Report*) at n. 96 ("Because of the difficulty we find in identifying all networks, we are not providing this information in our 14th Report. However, we believe the number of networks is approximately 800.").

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

[106] *See 2014 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,* Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371 (2014).

TV companies and the telcos – to join forces to create a single platform for local and national television advertisers.[107] The MVPD participants regard this "arrangement" as "crown[ing] a decade-long effort by NCC and its [cable] owners to *consolidate the advertising reach of all US MVPDs*" for local and national television advertisers.[108]

Local stations directly compete with these MVPD interconnects for advertising and frequently lose sales to jointly sold interconnect advertising.[109] Broadcasters have explained that interconnects have "enormous advantages over stand-alone broadcast stations in the sale of local advertising," and allow "MVPDs, working together, to compete directly with broadcasters for local television advertising buys" that previously would have been earned by local stations.[110] For example, a broadcaster in the small market of Chico, CA (DMA #132) has estimated that the cable interconnect there takes "some $3 to $4 million in local advertising" that formerly would have been likely to go to local TV stations.[111]

The Commission should examine whether the unrestrained ability of MVPDs to "consolidate" their "advertising reach" locally and nationally has or will likely have

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[107] NAB has previously discussed the "alliances" between NCC Media (which itself is owned by large cable operators), "cable operators and satellite and telco programming distributors, including DIRECTV, AT&T U-verse and VERIZON FiOS" to "offer advertisers a local market ad platform." *The Essential Guide to NCC Media: Planning & Buying Local Market Cable Television & Digital Media* (Sept. 2011) at 2. *See Ex Parte* Submission of the National Association of Broadcasters, MB Docket Nos. 09-182, 07-294, 04-256 (Mar. 18, 2014) at 5-6.

[108] NCC Media News, *DISH and NCC Media Join Forces, Greatly Extending Consumer Reach and Targeting for National and Local Television Advertisers* (Aug. 26, 2013) (emphasis added).

[109] *See, e.g., Ex Parte* Communication of LIN Television, MB Docket Nos. 09-182, 07-294, 10-71 (Feb. 26, 2014) at 2; *Ex Parte* Letter of Gregory L. Masters, Wiley Rein, MB Docket Nos. 09-182, 04-256, 10-17 (Feb. 26, 2014) at 2 & Attachments A, B; *Ex Parte* Letter of Joshua N. Pila, MB Docket Nos. 09-182, 07-294, 10-71 and GN Docket No. 12-268 (Jan. 15, 2014); *Ex Parte* Letter of Jack N. Goodman, MB Docket No. 09-182 (Dec. 19, 2012) at 3.

[110] *Ex Parte* Letter of John Hane, Pillsbury Winthrop Shaw Pittman LLP, MB Docket No. 09-182 (Jan. 16, 2013) at 1.

[111] *Ex Parte* Communication of National Association of Broadcasters, MB Docket Nos. 09-182, 04-256, 10-71 (Mar. 14, 2014), at 2.

anticompetitive effects in the video marketplace. As pay TV providers continue their seemingly inevitable consolidation, their unfettered ability to combine to sell advertising is increasingly problematic.

C. The Need to Achieve Economies of Scale and Scope in Television Broadcasting

While the MVPD market remains highly concentrated, the market for television programming is increasingly competitive. MVPDs now offer dozens and often hundreds of channels of video programming, which compete with local broadcast stations for viewership and advertising dollars. Television stations also are competing with an increasing amount and variety of other broadcasters' programming because of the rise of multicasting (discussed above). Yet television broadcast stations remain subject to ownership regulations grounded in an analysis of the market that considers only competition from other television broadcast stations.[112] This unduly narrow view of the market becomes increasingly unjustifiable as rising numbers of advertising dollars and eyeballs are diverted to other media platforms.

A recent econometric analysis conducted by Hal J. Singer and Kevin W. Caves of Economists Incorporated sought to test the view that local television advertising is a relevant product market.[113] The Economists Incorporated Study found no empirical evidence to support such a narrow market definition. Rather, their results show that a properly defined

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[112] The view that broadcast television stations only compete with each other also undergirds the Commission's local television ownership rule, which is predicated on maintaining a certain number of separate owners of local commercial television stations through the "eight voices" test, and barring combinations among top four-ranked stations—regardless of other media competing for the attention of audiences. 47 C.F.R. § 73.3555(b).

[113] *See* NAB Comments in MB Docket No. 14-50 (Aug. 6, 2014) at Attachment A, Kevin W. Caves and Hal J. Singer, *Competition in Local Broadcast Television Advertising Markets*, Economists Incorporated, at 3-4 (August 6, 2014) ("Economists Incorporated Study").

market includes non-broadcast alternatives.[114] Examining advertising pricing data over ten years across 210 local markets, the Study considered whether there was any evidence that markets with commonly owned television stations or stations involved in sharing arrangements charged higher prices.[115] If local television broadcast advertising were a relevant product market, then markets with such combinations would generally have stations that charged higher prices. However, the analysis showed that, on the contrary: (i) markets with local TV ownership combinations *do not* have higher advertising prices; (ii) the presence of sharing arrangements is not associated with higher prices—and is, in some cases, associated with *lower* rates; and (iii) increases in local television market concentration do not have any effect on the rates that broadcasters are able to charge.[116]

In addition to this econometric analysis, the Economists Incorporated Study also surveyed relevant advertising and viewership data and found that "broadcast television's share of both viewing audiences and advertising dollars has experienced substantial and persistent declines for decades, while nonbroadcast alternatives such as cable and Internet have experienced substantial growth."[117] Based on the econometric analysis and "clear evidence of both viewers' and advertisers' willingness to substitute away from broadcast and towards non-broadcast alternatives in large numbers,"[118] the Study concluded that a narrow, broadcast-only market definition "is not supported by the available evidence, and

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[114] Economists Incorporated Study at ¶ 3 (concluding that the prices of local broadcast advertising "are affected and disciplined by cable television and other advertising alternatives").

[115] The study controlled for several factors including "income, population, and demographics." Economists Incorporated Study at ¶ 20.

[116] *See* NAB Comments in MB Docket No. 14-50 (Aug. 6, 2014) at 43-44 and Attachment A.

[117] Economists Incorporated Study at ¶ 34.

[118] Economists Incorporated Study at ¶ 34.

that a properly defined relevant product would need to be broadened to include non-broadcast alternatives."[119]

As NAB demonstrated in previous comments,[120] the broadcast television industry is much less horizontally concentrated than the MVPD industry. BIA/Kelsey recently estimated that there are 630 separate owners of 1,785 full power television and 405 Class A television stations in the country—an average of only 3.5 stations per owner.[121]

In fact, the television industry is so diffusely owned that many stations struggle to compete effectively and continue to serve their audiences in today's marketplace. Current restrictions limit too many combinations that would yield economies of scale and scope beneficial to both broadcasters and viewers. The FCC's retention – indeed, its recent expansion -- of outdated ownership rules[122] and strict attribution standards[123] severely

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[119] Economists Incorporated Study at ¶ 35. *See also id.* at ¶ 11 and Figure 1 (basic cable has captured a larger viewing share than broadcast television since 2002 and reversal is not expected; instead, broadcast viewing is projected to decline to approximately 30% by 2021).

[120] *See, e.g.,* NAB Comments in MB Docket No. 14-16 (Mar. 21, 2014) at 18-20.

[121] Letter to Marlene H. Dortch, Secretary, FCC from Kathleen A. Kirby and Jack N. Goodman of the FCBA Mass Media Practice Committee in MB Docket No. 12-268 (May 14, 2015) at 2.

[122] Television broadcast station ownership is capped at both the national and local levels. *See* 47 C.F.R. § 73.3555(e) (a single entity cannot own stations with a combined national audience reach of more than 39 percent of U.S. television households); 47 C.F.R. § 73.3555(b) (a single entity cannot acquire a second television broadcast station in the same local market unless: (1) the stations' contours do not overlap; or (2) (a) at least one station is not ranked among the top four in terms of audience share and (b) there will remain at least eight independently owned television "voices" post-acquisition. As a practical matter, this restriction prevents an entity from owning more than one station in most local markets. Television broadcasters also face limits on their ownership of newspapers, 47 C.F.R. 73.3555(d), and radio stations, 47 C.F.R. 73.3555(c).

[123] As discussed above, MVPDs are not treated as "owning" other MVPDs when they enter into "interconnects"—which allow multiple MVPDs within the same market who often are competing head-to-head for subscribers—to jointly sell local advertising. Television broadcast stations, on the other hand, are considered to be commonly owned under the Commission's broadcast ownership limits if they sell more than 15 percent of a same-market station's advertising time. 47 U.S.C. 73.3555, Note 2(k). Similarly, local television station assignments or transfers involving sharing agreements that have any contingent financial component are subject to heightened review thresholds, pursuant to policy changes announced last year. *Processing of Broadcast Television*

constrains the ability of broadcast stations to compete for advertising dollars, viewers, and investment capital, particularly against their less regulated and more consolidated rivals.

As NAB has previously explained in detail, local television ownership combinations—as well as arrangements that allow stations to share certain resources without a change in ultimate control (e.g., joint sales agreements, shared services agreements)[124]—are important to local station operations because television broadcasting generally, and local news production specifically, are subject to strong economies of scale and scope.[125] Placing undue limitations on broadcasters' ability to achieve economies of scale and scope "result[s] in higher costs, lower revenues, reduced returns on invested capital, lower output and, potentially, fewer firms," as well as "significantly reducing the output of news

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Applications Proposing Sharing Arrangements and Contingent Interests, Public Notice, 29 FCC Rcd 2647 (MB 2014). There are no similar standards in place for cable, DBS or wireless services.

[124] These agreements are often critical to a broadcaster's ability to improve the quality and quantity of available programming and to remain financially viable in the face of rising competition. Economies of scale afforded by JSAs, SSAs, and LMAs have allowed broadcasters to maintain and even expand local news on many stations, even during periods of declining advertising revenue. *See* NAB Comments in MB Docket No. 14-16 (Mar. 21, 2014) at 23 (citing Pew Project for Excellence in Journalism, *The State of the News Media 2013: An Annual Report on American Journalism* (2013), available at http://stateofthemedia.org/2013/local-tv-audience-declines-as-revenue-bounces-back/local-tv-by-the-numbers/#economics (the estimated on-air advertising revenue of local television stations declined by 9 percent from 2007 to 2012)). While local stations experienced a slight uptick in advertising revenue in 2014 as compared to 2013 due to political advertising spending (a seven percent increase), ad revenue was still down three percent compared to 2012, the most recent political spending year. *See* Katrina-Eva Matsa, "Local TV News: Fact Sheet," Pew Research Center (Apr. 29, 2015), *available at:* http://www.journalism.org/2015/04/29/local-tv-news-fact-sheet/.

[125] *See* Jeffrey A. Eisenach & Kevin W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting 1 (2011) (Economies of Scale Report), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) in NAB Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011) (incorporated herein by reference). Scale economies arise because broadcast operations require large capital investment in equipment, production facilities, FCC licenses, and "first copy" intellectual property costs. *Id.* Economies of scope arise from the potential to use assets to create multiple products (e.g., a single transmitter can broadcast multiple digital programming streams). *Id.*

programming."[126] Modernizing the Commission's broadcast ownership rules is critical to broadcasters' ability to continue to innovate and offer the quality news, information and entertainment that their local viewers expect.[127]

The *Notice* also asks about vertical integration in the broadcast industry.[128] In response to similar questions in previous video competition proceedings, NAB observed that some of these inquiries do not concern actual vertical integration.[129] Ownership of a television broadcast station and a cable network, for example, does not relate to vertical integration because cable network programming is not distributed by television broadcast stations (nor is television broadcast station programming generally carried by cable networks).[130] To some extent, a broadcast station's over-the-air signal can be viewed as an input into an MVPD's downstream product. Thus, a vertical relationship can arise where a cable operator also owns a broadcast station in the same market. This remains relatively uncommon, however, with only two entities owning both a broadcast station and a cable system in the same market.[131] Overall, the broadcast television industry is not characterized by significant vertical integration.

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[126] Economies of Scale Report at 2-3.

[127] *See* NAB Comments in MB Docket No. 14-50 (Aug. 6, 2014); NAB Reply Comments in MB Docket No. 14-50 (Sept. 8, 2014).

[128] *See Notice* at 10.

[129] *See* NAB Comments in MB Docket No. 12-203 (Sept. 12, 2012) at 19-20; NAB Comments in MB Docket No. 14-16 (Mar. 21, 2014) at 20-22.

[130] Because neither of these video products are used as an upstream input into the other's downstream offering, ownership of broadcast stations and cable programming networks does not implicate vertical integration analyses or concerns. *See* Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* (Addison Wesley 4th ed. 2005), at 395 ("A firm that participates in *more than one* successive stage of the production or distribution of goods and services is vertically integrated.) (emphasis added).

[131] *Fifteenth Annual Video Competition Report* at ¶ 165. Comcast Corporation and Cox Communications, Inc. each own a cable system and a broadcast station in the same market. NAB

D. Promoting New Entry in Broadcasting

The *Notice* seeks comment on issues affecting entry into the broadcast industry.[132] The Notice also specifically seeks "data, information, and comment on the impact of the upcoming incentive auction on competition in the marketplace for the delivery of video programming."[133] NAB has previously explained that ownership restrictions reduce economic incentives to invest in broadcasting in general, making it more difficult for both existing and aspiring broadcasters to raise capital.[134] Outdated limitations that contribute to an undercapitalized and less competitive broadcast sector do not benefit any broadcasters, including new entrants and small businesses that face special challenges in obtaining investment to purchase or construct stations, technically upgrade facilities, create and acquire costly programming, and develop new services. Clearly, the FCC's maintenance of overly strict ownership and attribution policies has done little or nothing to promote new entry and diversity in television broadcasting, as the shortage of new entrants, including minority and female station owners, demonstrates.

The broadcast incentive auction will have a massive, and very likely disruptive, effect on the television industry, and will only exacerbate concerns about new entry. By continuing to shrink both the number of television stations and the spectrum available for television broadcasting, the Commission is necessarily shrinking opportunities for new entrants. In addition, with its recent proposal to reserve not just one, but two channels in the post-

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knows of no transactions since the release of the *Fifteenth Annual Video Competition Report* that have resulted in common ownership of a broadcast station and a cable operator in the same market.

[132] *Notice* at 10-11.

[133] *Id.*

[134] *See, e.g.,* NAB Comments in MB Docket No. 14-50 (Aug. 6, 2014); NAB Comments in MB Docket 09-182, at 56-57 (Mar. 5, 2012); NAB Reply Comments in MB Docket No. 06-121, at 33-38 (Nov. 1, 2007).

auction TV band for use by white space devices, the Commission is virtually guaranteeing that no channels will be available for new licensing. Given these spectrum policy choices, the Commission no longer has any basis for expecting true new entry into television broadcasting.

With fewer broadcast options available to the public post-auction, the Commission must take great care to ensure that existing broadcasters can continue to provide their essential and unique free over-the-air service. Especially with the decline of local newspapers, the public needs local TV broadcasters more than ever. If competition, diversity and localism continue to be core Communications Act values (as NAB believes they should), then the Commission must take steps to foster a healthy and locally-oriented broadcast industry, including maintaining the agency's exclusivity rules, refraining from bending retransmission consent rules in pay TV providers' favor, and promoting rational spectrum policies that allow local stations to continue to provide critical service to local markets.

III. CONCLUSION

Free over-the-air broadcast television improves the quantity, quality and diversity of video programming available to all American television households. Millions of households rely partially or exclusively on free broadcast signals for news, weather, emergency information and entertainment. Viewers are benefiting from exponential increases in the amount and types of broadcast programming, an expanding array of HD content, and the delivery of broadcast signals to portable handheld devices. By improving their service offerings, broadcasters continue to play a critical important role in today's competitive video marketplace, despite a regulatory regime that impedes their ability to develop efficient combinations and attract capital. The Commission should take immediate steps to update its ownership and attribution rules to permit broadcasters to realize economies of scale and scope, and obtain needed investment.

Respectfully submitted,

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