



July 8, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, 13-236

Dear Ms. Dortch:

On July 7, Gordon Smith, Rick Kaplan and Erin Dozier of the National Association of Broadcasters (NAB) participated in separate meetings with Commissioners Mignon Clyburn and Jessica Rosenworcel, as well as their respective legal advisors, J. David Grossman, Marc Paul, and intern Garrett Auzenne, to discuss the Commission's long pending 2010 and 2014 quadrennial reviews of the broadcast ownership rules.

During the meetings, we discussed the need to eliminate the print newspaper rule,<sup>1</sup> which today serves only to deter waning sources of investment for the struggling print newspaper industry. We contrasted media options available today versus those when the ban was adopted in 1975 (see attached presentation). We observed that continuing to disregard Americans' extensive use of an array of local news and information sources that are entirely independent of broadcast stations and newspapers cannot be squared with the Commission's statutory obligations<sup>2</sup> or its actions in other proceedings. In taking actions to promote an open Internet, for example, the Commission observed that the "explosive adoption" of the Internet has had "wide-ranging impacts on everything from: the way people get, share and create news . . . the way they learn; the nature of their political activity; their interactions with government . . . and the way they organize in communities."<sup>3</sup> The Commission thus held that its open Internet rules "serve First Amendment interests of the

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<sup>1</sup> 47 C.F.R. § 73.3555(d).

<sup>2</sup> Under Section 202(h) of the 1996 Act, the Commission must repeal or modify any media ownership regulations that no longer serve the public interest. Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996); 47 U.S.C. § 303(r) note.

<sup>3</sup> *Preserving and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5573 (2014) (quoting S. Fox & L. Rainie, *The Web at 25 in the U.S.*, at 4, Pew Research Internet Project (2014)).

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highest order, promoting ‘the widest possible dissemination of information from diverse and antagonistic sources’ and ‘assuring that the public has access to a multiplicity of information sources’ by preserving an open Internet.”<sup>4</sup>

We also discussed the Commission’s determination more than a decade ago that the print newspaper rule no longer serves the public interest, the Third Circuit Court of Appeals’ agreement with the Commission that, “record evidence suggests that cable and the Internet supplement the viewpoint diversity provided by broadcast and newspaper outlets in local markets,”<sup>5</sup> and the Third Circuit’s more recent holding that the Commission’s continuing failure to update the rule has “come at significant expense to parties that would be able, under some of the less restrictive options being considered by the Commission, to engage in profitable combinations.”<sup>6</sup> The very limited modifications to the print newspaper rule contained in the order currently circulating for a vote<sup>7</sup> do not approach the sort of change reflective of the actual marketplace in which stations and papers compete—the one that today’s citizens use to gather, share, create, curate, critique and otherwise interact with news and information of their choosing. We urged the FCC to follow the court’s direction that the print newspaper rule is outdated and, as NAB has long argued, to eliminate it.<sup>8</sup> In light of the fundamental transformations in how consumers obtain news and information, the Commission cannot now show that either the print newspaper rule or the radio/television cross-ownership rule remains “necessary in the public interest.”

NAB reiterated our support for initiatives that will promote increased ownership of broadcast outlets by minorities and women. Such goals will not be met, however, by continuing to depress the value of broadcast properties by prohibiting efficient combinations. Instead, the Commission should focus on solutions aimed at addressing the leading barrier to ownership diversity: access to capital. Such measures have been effective in the past and several can be adopted by the Commission without further Congressional action.<sup>9</sup> Claims that the current broadcast ownership rules are necessary – or even relevant to – promoting diversity of ownership by minorities and women are unsubstantiated and are belied by the current levels of ownership diversity.<sup>10</sup>

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<sup>4</sup> *Preserving and Promoting the Open Internet*, Order, 30 FCC Rcd 5601, 5868 (2015).

<sup>5</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 400 (3d Cir. 2004).

<sup>6</sup> See *Prometheus Radio Project v. FCC*, Nos. 15-3863, 15-3864, 15-3865 & 15-3866, at 38 (3d Cir. May 25, 2016) (*Prometheus III*).

<sup>7</sup> FCC, *Fact Sheet: Updating Media Ownership Rules in the Public Interest* (rel. Jun. 27, 2016).

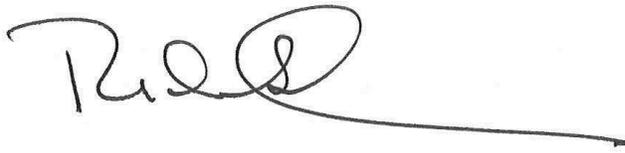
<sup>8</sup> See, e.g., Comments of NAB, MB Docket Nos. 14-50, *et al.*, at 9-31; 70-84 (Aug. 6, 2014) (NAB 2014 Comments).

<sup>9</sup> NAB Comments at 91-95; Letter from NAB and MMTC to Marlene H. Dortch in MB Docket Nos. 09-182 and 07-294 (Jan. 30, 2013); Comments of NAB in MB Docket Nos. 09-182 and 07-294 at 7-9 (Dec. 20, 2012) (discussing numerous incentive-based proposals that could be adopted by the Commission, including an incubator program and an updated definition of “eligible entity”).

<sup>10</sup> Comments of NAB in MB Docket No. 14-50 at 89 (Aug. 6, 2014) (NAB Comments) (“NAB fully agrees with the Commission that increasing broadcast ownership opportunities for minorities and women is

Finally, NAB highlighted its comments in the pending proceeding on the UHF discount and reiterated its position that eliminating the discount – which exists only as a calculation methodology for the national TV ownership cap – without considering the cap itself would be arbitrary and capricious.<sup>11</sup> Taking such action also would be contrary to the Third Circuit’s recent *Prometheus III* decision, where the court reversed the FCC for attributing TV joint sales agreements – and thereby making the ownership rules more stringent – without first determining whether the existing ownership rules were still sound and served the public interest.<sup>12</sup> Similarly, the Commission cannot, consistent with the Communications Act, eliminate the UHF discount, and thus alter the national TV ownership rule, without determining whether that rule still serves the public interest and, if so, at what level.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right from the end of the signature.

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Rick Kaplan  
General Counsel and Executive Vice President  
Legal and Regulatory Affairs

cc: Commissioner Clyburn, Commissioner Rosenworcel, J. David Grossman, Marc Paul,  
Garrett Auzenne

Attachment

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an important public policy goal. We disagree, however with the contention that retaining current structural ownership limits advances this policy. One need only observe that although structural rules have been in place for more than 70 years, women and minorities remain under-represented among broadcast owners.”).

<sup>11</sup> See Comments of NAB, MB Docket No. 13-236 (Dec. 16, 2013). Consistent with our previous comments, NAB continues to take no position as to whether the national cap should be retained at its current level, modified or eliminated.

<sup>12</sup> *Prometheus III*, at 52.



# **Modernizing the FCC's Broadcast Ownership Rules**

*Creating Rules for The Internet Age*

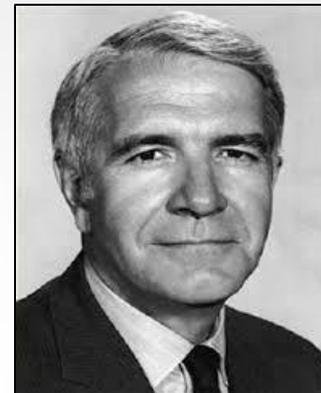
# 1975 Television



John Chancellor



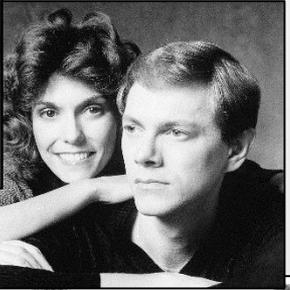
Walter Cronkite



Harry Reasoner



# 1975 Radio



# Viewpoint Diversity

“The Commission has described viewpoint diversity as ‘the availability of media content reflecting a variety of perspectives.’”

- 2014 Broadcast Ownership FNPRM, ¶ 114 and fn. 295 (citing 2002 Biennial Review Order, ¶ 19)

# DC News in 1975



The Washington Post

**NAB**  
NATIONAL ASSOCIATION OF BROADCASTERS

EAST CITY ART

# DC News in 2016



**WUSA 9**



**msnbc**

HUFFPOST DC

HillRag.com

**CURBED**  
WASHINGTON DC

**WETA**

**FAMOUSDC**



**BadWolf DC**



**CONGRESS HEIGHTS ON THE RISE**  
EST. 2008

**WAMU 88.5**  
AMERICAN UNIVERSITY RADIO

**DC Watch**  
An on-line magazine of politics and public affairs in the District of Columbia

**Google**

**wtop**

**WJLA**  
WASHINGTON, D.C.

**NBC 4**  
WASHINGTON, D.C.



**Greater Greater Washington**  
The Washington, DC area is great. But it could be greater.

**HILL NOW**

**The Washington Times**

**Frozen Tropics**  
A look at what's going on in Trinidad, on H Street, and in the larger area north of Capitol Hill.

**FOX 5**  
WTTG·DC

**105.9 FM**  
**WMAL**  
AM 630



**CNN**



**FOX NEWS channel**

**The Washington Post**



**POTUS**  
Politics of the United States

**EATER**  
WASHINGTON DC

**npr**

**EAT || SHOP || LIVE || ANACOSTIA**

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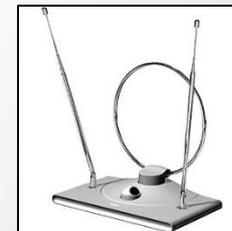


# Broadband Impact

“Today, thanks to an open Internet, a small community newspaper or a budding journalist essentially has the same distribution network as the Washington Post or the Memphis Commercial Appeal. Just think about what this opportunity affords all Americans.” – FCC Commissioner Mignon Clyburn

The internet is “the most dynamic platform for free speech ever invented. It is our modern town square. It is our printing press.” – FCC Commissioner Jessica Rosenworcel

# Pathways



# Third Circuit

“[T]he 1975 [cross-ownership] ban remains in effect to this day even though the FCC determined more than a decade ago that it is no longer in the public interest. This has come at significant expense to parties that would be able, under some of the less restrictive options being considered by the Commission, to engage in profitable combinations.” – *Prometheus Radio Project v. FCC*, May 25, 2016

“We agree record evidence suggests that cable and the Internet supplement the viewpoint diversity provided by broadcast and newspaper outlets in local markets.” – *Prometheus Radio Project v. FCC*, June 24, 2004

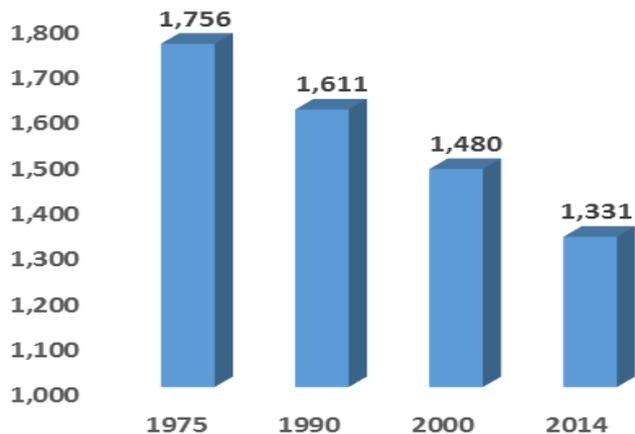
# Print Newspapers

“Though the industry has been struggling for some time, 2015 was perhaps the worst year for newspapers since the Great Recession and its immediate aftermath. Daily circulation fell by 7% since 2010, while advertising revenue at publicly traded newspaper companies fell by 8%, the most since 2009. At the same time, newsroom staffing fell by 10% in 2014, the last year for which data were available. Coming amid a wave of consolidation, this accelerating decline suggests the industry may be past its point of no return.”

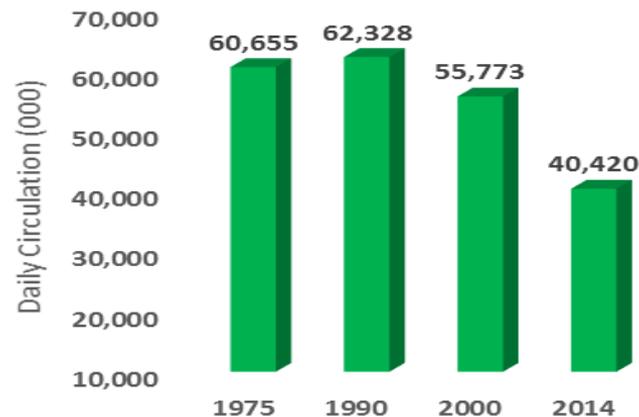
- “5 Key Takeaways about the State of the News Media in 2016”  
Pew Research Center  
June 15, 2016

# Print Newspapers

### Number of Daily Newspapers

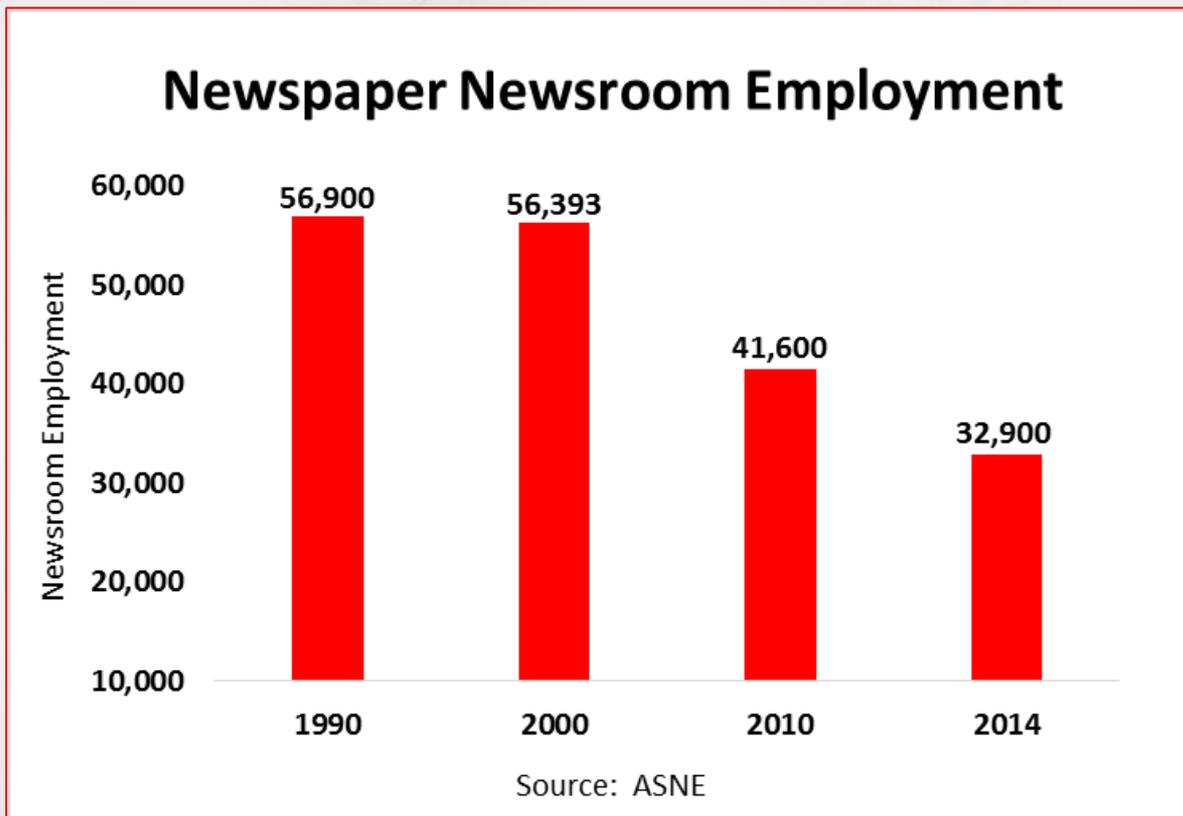


### Newspaper Circulation (000)



Source: Editor and Publisher Int'l Yearbook

# Print Newspapers



# Local TV Ownership

- 8 Voices
  - If voices, then far more than 8
  - If stations, more than 50% of markets don't even have 8 voices; no evidence of harm
- Top Four restriction
  - More restrictive than any other industry
    - e.g., wireless “screen” is 1/3 of holdings

# “Voices” in a Market

## Pew: Denver has 143 local “voices”

- Despite loss of Rocky Mountain News in 2009, information economy in Denver is robust
- Plethora of digital-only news outlets
- User-generated content “has increased the diversity of editorial voices in the city’s media ecology”
- Multiple outlets – online and print – that serve local ethnic communities, including nine for Hispanic audiences alone

### Denver News Providers

*Metro-area sources of news that provide at least monthly coverage*

Source	# of outlets
<b>Dedicated Journalistic/News Entities</b>	
Daily newspapers	1
Local TV stations	7
Digital-only news outlets	25
Community papers	28
Specialty/ethnic news outlets	35
Local news/talk radio	4
University news outlets	3
Multiplatform	2
<b>Additional News Providers</b>	
Gov't & municipal agencies	27
Neighborhood groups	11

Source: Pew Research Center analysis

PEW RESEARCH CENTER

# Conclusion

- Cross-ownership must be eliminated
  - Third Circuit indicated the time has come
  - Vastly different news and information landscape
  - Rules have affirmatively harmed newspaper and broadcasting industries
  - Zero quantifiable benefits of rule
- Local TV ownership rules must be updated
  - Broadcasters can't compete with consolidated industries
  - News and information helped by more flexible rules