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

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

REPLY COMMENTS OF CBS CORPORATION

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I. INTRODUCTION & SUMMARY

The FCC's broadcast ownership regulatory scheme is woefully and perilously out of sync with the realities of today's media marketplace. CBS and a wide range of other broadcast industry representatives, trade associations, and public interest organizations demonstrated that proposition convincingly, and with abundant evidentiary support, in the opening comments of these proceedings.

By contrast, in the thousands of pages of comments received, no compelling argument or reliable evidence was proffered to contradict the fundamental point that at least some relaxation of the ownership rules is needed in order to unshackle broadcasters from these regulatory restraints. Broadcasters must be allowed to compete freely and fairly in the current media marketplace of ever-proliferating delivery platforms and programming choices. Nor was any persuasive rebuttal made of the premise that such deregulation is required by Section 202(h) of the Telecommunications Act of 1996[1] and the Third Circuit's decision on review of the *2003 Order*.[2] Clearly, the time has long since passed for the Commission to bring the antiquated ownership scheme into the digital age.

Specifically, in light of the record evidence now before the agency, the FCC must act expeditiously to: (1) provide relief under the local television ownership rule; (2) minimize the local radio ownership restrictions; and (3) eliminate the radio/television cross-ownership limitation. With respect to the local television rule, the evidence makes glaringly clear, especially in larger markets, that the rule has no continuing relevance, given the abundant and

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[1] 1996 Act, § 202(h), 110 Stat. 111-12.

[2] *2002 Biennial Regulatory Review–Review of the Comm'ns Broad. Ownership Rules, Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13,620 (2003) ("*2003 Order*"), *aff'd in part, rev'd in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

continually-expanding options that consumers now have for national and local news, information, sports, and entertainment programming. The need for relief from the local television rule is even *more* pressing than it was just three years ago, when the Commission decided that relaxation of that rule was appropriate, given the troubling recent economic trends in the industry and the growing concern over broadcasters' continued ability to finance costly local news operations.

Similarly, in the case of the local radio ownership limits, the Commission should increase the caps in markets with 60 or more radio stations. Such modest reform would enable traditional radio broadcasters to serve their local audiences more efficiently and effectively, without creating any adverse effect on the robust competition and diversity present in those larger markets. The FCC thus should move forward to establish additional tiers under its existing local radio rule to better account for the competitive realities in these markets. And, in light of their utter lack of nexus to stated Commission goals, the arbitrary AM and FM radio sub-caps must be eliminated.

Finally, and as previously and well established in the Commission's 2003 ownership proceeding, the limitations on radio/television cross-ownership fail to serve any legitimate public interest purpose in today's burgeoning marketplace and indeed unnecessarily impede the ability of broadcasters to enhance their content offerings. This is even more true now than it was in 2003, as the marketplace has continued to expand since then, and at warp speed. At a minimum, then, cross-ownership restrictions should be eliminated in large markets, if not entirely.

II. <u>THE FCC MUST PROVIDE RELIEF UNDER THE LOCAL TELEVISION OWNERSHIP RULE IN ORDER TO ENSURE THAT FREE, OVER-THE-AIR BROADCASTERS WILL BE ABLE TO CONTINUE THEIR PROUD TRADITION OF SERVICE TO LOCAL COMMUNITIES.</u>

A multitude of broadcasters demonstrated in their opening comments that, in today's incredibly diverse and hyper-competitive media marketplace, the current local television ownership rule lacks any continued relevance.[3] With consumers in markets of all sizes being bombarded with choices for national and local news, information, and entertainment, the existing limitations on the joint ownership of two local television stations simply are not needed to ensure competition, diversity, or localism.[4] These choices are even more abundant in larger markets.

As commenters further showed, the need for relief from this restriction is even *more* pressing than it was just three years ago, when the Commission found that some loosening of the rule was appropriate.[5] As the sole source of free, over-the-air video programming, television broadcasters from markets of all sizes are seeing their audience shares and advertising revenue streams being continuously eroded by a daunting array of competitors—including a growing number of multichannel video programming distributors ("MVPDs"), the Internet, and a host of

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3 Although their specific proposals for reform varied, broadcasters generally urged the Commission to relax or repeal the local television ownership rule. *See, e.g.*, Comments of Belo Corp. ("Belo Comments"); Comments of Block Communications, Inc. ("Block Communications Comments"); Comments of Entravision Holdings, LLC ("Entravision Comments"); Comments of Fox Entertainment Group and Fox Television Holdings, Inc. ("Fox Comments"); Comments of Gannett Co., Inc. ("Gannett Comments"); Comments of Granite Broadcasting Corporation ("Granite Comments"); Comments of Gray Television, Inc. ("Gray Comments"); Comments of Hearst-Argyle Television, Inc. ("Hearst-Argyle Comments"); Comments of Hoak Media LLC ("Hoak Media Comments"); Comments of The National Association of Broadcasters ("NAB Comments"); Comments of NBC Universal, Inc. and NBC Telemundo License Co. ("NBC Comments"); Comments of Nexstar Broadcasting, Inc. ("Nexstar Comments"); Comments of Sinclair Broadcast Group, Inc. ("Sinclair Comments"). Unless otherwise noted, all comments cited herein were submitted in MB-Docket Nos. 06-121, *et al*. on October 23, 2006.

4 *See, e.g.*, Fox Comments at 18-25; Comments of The Media Institute at 8 ("Media Institute Comments"); NAB Comments at 87-88; Sinclair Comments at 12-13.

5 *See, e.g.*, Block Comments at 4-6; Comments of Cascade Broadcasting Group, L.L.C. at 2-4 ("Cascade Comments"); Granite Comments at 2-6; NAB Comments at 89-94; Comments of Smaller Market Television Stations at 3-6 ("Smaller Market Comments").

other alternative and emerging competitors.[6] At the same time that their longstanding business model is under attack, free, over-the-air broadcasters remain subject to efficiency-crippling ownership regulations, including the local television ownership rule, by which their competitors are not burdened.[7] A stark example of this is the freedom that a cable company has under the rules: Such an entity may own up to two TV stations in the same market in which it operates the sole cable system and offers not only multichannel video programming, but broadband, telephony, and wireless services.

Broadcasters explained in initial comments that in this increasingly challenging economic and unbalanced regulatory environment, their ability to fulfill their core missions of providing viewers with high-quality programming and locally-oriented service, free and over the air, is being seriously threatened.[8] Perhaps most alarmingly, as broadcasters informed the Commission, because of increased expenses and declining revenues, they are faced with the prospect of cutting costly local news operations.[9] This already has happened in some markets,[10] and the likelihood of additional reductions is looming.[11]

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6 *See, e.g.*, Entravision Comments at 6-9; Granite Comments at 3-4; Hearst-Argyle Comments at 4-16; Nexstar Comments at 6-10; Smaller Market Comments at 6-9.

7 *See, e.g.*, Cascade Comments at 2; Fox Comments at 23-24; Granite Comments at 7-8; Media Institute Comments at 3; Sinclair Comments at 32-34.

8 *See, e.g.*, Block Communications Comments at 3-4; Hoak Media Comments at 2-3; Smaller Market Comments at 9-10.

9 *See, e.g.*, Block Communications Comments at 3; Gannett Comments at 42-43; Gray Comments at 14-15; Hoak Media Comments at 7; Media Institute Comments at 8; NAB Comments at 94-97; Nexstar Comments at 13-14; Smaller Market Comments at 9-10.

10 *See, e.g.*, Block Communications Comments at 3; Gray Comments at 14-15; Media Institute Comments at 8; NAB Comments at 94; Smaller Market Comments at 9.

11 *See, e.g.*, NAB Comments at 97, 106; NBC Comments at 24; Smaller Market Comments at 10.

Relief from the local television ownership rule could provide a powerful antidote to these disturbing trends. By allowing broadcasters to operate more efficiently and to share expensive newsgathering resources, relaxation of the restriction would enable them to remain economically viable and, more specifically, to enhance local news and community-oriented coverage.[12] The FCC correctly concluded in 2003 that these public interest benefits likely would stem from loosening the restriction,[13] and indeed the record is now replete with evidence that this is precisely what has occurred in those instances in which local multiple television ownership has been permitted.[14]

A small handful of pro-regulatory commenters contend, as they have throughout the Commission's periodic media ownership reviews, that the FCC should keep intact the local television ownership rule[15] or even revert to the "single license" standard originally adopted in the 1960s.[16] Despite the evidence to the contrary, these few parties would have the FCC believe that the media marketplace is more or less the same as it was when the ownership rules were established decades ago, when, for instance, local broadcast stations and daily newspapers

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[12] *See, e.g.*, Block Communications Comments at 3-4; Cascade Comments at 3; Granite Comments at 6-7; Gray Comments at 16-17.

[13] *See 2003 Order*, 18 FCC Rcd at 13,685 (¶ 169).

[14] *See, e.g.*, Belo Comments at 22-27; Gannett Comments at 43-44, 46; Hoak Media Comments at 3; NAB Comments at 99-102.

[15] *See, e.g.*, Comments of the American Federation of Labor and Congress of Industrial Organizations, *et al.* at 41-45 ("AFL-CIO Comments"); Comments of Consumers Union, *et al.* at 5 ("Consumers Union Comments"); Comments of Communications Workers of America, *et al.* at 4, 60-61 ("CWA Comments").

[16] *See* Comments of the Office of Communication of the United Church of Christ at 44-60 ("UCC Comments").

offered the only viable news options in a given community.[17] In particular, these commenters try to persuade the agency that the ubiquitous Internet is somehow absent from the local news and information marketplace.[18] The record proves otherwise, however, as many parties demonstrated in their opening comments with concrete examples.[19]

The essence of the arguments put forth by the pro-regulatory commenters is that more owners automatically will translate into greater diversity and, for this reason, the FCC should maintain the status quo with respect to its duopoly restrictions.[20] But that does not mean the public and consumers will be better served. In fact, a close review of the record in this proceeding makes it perfectly clear that keeping the rule in place ultimately will be detrimental to diversity because it will undermine the economic vitality of broadcasters and their ability to provide a diverse array of programming.[21] Moreover, it is a fact of the marketplace that the owner of more than one co-located broadcast station has the economic incentive to diversify programming in order to reach the largest aggregate audience.

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17 *See, e.g.*, AFL-CIO Comments at 51-53; Comments of the Center for Creative Voices in Media, *et al.* at 3-4 ("Center for Creative Voices Comments"); Consumers Union Comments at 10-13; CWA Comments at 17-19; UCC Comments at 40-43.

18 *See, e.g.*, AFL-CIO Comments at 38-41; Center for Creative Voices Comments at 3-4; Consumers Union Comments at 11-13; CWA Comments at 18, 23; UCC Comments at 42-43. These pro-regulatory commenters also maintain that broadcasters have felt no adverse financial effect from the competition exploding around them and remain as economically robust as ever. *See, e.g.*, Consumers Union Comments at 17, Study 9; CWA Comments at 38-46; UCC Comments at 67-68. Even though it may be the case that broadcasters remain competitive and in some cases may enjoy profitable operations, the detailed evidence and first-hand accounts provided by many parties in the opening comments show that the economic trends in the industry have taken a decisive downward turn.

19 *See, e.g.*, Belo Comments at 11; Bonneville Comments at 9-10; Cox Comments at 22-23; Fox Comments at 14-15; Media General Comments at 52-54.

20 *See, e.g.*, Consumers Union Comments at 19-20, Study 19; CWA Comments at 17; UCC Comments at 52-55.

21 *See, e.g.*, Belo Comments at 22; Cascade Comments at 2; Gray Comments at 19.

Pro-regulatory commenters also claim that the existing rule is needed to protect localism because common owners make a practice of "consolidating newscasts."[22] As noted above, the opposite more typically has occurred, with the creation of duopolies fostering the creation of *additional* newscasts.[23] To the extent that CBS is held up as an example to bolster the pro-regulatory allegations, the anecdotes supplied simply miss the mark. For example, AFL-CIO claims that CBS drastically has cut news operations at its duopoly stations in the Los Angeles and Detroit markets.[24] In fact, CBS' combination in Los Angeles, which consists of stations KCBS (CBS) and KCAL (IND), has *increased* its weekly hours of local news programming since the stations became jointly owned in 2000. Prior to the merger, the stations collectively aired an impressive 60 hours of local newscasts per week; post-merger, the number increased even further to 64 hours per week.[25] Indeed, the Los Angeles combination is the *largest* news producing duopoly in *the entire country*. Although AFL-CIO insinuates that the two stations essentially air one consolidated newscast, that is not the case. In reality, the newscasts are produced independently, feature different anchors, and have largely different characteristics and focus points.

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[22] *See*, *e.g.*, AFL-CIO Comments at 42-43; Comments of The American Federation of Television and Radio Artists at 14-15 ("AFTRA Comments"); CWA Comments at 13-14.

[23] *See* note 15, *supra*.

[24] *See* AFL-CIO Comments at 30-32, 59; *see also* AFTRA Comments at 15.

[25] Even a recent study conducted by Professor Michael Yan of the University of Michigan, which is cited heavily by pro-regulatory commenters for the dubious proposition that duopoly stations tend to have substandard news operations, evidences the exceptional news operations of the CBS-owned duopoly station in Los Angeles. *See* Michael Zhaoxu Yan, Department of Communication Studies, The University of Michigan, *Duopoly Ownership and Local Informational Programming on Television: An Empirical Analysis* (2005); *see also* Consumers Union Comments, Study 16, UCC Comments at 51-52. The stations included in the study sample, which consisted of both duopoly and non-duopoly stations, provided an average of approximately 29 hours of local news programming over a two-week period. In contrast, KCAL currently provides 77 hours of local news on a bi-weekly basis, more than 2.6 times as much as the TV stations in the Yan Study, while KCBS provides 51 bi-weekly hours of local news.

In addition to its many hours of traditional newscasts, KCBS also produces and airs two hours per week of locally produced sports news, bringing the total combined hours of weekly locally produced news programming to 66. The outstanding quality of the Los Angeles stations' news reporting is reflected in the many awards they have received in recent years. In 2006 alone, KCBS and KCAL together received 16 Emmys (including Best Newscast, Best Investigative Reporting, and Best Serious News Story) as well as over a dozen other awards (including a Regional Murrow Award for Best Spot News Coverage and an Imagen Award for Best Local Informational Programming).[26] Since the formation of the duopoly, the stations also have increased their public affairs programming line-up through the addition of "Studio 2," a weekly half-hour program that airs on KCBS on Sundays at 6:30 PM. "Studio 2" takes an in-depth look at a variety of pressing issues facing Los Angeles residents and already has received several awards, including a 2006 Best Talk/Public Affairs program award from the Los Angeles Press Club and a 2005 Emmy for Best Program on Crime/Social Issues.

CBS' commitment to the Detroit community via its WWJ (CBS) and WKBD (CW) must be viewed within the unique history of the stations, the market, and the competitive broadcast landscape. When the then-brand new FOX broadcast network was launched in the early 1990s, there was a great displacement of affiliations around the country as the fourth network lured away stations carrying other networks' programming. In this competitive shuffle, CBS lost its long-time channel 2 outlet in Detroit and responded by acquiring WGPR, channel 62. That

[26] Since coming under joint ownership, the stations have combined resources to create the most honored and prolific television news investigative unit in the Los Angeles market. Collectively, the stations have produced more than 100 investigative news stories, many of which have prompted direct responses from public officials, including Governor Arnold Schwarzenegger. By way of example, the stations in February 2006 exposed the involvement of state corrections officials in the illegal residential placement of registered sex offenders. The story prompted the implementation of a statewide task force to overhaul the system and the resignation of the head of the State Department of Corrections.

800,000-watt, independent UHF station which, by the early 1990s, was airing infomercials for much of the day, had a signal so weak that it could be viewed over the air only by those living in Detroit proper and the inner northern suburbs.

CBS invested millions of dollars to upgrade the facility to five million watts in 1999 and to design a state-of-the-art studio to transmit CBS Network news, sports, and entertainment programming to more viewers than ever in the Detroit area. A year later, CBS merged with Viacom, which owned long-established, then UPN-affiliated WKBD, channel 50, in Detroit. After the combination was formed, WWJ launched an 11 PM newscast, but it was readily apparent that the Detroit audience was not looking for yet another 11 PM newscast. In fact, WWJ's newscast garnered lower ratings than certain syndicated programming (reruns) airing on other stations at the same time. Thus, rather than curtailing local news, the duopoly provided CBS with the incentive to try to launch local news for the first time on channel 62.

As for WKBD, it aired a 10 PM newscast and was also known as "the" sports station in Detroit. It had a long history as the broadcast home of the Detroit Red Wings hockey team, the Detroit Pistons basketball team, and the Detroit Tigers baseball team. On average, the station broadcast more than 100 games each year, with many of them running into and beyond the 10 PM start-time for the local news. On those nights, the news was delayed until the end of the game, when it was then aired. This inconsistent availability of the news drove many news viewers to a competing 10 PM newscast, while WKBD continued to serve those viewers wanting to watch their hometown sports teams from the comfort of their living rooms—for free.

Although the stations do not currently air local newscasts, both air local public affairs programming.[27] Given the unique history of the Detroit market and the CBS-owned stations in particular, the situation does not provide any support for pro-regulatory commenters' allegation that broadcasters will eliminate news from one station in order to avoid "competition" between duopoly partners.[28]

Finally, UCC asserts that relaxation of the local television ownership rule is unnecessary because broadcasters now have the right to multicast.[29] If broadcasters want to extend their program offerings within a local market, UCC declares, they already can do so via their excess digital capacity. This argument blithely ignores a critical technical and marketplace reality. Broadcasters certainly have the right to multicast, but if they elect to do so, it is at the expense of serving their viewers with the highest quality, full-bandwidth, high definition ("HD") programming. So compelling is such HD programming that it is being offered as an incentive to subscribers by more and more MVPDs and cable program networks, which compete directly with broadcasters for eyeballs and advertising revenues. Thus, for UCC to argue that broadcasters should multicast in lieu of operating another station in the market overlooks entirely the fact that doing so would put broadcasters at a competitive disadvantage vis-à-vis their subscription service rivals. By contrast, permitting common ownership of more stations in a market could pave the way for broadcasters to offer their communities not only additional high quality programming but *also* full-blown HD programming, over-the-air, for free.

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[27] For example, the stations offer: (1) "Street Beat," a 30-minute weekly program focusing on local topics; (2) "Michigan Matters," a 30-minute weekly program focusing on state and local issues and on which federal, state, and local officials frequently appear; and (3) "Pancakes and Politics," a quarterly program produced in partnership with the *Michigan Chronicle*.

[28] *See, e.g.*, CWA Comments at 16.

[29] *See* UCC Comments at 55-60.

III. <u>THE LOCAL RADIO OWNERSHIP LIMITS MUST BE MORE NARROWLY TAILORED TO ADDRESS THE OBJECTIVE OF PROMOTING COMPETITION WITHOUT ARBITRARILY IMPEDING THE ABILITY OF BROADCASTERS TO COMPETE IN A RAPIDLY EVOLVING MARKETPLACE.</u>

A. The FCC Should Increase the Limits on Local Radio Station Ownership in the Largest Markets.

In the Third Circuit's remand of the local radio ownership limits, the Court specifically instructed the Commission to support any decision to retain its existing numerical limits with reasoned analysis.[30] The FCC's current local radio caps are tiered to provide incremental ownership limits for markets with up to 14, 29, 44, and 45 or more radio stations. The regulations inexplicably fail to include further tiers for markets beyond the 45-station mark, despite the fact that a significant number of markets are considerably larger and substantially more competitive, with at least 60 stations. Thus, these rules are not sufficiently tailored to account for the robust and increasing competition in the nation's largest media markets.[31] CBS accordingly submits that the Commission should establish additional tiers for markets with between 60 and 74 radio stations, and markets with 75 or more stations.

Specifically, CBS supports the proposal that an entity in a local market with 60 to 74 radio stations should be permitted to own up to 10 radio stations, and an entity in a market with 75 or more radio stations be permitted to own up to 12 radio stations.[32] As the record shows, this step would affect only the 17 largest radio markets, and would allow a maximum ownership of

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30 *See Prometheus*, 373 F.3d at 432. The Court did not question the Commission's decision to rely solely on competition as a means of ensuring viewpoint diversity, and thus not to rely on promotion of programming diversity as a basis for regulation of local ownership; therefore, these matters are not at issue in this remand proceeding.

31 *See* Comments of Clear Channel Communications, Inc. at 50-59 ("Clear Channel Comments"); Media Institute Comments at 8.

32 *See* Clear Channel Comments at 50.

17% of the stations in a single market, a level less than currently permitted in markets with at least 45 stations.[33]

Far from having any adverse impact on competition, this modest increase in the permissible number of commonly-owned radio stations in the very largest markets is likely to produce substantial benefits to the operators involved and, thus, the listening public. From an economic standpoint, consolidated ownership offers significant efficiencies that can improve the operations and fiscal health of broadcast enterprises, thereby providing corollary benefits to the public—a point made by many of the commenters.[34] Economic efficiencies, in turn, provide a cushion that produces benefits for the content production side of the business. Stations that are not operating close to the margin can afford to be less risk-averse and are therefore more likely to experiment with new types of programming and formats.[35] Otherwise, stations are pressed to program in an attempt to reach the widest possible general audience, which can sometimes result in homogenized programming that may have some appeal to many, but is highly valued by few.

Regardless of other steps the Commission may take, however, it ought not alter its past course by attempting to base its ownership regulations on the concept of "market share," or on the ratings popularity of individual stations.[36] Radio market audience and revenue shares are

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33 *See id.* at 56.

34 *See, e.g.*, Clear Channel Comments at 19, 30-32; NAB Comments at 36-42; *see also 2003 Order*, 18 FCC Rcd at 13,738 (¶ 303).

35 *See* NAB Comments at 41 ("Empirical studies demonstrate that the joint ownership of radio outlets … enhances the ability of broadcasters to serve the needs and interests of diverse audiences by offering more varied programming."); Cascade Comments at 2 (noting that independent operators are constrained by economic realities from offering new or unusual programming); *see also* Clear Channel Comments at 22-23 & 41, and Exhibit 2 thereto, Statement of Prof. Jerry A. Hausman.

36 *See* Clear Channel Comments at 59-66 & n.180 (noting in particular that it was Congress that mandated the Commission's elimination of any market share test as part of the local radio ownership limits).

constantly changing and may be very hard to measure with objective accuracy, such that these characteristics are open to question in measuring the current competitive situation and of dubious value in predicting future performance.[37]

For all these reasons, the Commission should carefully reconsider its local radio broadcast numerical limits and add additional tiers that would permit ownership of larger groupings of stations in the very largest markets.

B. The Commission Should Eliminate the AM and FM Radio Sub-Caps, Which Lack Any Justification in the Current Marketplace.

Most of the commenters that addressed the issue of the local radio market sub-caps, which restrict ownership of AM and FM radio stations, emphatically supported the elimination of these arbitrary limitations.[38] This is a deregulatory measure that the FCC should now implement, particularly because the Third Circuit found that the Commission had not adequately justified the retention of these caps in its *2003 Order*.[39] Indeed, in its *2003 Order*, the Commission made no significant attempt to evaluate or justify retention of these band-specific limits.[40]

Similarly, no party to this proceeding has made any showing that the sub-caps serve any purpose in the promotion of competition or viewpoint diversity. To the limited extent that commenters addressing this issue support retention of the sub-caps, the arguments raised in favor of such action are entirely conclusory, lacking both substance and record support. For example,

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37 *See*, *e.g.*, *id*. at 61-62.

38 *See*, *e.g.*, *id.* at 66-73; Comments of Multicultural Radio Broadcasting, Inc. at 3-4 ("Multicultural Comments").

39 *See Prometheus*, 373 F.3d at 434-35.

40 *See 2003 Order*, 18 FCC Rcd at 13,733-34 (¶ 294).

some suggest that the sole justification that the Commission gave in the *2003 Order* for retaining the sub-caps—*i.e.*, that subcaps are warranted because AM stations are generally inferior to FM stations—was correct. This AM-inferiority argument lacks any rational, real-world basis. In the first instance, if it were true, there would be no reason to impose any limitation at all on the ownership of AM stations, as the Third Circuit itself suggested.[41] In that case, the most appropriate course would be for the FCC to do everything in its power to support and encourage, but not to *restrict*, the ownership of these less desirable radio properties. Accordingly, the argument that retaining caps on both FM and AM ownership "promotes new entry" is counterintuitive.[42]

Moreover, if the thesis of general AM inferiority were correct, then elimination of both caps likely would result in *more* AM stations becoming available for sale to new or minority entrants. On the other hand, if AM stations are not generally inferior to FM stations, then the elimination of the caps would have little or no effect either way, as stations in each service will continue to be valued based on their intrinsic qualities rather than the band in which they operate.

In fact, evidence provided in this proceeding has shown that many AM stations are strong competitors in many markets all across the country.[43] Indeed, some are among both the most popular stations and the top billing stations in the country.[44] These empirical data demonstrate that, just like FM stations, some AM stations have a broad reach and attract large audiences,

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41 *See Prometheus*, 373 F.3d at 434.

42 *See* UCC Comments at 84-85.

43 *See* Clear Channel Comments at 70-73.

44 *See id.* at 67-68 (observing that AM stations ranked number one in more than 20% of the top fifty markets and that seven Clear Channel AM stations ranked in top three stations in medium-sized markets); Multicultural Comments at 2 (noting that its successful business has been built almost entirely with AM radio stations in major markets).

while others do not. The absence of a bright-line demarcation between FM stations and AM stations in terms of audience reach and overall competitiveness therefore undermines any basis for treating them as distinct types of facilities for multiple ownership purposes.

Finally, as made plain by several commenters, application of the sub-caps can produce absurd results. For example, there are markets where the strict application of these limits would require one company, Multicultural, to divest an AM station even though the rules would at the same time permit it to own up to *three* additional FM stations in the same market.[45] Such anomalous results, which fly in the face of the principal rationale for the sub-caps' retention, strongly indicate that the rule differentiating between AM and FM stations for purposes of the multiple ownership restrictions should be abandoned.

IV. **THERE IS NO BASIS FOR APPLYING ANY RADIO/TELEVISION CROSS-OWNERSHIP LIMITATION IN THE LARGEST MEDIA MARKETS.**

There is no real debate on the record in this proceeding that the Commission's radio/television cross-ownership restriction is obsolete, unjustified, and was appropriately eliminated in 2003. In fact, the FCC's deletion of the rule was uncontested on appeal and is therefore not subject to review on remand.[46] Almost every commenter meaningfully speaking to this issue supports maintaining the Commission's 2003 determination to repeal the rule.[47] The

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[45] *See* Multicultural Comments at 3.

[46] *See Prometheus*, 373 F.3d at 397 & n.22 (upholding the Commission's decision to replace its broadcast cross-ownership restrictions generally, and noting specifically that no party challenged on appeal the repeal of the radio/television cross-ownership rule.)

[47] *See* Clear Channel Comments at 80-90; Fox Comments at 25-26; NAB Comments at 120-124; Comments of Spanish Broadcasting System, Inc. at 8-10.

few commenters who argue in favor of resurrecting a radio/television cross ownership limit offer only the vaguest rationales and fail to provide any data to support their views.[48]

The FCC historically justified the radio/television cross-ownership rule, as well as other cross-ownership limitations, as necessary to promote economic competition, localism, and viewpoint diversity.[49] But the Commission at least five years ago began to move away from the promotion of competition as a justification for the rule because that rationale lacked any empirical evidence or rational basis.[50]

Given the acknowledged major changes in the media marketplace, retention of any radio/television cross-ownership limit is also unnecessary to promote localism or diversity, and would be inconsistent with the elimination of the cable-broadcast cross-ownership rule as well as any modification or elimination of the newspaper-broadcast cross-ownership rule. The same reasoning that compels repeal of these rules applies at least equally, if not more strongly, to the radio/television cross-ownership rule: The current media marketplace renders the cross-ownership rules no longer necessary in light of increased competition, and, as explained below, cross-ownership actually promotes the public interest.

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48 *See* Comments of the National Association of Black Owned Broadcasters, Inc. and the Rainbow/PUSH Coalition, Inc. at 14; AFTRA Comments at 22-23; UCC Comments at 76.

49 *See, e.g.*, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 19861, 19870 (¶ 20) (2001).

50 *See 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules, Further Notice of Proposed Rulemaking*, 21 FCC Rcd 8834 (¶ 25) (2006); *2003 Order*, 18 FCC Rcd at 13,769-72 (¶¶ 375-81); *see also, e.g.*, *Nassau Broad. II, LLC*, 17 FCC Rcd 9001, 9008 (¶¶ 23-24) (2002); *Air Virginia, Inc.*, 17 FCC Rcd 5423, 5428-29 (¶ 18) (2002).

As others have noted in this proceeding, the radio/television cross-ownership rule also places disproportionate limits on radio ownership.[51] Under no circumstance does the rule allow the common ownership of the maximum number of radio stations permitted under the local radio ownership rule (*i.e.*, eight) and even a single television station. On the other hand, the rule permits common ownership of the maximum number of television stations allowed under the local television rule (two) and up to six radio stations. By adhering to its earlier decision to reject a radio/television cross-ownership limitation, the Commission therefore would merely be allowing the common ownership of one or two additional radio stations in the largest markets.

It is difficult to see how, in today's vibrant media marketplace, viewpoint diversity could be harmed by the common ownership of one or two additional radio stations in such markets, the ownership which would otherwise be permitted under the local radio ownership rule, yet not harmed by the common ownership of either radio or television stations and a local cable television system. The separate local radio and local television rules, in whatever form the Commission chooses to retain them, are thus more than adequate to protect diversity.

In addition to the absence of a concrete justification for a radio/television cross-ownership restriction, there are multiple practical considerations that weigh strongly in favor of its repeal. Like common control of multiple radio stations in a local market, cross-ownership of radio stations with another media outlet, whether a newspaper or television stations, creates economic and other efficiencies that benefit the public through access to broader and more varied types of programming.[52]

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[51] *See* NAB Comments at 122-23.

[52] *See supra* at 11-12 (explaining benefits of common ownership of radio stations); *see also* Bonneville Comments at 13-15; Media General Comments at 11; Comments of the Newspaper Association of America at 66-79; Comments of Shamrock Communications Inc. and the Scranton Times, L.P. at 7.

In its comments, AFTRA contests the idea that there are content benefits arising from cross-ownership, asserting that contract proposals by broadcasting companies permitting television reporters to file stories for radio stations are part of a process under which co-owned radio and television stations will "invariably cross-assign employees among those properties."[53] As an initial matter, this argument already has been rejected by the Commission in its *2003 Order*, and the Third Circuit's decision provides no reason for the agency to revisit this determination.[54] In any case, contrary to AFTRA's assertions, CBS' co-owned radio and TV stations do not typically cross-assign reporters to work for both radio and television outlets. In the rare instances when reporters or other personalities do appear either regularly or occasionally on co-owned CBS radio and television stations, such practices have not been in lieu of hiring fulltime radio reporters, as AFTRA suggests, but have actually provided listeners with additional or timelier news and information.[55]

Significant public benefits flow from the ability to put reporters on the air on either radio or television stations. Among other things, this approach allows both stations to go live in breaking news situations when just one outlet has a reporter on the scene who can deliver important, perhaps critical, details to the widest possible audience. In October 2006, for example, WCBS-AM made use of WCBS-TV reporters in the New York market to cover the crash of a private plane piloted by New York Yankees pitcher Cory Lidle into a Manhattan

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53 *See* AFTRA Comments at 22-23.

54 *See 2003 Order*, 18 FCC Rcd at 13,773 (¶ 385) (rejecting AFTRA's arguments that radio-TV cross-ownership leads to less independent news and public affairs programming, and noting that "efficiencies derived … may in fact, increase the amount of diverse, competitive news and local information available to the public").

55 In fact, cross-ownership may actually protect against a loss of on-air reporting jobs by allowing individual stations to save money in other areas of operation while maintaining, or even increasing, budgets for news and other content. In some cases, even where the radio and television stations are commonly owned, reporters or other talent are employed by one station and separately compensated by the other as an independent contractor.

apartment building. In the first instance, there were fears that the crash could have been a terrorist attack, but the use of the reporters available to provide information quickly to viewers and listeners of both CBS stations allowed the stations to quell much potential panic and to disseminate quickly the information that the crash was a tragic accident.

No legitimate reasons have been advanced in this proceeding for the Commission to entertain retention of a radio/television cross-ownership limitation. Consistent with the record, this restriction must be abandoned permanently in order to promote more robust competition and to advance the public interest. Whatever other cross-media limitations may ultimately be adopted, the Commission should refrain from adopting any restrictions on radio/television cross-ownership in the markets with more than three full-power television stations, as provided for in the cross media limit adopted in 2003.

The three broadcast ownership rules discussed herein are of particular interest to CBS, as are other regulatory issues, such as the UHF discount, addressed in the reply comments that CBS is concurrently filing jointly with ABC, FOX, and NBC. CBS also urges the Commission to eliminate the dual network rule and, in all markets, the newspaper/broadcast cross-ownership ban. The remaining portions of the dual network rule are no longer necessary in the public interest, given the variety of broadcast and cable networks from which viewers today can choose. And elimination of the newspaper/broadcast cross-ownership rule would create stronger local affiliates for not just for the CBS Television Network but for *all* broadcast networks. As to both rules, CBS incorporates by reference and renews the full arguments contained in the joint network comments and reply comments submitted in the 2002 biennial review, one of the dockets included in the instant proceeding.[56]

[56] As those comments explain, elimination of the dual network rule will promote innovation without limiting the continued availability of national and local news service; further, the dual network rule does not serve the FCC's competition and diversity goals and bears little, if any, relationship to localism. *See* Comments of Fox Entertainment Group and Fox Television Stations, National Broadcasting Company, Inc. and Telemundo Communications Group, Inc., and Viacom, MB Docket No. 02-277, at 44-49 (Jan. 2, 2003) ("Joint Network Comments"); Reply Comments of Fox Entertainment Group and Fox Television Stations, National Broadcasting Company, Inc. and Telemundo Communications Group, Inc., and Viacom, MB Docket No. 02-277, at 37-39 (Feb. 3, 2003) ("Joint Network Reply Comments"). As we also have previously explained, eradication of the newspaper/television cross-ownership ban poses no credible threat to diversity. *See* Joint Network Comments at 54-55; Joint Network Reply Comments at 43-46. Indeed, as with the other broadcast ownership rules, the need to repeal these outdated regulations has only gotten stronger since these comments were filed in 2003, with the continuing developments in the media marketplace.

V. CONCLUSION

As shown herein, the current restrictions on television duopolies, local radio ownership, and television/radio cross-ownership no longer serve the FCC's public interest goals and must now, as matter of law, policy, and fact of the new media world, be modified. When viewed against the backdrop of present-day market realities, these regulations are clearly outdated relics of a bygone era. The specific regulatory relief outlined above is urgently needed in order to enable broadcasters to compete effectively in the modern age, so as to save the time-honored cultural tradition of broadcasting and its vast digital potential for the American viewing and listening audience. No credible evidence or serious arguments have been submitted on the record that could properly serve as the basis for denying this relief and instead keeping in place a regulatory regime that dates back more than 40 years.

Respectfully submitted,

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