

**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 – Review	)	MB Docket No. 02-277
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	)	MM Docket No. 01-235
Newspapers	)	
	)	
Rules and Policies Concerning	)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast	)	
Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: The Secretary

**REPLY COMMENTS OF ENTRAVISION HOLDINGS, LLC**

Entravision Holdings, LLC (“Entravision”), the licensee of radio and television stations providing Spanish-language programming to Hispanic audiences, by its attorneys, hereby submits these Reply Comments in the above-captioned, consolidated proceeding<sup>1</sup> in which the

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<sup>1</sup> See *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*, Further Notice of Proposed Rule Making, 21 FCC Rcd 8834 (2006) (“NPRM”). The Commission extended the date for Reply Comments to January 16, 2007. See *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and*

Commission has sought comment on how to respond to the United States Court of Appeals for the Third Circuit's decision in *Prometheus Radio Project, et al. v. FCC*<sup>2</sup> and on whether the media ownership rules are "necessary in the public interest as the result of competition."<sup>3</sup>

Like Entravision, numerous parties in this proceeding have provided evidence of the significant changes in video programming markets since *Prometheus* was decided, and the ever-increasing substitutability of television and non-broadcast video alternatives, particularly the Internet. In light of these developments, the Commission should relax broadcast television ownership limits to allow common ownership of three broadcast television stations in the largest television markets. Relaxing ownership limits in this fashion will not undermine the significant role broadcast television stations play in providing local service to their communities. Instead, as various parties in this proceeding have argued, relaxed ownership limits will help restore broadcasters' local competitive edge by allowing station group owners to enjoy the benefits of moderate consolidation. The Commission can further promote and protect broadcast television's unique contribution to local video markets by regulating important areas other than ownership, such as anti-competitive practices and must-carry rights. In support thereof, Entravision states as follows.

I. Substitutability of Non-Broadcast Video Programming

As demonstrated by various parties in the instant proceeding, the years since the Commission's 2003 overhaul of its media ownership rules<sup>4</sup> and the Third Circuit's 2004

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*Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, DA 06-2514, released December 15, 2006.

<sup>2</sup> 373 F.3d 372 (2004), *stay modified on rehearing*, No. 03-3388 (Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168 and 04-1177).

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) ("Appropriations Act") (amending Sections 202(c) and 202(h) of the 1996 Act).

*Prometheus* decision have witnessed an unprecedented increase in the quantity and quality of video programming available in non-broadcast outlets, particularly content distributed over the Internet. As Entravision demonstrated in its Comments, the emergence of weblogs and audio and video sites as "diverse and antagonistic sources"<sup>5</sup> of news, information and entertainment is now a fact of the modern media marketplace.<sup>6</sup> From politics to popular culture, Internet websites and bloggers have demonstrated their power to report, critique and shape the development of contemporary events.<sup>7</sup> And as evidenced by Entravision's discussion of various locally-oriented websites, while the Internet's influence on national issues and events may generate greater buzz, the Internet's ever-expanding role as a source of valuable local content is equally important.<sup>8</sup>

Further, as set forth in the *Entravision Comments*, the quantity and quality of cable-based local news channels has also expanded and improved since *Prometheus* was decided, if somewhat less dramatically than with respect to the Internet. The growing number of cable-based local programming outlets, and their competitive relationship with broadcast as well as Internet media sources, contributes to the abundant supply of non-broadcast substitutes in today's media market.<sup>9</sup>

A number of the parties filing comments in response to the *NPRM* have identified and documented the same substitutability trends in video programming. According to The National Association of Broadcasters ("NAB"), "[f]our years ago, platforms such as blogs, podcasts and

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<sup>4</sup> See 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 (2003) ("*Ownership Order*"), *aff'd in part and remanded in part, Prometheus, supra*.

<sup>5</sup> *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

<sup>6</sup> See *Comments of Entravision Holdings, LLC*, MB Docket No. 06-121 (Oct. 23, 2006) ("*Entravision Comments*") at 5-9.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* at 6-7 (discussing Metroblogging.com and other locally-oriented websites).

<sup>9</sup> See *id.* at 9.

YouTube either did not exist or were mere blips on the radar; today they are important elements of the media landscape and are changing the way consumers access news and entertainment."<sup>10</sup> Significantly, the proliferation of content sources on the Internet includes precisely the kinds of locally-oriented sites that the *Prometheus* Court – after considering an administrative record compiled prior to the Commission's 2003 *Ownership Order* - concluded were unacceptably underrepresented among the Internet's heralded multiplicity of offerings.<sup>11</sup> For instance, NAB points out that "Gothamist.com and its progeny of Web sites....provide professional-quality local news for a number of cities around the world, each site updated several times daily by local, on-the-ground editors and writers."<sup>12</sup> NBC Universal, Inc. and NBC Telemundo License Co. (collectively "NBC") similarly point to the 55 locally-oriented news websites in the New York television market, and the dozen such websites in the smaller Charlotte, North Carolina television market as signs of the vibrant local service available on the Internet.<sup>13</sup> NBC further provides evidence of the growing number of regional and local cable news channels.<sup>14</sup>

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<sup>10</sup> *Comments of The National Association of Broadcasters*, MB Docket No. 06-121 (Oct. 23, 2006) ("*NAB Comments*") at 12 (citing *The Wired Guide to the Online Video Explosion*, Wired Magazine, Issue 14.05 at 121 (May 2006) ("Thanks to growing bandwidth, easy access to the means of production, and cheap storage, [online video is] exploding all around us and becoming a very real, very different way to experience news and entertainment"). See also *Comments of Sinclair Broadcast Group, Inc.*, MB Docket No. 06-121 (Oct. 23, 2006) at 13-21 (arguing that the Internet "has produced a seismic shift in video competition and viewpoint and source diversity since the Commission's last review"); *Comments of Hearst-Argyle Television, Inc.*, MB Docket No. 06-121 (Oct. 23, 2006) at 6-13 (detailing the proliferation of video content sources and non-broadcast media platforms).

<sup>11</sup> See *Prometheus*, 373 F.3d at 415 (discussing limited substitutability of cable; noting negative correlation between television and Internet, but concluding Internet is "limited in its availability and as a source of local news," and therefore like cable limited in its ability "to mitigate the threat that local station consolidations pose to viewpoint diversity").

<sup>12</sup> *NAB Comments* at 19.

<sup>13</sup> See *Comments of NBC Universal, Inc. and NBC Telemundo License Co.*, MB Docket No. 06-121 (Oct. 23, 2006) ("*NBC Comments*") at 20-21. The majority of these sites are not associated with traditional broadcast and newspaper outlets.

<sup>14</sup> See *NBC Comments* at 19.

The dramatic increase in and increasing substitutability of non-broadcast media documented by Entravision and others unquestionably contributes to the diversity of voices in the media marketplace and helps mitigate concerns about excessive concentration in local markets. The flourishing of non-broadcast media on the Internet and cable clearly supports the limited relaxation of local television ownership recommended by Entravision in the instant proceeding.

## II. Competition and the Benefits of Consolidation

The competition broadcasters face from non-broadcast media and the benefits of consolidated ownership further justify relaxed ownership limits, particularly in large markets. The principles of reasoned agency decisionmaking, in fact, require the Commission to extend its focus beyond the television market in order properly to encompass the many facets of the media marketplace.<sup>15</sup> As numerous commenters have demonstrated in the instant proceeding, broadcast television stations face fierce competition from various non-broadcast media outlets, including cable, satellite, the Internet and newspapers.<sup>16</sup> Relaxing local television ownership limits to permit triopolies in the largest markets will allow group owners of television stations to achieve efficiencies that will enable them to compete more effectively with these non-broadcast content providers. As acknowledged by both the Commission and the Third Circuit, "common ownership of television stations in local markets can result in 'consumer welfare enhancing efficiencies' by eliminating redundant expenses and increasing opportunities for cross-promotion and related programming."<sup>17</sup> On remand, the Commission should reiterate the public benefits

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<sup>15</sup> See *Sinclair Broadcast Group, Inc. v. F.C.C.*, 284 F.3d 148, 163-165 (D.C. Cir. 2002) (finding unreasonable Commission's exclusion of non-broadcast media from voice count for purposes of local television ownership rule).

<sup>16</sup> See, e.g., *NAB Comments* at 23-35; *NBC Comments* at 7-12.

<sup>17</sup> *Prometheus*, 373 F.3d at 415 (quoting *Ownership Order* at ¶ 147).

that can accompany targeted consolidation, as evidenced by the record in the previous ownership proceeding and as accepted by the *Prometheus* Court.

Moreover, by facilitating such efficiencies, a relaxed local television ownership rule will provide for expanded local news and additional programming responsive to the needs and interests of local viewers.<sup>18</sup> As acknowledged by the Third Circuit, "commonly owned television stations are more likely to carry local news than other stations and air a similar quality and quantity of news as other stations."<sup>19</sup>

The increasing abundance of news and public affairs content available in large video markets – on 18 or more television stations, and on the Internet and cable – offers added justification for the local television ownership limits set forth in the *Ownership Order*, in particular the allowance of three commonly-owned television stations in large markets. The expanding media universe and the market conditions described above evidence a media marketplace in which relaxed local television ownership limits will not harm diversity, localism or competition, particularly in the largest markets where viable alternative programming sources are abundant, as long as such limits are properly reinforced by other Commission policies.

### III. Regulations Protecting Broadcast Television's Unique Role in Promoting Localism

While widespread competition and the ever-increasing availability of alternative video programming sources support the selective relaxation of television ownership limits, Entravision recognizes the uniquely important role broadcast television stations play in providing local

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<sup>18</sup> See *Ownership Order* at ¶¶ 157-164.

<sup>19</sup> *Prometheus*, 373 F.3d at 415 (citing Bruce M. Owen *et al.*, *Effect of Common Ownership or Operation on Television News Carriage, Quantity and Quality*, in *Comments of Fox Entertainment Group, Inc., et al.*, MB Docket No. 02-277 (Jan. 2, 2003)).

service to their viewers.<sup>20</sup> Local viewers rely upon broadcast television as a primary source for local news and public affairs programming, and neither the Internet nor cable can provide perfect substitutes for this critical public service.<sup>21</sup> The benefits of consolidation notwithstanding, Entravision recognizes the legitimate concerns of many parties with respect to the effects consolidation may have upon the diversity of voices in local markets and broadcast television stations' local service to the public.

However, rather than try to fine-tune local television markets with blunt numerical limits, the Commission should turn to other policies at its disposal to promote and protect diverse, vibrant local programming alternatives. As set forth in its Comments, Entravision believes that regulations targeting anticompetitive practices of media conglomerates offer a practical means of minimizing any potential negative consequences from consolidation without preventing small and medium-sized broadcasters from enjoying the competitive benefits of consolidation.<sup>22</sup>

Entravision also supports those commenters who argue that more robust, market-wide must-carry rights for local television stations would help ensure the continuing viability of small, independent stations – precisely those stations many critics fear could be driven out of the

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<sup>20</sup> See, e.g., *NBC Comments* at 22-23 (noting that free over-the-air television remains a leading source of news for viewers); *Comments of KVMD Licensee Co., LLC*, MB Docket No. 06-121 (Oct. 23, 2006) ("*KVMD Comments*") at 9-10 (discussing unique local standing of broadcast television stations).

<sup>21</sup> See, e.g., *Local TV is Dominant Source of News: Study*, TV Newsday, Oct. 3, 2006, available at <http://www.tvnewsday.com/articles/2006/10/03/daily.11/?print> (visited October 17, 2006) (reporting that study by Radio and Television News Directors Foundation demonstrates that more Americans choose local television as one of their top three news sources than any other form of traditional or new media). See also *Prometheus*, 373 F.3d at 414-415 (discussing limited substitutability of cable and satellite for broadcast television as sources of local news and public affairs programming).

<sup>22</sup> See *Entravision Comments* at 13-19 (advocating new rules regulating anti-competitive practices, including "syndicated programs," "TV listings" and "preferred ad rate" rules).

