Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 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	)	MB Docket No. 06-121
	)	
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	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	

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INTRODUCTION & SUMMARY

Four years ago, when the FCC last reviewed its broadcast ownership rules, the YouTube.com domain name had not even been registered, the first Windows version of the audio iPod was just rolling out, Google was only a search engine, cable companies sold primarily video packages, and telephone companies sold primarily voice services. Cellphones were designed for making a phone call. And NBC was the most popular broadcast network, thanks in part to its high-rated sitcom "Friends" airing during the first hour of prime time.

Today, just four years later, Google is preparing to acquire the eighteen-month old video-sharing website YouTube for more than $1.65 billion (which will increase Google's market capitalization by less than 2%), Apple has had its fifth-generation video iPod on the market for more than a year, and cable and telephone companies now sell packages of video, voice, broadband and wireless services. Cellphones double as TV receivers for multi-channel video services operated by new entrants such as Qualcomm using broadcast-type technology on spectrum allotted to television broadcasters. And NBC announced last week that it was making drastic cuts in its television operations, including phasing out costly scripted dramas and comedies during the first hour of prime time.

The pace of change in the media marketplace is breathtaking and is only accelerating. Which makes the congressionally mandated quadrennial review of the broadcast ownership rules an essential, if not too late, opportunity for the Commission to step back and make a clear-eyed assessment of the purpose of the regulation of broadcast ownership, the status of the media marketplace, the role that free, local over-the-air broadcasting should play in this country, and whether its vitality is threatened.

But that review is off to a somewhat troubling start. The first public "hearings" that have been held were filled with invective and emotion rather than fact and intellectually rigorous analysis, and thus were overwhelmingly inconsistent with the legal standard set for an "expert agency."

The broadcast ownership rules were adopted decades ago, beginning in the 1940s. In those times, television offerings were basically limited to the programming aired by three networks; there were no cable or satellite programming services, no personal computers or Internet, no VCRs or DVDs, no personal electronic devices such as Blackberries or iPods, no video-on-demand, no DVRs and no TiVo. Since then, much consideration has been given to the question of how the rules might be modified in light of changes in the media industry. Mountains of paper have been produced on the question, and an endless stream of legal proceedings has commanded the attention of government decision-makers, industry executives, and battalions of lawyers, lobbyists, and consultants.

Yet no substantial regulatory change has actually occurred. In its *2003 Media Ownership Order*, the Commission made, for the first time in years, important but balanced revisions to these rules – moderately loosening certain limits, retaining some unchanged, and effectively tightening others.[1] But due to the Third Circuit's decision on

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[1] *See 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) ("*2003 Media Ownership Order*").

appeal from that Order,[2] even these modest deregulatory steps remain unimplemented. Thus, while the framework of the regulatory scheme for media ownership has stayed fundamentally the same for generations, the media marketplace has rocketed ahead, undergoing a revolution in both the delivery and variety of programming choices for consumers.

It is time finally to bring the regulatory scheme into the new age, so that broadcasters can enjoy the fundamental freedom to compete in the contemporary marketplace. Otherwise, we put at risk the rich American tradition of free, over-the-air broadcasting, including its universal availability, commitment to public service and localism, and its high quality entertainment, sports and news programming.

I. THE FCC RIGHTLY CONCLUDED IN 2003 THAT COMPETITIVE MARKET DEVELOPMENTS AND CONGRESS' MANDATE IN THE 1996 ACT REQUIRED RELAXATION OF ITS MEDIA OWNERSHIP RULES.

In the Telecommunications Act of 1996,[3] Congress directed the FCC to make sweeping deregulatory changes to certain of its media ownership regulations and to periodically review all of its ownership rules, to determine whether they remain necessary in the public interest in light of competition and, if not, to repeal or modify them.[4] As the Commission previously found, and as the Third Circuit agreed:

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2 *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004).

3 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

4 1996 Act, § 202(h), 110 Stat. 111-12. Section 202(h) initially required the FCC to conduct periodic reviews on a biennial basis. Congress has since amended the statute to provide

> The text and legislative history of the 1996 Act indicate that Congress intended periodic reviews to operate as an 'ongoing mechanism to ensure that the Commission's regulatory framework would keep pace with the competitive changes in the marketplace' resulting from that Act's relaxation of the Commission's regulations, including the broadcast media ownership regulations.[5]

In 2003, the Commission acknowledged the explosion of competition in the media marketplace that had occurred since passage of the 1996 Act and found, pursuant to Congress's directive, that these competitive developments compelled it to take at least some steps to relax its media ownership regulations.[6] As a result, the FCC modified its local television ownership rule – first adopted in 1964, and which at the time only permitted ownership of two local television stations (so-called "duopolies") in very limited circumstances[7] – to allow duopolies in more television markets and to allow ownership of three stations (or "triopolies") in the nation's largest markets.[8] The Commission also eliminated its 1975 blanket ban on newspaper/broadcast cross-ownership, and decided that its 1970 radio/television cross-ownership rule (the so-called

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for quadrennial reviews. *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 100 (2004).

5 *Prometheus*, 373 F.3d at 391 (quoting *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, 4732-33 (¶¶ 16, 17) (2003) ("*2002 Biennial Review Report*"); *see 2003 Media Ownership Order*, 18 FCC Rcd at 13624-25 (¶¶ 10-12).

6 *See 2003 Media Ownership Order*, 18 FCC Rcd at 13647-67 (¶¶ 86-128).

7 In 1999, the Commission made changes to the rule that relaxed somewhat the original ban on any dual ownership, but major restrictions on such ownership remained; the Commission also coupled these changes with tighter attribution rules, thus diminishing their practical effect. *See Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999).

8 *See 2003 Media Ownership Order*, 18 FCC Rcd at 13668-13711 (¶¶ 132-233).

"one-to-a-market rule") also was no longer needed.[9] The FCC replaced both of these rules with a single set of "Cross Media Limits," which would have allowed varying degrees of common ownership of newspapers, television stations, and radio stations depending on the properties owned and the size of the local market.[10] With respect to the local radio ownership rule (dating back to 1941 but revised by Congress in 1996 to permit greater levels of ownership), the Commission retained the existing statutory numerical limits but changed its method of defining local radio markets and made other changes that actually had the effect of *decreasing* the number of stations that a single entity could own in certain areas of the country.[11]

This was far from radical deregulation. In fact, some might argue the FCC did not go far enough in light of the competitive transformation that had already taken place in the media marketplace as of 2003. In any event, the *2003 Media Ownership Order* certainly represented a measured, considered approach to the market changes that had occurred in the years between the 1996 Act's passage and the biennial review, as required by Congress's directive in Section 202(h).

Because the Third Circuit stayed implementation of the modified local television ownership rule and the new Cross Media Limits pending the outcome of this proceeding, even those modest deregulatory changes have not yet been implemented.[12]

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9 *See id.* at 13747-67 (¶¶ 328-69) (newspaper/broadcast); *id.* at 13767-74 (¶¶ 370-390) (radio/television).

10 *See id.* at 13790-13806 (¶¶ 432-481).

11 *See id.* at 13711-47 (¶¶ 235-326).

12 *See Prometheus*, 373 F.3d at 435. The Third Circuit initially stayed all of the rule changes but later, in response to a request from the FCC, allowed the ownership-restricting revisions to the local radio ownership rules to take effect. *Prometheus Radio Project v. FCC*, No. 03-3388 (3d Cir. Sept. 3, 2004).

Consequently, there has been no alteration of the local television ownership rule since 1999, when the original 1964 version was only marginally relaxed,[13] no deregulatory changes to the local radio rules since Congress ordered such action in 1996, and no change at all to the newspaper/broadcast cross-ownership rule since 1975. In addition, there has been no modification of the radio/television cross-ownership rule --originally adopted in the 1970s-- since it was relaxed somewhat in 1999, although major regulatory limitations remain.

On remand from the Third Circuit's decision, and in the course of the instant congressionally mandated quadrennial review, the Commission once again stands at the crossroads of potential regulatory change.

II. THE MEDIA MARKETPLACE HAS UNDERGONE A REVOLUTION.

At this juncture, it is well worth stepping back to review the history of broadcast regulation: where we started, where we are today, and what happened along the way. From this perspective, we can see that the modern media marketplace is the product of an extraordinary market revolution and would be unrecognizable to those who adopted the original broadcast ownership rules.

The FCC first adopted broadcast ownership rules – the local radio ownership rule, the national television ownership rule, and the dual television network rule – in the 1940s. Then, in the 1960s and 1970s, came more rules – the local television ownership rules, the radio-television cross-ownership restriction, and the newspaper-broadcast

13 *See supra* n.7.

cross-ownership ban. These times were, in "media years," eons ago. Video service to an individual community was generally limited to three network-owned or -affiliated stations and, perhaps, a single "independent."

In ensuing years, the field of electronic communication has been radically transformed due to wave upon wave of new market entrants and a mind-numbing series of technological and market innovations. As new competitors have blasted ahead with the development of systems featuring hundreds of subscription- and advertising-supported channels, advertising-only-supported broadcasters continue to be shackled by extraordinarily tight constraints on ownership. As a result, the existing rules are a glaring anomaly – a dusty relic of a by-gone regime that has yet to acknowledge the reality that the forces of competition have successfully stormed the regulatory palace.

As the Commission itself recognized during the last broadcast ownership review, a generation ago "only science fiction writers dreamed of satellite-delivered television, cable was little more than a means of delivering broadcast signals to remote locations, and the seeds of the Internet were just being planted in a Department of Defense project."[14] Today, in every market in the country, consumers have access to hundreds of video channels and, "via the Internet, Americans can access virtually any information, anywhere, on any topic."[15] The Commission has further acknowledged:

> [T]he magnitude of the growth in local media voices shows that there will be a plethora of voices in most or all markets absent the rule. Indeed, the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all

[14] *2003 Media Ownership Order*, 18 FCC Rcd at 13623 (¶ 3).

[15] *Id.*

> among the cacophony of voices vying for the attention of Americans.[16]

Even in the three years since the *2003 Media Ownership Order*, the variety of new media alternatives has expanded dramatically. For example, after many years of staggering growth, the Internet has continued to expand at an exponential rate and is now poised to become the universal medium of information and entertainment. The number of web pages indexed by Google is now understood to be over 23 billion – an expansion of 537% since early 2004.[17] Indeed, the market capitalization of Google and Yahoo is more than that of the top 20 local television, radio, and newspaper companies *combined*.[18] The number of adult Americans utilizing the Internet has risen to about 137 million.[19] This is more than twice the level of usage that existed just five years ago. The powerful communications phenomenon of the Internet "blog" has also arisen since the Commission last considered ownership issues; among the many millions of sources of news and information available on the Web, citizen journalists are becoming increasingly prominent, and even ordinary citizens can post their views for all the world to see. For example, the recent news stories on former Congressman Mark Foley "originally percolated in the world of new media – Web sites and news outlets that did not exist a generation ago – before charging into the traditional world of newspapers and television

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[16] *Id.* at 13766-67 (¶ 367).

[17] *See* http://www.google.com/search?q=a (last visited Oct. 19, 2006).

[18] Victor B. Miller IV, Bear Stearns & Co., *Radio: A Crude Recovery?*, Sept. 20, 2006, at 16 (presented at the NAB Radio Show 2006).

[19] Project for Excellence in Journalism, *The State of the News Media in 2006, An Annual Report on American Journalism*, Cable TV: Audience, Mar. 13, 2006 ("*Annual Journalism Report*"), www.stateofthemedia.org/2006/narrative_online_audience.asp.

networks."[20] And, of new media's rise, Vice President Cheney has said that "there's more time and opportunity for policy discussions and debate than there used to be." [21]

As for video programming, the Commission in 2005 identified 531 satellite-delivered national programming networks, an increase of 143 (or 37%) from the previous year.[22] During the same period, the number of regional networks grew by 46.9%.[23] The advent of video-on-demand services and TiVo has vastly increased consumers' ability to consume entertainment, as well as news and information, according to their own needs and schedules. Over the past several years, cable operators have amassed enormous libraries of VOD programming.[24] And cable news services have continued to grow their viewership, with median primetime cable news viewership increasing about 10% from 2.45 million in 2003 to 2.7 million in 2005.[25]

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[20] John F. Harris, "New Media A Weapon in the New World of Politics," *Wash. Post*, Oct. 6, 2006, at A01.

[21] John F. Harris, "Recent Scandals Brew in New Media," *Northwest Herald*, Oct. 6, 2006, *available at* http://www.nwherald.com/articles/2006/10/06/news/nation_and_world/doc45261c648eef7181354419.txt.

[22] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, 2575 (¶ 157) (2006) ("*Twelfth Annual Video Competition Report*"). While the Commission attributes part of this increase to its own internal data corrections, it also represents significant growth, particularly in new networks. *Id*. at 2575 (¶ 158).

[23] *Id.* at 2587 (¶ 185).

[24] *Id.* at 2529 (¶ 57) (noting, for example, that Comcast's VOD service, which is "available to 87 percent of Comcast subscribers, allows digital cable subscribers to choose from a menu of more than 3,500 programs, at any given time, with most of the programs available free").

[25] *See Annual Journalism Report,* Cable TV: Audience, http://www.stateofthemedia.org/2006/narrative_cabletv_audience.asp?cat=3&media=6; *see also id.*, Cable TV News Prime Time Median Audience, link to embedded "Design Your Own Chart" tool, http://www.stateofthemedia.org/2006/chartland.asp?id=482&ct=col&dir=&sort=&col1_box=1.

With respect to audio, subscription to the XM and Sirius satellite radio services expanded by 1351% in just the last three years.[26] And the number of listeners to these services is expected to reach 35 million by the end of the year 2010.[27] In addition, one in five adults between the ages of 18 and 34 now listen to Internet radio each week, and weekly Internet radio audiences increased by 50 percent between January 2005 and January 2006 alone.[28] More than six percent of online users, or 9.2 million people, have downloaded a podcast,[29] a relatively new audio download system that did not even *exist* until 2004. Since then, iPods and MP3 players have been transformed from a novelty to a commonplace accessory in modern American culture.

All of this makes plain that regulations tailored to the marketplace conditions of what is, relatively speaking, ancient history have little relevance to today's rapidly evolving and immensely varied media environment. In fact, a continuation of the

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[26] *See* XM Satellite Radio Holdings, Press Release, *XM Satellite Radio Announces Second Quarter 2006 Results* (July 27, 2006), http://www.xmradio.com/newsroom/screen/pr_2006_07_27.html (reporting 6,899,871 subscribers at end of second quarter 2006); XM Satellite Radio Holdings, Press Release, *XM Satellite Radio Holdings, Inc. Announces Second Quarter 2003 Results* (Aug. 3, 2003), http://www.xmradio.com/newsroom/screen/pr_2003_08_07.html (reporting 692,253 subscribers at end of second quarter 2003); Sirius Satellite Radio, Press Release, *SIRIUS Reports Strong Second Quarter 2006 Results* (Aug. 1, 2006), http://investor.sirius.com/ReleaseDetail.cfm?ReleaseID=205864&cat=Earnings&newsroom= (reporting 4,678,207 subscribers at end of second quarter 2006); Sirius Satellite Radio, *SIRIUS Announces Second Quarter 2003 Financial and Operating Results* (Aug. 6, 2003), http://investor.sirius.com/ReleaseDetail.cfm?ReleaseID=152756&cat=earnings&newsroom= (reporting 105,186 subscribers at end of second quarter 2003).

[27] William A. Meyers, Lehman Brothers, *How Much Will Satellite Radio Affect Terrestrial Radio?: Satellite Radio Represents a Material Threat*, at 2 (Feb. 7, 2005).

[28] *See* Edison Media Research, *Digital Platforms Extend Radio Beyond AM/FM Dial*, Apr. 13, 2006, http://www.edisonresearch.com/archives/2006/04/digital_platfor.php.

[29] NetRatings, Inc., *Podcasting Gains An Important Foothold Among U.S. Adult Online Population, According To Nielsen//NetRatings*, Jul. 12, 2006, http://netratings.com/pr/pr_060712.pdf.

regulatory status quo would only further constrain the competitive potential of free, over-the-air broadcast stations that face major competitive challenges in today's market. Since the advent of cable, satellite, and the numerous other new entrants described above, consumers have migrated steadily from broadcast to these primarily subscription-based providers. Television broadcasters, in particular, have suffered in recent years: "[B]roadcast television stations' audience shares have continued to fall as cable and DBS penetration, the number of cable channels, and the number of broadcast networks continue to grow."[30] And the number of television viewers who rely solely on broadcasting has continued to wane, dropping from about 16.2% of television households (or approximately 16.3 million) in 2000[31] to 14% (or approximately 15.36 million) in 2005.[32]

Keeping the broadcast ownership rules up to date with these speeding market forces is not an easy task. But the agency's duty, both as a general matter and pursuant to Congress' clear direction in the 1996 Act, is to "give recognition to [the market] changes which have taken place and to see to it that [ownership rules] adequately reflect the situation as it is, not *was*."[33]

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30 *Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2550 (¶ 93); *see also 2003 Media Ownership Order*, 18 FCC Rcd at 13698 (¶ 201) (concluding that "the ability of local stations to compete successfully in the delivered video market [has been] meaningfully (and negatively) affected," particularly "in mid-sized and smaller markets").

31 *Annual Report on the Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Seventh Annual Report, 16 FCC Rcd 6005, 6008 (¶ 6) (2001).

32 *Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2552 (¶ 17).

33 *2003 Media Ownership Order*, 18 FCC Rcd at 13767 (¶ 367) (internal quotation and citation omitted).

III. IN THE OWNERSHIP DEBATE, ALL RELEVANT VALUES – INCLUDING THE IMPORTANCE OF FREE LOCAL OVER-THE-AIR BROADCASTING – MUST BE CONSIDERED.

We can and should debate how best to revise the ownership rules in light of the phenomenal change that the media marketplace has undergone. But in weighing what to do, *all* important values must be placed on the scale, not just a select few arguments. It must not be forgotten that what is primarily at stake in the debate is the preservation of a local video news, information and entertainment service that is free to all Americans. Congress, the Supreme Court, and the Commission have repeatedly recognized this goal as a government interest of the highest order.[34] And it's time to reaffirm that goal.

Let's recall what that proud tradition of service has meant to the American people thus far in the 20th century and consider what it promises to offer them in the future. *First*, the broadcasting system in the United States is unique in that it is both free of charge to the consumer and universally available. Some 15 million households – many of whom cannot afford cable or satellite subscriptions – rely exclusively on over-the-air television service.[35] In thirteen major television markets, fewer than 50% of television households subscribe to cable.[36] And "analog [over-the-air] households are

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[34] *See, e.g., Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662-663 (1994); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12820-21, 12834 (¶¶ 1-2, 25-31, 57-60) (1997) ("*DTV Fifth Report & Order*").

[35] *See Twelfth Annual Video Competition Report*, 21 FCC Rcd at 2552 (¶ 17); *see also* 1992 Cable Act, Pub. L. No. 102-385, §§ 2(a)(11), (12).

[36] FCC, Media Bureau Staff Report, *Concerning Over-The-Air Broadcast Television Viewers*, MB Dkt. No. 04-210, 2005 WL 473322, at *2 (Feb. 28, 2005).

disproportionately African-American, Hispanic, and low-income."[37] Moreover, unlike the new entrants that offer mainly "niche" programming designed to interest discrete groups, broadcasters' primary programming is by definition meant to hold wide appeal.

The broadcasting system allows *all* Americans to learn from and enjoy basic television and radio programming. From kids in Brooklyn who can't go the Mets game at Shea Stadium but can see it or hear it at home, to grandparents who want to watch the hot new network show that has captivated their grandchildren so they can talk to them about it, broadcasting gives people unfettered access to the ideas and information that have become a key part of our national culture. "Broadcast television's universal availability, appeal, and the programs it provides – for example, entertainment, sports, local and national news, election results, weather advisories, access for candidates and public interest programming such as education television for children – have made broadcast television a vital service."[38]

Indeed, since its introduction in the 1940s, national television has brought us together as a people – with a shared sense of participation in the events that have shaped our country and the world – in a way never before possible.[39] As the FCC has explained, broadcast "[t]elevision has played a critical role in the United States in the second half of

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[37] *Id.*

[38] *Id.* at 12820 (¶ 27). In addition to the benefits to those who rely on broadcasting as their sole source of programming, broadcast services serve a valuable function for cable and satellite subscribers by providing an alternative to, and thus creating a disciplining effect on, the price of subscription programming services.

[39] *See* Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* 243 (2000) ("*Bowling Alone*") ("[T]elevision . . . can sometimes reinforce a wide sense of community by communicating a common experience to the entire nation. . . . Television at its civic best can be a gathering place, a powerful force for bridging social differences, nurturing solidarity, and communicating essential civic information.").

the twentieth century."[40] In 1960, for example, CBS aired the first television debates in a national general presidential election between John F. Kennedy and Richard Nixon; these broadcasts had a profound influence on the elections, as voters took their own measure of the candidates by seeing and hearing them directly. Similarly, in 1963, nationally televised news coverage of police dogs and fire hoses in Birmingham changed forever the views of many Americans about the civil rights movement. Today, people who may share little in common in terms of race, gender, or socio-economic status can talk about the latest edition of CBS's "60 Minutes" or the NCAA basketball playoffs or the weekend's NFL games at the water cooler. In current times of increasing social isolation and fragmentation,[41] the unifying power of television through the provision of shared experience matters more than ever.

Second, broadcasters are a key part of our country's first responder team:

> [O]ne of their most important functions is to provide critical 'real time' information to viewers in times of emergencies, both manmade and natural. Unlike the pay television services, local broadcasters are able to reach nearly 100 percent of a local community. Television broadcasters are thus an essential part of emergency preparedness. Federal, state, and local governments have expressly relied on broadcast television as a means to keep the public informed of critical emergency information. Broadcast television is a longstanding and key component of the Emergency Alert System for official government communication with the public during times of emergency.[42]

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40 *2003 Media Ownership Order*, 18 FCC Rcd at 12810 (¶ 1).

41 *See Bowling Alone* at 27 ("For the first two-thirds of the twentieth century a powerful tide bore Americans into ever deeper engagement in the life of their communities, but a few decades ago . . . that tide reversed. . . . [W]e have been pulled apart from one another and from our communities over the last third of the century.").

42 *Spectrum for Public Safety Users: S. Comm. on Commerce, Science & Transportation*, 108th Cong. 14 (Sept. 8, 2004) (statement of Robert W. Hubbard, Secretary & Treasurer,

Concerns relating to communications in emergency situations are heightened today, given the homeland security issues that our nation faces and in light of the devastation caused by recent national disasters. When the terrorists attacked on 9/11, and again when Hurricane Katrina struck the Gulf Coast, broadcasters were there to convey life-saving information. In New York on September 11, 2001 when the World Trade Center towers collapsed at terrorists' hands, so did the transmitters sitting atop those buildings so vital to television, cellphones and other local communications. WCBS-TV, which had installed emergency back-up equipment on the Empire State Building, was the only New York City television station able to continue providing on-the-scene reports, information and updates to New Yorkers and to the world. And it did so, non-stop, around the clock straight, for several days. In the wake of Katrina, WWL-TV in New Orleans maintained its broadcast signal and provided non-stop coverage of the disaster.[43] Other stations evacuated to other cities in order to stay on the air.[44]

Third, broadcasters have long been among the most important providers of local news and information. Many Americans with access to other delivery methods rely on broadcast television as a critical source of local news. "Seventy-seven percent of U.S. adults watch local broadcast news."[45] And "[f]ifty-one percent of Americans get their

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Association for Maximum Service Television), http://commerce.senate.gov/hearings/testimony.cfm?id=1300&wit_id=3782.

[43] Dave Walker, "The Perfect Storm Coverage: Broadcasters Shine During New Orleans's Darkest Days," *Times Picayune*, Sept. 24, 2005, at C-1.

[44] *Id.*

[45] *Most Get News From Broadcasters*, Feb. 25, 2006, http://feeds.bignewsnetwork.com/?sid=284c6cdf1656ef89; *see* Harris Interactive, *The Harris Poll #20: Seven in 10 U.S. Adults Say They Watch Broadcast News at Least Several Times a Week*, Feb. 25, 2006, http://www.harrisinteractive.com/harris_poll/index.asp?PID=644.

news *every day* from local TV news, topping a list of information sources in today's fractured media landscape."[46] Indeed, in an increasingly competitive media marketplace, local news is the hallmark of television broadcasting. It is broadcasters' signature product, one that distinguishes them from national networks and cable and satellite providers. But it does not come cheap. Broadcast stations make huge investments in people, equipment and technology in order to deliver live, breaking news and information to their communities. In short, though improvements can always be made in broadcasters' execution of localism, there can be no question that they are still the preeminent providers of that important content in communities across America. And they are, because, until now, they have been able to make that financial investment and commitment.

In other matters of public interest, such as elections, broadcasters remain the most important source of information for the voters. Broadcasts of election debates, as noted above, are now an indispensable part of the political process. And election coverage, both local and national, is a staple of broadcast programming, which voters prefer above all other sources for information about the democratic process.[47]

Fourth, over-the-air broadcasting is a service infused with public interest responsibilities and a commitment to local service not borne by the other media with which broadcasters must compete. Broadcasters' emphasis on local news fosters a direct

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[46] Paul J. Gough, *Gallup: People Want Local News*, The Hollywood Reporter.com, Dec. 22, 2004, http://www.hollywoodreporter.com/thr/television//brief_display.jsp?vnu_content_id=1000741092 (emphasis added).

[47] Pew Research Center for People and the Press, *Cable and Internet Loom Large in Fragmented Political News Universe*, Jan. 11, 2004, http://people-press.org/reports/display.php3?ReportID=200.

and continuing interaction between them and their communities. In 2005, local radio and television stations generated a record $10.3 billion in public service funds, through a combination of airtime donated for public service announcements and money raised for charity and disaster relief.[48] In particular, broadcasters across the nation took to the airwaves to generate charitable fundraising that totaled more than $1 billion after Hurricane Katrina and the Southeast Asian tsunami.[49]

In this proceeding, all of these many public interest benefits hang in the balance. Without the basic freedom to compete meaningfully against new media market entrants, broadcasters will be consigned to a slow death by antiquated government regulation. This, too, must be fully and fairly considered in the ownership debate.

CONCLUSION

No other competitor in the media market has been so hobbled, for so long, by government regulations as the broadcaster. Regrettably, as the technological world has marched on, these rules have remain locked in the past, like a deposed ruler who still denies the fact of the uprising that turned him out of power. The historic contributions of broadcasters, and those that their future holds, must be included in the regulatory equation here. For without some form of relief to allow broadcasters to compete effectively in the modern age, these contributions are put in ever-increasing jeopardy. The loss of the time-honored cultural tradition of broadcasting and its vast digital

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48 *See* http://www.broadcastpublicservice.org (last visited Oct. 29, 2006).

49 *See* National Report on Broadcasters' Community Service, June 12, 2006, at 3, 5, 48, http://www.broadcastpublicservice.org/images/nationalreport/NationalReport2006.pdf.

potential would be tragic not just for broadcasters but for all the American viewing and listening audience.

Respectfully submitted,

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