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

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review –	)	MB Docket No. 06-121
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
2002 Biennial Regulatory Review –	)	MB Docket No. 02-277
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202	)	
of the Telecommunications Act of 1996	)	
	)	
Cross-Ownership of Broadcast Stations	)	MM Docket No. 01-235
and Newspapers	)	
	)	
Rules and Policies Concerning Multiple	)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations	)	
in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

Reply Comments of the
American Federation of Labor and Congress of Industrial Organizations
and the
Department for Professional Employees, AFL-CIO

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SUMMARY

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Department for Professional Employees, AFL-CIO (DPE) file these reply comments in response to certain comments on the Federal Communications Commission *Further Notice of Proposed Rule Making* (*FNPRM*) released July 24, 2006. The findings presented in the AFL-CIO/DPE comments, and those of union affiliates and consumer groups, are in direct contrast with positions and arguments presented in the comments submitted by broadcast and newspaper industry associations and companies. The media industry commentators call for a loosening, if not elimination, of most ownership limits in the Commission's rulemaking, based on a number of claims. The AFL-CIO/DPE reply comments argue that these claims are based on incorrect premises, and provide evidence that the industry commentators have failed to make the case that ownership rules no longer are required in the 21st century media market.

The Internet and Multichannel Outlets Are Not Substitutes for Traditional Media, Including Broadcast and Newspapers, Especially for Local News, Information and Entertainment. The industry commentators claim that there is a continuing proliferation of media outlets (multichannel video and audio, the Internet, other new digital media) that compete with and substitute for traditional broadcast and newspaper media for both information and entertainment. While the proliferation of media sources is not disputed, the primary issue before the Commission is whether the new outlets compete with and substitute for traditional broadcast and newspaper outlets in the delivery of *local* news and entertainment. The evidence strongly indicates that they do not.

- *Traditional Broadcast and Newspaper Outlets Remain the Primary Source of Local Media Markets.* The Commission appropriately determined that its primary focus should be on how media ownership structures affect local news output. Newspapers and television by far are the most frequent and important source of local news and information, followed by local weeklies and radio. A recent Pew Center survey reported that 61 percent of respondents identified newspapers as their primary source of local and community news. In contrast, cable and the Internet are not important sources of local news and information. For example, there are only 22 local cable news channels in the nation, which serve only 10-15 percent of local media markets. The Commission itself determined in its *2002 Biennial Review Order* not to give weight to cable television as a source of local news.
- *The Internet Is Not an Alternative to Local Broadcast and Newspaper Media For Local Information, News and Entertainment.* Noting that

almost 30 percent of Americans do not have Internet access, the *Prometheus* Court discounted the Internet's relevance as an important, independent source of local news and information, and empirical evidence shows that this position is well founded. The Internet is relied upon for national and international news and information far more than it is for local news and information. Even for national and international news, it is primarily younger respondents who use it, and, for local news and information, even among the young, the Internet makes, at most, a small contribution. At best, the Internet is a supplement for local news and information. Those who do rely on the Internet for their news, overwhelmingly go to web sites of traditional media, local TV and daily newspapers and national TV. In addition, new web-based information applications, such as blogging, while vigorous arenas of speech, are not journalistic undertakings, and therefore do not constitute independent media voices.

- *Local Ownership of Traditional Radio Matters to Maintaining the Diversity and Unique Character of Local Radio Musical Programming, Which New Media Outlets, Such as Satellite and Internet Radio Cannot Adequately Provide.* No new technology has the penetration that radio has. Approximately 94 percent of Americans listen to radio each week for a wide range of music, news, information, public affairs and other media services. The evidence shows that new media, such as Internet radio, satellite radio, podcasting, and portable digital music devices (including cell phones) cannot substitute for the public benefits traditional terrestrial radio provides at the local level. Rather than replacing, the media technologies can complement each other. The opportunities for new technologies to foster diversity and localism in musical programming may be greater in markets which preserve the competitive nature of media markets, rather than in markets characterized by consolidation and conglomeration.

The Proliferation of Alternative Outlets (Multichannel Video and Audio, Internet) Has Not Eliminated the Need For Media Ownership Regulation, and Ownership Limits Are Still Required to Preserve Diversity, Localism and Competition in Media Markets. Industry commentators claim that the proliferation of new media outlets undercuts the constitutional basis for regulating media ownership—that ownership rules are necessary to ensure competition among "antagonistic" media sources to protect diversity and localism. However, if the new multichannel, Internet and other digital media providers do not qualify as independent sources of local news and information, as demonstrated in these reply comments, the rationale for arguing that media ownership restrictions should further be loosened (or eliminated) does not hold. Since it remains important that the Commission maintain its focus on preserving independent "antagonistic" news sources in its rulemaking, it must continue to be concerned about media ownership structures in traditional broadcast and newspaper markets. In the end, the evidence supports the conclusion that, in the face of proliferating numbers of new kinds of media, ownership rules that limit concentration in the television and radio markets need to be maintained, if not strengthened.

On The Whole, Broadcasters and Newspapers Are Financially Healthy, and Economic Considerations Do Not Justify Reducing Ownership Limits. The industry commentators claim that traditional broadcast and newspaper firms are in financial trouble, a problem made worse by having to compete against growing numbers of non-traditional media outlets for advertising dollars, threatening the economic viability of traditional broadcast and newspaper properties. They further argue that allowing ownership concentrations would result in greater efficiencies and therefore greater economic health of media companies. These contentions are directly contradicted by evidence presented by consumer and union commentators. Operating profit margins over the past year at large newspaper and television chains were extremely robust. Newspaper margins average 20 percent, and local television stations typically generate 40 to 50 percent margins, compared to 11 percent for Fortune 500 companies. Although print circulation dropped in recent years, online newspaper readership increased by 15.8 percent and online advertising revenues at public newspaper companies grew 30-60 percent in 2005. Television stations' sales also grew from $1.2 billion in 2004 to $3.2 billion in 2005. Newspaper and television properties are selling at healthy prices, with cash flow multiples at which numerous properties have been sold over the past couple of years consistent with, or higher than, what is typical of these sectors.

Consolidation and Cross-ownership Have Resulted in the Deterioration of Local Media Quality and Content in Both News and Entertainment, Despite the Claims of Media Ban Opponents to the Contrary. The industry groups argue that because of greater efficiencies resulting from consolidating operations, commonly owned media properties produce more and higher quality news, information, and entertainment than individually-owned media outlets. Evidence from union and consumer commentators, however, refutes these claims.

- *Common Ownership of Media Properties Has Resulted in Extensive Commingling of News Operations, Leading to Diminished Diversity and Journalistic Quality.* Survey and other data show that common ownership of newspaper/broadcast combinations in the same market and television duopolies and triopolies result in extensive commingling of news operations, reducing the number of diverse and competing news outlets in a local market. Surveyed union members employed in local news operations report numerous examples of commingling of news sources, reporting, and cross-promotion. They provided compelling evidence that newspaper/broadcast co-ownership reduces diversity by creating incentives to eliminate separate newsgathering operations to achieve efficiencies. Outlets that would have competed for news sources and stories now share sources, assignments, staff, and editors. Evidence shows a similar commingling of operations by commonly owned local television stations (duopolies and triopolies), where station owners combine management, programming, and news operations. Academic research also shows that common ownership reduces competition in newsgathering.

- *Duopolies Reduce Local News Content and Quality.* The industry contention that television duopolies result in programming benefits is based on faulty reasoning. Evidence shows that same-market combinations can lead to diseconomies of scale, and less competition reduces incentives for merged entities to seek efficiencies. There also is little evidence that broadcasters will reinvest efficiency-enabled costs-savings to better local information programming. Consolidation and conglomeration create a "largest market share/lowest common denominator" ethic undercutting stations' ability to deliver culturally diverse, locally-oriented and public interest programming. In fact, empirical evidence shows that duopolies do not provide superior local programming. Studies have found that duopoly stations air significantly less local news than non-duopoly stations and that national chains and conglomerates reduce local-oriented content. Indeed, the data suggest that *competition*, not concentration, has a positive correlation with informational programming and with diversity.
- *Media Cross-ownership Doesn't Result in Improved Local Content and Quality in Local News Coverage.* The benefits of local news and public affairs programming from cross-ownership, touted by industry commentators, are shown to be nonexistent. Studies find that cross-owned stations did not broadcast more local news than other stations that provided news, and that cross-ownership has had no substantial impact on either the incidence or the quantity of local affairs programming on commercial television stations. Rigorous empirical evidence shows that newspaper/TV combinations and duopolies do not result in increases in the quantity or quality of local news and information available to the public. Other studies show that neither of the two studies Commission relied upon in its earlier conclusion, that media cross-ownership can enhance quality, provided a valid basis for that conclusion. The very data that the Commission relied on to lift the newspaper-TV cross-ownership ban, when reanalyzed by its own staff, contradicts this earlier result.
- *Local Control of Terrestrial Radio Is As Vital for Preserving Diversity and Local Character in Local Radio Musical Programming As It Is for News*

and Information. Radio ownership concentration has led to increased homogenization of musical programming and reduced opportunities for local artists. By several measures radio ownership concentration has grown substantially, and localness of radio ownership has declined, since the 1996 Telecommunications Act loosened radio ownership limits. Empirical studies counter broadcaster claims that ownership concentration and larger radio station groups result in greater diversity, quality and local content in radio programming. A detailed Future of Music Coalition (FMC) study of programming formats shows that just fifteen formats make up 76 percent of commercial radio programming. FMC also shows that smaller station groups, not larger station groups, provide wider variety in programming: large radio station groups focus only on six format categories—Adult Contemporary, Album-Oriented Rock/Classic rock, Contemporary Hit Radio (Top 40), Country, News, and Rock—while less common format categories are underrepresented. Only small station groups almost exclusively offer niche formats such as Classical, Jazz, and Folk, where they exist. Small group stations also sustain local public-interest programming, and are the predominant providers of children's, religious, foreign-language and ethnic-community programming. Other evidence shows how the radio ownership concentration and the resulting homogenization of radio programming prevent new creative artists from finding a voice in local radio markets.

The Cross-ownership Ban Needs To Be Maintained to Preserve Diversity and Localism in News and Entertainment. The industry commentators strongly argue that the proliferation of media outlets have made cross-ownership rules (on broadcast-newspapers and TV-radio combinations) inequitable and outdated. In contrast to this claim, evidence provided throughout the reply comments, both generally and specific to cross-ownership, provide ample support for maintaining the cross-ownership ban. First, the proliferation of new non-traditional media outlets has not reduced the importance of local broadcast and newspapers in providing independent "antagonistic" sources of local news, information and entertainment. Allowing more cross-ownership would diminish these voices. Moreover, the economic rationale used for allowing cross-ownership was shown to be unfounded, as were the arguments that cross-ownership leads to better and more local content, as well as greater innovation in media services. Indeed, allowing more cross-ownership could lead to poorer economic performance, reduced quality and local content, and diminished capabilities to innovate among cross-owned media properties.

In sum, the evidence clearly does not warrant any weakening of ownership caps, as argued by the media industry. On the contrary, it provides a strong rationale for why it is in the public interest that the FCC retain and strengthen its current ownership limits for the sake of maintaining a media industry with as many small, independent, local broadcast and newspaper outlets as possible.

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I. INTRODUCTION

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Department for Professional Employees, AFL-CIO (DPE) file these reply comments in response to certain comments on the Federal Communications Commission *Further Notice of Proposed Rule Making* (*FNPRM*) released July 24, 2006. The *FNPRM* asked for public input on how to address the issues raised by the opinion of the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC*[1] and whether the media ownership rules are "necessary in the public interest as the result of competition." On June 2, 2003, the Commission adopted a Report and Order in its third biennial review of its broadcast ownership rules (i.e., the "*2002 Biennial Review Order,*" referred to here as the "*2002 Order*").[2] The *2002 Biennial Review Order* addressed all six of the Commission's broadcast ownership rules: the national television multiple ownership rule, the local television multiple ownership rule, the radio/television cross-ownership rule, the dual network rule, the local radio ownership rule, and the newspaper/broadcast cross-ownership rule. In *Prometheus*, the Third Circuit Court affirmed some of the Commission's decisions in that order, but remanded several others for further Commission justification or modification.

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1 *Prometheus Radio Project, et al. v. Federal Communications Commission,* 373 F.3rd 372 (2004) ("*Prometheus*").

2 *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13711-47(2003) ("*2002 Order*").

The AFL-CIO is a federation of 54 national and international unions representing nearly nine million working women and men nationwide and another one million members of the AFL-CIO affiliate Working America. The Department for Professional Employees, AFL-CIO (DPE) represents 23 national AFL-CIO unions that include professional, technical, and other highly skilled white-collar workers in their bargaining units as well as musicians and vocalists who create sound recordings and soundtracks. These DPE unions collectively represent over 4 million union households, with nearly 10 million television viewers in them who are consumers of news and entertainment programming. Among the DPE unions are 11 with nearly one-half million media professionals, artists, technicians and support workers who are involved in all phases of news and entertainment programming and artistic creation.

The AFL-CIO and DPE ("AFL-CIO/DPE") reiterate the principles stated in their comments, that were affirmed in the comments of affiliated unions and other citizen commentators, and largely acknowledged as important goals by the Commission and affirmed by the *Prometheus* Court, namely that viewpoint diversity, localism and competition must be maintained as primary goals of the Commission's rulemaking. The AFL-CIO/DPE comments also presented evidence that media and news markets are highly concentrated and will become even more so if media ownership rules are relaxed; media ownership concentration reduces viewpoint diversity and diminishes localism in news media and in musical programming; and, that substitutability between media types (television, radio, newspaper, cable, Internet) is very limited, and not a valid justification for weakening media ownership rules. Finally, the comments concluded that based on the substantial evidence of how media concentration erodes diversity, localism and competition in news and entertaining programming, the Commission should retain or strengthen the current television and radio ownership limits, and preserve the limits on broadcast-newspaper and TV-radio cross-ownership, whether they are treated as separate rules or a combined media cross-ownership rule. In addition, they argued that the Commission should retain the dual network rule and that its rulemaking should be designed to preserve, protect and promote minority ownership of media properties.

The findings presented in the AFL-CIO/DPE comments, as well as those of union affiliates and consumer groups, are in direct contrast to many of the key positions and arguments presented in the comments submitted by broadcast and newspaper industry associations and companies. Specifically, the industry comments call for a loosening, if not elimination, of most ownership limits in the Commission's rulemaking, based on a number of claims:

- There is a continuing proliferation of media outlets, in particular multichannel video and audio and Internet, that directly compete with and substitute for traditional media such as broadcast and newspapers for both information and entertainment, including in local media markets;

- The proliferation of non-broadcast video and radio, Internet and new forms of digital media has undercut the constitutional basis for regulating media ownership—i.e., the proposition that ownership rules are necessary to ensure adequate competition among "antagonistic" media sources in order to protect diversity and localism;
- Many broadcasters and newspapers, especially in local markets, are in financial trouble, a problem made worse by having to compete against growing numbers of non-traditional media outlets for advertising dollars;
- Because of greater efficiencies that result from consolidating operations, commonly owned media properties produce more and higher quality news and information than individually-owned broadcast and newspaper outlets;
- Because of the proliferation of media outlets, cross-ownership rules (on broadcast-newspapers and TV-radio combinations) have become inequitable and outdated, and prohibiting cross-ownership stifles the development of innovative media services (e.g., online and digital services).

The AFL-CIO/DPE reply comments below address these claims, arguing in some instances that they are based on incorrect premises, and providing evidence that the media industry commentators have failed to make the case that ownership rules are no longer required in the 21st century media market.

II. THE INTERNET AND MULTICHANNEL OUTLETS ARE NOT SUBSTITUTES FOR TRADITIONAL MEDIA, INCLUDING BROADCAST AND NEWSPAPERS, ESPECIALLY FOR LOCAL NEWS, INFORMATION AND ENTERTAINMENT

The broadcast and newspaper industry groups (or "Deregulatory Commentators" to paraphrase the *Prometheus* Court) largely base their arguments for weakening or eliminating ownership rules on the apparently growing proliferation of new, non-traditional media sources of information and entertainment. Specifically, they point to the emergence and spread of multichannel video and radio (cable, satellite) and Internet outlets, which compete with and substitute for the use of traditional media, including broadcast television and radio and newspapers. The Internet, in particular, has continued to evolve as a fundamental source of both national and local news and information, and broadband, new video and Internet applications have increased the number of independent information sources.

The National Association of Broadcasters ("NAB") notes that the "proliferation of broadcast outlets and the rise of new multichannel video and audio programming distributors and the Internet have produced an exponential increase in programming and service choices available to viewers and listeners."[3] The Newspaper Association of America ("NAA") similarly claims that, "today consumers have virtually limitless choices in news and informational content on every subject imaginable, delivered in an ever-expanding variety of forms to suit every taste and schedule."[4]

Both emphasize the importance of the Internet as a competitor and substitute for traditional media sources. The NAB argues that, "In the Internet age, every local station is potentially competing against thousands of radio stations from around the country or world, and estimated monthly audiences for Internet radio are over 52 million." In addition, terrestrial radio stations are facing growing competition from satellite and "a host of mobile gadgets," for listeners, whether "in automobiles or outside the home or office."[5] The NAB further identifies user-generated video and web-logs or blogs as new competitors in the media marketplace.[6]

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[3] Comments of the National Association of Broadcasters ("NAB"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006, iii.

[4] Comments of the Newspaper Association of America ("NAA"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006, v

[5] NAB, v.

[6] *Id.,* 17ff.

In a similar vein, Clear Channel, the mammoth national radio station chain, argues that satellite and Internet radio are increasingly competing with terrestrial radio broadcasting, for audience share and advertising revenues. Yet, it complains, "None of the new competitors to free, over-the-air radio . . . are shackled by government-imposed limitations on the number of outlets that can be owned."[7]

The NAA also notes the wide range of options created by the Internet, "from the websites of traditional media outlets—which place far more innovative and extensive information online than is feasible via traditional print or broadcast means—to sites maintained by an ever-expanding range of wholly independent 'media outlets'. . . This remarkable medium now plays a vital role in the local news and informational marketplace."[8] In short, as the NAB concludes, the proliferation of all these non-traditional media sources presents a "new and unprecedented opportunity for individual citizens and small groups, including minority and non-mainstream groups, to both obtain and to offer information and entertainment to the world at large."[9]

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[7] Comments of Clear Channel Communications, Inc. ("Clear Channel"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006, 17.

[8] NAA, v.

[9] NAB, 22.

a. EVIDENCE SHOWS THAT NEW TYPES OF MEDIA OUTLETS ARE NOT SUBSTITUTES FOR TRADITIONAL BROADCAST AND NEWSPAPER OUTLETS IN LOCAL MEDIA MARKETS

There is little dispute that there has been a growing proliferation of media sources, including multichannel video and satellite stations, and especially Internet and other alternative digital media services. However, although the broadcast and newspaper industry groups make this proliferation the basis for their claim that ownership rules have become outmoded, it is in fact largely beside the point with respect to the matters now before the Commission, as remanded by the Third Circuit Court. As noted in the comments of Consumers Union, Consumer Federation of America and Free Press ("CUCFA"), "Congress and the courts have established the principle that media ownership limits should promote the goal of the 'widest possible dissemination of information from diverse and antagonistic sources,'" and the Commission "has been instructed to 'focus attention on local media and assess the manner in which people gather news and information.'"[10] That is, the Commission should primarily be concerned about whether the numerous, new media outlets represent a growth of independent information sources that compete with and substitute for

[10] Comments of the Consumers Union, Consumer Federation of America and Free Press ("CUCFA"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006, 10.

traditional media outlets in the delivery of local news and entertainment. The evidence strongly indicates that the answer is no—the new outlets do not constitute a substitute for traditional providers in local media markets.

In its comments for these proceedings, CUCFA submitted a compendium of studies providing substantial empirical support for its arguments[11], which are largely in agreement with the comments of AFL-CIO/DPE, affiliate union and other consumer organizations. Study 7 of the compendium, "Media Usage: Traditional Outlets Still Dominate Local News and Information,"[12] shows that newspapers and television are by far the most frequent and important source of local news and information, followed by local weeklies and radio. Four traditional sources, in particular—local TV, local dailies and weeklies and radio—dominate the local news landscape. A survey conducted for the study reported that these sources were mentioned by 88 percent of the respondents as the most frequently used source of local news and information, and 72 percent said they were the second most frequent sources. These sources were also cited as most important by 82 percent of the respondents and as second most important by 71 percent. Local newspapers and local television were about equal in the number of responses, each accounting for about one-third the mentions, while radio and

[11] CUCFA, *A Compendium of Public Interest Research on Media Ownership, Diversity and Localism,* Filed with the FCC October 23, 2006. ("*Compendium*").

[12] Mark Cooper, Study 7, "Media Usage: Traditional Outlets Still Dominate Local News and Information," *Compendium*, 117-133.

local weeklies also received almost equal numbers of mentions, each accounting for about 10 percent.

Newspapers are the most important source of local news, according to the survey. Local newspapers (dailies plus weeklies) were the first mentions of 57 percent of the respondents compared to only 15 percent for national news. Television is more commonly used for national news (62 percent) compared to local news (27 percent), though broadcast television is still quite important for local news, compared to cable, Internet, radio and magazines. The study also cites another recent survey by the Radio-Television News Directors Foundation (RTNDF) that reached similar conclusions to surveys discussed in the study, though it didn't distinguish between national and local news. The RTNDF survey showed that local TV, local newspapers, and national TV are by far the three most important sources of news, followed by local radio, the Internet and finally, national newspapers.[13]

In a similar vein, the Communications Workers of America ("CWA") noted that the *Prometheus* court remanded for consideration the Commission's local media ownership rules, and that the FCC's deliberations should focus primarily on the structure of local markets for news and information.[14] CWA writes:

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[13] *Id.,* 132-133.

[14] Comments of the Communications Workers of America, The Newspaper Guild/CWA, National Association of Broadcast Employees and Technicians/CWA ("CWA"), *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, 2002 Biennial Regulatory Review—Review of the*

> "In the *2002 Biennial Review Order*, the Commission concluded that viewpoint diversity is most easily measured through news and public affairs programming, which also relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media. Based on this reasoning, the Commission appropriately determined that it should focus on how media ownership structures affect local news output, which is more limited than national news outlets."[15]

The CWA reviewed both traditional and non-traditional media as sources of local news and information, and found that "No other type of media comes close to the penetration level of local television and the newspaper for news and information, particularly for <u>local</u> news and information."[16] Citing NAA statistics, CWA reported that more than half the adult population (51.6 percent) reads a daily newspaper and almost two-thirds (59.6 percent) read a Sunday newspaper. According to data from a FCC-commissioned study, 62 percent read a daily newspaper and 62.8 percent identified the newspaper as a source for local news and information in the past seven days. These findings are consistent with a more recent Pew Center survey, according to CWA, which reported that 61 percent of respondents identified newspapers as their primary source of local and community news.[17]

Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006, 17.

[15] *Id.,* 17.

[16] *Id.,* 19.

[17] *Id.,* 18.

CWA reports further that Americans rely on television as another primary source of local (and national) news and information. It cites a FCC-sponsored study that found that 59.6 percent of Americans watch evening news and 64 percent of Americans watch nightly news. A Nielsen survey sponsored by the FCC for the *2002 Biennial Review Order* proceedings found that 84.8 percent of respondents identified television as a source for local news and information in the past seven days. CWA also cites a 2006 Pew Research Center survey, which found that 34 percent of respondents turn to television for local and community news, while two-thirds turn to television for national and international news.[18]

Cable, however, is not an important source of local news and information. CWA notes that there are only 22 local cable channels in the nation, of which five are in the New York City area. These cable news channels serve only 10-15 percent of local media markets. CWA further notes that respondents in surveys are likely to confuse broadcast and cable television, which lowers the actual extent cable is relied on for local news coverage. CWA consequently concludes that the "Commission correctly determined in the *2002 Biennial Review Order* to give no weight to cable television as a source of local news in devising its diversity index," and noted the Third Circuit's affirmation of the Commission's "reasoned decision" to

[18] *Id.,* 19.

discount cable… because of serious doubts as to the extent that cable provides independent local news.[19]

b. THE INTERNET IS NOT AN ADEQUATE ALTERNATIVE TO LOCAL BROADCAST AND NEWSPAPER MEDIA FOR LOCAL INFORMATION, NEWS AND ENTERTAINMENT

Study 8 of the CUCFA compendium, "The Internet and Local News and Information,"[20] reminds us that "*Prometheus* emphasized the importance of independent sources of local news and information, and questioned the relevance of the Internet as such a source," and notes that "empirical evidence shows that this position was well founded." In particular, it concludes that reliance on the Internet for national and international news and information is much greater than for local news and information; that even for national and international news, it is primarily younger respondents who use it; and, for local news and information, even among the young, the Internet makes, at most, a small contribution.

In a survey conducted for the study, "the Internet was found to be at best a supplement for local news and information that is relied upon by a very small percentage of the population (4% first mention, 7% second mention)." Even those who rely on the Internet for much of their news, overwhelmingly go to web sites of traditional media, local TV and daily newspapers and national TV. Among the 11 percent of respondents who said

[19] *Id.,* 20.

[20] Mark Cooper, Study 8, "The Internet and Local News and Information," *Compendium*, 134-151.

that the Internet is their first or second most frequent source of news, the websites of local TV and daily newspapers account for about half (51%) of the primary sites they visit most frequently. Sites not affiliated with a traditional media outlet (blogs, listservs, alternative news sites and others, including aggregators) account for only 17 percent of the sites visited most and second most.

In addition, the study notes that the *Prometheus* court recognized that "much of the activity on the Internet lacks the attributes of journalistic enterprise." The most prominent examples of news sources on the web, such as portals like Google, involve pure aggregation, which involve little or no reporting, editing or allowance for response. Meanwhile, blogging activity, although a vigorous arena of speech, shows it is not primarily a journalistic undertaking; it involves personal statements and accounts that do not involve reporting, fact checking or editing, and is largely a form of personal expression to people whom the blogger knows. That is, although blogging provides valuable communications and networking functions "it is just not local news and information for the vast majority of citizens."[21]

CWA similarly observes that the Court was "most troubled by the Commission's treatment of the Internet as a source of viewpoint diversity." The Court found that the decision to give substantial weight to the Internet in its diversity index was not "rational" because "the Internet is not primarily

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[21] Mark Cooper, Study 8, 151.

an independent source of local news." The Court emphasized that websites that repackaged the news are not independent sources of information and therefore do not contribute to viewpoint diversity.[22] As in the CUCFA study, CWA cited a 2006 Pew survey that found that among those who go online to get their news, 45 percent go to the site of aggregators (Yahoo, Google, AOL), 32 percent to TV networks (such as CNN, MSNBC, ABCnews, etc) and 29 percent to newspaper sites. A Project for Excellence in Journalism study found that of the top 20 online news sites, 80 percent are owned by the 100 largest media companies.[23]

CWA reported on its own survey of journalists represented by The Newspaper Guild/CWA ("TNG/CWA") regarding the level of independent content on the newspaper websites where they work. The survey involved journalists employed by newspapers serving large, medium, and small markets. It notes that these websites "are owned by the local newspaper (or in a few instances, the grandfathered commonly owned newspaper/television outlets)," and since the Commission has determined that ownership matters for viewpoint diversity, these websites therefore should not be counted as independent sources of news for diversity purposes.[24] In most cases, the respondents

> "reported that 'almost all' of the news content posted on the newspaper website is generated by newspaper employees, repurposed

[22] CWA, 21.

[23] *Id.,* 22.

[24] *Id.,* 24.

> for the web. Most if not all the text on the newspaper website is written by the newspaper reporters. Most small and medium market newspaper websites have none, one, or two dedicated web employees, whose job function is primarily to re-design content and post material generated by the newspaper reporters or wire services on the website."[25]

Finally, the Third Circuit Court discounted the Internet because almost 30 percent of Americans still do not have Internet access, and for this reason the Commission could not justify inclusion of the Internet in its diversity index. Because broadband Internet consumers are more likely to use the Internet as a news source, a "broadband digital divide based on income and urban/rural geography means that a significant portion of lower-income and rural Americans are much less likely to access the Internet for any type of news." Thus, CWA concludes, "There is no rational explanation for including the Internet as an independent source of local news and information."[26]

c. LOCAL OWNERSHIP OF TRADITIONAL RADIO MATTERS TO MAINTAINING THE DIVERSITY AND UNIQUE CHARACTER OF LOCAL RADIO MUSICAL PROGRAMMING, WHICH NEW MEDIA OUTLETS, SUCH AS SATELLITE AND INTERNET RADIO CANNOT ADEQUATELY PROVIDE

The new media also cannot substitute for the valuable public benefits traditional terrestrial radio provides, especially at the local level. As a recent Future of Music Coalition ("FMC") study reports:

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[25] *Id.,* 22.

[26] *Id.,* 23.

> "With the onset of internet radio, satellite radio, podcasting, and portable digital music devices (including cell phones) over the past decade or so, some observers mistakenly consider traditional, terrestrial radio to be of waning importance. Traditional radio companies have actually begun making the transition to digital broadcasting, sometimes called 'HD Radio,' but this transition has happened slowly and the results remain uncertain. But digital or not, radio remains one of our most valuable media."[27]

Most significantly, it adds, "No new technology has the penetration that radio has. Approximately 94 percent of Americans listen to radio each week. Compare that to the 42 percent of US household that had high-speed internet access as of March 2006." It lists the several "vital" ways traditional radio is important, from offering DJed sequences of songs, live concerts, news and talk shows, education and how-to guides. It points out the emergency authorities' reliance on radio during disasters like hurricanes, fires, and chemical spills. Indeed, even Clear Channel, in its comments, notes the remarkable and critical role free radio played during the floods along the Gulf Coast in the wake of Hurricane Katrina. "When electricity failed, when television broadcasting was impossible, when Internet connections were down and no one could access the web anyway because they had no source of power" it exclaims, "free radio worked—and worked well—to communicate to those affected by the crisis the information that they needed to survive."[28]

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[27] Peter DiCola, *False Premises, False Promises, A Quantitative History of Ownership Consolidation in the Radio Industry,* Future of Music Coalition, Ann Arbor, MI: December 2006, 11.

[28] Clear Channel, 53.

The FMC study further observes that the new technologies are not likely to penetrate deeply into the traditional radio markets. For example, it reports, "Even the vast majority of early adopters of new audio technologies expect to maintain their current habits of listening to traditional radio."[29] While the new technologies are creating "exciting opportunities" for musicians and consumers, they are not a substitute for traditional radio in creating valuable musical, news and public services, especially in local markets. For example, the FMC study states: "satellite radio can program in more granular musical genres, but cannot build local connections between musicians and communities like traditional radio does. Webcasts might have a local focus, but they lack the audience of traditional radio and cannot transmit to your car. Podcasts provide a portable means to hear music, news, or other audio programs in your car or anywhere else. But licensing copyrighted music for podcasts presents a significant hurdle."[30]

Indeed, the media technologies are not replacements for each other, but can complement each other. The FMC report points out that the new technologies "have helped musicians and individual listeners route around the bottlenecks that consolidation has caused in traditional media like radio." But ultimately these effects will depend on how radio companies respond to these business challenges—and whether policies promote the best outcomes

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[29] Peter DiCola, 12, see especially n.8.

[30] *Id.,* 12.

for the public.[31] That is, the opportunities for these new technologies to foster diversity and localism in musical programming (indeed in news programming as well) may be greater in markets which preserve the competitive nature of media markets, rather in markets characterized by consolidation and conglomeration. In fact, media consolidation in the end can actually hinder optimal innovative applications of the new technologies, which only smaller, localized markets can provide.

III. The Proliferation of Alternative Outlets (Multichannel Video and Audio, Internet) Has Not Eliminated the Need For Media Ownership Regulation, and Ownership Limits Are Still Required to Preserve Diversity, Localism and Competition in Media Markets

The Deregulatory Commentators claim not only that the proliferation of multichannel, Internet and other digital news and entertainment sources competed with and substituted for traditional broadcast and newspaper media, it eliminated the need for ownership rules established to preserve diversity, localism and competition in media markets. The "dramatic changes to the media landscape produced by the development of the Internet and digital technologies," the NAB argues, has made the "long-standing controversies over traditional media outlets . . . increasingly anachronistic."[32]

The NAB bases its argument on Section 202(h), which "explicitly requires the repeal or modification of existing ownership regulations if they

[31] *Id.*

[32] NAB, 22.

are no longer necessary in the public interest as the result of competition."[33] On the one hand, the proliferation of media outlets ensures consumers have wide access to a large number of independent, competing sources of entertainment and information. On the other hand, the profound impact this proliferation has had on the structure of the media industry prevents traditional media outlets from dominating national or local media markets. Moreover, the NAB argument goes, in the multichannel environment dominated by consolidated cable and satellite system operations, broadcasters are not able to obtain and exercise undue market power. Thus, "the Commission should find that a further liberalization of the decade-old radio ownership restrictions would serve the public interest."[34]

However, if the new multichannel, Internet and other digital media providers do not qualify as independent sources of local news and information, as was demonstrated in the section above, the broadcast and newspaper industries' rationale for arguing that media ownership restrictions should be further loosened (or eliminated) does not hold. Since it remains important that the Commission maintain its focus on preserving independent "antagonistic" news sources in its rulemaking, it must continue to be concerned about the media ownership structures in the traditional broadcast and newspaper markets. As argued in the AFL-CIO/DPE comments, and those of CUCFA, CWA and other citizen commentators—and

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[33] *Id.,* i.

[34] *Id.,* v.

affirmed both by the Commission and the courts—media ownership matters in preserving diversity, localism and competition especially in local media markets. The proliferation of media outlets, few of which are genuine substitutes or compete with traditional media as sources of local news and information, does not alter the need for rules that limit consolidations that result in the loss of independent media voices. The high—and increasing—levels of concentration of media ownership in television, radio and newspapers, especially at the local level, has been well documented in the AFL-CIO/DPE, CWA, CUCFA, and other affiliate union and citizen comments. Consequently, as argued in these comments, ownership rules that limit concentration in the television and radio markets need to be maintained, if not strengthened.

IV. On The Whole, Broadcasters and Newspapers Are Financially Healthy, and Economic Considerations Do Not Justify Reducing Ownership Limits

According to the Deregulatory Commentators, the proliferation of media outlets is also hurting the competitiveness and threatening the economic viability of traditional media sources, which are already experiencing financial difficulties. Broadcast and newspapers, which are almost solely dependent on advertising for their revenues, increasingly are competing for viewership and advertising, against multichannel video and radio, Internet, and other forms of media. As the NAB exclaims, due to the "explosion of outlets . . . traditional broadcasters are struggling to maintain their audience and advertising shares 'in a sea of competition.'"[35]

According to the broadcast and newspaper industry groups, the growing proliferation of media outlets competing with traditional media sources for advertising revenues provides strong justification for loosening if not eliminating ownership (including cross-ownership) restrictions in the broadcast and newspaper markets. The broadcasters in particular want to see reforming of the restrictions "that prevent local broadcasters from forming efficient ownership structures, better enabling them to compete for advertising dollars."[36] The NAB argues that "if the Commission seeks to maintain a system of viable commercial broadcast stations offering free, over-the-air service to local communities, then stations must be allowed to form efficient and financially sustainable ownership structures."[37] The NAA similarly wants to "level the regulatory playing field between traditional media and a growing list of competitors by repealing the newspaper-broadcast cross-ownership ban."[38]

The broadcaster and newspaper industries' contentions—that media outlet proliferation threatens the economic viability of traditional broadcast and newspaper properties, and that allowing ownership concentrations would result in greater efficiencies and therefore greater economic health of media

[35] *Id.,* ii.
[36] *Id.,* 35.
[37] *Id.,* iv.
[38] NAA, v.

companies—are directly contrary to evidence presented by consumer and union commentators. Study 9 in the CUCFA compendium, "Local Media and the Failure of Big Media's Conglomerate Model"[39] observes that the courts have asserted that the pursuit of the goal of the "widest possible dissemination of information from diverse and antagonistic sources" is about much more than economics. Yet, the media owners claim that consolidation and conglomeration promote economic efficiency, which results in "a more vibrant media marketplace." But, CUCFA continues, because the public policy presumption favors more independent voices, and because consolidation and conglomeration reduce the number of owners in local media markets, "such claims bear a heavy burden of proving that absent such mergers, a media outlet would be seriously weakened or unable to survive."[40]

First, as CWA notes, the evidence strongly refutes the media industries' pleas of financial distress. Newspaper and broadcast companies are in fact highly profitable entities. For example, newspaper operating profit margins are averaging 20 percent, and local television stations typically generate 40 to 50 percent margins, compared to 11 percent for Fortune 500 companies. CWA points to a recent *Broadcasting and Cable* article on the economics of local television stations that emphasized their financial

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[39] Mark Cooper, Study 9, "Local Media and the Failure of Big Media's Conglomerate Model," *Compendium*, 153-183.

[40] Mark Cooper, Study 9, 153.

strength, noting that local television operating margins over the past year at large newspaper and television chains were extremely robust.[41]

The United Church of Christ et al. ("UCC") comments[42] similarly observe that, "Rumors of a crumbling newspaper industry have been greatly exaggerated and evidence does not suggest newspapers need to cross-own broadcast stations to survive." They report that although print circulation has dropped in recent years, online newspaper readership has increased by 15.8 percent in 2005 and online advertising revenues at public newspaper companies grew 30-60 percent in 2005. Television stations also have been succeeding financially, their sales increasing from $1.2 billion in 2004 to $3.2 billion in 2005.[43]

CWA further reports that recent transactions show that buyers are willing to pay handsomely for media outlets, and that Wall Street values these properties, with an average ratio of price to earnings for the printing and publishing industry of 23.71 and for the broadcasting and cable industry of 31.59 percent, both of which exceed the S&P average price-to-earnings

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[41] CWA, 38.

[42] Comments of Office of Communication of United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, Benton Foundation ("UCC"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006.

[43] UCC, 67.

ratio of 20.14.[44] CUCFA Study 9 also shows that newspaper and television properties are selling at healthy prices, with cash flow multiples at which numerous properties have been sold over the past couple of years consistent with, or higher than, what is typical of these sectors. For example, after McClatchy purchased the Knight Ridder chain, it immediately sold off a dozen of the "least attractive" properties at 12 times cash flow, a 25 percent premium to its purchase price. Similarly, Media General sold four television properties in mid-sized markets at 15 times cash flow.[45]

V. CONSOLIDATION AND CROSS-OWNERSHIP HAVE RESULTED IN THE DETERIORATION OF LOCAL MEDIA QUALITY AND CONTENT IN BOTH NEWS AND ENTERTAINMENT, DESPITE THE CLAIMS OF MEDIA BAN OPPONENTS TO THE CONTRARY

Aside from enabling greater efficiencies and the ability to compete against multichannel media services, the Internet and other competitors for advertising revenues, the Deregulatory Commentators argue that commonly owned properties produce more and better news and information. Indeed, they claim, the efficiencies gained from consolidating media operations allow greater investment in local news content and quality. For example, the NAB comments contend that as the Commission and the *Prometheus* court affirmed, "multiple studies and persuasive anecdotal evidence have shown that television duopolies result in efficiencies that produce public interest benefits, such as improved news, sports, weather and other local

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[44] CWA, 38.

[45] Mark Cooper, Study 9.

programming, in all markets including the large ones."[46] In its comments, Clear Channel, by far the nation's largest chain of broadcast radio stations, argues that, "the increased levels of common ownership made possible by Congress's deregulatory action in the 1966 Act have produced real benefits for American listeners."[47]

Clear Channel claims that it "delivers these benefits to listeners every day in the form of vastly increased program choices, including a greater overall number of radio program formats, larger variety in the number of unique songs and artists played on stations regardless of format, and increased outlets for new and emerging artists." In addition, it offers other benefits such as "increases in the quality and content of local news and public affairs programming, expanded emergency preparedness capabilities, and higher levels of participation in events affecting the local communities that Clear Channel stations serve." It then concludes that "the benefits provided by these types of programming and community involvement . . . flow directly from the incentives, efficiencies, and economies of scale that are made possible by increased levels of common ownership."[48]

The broadcast and newspaper commentators note that the Third Court affirmed the Commission's determination that restrictions on cross-ownership are no longer necessary to preserve marketplace competition, "and

[46] NAB, vi.

[47] Clear Channel, iii.

[48] *Id.*

are, in fact, inimical to the agency's localism objectives."[49] The NAA, in particular, points to "the continued evidence that cross-ownership substantially enhances localism without posing any appreciable threat to viewpoint diversity." Moreover, the NAA asserts that, "The Commission correctly concluded in 2003, and it remains the case today, that existing newspaper/broadcast combinations serve their local markets with more and higher quality news and information than their stand-alone counterparts." The NAA further argues that the explanation for these improvements is the greater efficiency and consolidation of behind-the-scenes operations, which have enabled cross-owned properties "to garner substantial savings that can be refocused on core media functions, including the production of local news, public affairs, and other informational content." The NAA also claims that despite the consolidation of operations, "cross-owned outlets generally have sustained their established practice of maintaining separate news operations and editorial independence."[50]

a. COMMON OWNERSHIP OF MEDIA PROPERTIES HAS RESULTED IN EXTENSIVE COMMINGLING OF NEWS OPERATIONS, LEADING TO DIMINISHED DIVERSITY AND JOURNALISTIC QUALITY

Once again, the evidence from union and consumer commentators contradicts the claims made by the industry petitioners that consolidation and cross-ownership leads to increased journalistic quality and greater local content. For example, CWA provides substantial evidence that shows that

[49] NAA, iv.
[50] *Id.,* vi.

"common ownership of newspaper/broadcast combinations in the same market and television duopolies and triopolies results in commingling of news operations, reducing the number of diverse and competing news outlets in a local market."[51] The CWA refers to its earlier comments submitted to the *2002 Biennial Review* proceedings, which reported on a survey of existing co-owned newspapers and broadcasting properties undertaken by the CWA in an effort to assess the impact of cross-ownership on media voice. It interviewed union members employed in newsrooms in four co-owned properties that had been grandfathered when the cross-ownership rule was promulgated in 1975. The respondents provided numerous examples of commingling of news sources, reporting, and cross-promotion.[52] These examples provide compelling evidence that co-ownership reduces diversity by creating incentives to eliminate separate newsgathering operations to achieve efficiencies. "It eliminates the competition that drives aggressive newsgathering. Outlets that would have competed for news sources and stories now share sources, assignments, staff, and editors."[53] CWA also cites academic researchers who have studied converged newspaper/broadcast operations, who concluded that common ownership reduces competition in newsgathering.[54]

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[51] CWA, 17.
[52] *Id.*, 8.
[53] *Id.,* 11.
[54] *Id.,* 11ff.

A similar commingling of operations occurs under common ownership of local television stations (duopolies and triopolies), in which station owners are combining management, programming, and news operations.[55] CWA notes that its affiliate, the National Association of Broadcast Employees and Technicians/CWA ("NABET/CWA") has direct experience with what happens when one company owns more than one TV station in the same market: "The owner merges operations, slashes jobs, and reduces the quantity and quality of the news." For example, at two stations jointly owned by Viacom-CBS, KCAL-channel 9 and KCBS-channel 2, there is extensive commingling, with sharing of reporters and often airing of the same news stories. CWA also cited several other examples of duopolies that have merged management and news operations.[56]

b. Duopolies Reduce Local News Content and Quality

The UCC challenges the assumption that duopolies will result in programming benefits, which it argues is based on faulty reasoning. This supposition rests on "two questionable assumptions." The first is that same-market combinations lead to efficiencies. In fact, UCC argues, such combinations can lead to diseconomies of scale as well as economies of scale, and less competition reduces the incentives for merged entities to seek efficiencies. Second is the belief that broadcasters will reinvest efficiency-

[55] *Id.,* 13.
[56] *Id.,* 15.

enabled savings to better local information programming. However, there is in fact little economic incentive and no concrete public-interest obligations to do so.[57] Broadcasters are just as likely to channel these cost-savings to dividends or capital gains or to advertising instead of into local or informational programming which benefits viewers. Thus "as a matter of theory and logic, there is no reason to believe that common local television ownership would lead to improved local programming."[58]

UCC also points to recent empirical evidence that shows that duopolies do not provide superior local programming. In particular, a study published in 2005, by Michael Yan & Yong Park, two communications scholars at the University of Michigan, refuted the "assumptions that economies of scale [in local television duopolies] contribute to greater production of local informational programming."[59] Their study consisted of a two-week sample of television programming in 1997 and 2003 for 116 commercial, full-power television stations. In 2003, 40 of these stations were involved in duopolies. The study found that duopoly stations aired significantly less local news than non-duopoly stations.

CUCFA's Study 4, which reviewed an extensive body of quantitative and qualitative evidence, similarly found that national chains and

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[57] UCC, 50.

[58] UCC, 51.

[59] Michael Z. Yan & Yong J. Park, Duopoly Ownership and Local Information Programming on Television: An Empirical Analysis, 6, Paper presented at the Telecommunications Policy Research Conference, Washington, D.C. (2005), available at http://web.si.umich.edu/tprc/papers/2005_yan.pdf. Cited in UCC, 51.

conglomerates reduce local-oriented content.[60] It notes a trend in commercial mass media, particularly television, towards a reduction in news coverage of local issues in the period leading up to elections. Local public affairs programming also is notable by its absence on most television stations. Recent studies based on FCC data confirm much of the earlier research sponsored by the Commission. CUCFA concludes that consolidation and conglomeration give rise to a "largest market share/lowest common denominator" ethic that undercuts stations' ability to deliver culturally diverse programming, locally-oriented programming and public interest programming.[61]

Finally, UCC concludes in its review of several other studies that, "These studies all suggest that *competition*, not concentration, has a positive correlation with informational programming and with diversity."[62] In addition, several studies suggest that competition leads not just to more news but also to more accurate news. UCC reports that Common Cause "has documented instances within communities where consolidation has decreased the number of jobs in local journalism, has decreased the amount of original or locally-produced programming, has decreased the community-responsiveness of programming, and has resulted in censorship of divergent viewpoints. These experiences are consistent with the empirical data

[60] Marjorie Heins and Mark Cooper, Study 4, "Localism and Diversity," *Compendium*, 58-77.
[61] CUCFA, 15.
[62] UCC, 53.

demonstrating that consolidation of local television does not serve the public interest."[63]

c. Media Cross-ownership Doesn't Result in Improved Local Content and Quality in Local News Coverage

UCC further reports on a recent study by Michael Yan that demonstrates that the supposed benefits of local news and public affairs programming from cross-ownership are nonexistent.[64] Using a multivariate analysis of two-week random sample of television programming of 226 commercial television stations and 27 cross-owned stations, he analyzed local news programming and public affairs programming on cross-owned and non-cross owned stations. The study found that cross-owned stations did not broadcast more local news than other stations that provided news. The analysis also demonstrated that cross-ownership had no substantial impact on either the incidence or the quantity of local affairs programming on commercial television stations.[65]

Studies 15 and 16 in the CUCFA compendium[66] present a critical examination of the record evidence relied upon the Commission in the *2002 Biennial Review Order* in support of its conclusion that media cross-

[63] *Id.,* 54.

[64] Michael Yan, *Newspaper/Television Cross-Ownership and Local News and Public Affairs Programming on Television Stations: An Empirical Analysis* (Oct. 17, 2006). Cited in UCC, 65.

[65] *Id.*

[66] Mark Cooper, Study 15 "Consolidation and Conglomeration Diminish Diversity and Do Not Promote the Public Interest: A Review of the Hearing Record in the Media Ownership Proceeding," *Compendium*, 287-300; Mark Cooper and S. Derek Turner, "Consolidation and Conglomeration Diminish Diversity and Do Not Promote the Public Interest: New Evidence," *Compendium*, 301-329.

ownership can enhance quality. It argues that neither of the two studies relied on by the Commission—a study by the Project on Excellence in Journalism and another, study 7, by the Commission's own Media Ownership Working Group (MOWG)—provided a valid basis for reaching that conclusion. CUCFA concludes that,

> "although the Commission reached, and the *Prometheus* Court accepted, the wrong conclusion based on an inadequate evidentiary record, it is not too late to reverse course. There is no credible evidence that consolidation and/or conglomeration have positive effects. . . On the contrary, subsequent rigorous empirical evidence shows that newspaper/TV combinations and duopolies do not result in increases in the quantity or quality of local news and information available to the public. The very data on which the Commission relied to lift the newspaper-TV cross-ownership ban, when reanalyzed by its own staff, contradicts its earlier conclusion."[67]

d. Local Control of Terrestrial Radio Is As Vital for Preserving Diversity and Local Character in Local Radio Musical Programming As It Is for News and Information

The consolidation and conglomeration of radio stations, especially since the Telecommunications Act of 1996, which loosened ownership limits in radio, has led to increasing homogenization of musical programming and reduced opportunities for local artists to get their music heard on the airways. According to the FMC study on radio ownership consolidation, by a number of measures ownership concentration in the radio industry has

[67] CUCFA, 18.

grown substantially, and localness of radio ownership has declined, since 1996. For examples, it reports that the number of stations owned by the largest radio entity in every local market, has increased considerably since 1996. The FMC Local Ownership Index, a metric constructed by FMC for measuring the level of local ownership in local markets over time, shows that localness of radio ownership declined from an average of 97.1 percent to an average of 69.9, a drop of 28 percent.[68]

The study also found the number of companies that own radio stations peaked in 1995 and has since declined dramatically. At the same time, radio companies became larger, as radio-station holdings of the ten largest radio companies increased by almost 15 times from 1985 to 2005, and the holdings of the fifty largest companies grew almost sevenfold. Industry consolidation is also reflected in the national concentration of advertising revenue, indicated by a rise of 12 percent market share for the top four companies in 1993 to 50 percent by 2004. The national concentration of listenership also has been increasing—in 2005, the top four firms had 48 percent of the radio listeners and the top ten firms had almost two-thirds of the radio audience.[69]

FMC and the American Federation of Musicians (AFM) present substantial evidence that counters the claims of the broadcasters, especially Clear Channel, that ownership concentration and larger radio station groups result in greater diversity, quality and local content in radio broadcast

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[68] Peter DiCola, 51.
[69] *Id.,* 19.

programming. First, the FMC study examines in depth the most common programming formats used by radio stations. It documented the relative frequency of 120 different programming formats that appear in the BIA Financial Networks database, and looked at the 10,761 commercial stations broadcasting in the Spring 2005 for which data from BIA on their programming formats is available. Analysis of this data shows increasing homogenization of radio programming, with just fifteen formats making up 76 percent of commercial programming. It also shows that Sports, Talk, and Classic Rock are the fastest-growing formats over the last decade, and that fewer stations are featuring "niche formats," such as Classical and Jazz, as their primary format.[70]

Building on this analysis, the FMC study (whose findings are summarized in the joint comments of FMC and AFM ("FMC/AFM")[71]) examines the hypothesis that larger station groups offer more variety than smaller radio station groups. This analysis compares the programming of station groups under a common owner that exceeded the local ownership caps, to that of station groups equal to or below the ownership caps. From 1992 to 2004, the FCC had used what is known as the "signal-counter"

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[70] *Id.,* 83-93.

[71] Comments of Future of Music Coalition and American Federation of Musicians ("FMC/AMF"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006.

method of defining a local market, based on the overlapping signal coverage areas of radio stations. This definition allowed greater consolidation than a geographically-based method market definition when used to apply the Local Ownership Rule. In the Fall of 2004, however, the FCC switched to a geography-based market definition, borrowed from that used by the Arbitron Company, which provides ratings of radio stations in local markets. This definition is more restrictive when applying the ownership rule, and after this switch in definition, radio station owners who suddenly exceeded the local caps in particular markets were grandfathered in. Moreover, such groups not only have larger numbers of stations, they also have more stations than their competitors.

"In theory," FMC/AMF argues, "large station groups offer radio companies an opportunity to offer the widest variety. It stands to reason that a station group containing, say, twelve stations could be more likely to offer a wider variety of programming formats than a station group with four stations."[72] It therefore is reasonable to expect that station groups in excess of the local ownership limit would offer programming in a wider range of programming formats and should have more flexibility to experiment with alternative formats. They should have the most opportunities to program in specific "niche" formats within the BIA Financial Networks categories. (BIA categorizes each U.S. radio station's programming format into one of twenty-one categories.)

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[72] FMC/AMF, 8. See also Peter DiCola, 11-12, 93-98.

The evidence, however, indicates that the larger radio groups "do not appear to take that opportunity."[73] In fact, the contrary is shown to be true.[74] The largest station groups in excess of or at the local ownership cap focus only on six format categories—Adult Contemporary, Album-Oriented Rock/Classic rock, Contemporary Hit Radio (Top 40), Country, News, and Rock—while other format categories are underrepresented compared to smaller groups. Among the largest station groups, Spanish-format stations are relatively underrepresented, and Classical or Educational stations are almost nonexistent. In contrast, among the station groups below the local ownership caps, the balance across programming format categories is generally more even. For example, Religious-format stations and Spanish-format stations are more common, as are Classical and Jazz/New Age stations.

The FMC study also looks at a group of the ten less common music formats, comparing the offerings for radio companies in markets where their holding exceed the local ownership caps to the offerings of all other radio companies. Examining only stations in the 297 Arbitron-rated markets in the United States, the findings showed that the ten types of less common formats are underrepresented among owners with holdings in excess of the ownership caps. At the same time, only the small station groups offer primarily niche formats like Classical, Jazz, Americana, Bluegrass, New

[73] FMC/AMF, 11.
[74] See Peter DiCola, 93-96.

Rock and Folk. Smaller group stations also sustain local public-interest programming, and are the predominant providers of children's programming, religious programming, foreign-language and ethnic-community programming.[75]

In short, this analysis demonstrates that relatively smaller station groups, not the larger station groups provide a wider variety of programming, in contrast to the claim that larger groups offer the greatest variety. These findings, the FMC study concludes, "speak to whether the FCC should increase, maintain, or lower the local ownership rule. If the largest station groups do not provide additional variety with their additional stations, then there is no demonstrable benefit to the public from allowing even more stations of such size."[76]

The concentration of radio ownership and the resulting homogenization and limitations on radio programming, impinges directly on the ability of new creative artists to find a voice in local radio markets. Noting that "a very few corporate owners like Clear Channel and Cumulus Broadcasting now own vast number of radio stations across the country," AMF Vice President Harold Ray Bradley, in testimony before the FCC, argues that this "handful of corporations have become the gatekeepers of the music industry regarding radio airplay." Increasingly, he adds, "radio playlists are determined by conglomerates on a national level, the local radio

[75] See Peter DiCola, 96-98.

[76] FMC/AMF, 13.

folks—assuming there are any—have little or new freedom to add new artists, local artists, or artists with recordings that don't fit comfortably into the dominant radio formats."[77]

Bradley provides several anecdotal stories of local markets dominated by national conglomerates in which stations have allowed only labels and songs from national airlists to be played. This has prevented high-quality local artists, many of whom have received artistic praise from local radio programmers and elsewhere—even internationally—from having their music played on these nationally-owned stations.

For example, a North Dakota disk jockey reported that he couldn't play anything from a new album of a local musician whose music he played in the 1980s, but now felt he "couldn't deviate from the national list without risking his job." In another example, the story told by a music director illustrated the increasingly limited size of playlists available in local programming. The director explained that only a small number of slots were available on the station's limited playlist at the best of times, and that openings of radio airplay primarily favor celebrity acts over local talent.

In a very telling example, Bradley describes how the situation changed for a local artist from early to the late 1990s:

> "He made a jazz CD in 1993, and with the help of a promoter succeeded in getting exposure on 271 stations in the United States. A

[77] "Testimony of Harold Ray Bradley, American Federation of Musicians," FCC Hearing on Media Ownership, Nashville, Tennessee, December 11, 2006.

> few years later, he used the same means to promote a jazz album—but that time, as he said, he 'bumped into Clear Channel.' All the 'smooth jazz' stations had, in the meantime, been purchased by Clear Channel, and were being programmed by one or two central programmers. With no diversity of outlets, the second recording never received the airplay that the first recording had. He described radio today as a 'nightmare,' with only limited opportunities to bring a great product to a station and win a chance to excite new listeners."[78]

VI. THE CROSS-OWNERSHIP BAN NEEDS TO BE MAINTAINED TO PRESERVE DIVERSITY AND LOCALISM IN NEWS AND ENTERTAINMENT

The Deregulatory Commentators are particularly eager to eliminate the newspaper-broadcast cross-ownership ban. The NAA calls the ban a "relic of the 1970s—a time when the original 'Big Three' television networks brought us the only national newscasts, cable was in its infancy, and the Internet, cell phones, wi-fi, and iPods were not even visible on the distant horizon."[79] The NAB claims that the ban inhibits the development of new innovative media services, especially on-line and digital services. Moreover, the ban "precludes struggling broadcast and newspaper entities, particularly those in smaller markets, from joining together to improve, or at least maintain, existing local news operations." The NAB also refers to studies ostensibly spanning several years that demonstrated that broadcast television stations co-owned with newspapers offer greater amounts of local

[78] "Testimony of Harold Ray Bradley."
[79] NAA, iii.

programming—and more local news and public affairs programming—than non-newspaper owned stations.[80] Finally, the NAB raises the specter of television and radio broadcasters "facing unprecedented competition from cable, satellite television and radio, and audio and video Internet applications." "If the Commission retains the local radio ownership rule and the television duopoly rule in some form," the NAB argues, "no plausible reasons exists to also retain the cross-ownership rule, as any diversity or competition concerns can be addressed more directly by these other local rules."[81]

The counterpoints to these positions have been presented in a number of places above, both generally and specific to the cross-ownership rule. In sum, the first sections (II, III) presented substantial evidence that the proliferation of new non-traditional media outlets has not reduced the importance of local broadcast stations and newspapers in providing independent "antagonistic" sources of local news and information. Allowing more cross-ownership therefore would eliminate independent voices in local markets, which runs counter to the Commission's policy goal of preserving diversity, local content and competition in local media markets. The economic rationale put forth why cross-ownership (as well as duopolies and triopolies in broadcast) should be allowed, was also shown to be unfounded (section IV), as were the arguments that cross-ownership actually leads to

[80] NAB, vii.
[81] *Id.,* viii.

better and more local content, as well as fostering greater innovation in media services (section V). In fact, the evidence and arguments presented by CWA, CUFCA and UCC demonstrate that not only is innovation not stifled by limiting cross-ownership, allowing more cross-ownership could in fact lead to poorer economic performance, reduced quality and local content, and diminished capabilities to innovate..

VII. CONCLUSION

These reply comments present a large body of evidence that undercuts a number of claims made by broadcast and newspaper commentators to justify their calls for the weakening or elimination of the FCC limits on media ownership. In particular, the evidence shows that the new forms of media (multichannel video and radio, Internet, etc.), which have been proliferating in recent years, are not adequate substitutes for traditional broadcast and newspaper outlets to provide local news, information and entertainment. Second, the media industry on the whole is shown to be financially healthy. Finally, consolidation and cross-ownership have not resulted in improved local media quality and content in news and entertainment. On the contrary, smaller, locally controlled media outlets are vital for maintaining diversity and local content in news and musical programming in local media markets.

In light of these findings, the AFL-CIO and DPE reiterate their call for maintaining and strengthening the media ownership rules to preserve diversity, localism, and competition in media markets. In particular, the AFL-CIO and DPE reaffirm the recommendations outlined in their comments:[82]

- The Commission should retain or tighten the local television ownership limit to preserve diversity and localism in the delivery of news;
- The Commission should maintain and strengthen the local radio ownership caps to preserve, protect and promote diversity and localism in musical programming;
- The Commission should retain and strengthen limits on broadcast-newspaper cross-ownership and TV-radio cross-ownership, whether they are treated as separate rules or as a combined media cross-ownership rule;
- The Commission should retain the dual network rule to protect against the erosion of local news and to revitalize and encourage innovation in entertainment programming; and
- The Commission's media ownership rules should be designed to preserve, protect and promote minority ownership of media properties.

[82] Comments of the American Federation of Labor and Congress of Industrial Organizations and the Department of Professional Employees, AFL-CIO ("AFL-CIO/DPE"), *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, 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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* MB Docket Nos. 06-121, 02-277; MM Docket Nos. No. 01-235, 01-317, and 00-244. Filed with the FCC October 23, 2006.

In short, the evidence clearly does not warrant any weakening of ownership caps, as argued by the media industry. On the contrary, it provides a strong rationale that the public interest requires the FCC to retain and strengthen its current ownership limits.