Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review	)	MB Docket No. 06-121
of the Commission's Broadcast Ownership	)	
Rules and Other Rules Adopted Pursuant to	)	
Section 202 of the Telecommunications Act	)	
of 1996	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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Executive Summary

The National Association of Broadcasters ("NAB") submits these comments in response to the request for comment on the proposal to revise the newspaper/broadcast cross-ownership rule released on November 13, 2007. This proposal presumes that cross-ownership between a daily newspaper and a single broadcast outlet in the 20 largest Nielsen Designated Markets Areas ("DMAs") is consistent with the public interest (if certain additional conditions are met with regard to newspaper/television cross-ownership). It presumes that newspaper/broadcast transactions outside the top 20 DMAs are not in the public interest, although notwithstanding that presumption, particular transactions in these DMAs would be considered under several public interest factors set forth in the proposal. With respect to the remaining broadcast ownership rules currently under review in the statutorily-required quadrennial review, the proposal states that any further relaxation of the local radio and television ownership rules should be not allowed.

NAB supports amendment of the outdated prohibition on newspaper/broadcast cross-ownership, which has not been revised since its adoption in 1975. Elimination of the total ban on cross-ownership is clearly supported by the record in this proceeding, and modifying the rule is consistent with judicial affirmation of the Commission's 2003 determination that the ban was no longer in the public interest. Indeed, the voluminous record in this proceeding would support a more extensive revision of the newspaper cross-ownership restrictions, given the public interest benefits derived from such cross-ownership.

Any claims that the proposed modest changes to the newspaper cross-ownership ban would harm the public interest are untenable. Parties arguing that the cross-

ownership ban should not be modified in any respect must be able to show that the media marketplace has not changed at all since 1975 and that the development of digital technology, numerous multichannel video and audio services, and the Internet has not made the marketplace any more competitive or diverse. Moreover, the Commission commenced its reexamination of the newspaper/broadcast cross-ownership ban in 1996, so there can be no basis for suggesting that the agency is rushing to judgment on this issue or that another decade of delay is necessary. There is also no credible evidence in the record that cross-ownership harms the public interest.

NAB, however, strongly believes that the November 13 proposal does not reflect current video marketplace realities because it makes no changes to the existing television duopoly rule. The Court of Appeals for the District of Columbia Circuit found this duopoly restriction to be arbitrary and capricious over five and a half years ago for its failure to justify the exclusion of nonbroadcast media, particularly cable television, from the rule's "voice" threshold. *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d. 148, 164-165, 169 (D.C. Cir. 2002). The proposed continued maintenance of this arbitrary and capricious rule cannot be justified, especially given that the levels of competition and diversity offered by cable television, other multichannel providers, and the Internet are much greater now than in 2002. Moreover, multiple studies conducted by the Commission and other parties have shown that the common ownership of television stations in local markets promotes program diversity and localism.

With regard to changes to the current radio ownership rule, NAB agrees with the proposal's rejection of calls by some parties to restrict further the levels of common ownership permitted in local radio markets. However, given the substantial record in this

proceeding that common ownership of radio stations promotes programming diversity and does not harm competition, NAB urges the Commission to consider the continued relaxation of the local radio limitations set by Congress over a decade a ago in a less competitive and diverse media marketplace.

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To: The Commission

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the request for comment on the proposal to revise the newspaper/broadcast cross-ownership rule released on November 13, 2007.[2] This proposal presumes that cross-ownership between a daily newspaper and a single broadcast outlet in the 20 largest Nielsen Designated Market Areas ("DMAs") is consistent with the public interest (if certain additional conditions are met with regard to newspaper/television cross-ownership). It presumes that newspaper/broadcast transactions outside the top 20 DMAs are not in the public interest, although notwithstanding that presumption, particular transactions in these DMAs would be considered under several public interest factors set forth in the proposal. With respect to the remaining broadcast ownership rules currently

[1] NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

[2] *See* FCC News Release, *Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule* (Nov. 13, 2007) ("*Cross-Ownership News Release*").

under review in the statutorily-required quadrennial review, the proposal states that "any further relaxation" of the local radio and television ownership rules "should not be allowed." *Cross-Ownership News Release* at 2.

NAB supports amendment of the outdated prohibition on newspaper/broadcast cross-ownership. Elimination of the total ban on cross-ownership is clearly supported by the record in this proceeding, and modifying the rule is consistent with judicial affirmation of the Commission's 2003 determination that the ban was no longer in the public interest. Indeed, the voluminous record in this proceeding would support a more extensive revision of newspaper cross-ownership restrictions, given the public interest benefits derived from such cross-ownership.

NAB, however, strongly believes that the November 13 proposal does not reflect current video marketplace realities because it makes no changes to the existing television duopoly rule. The Court of Appeals for the District of Columbia Circuit found this duopoly restriction to be arbitrary and capricious over five and a half years ago. Continued maintenance of this arbitrary and capricious rule cannot be justified, given the levels of competition and diversity offered by cable television, other multichannel providers, and the Internet, as well as the diversity and localism benefits derived from common ownership of television stations in local markets.

With regard to changes to the current radio ownership rule, NAB agrees with the proposal's rejection of calls by some parties to restrict further the levels of common ownership permitted in local radio markets. However, given the substantial record in this proceeding that common ownership of radio stations promotes programming diversity and does not harm competition, the Commission should consider continued relaxation of

the local radio limitations set by Congress over a decade ago in a less competitive and diverse marketplace.

I. The Complete Ban On Newspaper/Broadcast Cross-Ownership Should Be Revised

A. The Record in this Proceeding and Relevant Judicial Determinations Support Elimination of the Blanket Ban on Newspaper Cross-Ownership

The November 13 proposal to relax modestly the long-standing total ban on newspaper/broadcast cross-ownership in the 20 largest DMAs is more than justified by the record in this proceeding. Over four years ago, the Commission, after an extensive review beginning in 2001, concluded that (1) the cross-ownership ban cannot be sustained on competitive grounds; (2) the rule is not necessary to promote localism and may in fact harm localism; and (3) most media markets are diverse, obviating a need for a blanket ban on newspaper/broadcast combinations.[3] On review, the U.S. Court of Appeals for the Third Circuit agreed with the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership no longer served the public interest. *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). The Court concluded that "newspaper/broadcast combinations can promote localism," and agreed with the Commission that a "blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity." *Id*. at 398-99. Thus, the reaffirmation in this proceeding that the complete ban on newspaper cross-ownership should be revised is entirely consistent with the *Prometheus* decision. Indeed, given the Third Circuit's conclusions that newspaper/broadcast combinations promote localism and that a blanket prohibition

[3] *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13748 (2003) ("*2002 Biennial Review Order*").

on such combinations is not necessary to protect diversity, the continued maintenance of the total ban on cross-ownership, which has resulted from the *Prometheus* remand, is clearly unjustifiable.

The voluminous record in this and in earlier proceedings not only justify the modest proposed revisions to the outmoded newspaper cross-ownership ban, but would in fact support much more extensive relaxation of newspaper cross-ownership restrictions. Numerous studies over the past several decades have consistently shown that television stations commonly owned with newspapers offer more and higher quality news programming and more local programming generally than other stations.[4] Thus, even before the Commission conducted several additional studies this year, evidence spanning decades strongly supported substantial revision of newspaper/broadcast cross-ownership restrictions.

Studies conducted by and for the Commission in 2007 also clearly demonstrate that common ownership of newspapers and broadcast outlets benefit viewers and listeners in local markets by promoting the provision of news programming generally and local news specifically. The Commission's own study found that television stations provided 18 minutes per day, or 11% more, news programming generally if they were cross-owned with a newspaper.[5] A study by Dr. Jeffrey Milyo of the Universities of Kansas and Missouri found that local newscasts for cross-owned television stations contained more total news coverage overall, more local news content, and more coverage

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[4] *See* NAB Reply Comments in MB Docket No. 06-121 at 82-84 (filed Jan. 16, 2007) ("NAB Reply Comments") (describing ten studies, including the FCC's own 2002 study).

[5] FCC, Daniel Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* (July 24, 2007) ("*Shiman Ownership Structure Study*").

of state and local political candidates than non-cross-owned stations.[6] Another study by Dr. Gregory Crawford of the University of Arizona similarly found that television stations commonly owned with a newspaper in the same area offered more local news programming.[7] Multiple recent studies moreover demonstrate that such common ownership does not present diversity concerns because ownership does not determine the viewpoint or political "slant" of media outlets and that commonly-owned outlets can and do offer diverse viewpoints.[8] Indeed, rather than ownership, several studies have found that market forces – specifically the ideology of the target market – drives the political orientation of newspapers much more than ownership.[9]

In light of the overwhelming evidence that the prohibition on newspaper/broadcast cross-ownership harms localism and is not needed to promote diversity, the November 13 proposal would appropriately end the complete ban on such cross-ownership, at least in the largest markets. This change would also promote the Commission's competition goals by allowing entities producing local news to form more

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[6] Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News* at 18-20 (June 13, 2007) ("*Milyo Cross-Ownership Study*").

[7] Gregory Crawford, *Television Station Ownership and the Quantity and Quality of TV Programming* at 23 (July 23, 2007) ("*Crawford Television Programming Study*").

[8] *See, e.g., Milyo Cross-Ownership Study* at 21-24; Matthew Gentzkow & Jesse M. Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers* at 4-5, 43-44 (Nat'l Bureau of Econ. Research, Working Paper No. 12707, 2006); David Pritchard, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002) (survey of newspaper/television combinations found that common ownership of these outlets did not result in a predictable pattern of news coverage and commentary about political events); Comments of Media General in MB Docket No. 06-121 at Appendix 6 (filed Oct. 23, 2006) (surveying differing 2004 presidential endorsements by newspapers owned by same companies).

[9] *See Milyo Cross-Ownership Study* at 23-24; *Gentzkow Media Slant Study* at 24.

viable ownership structures. Just the past month has seen numerous additional reports about the continued circulation and financial struggles of the newspaper industry.[10] These reports only reinforce extensive evidence presented by commenters in this proceeding about the competitive challenges facing newspapers in the Internet age, as consumers utilize other media outlets, circulation falls and revenues plummet as advertisers increasingly move their ad dollars away from traditional media.[11] As noted in the November 13 proposal, "[c]onsumers have benefited from the explosion of new sources of news and information," including cable, satellite and the Internet, but, as a result, "newspapers are struggling" by "almost every measure," whether circulation, ad revenue or stock prices. In fact, 300 or more "daily newspapers have stopped publishing over the past 30 years." *Cross-Ownership News Release* at 1. Given the urgent need for repeal of the blanket ban on newspaper/broadcast cross-ownership, which harms the public interest and the financial vibrancy of local news outlets, NAB urges the Commission to act promptly to adopt the November 13 proposal, or to approve more extensive revisions to this outmoded restriction.

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[10] *See, e.g.*, James P. Miller, *Tribune Revenues Down 9.3% in October*, chicagotribune.com (Nov. 27, 2007); Mark Fitzgerald, *On Bad Day for Newspaper Stocks – Sun-Times Media Group Sinks 23%*, Editor & Publisher (Nov. 26, 2007); Jennifer Saba, *Report: Online Real Estate Ad Revenue to Eclipse Newspapers by 2012*, Editor & Publisher (Nov. 26, 2007); Erik Sass, *Rough October Spells 4Q Trouble for Newspapers*, MediaPost Publications (Nov. 26, 2007); Associated Press, *Sinking Feeling: McClatchy's Revenue Off 9.9%*, Editor & Publisher (Nov. 20, 2007); Associated Press, *PCM, Which Pushed for Knight Ridder Sale, Dumps Much of its Stake in Newspapers*, Editor & Publisher (Nov. 14, 2007); Aldo Svaldi, *Post Owner Reports Loss for First Quarter*, denverpost.com (Nov. 14, 2007); Richard Perez-Pena, *More Readers Trading Newspapers for Web Sites*, nytimes.com (Nov. 6, 2007); E&P Staff, *Top 25 Daily and Sunday U.S. Newspapers*, Editor & Publisher (Nov. 5, 2007).

[11] *See, e.g.*, NAB Comments in MB Docket No. 06-121 at 116-117 (filed Oct. 23, 2006) ("NAB Comments"); NAB Reply Comments at 89-90; Comments of the Newspaper Association of America in MB Docket No. 06-121 at 41-45 (filed Oct. 23, 2006).

B. Any Claims that the Proposed Modest Changes to the Newspaper Cross-Ownership Ban Would Harm the Public Interest Are Untenable

Some parties in the media ownership debate continue to argue that the broadcast ownership rules – including the newspaper cross-ownership ban which has not been modified since its adoption in 1975 – should not be modernized in any respect or should be made even more restrictive.[12] However, to support such views, one must believe that the media marketplace has not changed at all over the past several decades or that the media marketplace is less competitive and diverse than before the development of digital technology, numerous multichannel video and audio services, and the Internet. Such a position is clearly untenable.[13]

Despite claims by some opposing any modernization of the newspaper cross-ownership and other broadcast restrictions, NAB also observes that there has not been any rush to judgment in the FCC's current statutorily-required review of the ownership

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[12] *See, e.g.*, Further Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket No. 06-121 (filed Oct. 22, 2007) ("Consumers Union, *et al*. Comments"); Comments of Office of Communication of United Church of Christ, Inc., *et al*. in MB Docket No. 06-121 (filed Oct. 22, 2007).

[13] As NAB has previously noted, those opposing reform of the local broadcast restrictions have been reduced to making nonsensical arguments, such as that the Internet has only minor effects on the media marketplace and that the significance of cable television should also be greatly discounted. NAB has refuted these fanciful arguments at length in numerous previous submissions (as have other commenters) and will not repeat them here. *See, e.g.*, NAB Comments at 12-35; NAB Reply Comments at 16-34; NAB *Ex Parte* in MB Docket No. 06-121 at 8-23 (filed Nov. 1, 2007); Reply Comments of the Newspaper Association of America on Media Ownership Research Studies at 15-21 (filed Nov. 1, 2007); Media General Reply Comments on FCC Research Studies on Media Ownership at 12-24 (filed Nov. 1, 2007).

rules.[14] The Commission began its reexamination of the newspaper/broadcast cross-ownership ban in 1996 with a notice of inquiry on newspaper/radio cross-ownership, and commenced the still-pending review of the newspaper/broadcast prohibition in 2001. The Commission also commenced a review of radio ownership in 2001. The Commission's review and revision of the television duopoly and radio/television cross-ownership rules in the 1990s resulted in a 2002 court appeal finding the revised duopoly rule to be arbitrary and capricious, and sending the FCC's decision back to the agency for further consideration. *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) (remand pending). In addition, the Commission reexamined the local broadcast ownership rules in its statutorily-required 1998, 2000 and 2002 biennial reviews (the last of which remains pending at the FCC after an appeal and decision by the Third Circuit in *Prometheus*). Given the number of years that the Commission has been considering reform of the newspaper cross-ownership ban and other broadcast ownership restrictions, and the voluminous empirical and anecdotal evidence that has been submitted by those urging reform of these rules, the opponents of reform have no basis for their claims that the Commission is somehow rushing to judgment or that another decade of delay is necessary.

Faced with overwhelming evidence of the public interest benefits of newspaper/broadcast cross-ownership, certain parties, as noted in previous NAB filings, have attempted to oppose any reform of the 1975 newspaper cross-ownership ban by

[14] Section 202(h) of the Telecommunications Act of 1996, as amended, requires the FCC to review its broadcast ownership rules every four years and determine whether those rules remain "necessary in the public interest as the result of competition." Pub. L. No. 104-104 § 202(h), 110 Stat. 56 (1996), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

making unsupported arguments about the alleged harms of cross-ownership based on their own statistically insignificant research results. For example, despite the evidence that ownership by a newspaper increases the news output of cross-owned television stations, some parties have contended that cross-ownership still somehow reduces the output of local news available in the market overall. *See* Consumers Union, *et al*. Comments at 7. This claim rests on speculation as to how the existence of a cross-owned station "disadvantages" other stations in the market and even more highly dubious distinctions drawn between grandfathered cross-owned stations and television stations with cross-ownership waivers. As NAB and other commenters have explained, these basic assumptions underlying Consumers Union *et al*.'s claims are wholly unsupportable.[15]

And beyond being based on untenable assumptions, Consumers Union, *et al*.'s claims are not even supported by their own analysis. Indeed, although Consumers Union, *et al*. contend that newspaper cross-ownership reduces the total amount of local news available in local markets, their own regression analysis produced *no* statistically significant results among their four models.[16] As NAB and other commenters pointed

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[15] *See* NAB, Reply Comments in MB Docket No. 06-121 at 14-16 (Nov. 1, 2007) ("NAB Ownership Study Reply Comments"); Kent W. Mikkelsen, Economists Incorporated, *Effects of Newspaper-Television Cross-Ownership on Total Market News Minutes: Response to "Further Comments of Consumers Union, Consumer Federation of America and Free Press"* at 2, 4-5, Attachment 1 to Reply Comments of the Newspaper Association of America on Media Ownership Research Studies (filed Nov. 1, 2007) ("Mikkelsen/Economists Incorporated Study"); *Econometric Review* by Dr. Harold Furchtgott-Roth at 7-8, Appendix A to Media General Reply Comments on FCC Research Studies on Media Ownership (filed Nov. 1, 2007) ("Furchtgott-Roth Econometric Review").

[16] *See* Consumers Union, *et al*. Comments at 96, Exhibit IV-3 Market Level Models of News Output, "XO Present" line. NAB further notes that Consumers Union, *et al*.

out, there is no justification for citing non-significant results as if they have meaning,[17] and these non-significant results obviously provide no support for Consumers Union *et al*.'s claims about alleged harms arising from newspaper cross-ownership.[18] In fact, other studies have found that the average amount of non-entertainment programming in markets with newspaper/television combinations exceeds the amount in comparable markets without such combinations.[19]

Beyond the lack of any credible evidence that even the elimination of newspaper cross-ownership restrictions would harm the public interest, no one can seriously contend

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misstated their research results. On page 95 of their October 22, 2007 comments, Consumers Union, *et al.* asserted that "one" of the four coefficients "is significant," but in fact the report of their regression analysis in Exhibit IV-3 (on page 96) showed that *none* of the estimated coefficients in any of the four regressions are statistically significantly different from zero. *See* Mikkelsen/Economists Incorporated Study at 3.

[17] *See* Mikkelsen/Economists Incorporated Study at 3; Further Reply Comments of Tribune Company on Research Studies on Media Ownership at 12 (filed Nov. 1, 2007).

[18] Other economists have refuted Consumers Union *et al*.'s market level analysis in considerable detail on a number of grounds. *See* Mikkelsen/Economists Incorporated Study at 2-5 (Consumers Union, *et al*.'s study "provides no coherent theory of why one might expect a market-wide decrease in broadcast news minutes to result from cross-ownership"; there were "a number of peculiarities in the choice of variables and the way those variables were defined"; and the results found no statistically "significant decrease in market-wide news minutes associated with cross-owned stations"); Furchtgott-Roth Econometric Review at 2 (Consumers Union, *et al*. make several economic and econometric mistakes that render their results and conclusions unreliable, including misstating statistical terminology; running regressions with undefined variables and without transparent data; failing to establish causation with respect to cross-ownership; incompletely reviewing the peer review comments and failing to refute the statistical results of the peer-reviewed FCC studies showing increases in news programming resulting from cross-ownership).

[19] *See* Michael G. Baumann, *Review of the Increases in Non-Entertainment Programming Provided in Markets with Newspaper-Owned Television Stations: An Update*, Comments of Media General in MB Docket No. 06-121, Appendix 5 (Oct. 23, 2006); Comments of Media General in MM Docket No. 01-235, Appendix 5 (filed Dec. 3, 2001).

that the very modest revision of the cross-ownership rule proposed in the November 13 news release could pose any harm to competition, diversity or localism. The proposal presumes that a newspaper/broadcast transaction would be in the public interest only if the market at issue is one of the 20 largest DMAs, which are all highly competitive and have numerous, separately owned media outlets.[20] Even then the proposal imposes extensive additional conditions on any newspaper/television combination. And, of course, under the proposal a newspaper/broadcast combination even in these top 20 markets would only be presumed to be in the public interest, and such a presumption could be refuted if a proposed transaction could be shown to pose harm to the Commission's public interest goals.

Moreover, the fact that under the proposal the Commission would consider certain factors in determining whether other proposed newspaper/broadcast combinations outside

[20] For example, in the Boston DMA in 2006, there were 21 full power TV stations owned by 15 separate owners (plus an additional 11 low power TV stations); 197 full power radio stations owned by 105 different owners; a 94% MVPD penetration rate; an average of 315.2 cable delivered channels in use on cable systems in the market; 32 daily and 189 weekly newspapers; and 74% of adults were online. In the San Francisco DMA in 2006, there were 23 full power TV stations owned by 17 separate owners (with an additional 19 low power TV stations); 130 full power radio stations owned by 72 different owners; an 89% MVPD penetration rate; an average of 341.8 cable delivered channels in use on cable systems in the market; 19 daily and 54 weekly newspapers; and 74% of adults were online. In the Orlando DMA in 2006, there were 16 full power TV stations with 13 different owners (plus an additional 17 low power TV stations); 93 full power radio stations with 50 separate owners; a 95% MVPD penetration rate; an average of 332.7 cable delivered channels in use on cable systems in the market; 7 daily and 22 weekly newspapers; and 75% of adults were online. In the Sacramento DMA in 2006, there were 11 full power TV stations with eight separate owners (plus an additional 16 low power TV stations); 108 full power radio stations with 44 different owners; an 84% MVPD penetration rate; an average of 331 cable delivered channels in use on cable systems in the market; 12 daily and 40 weekly newspapers; and 74% of adults were online. *See* BIA Financial Network, *Media Outlets Availability by Markets* (Oct. 23, 2006), Attachment A to NAB Comments. Orlando and Sacramento are now the 19th and 20th ranked DMAs and thus the smallest markets to which the proposal's presumption would apply.

the top 20 DMAs would serve the public interest does not mean, as some have implied, that all significant restrictions on newspaper/broadcast cross-ownership may somehow be eliminated.[21] This is not an accurate representation of the proposal, which makes clear that newspaper/broadcast transactions outside the top 20 DMAs are presumed to be inconsistent with the public interest. In any event, even under current law, an entity proposing a newspaper/broadcast combination in any market may request a waiver of the newspaper cross-ownership rule, which the Commission must consider. As the Court of Appeals for the District of Columbia Circuit has held, requests for waiver of the FCC's rules that are "stated with clarity and accompanied by supporting data, are not subject to perfunctory treatment, but must be given a 'hard look.'" *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Indeed, the Commission in the past has granted long-term or even permanent waivers of the newspaper cross-ownership rule based on factors similar to the ones set forth in the proposal. For example, waivers have been granted due to the struggling financial condition of the newspaper involved in the proposed transaction.[22] The

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[21] The proposal states that the Commission shall consider the following factors in making a finding that the public interest would be served by allowing a newspaper/broadcast combination: (1) the level of concentration in the DMA; (2) a showing that the combined entity will increase the amount of local news in the market; (3) a commitment that both the newspaper and the broadcast outlet will continue to exercise its own independent news judgment; and (4) the financial condition of the newspaper, and if the newspaper is in financial distress, the owner's commitment to invest significantly in newsroom operations.

[22] *See Fox Television Stations Inc*., Declaratory Ruling, 8 FCC Rcd 5341 (1993) (granting permanent waiver of the cross-ownership ban due to bankruptcy of newspaper involved); *Crosby N. Boyd, et al*., Memorandum Opinion and Order, 57 FCC 2d 475 (1976) (granting three-year waiver of cross-ownership rule due to precarious financial condition of newspaper involved).

Commission has also previously looked at the level of concentration in the local market, as proposed in the November 13 release.[23] Thus, the proposal cannot accurately be described, as some have contended, as a far reaching or significant change to current law.

NAB also observes that the Commission has previously considered the financial condition of the broadcast property involved in a proposed newspaper/broadcast combination. In *Field Communications Corporation*, 65 FCC 2d 959, 961 (1977), the Commission granted a permanent waiver of the newspaper/broadcast ban in substantial part due to the history of financial losses suffered by the television station involved in the proposed transaction. Thus, NAB believes that, beyond considering just the financial condition of the newspaper, as set forth in the *Cross-Ownership News Release*, the Commission should also consider the financial condition of the broadcast property as a factor in determining whether a proposed combination serves the public interest.

As the Commission has recognized, the ability of broadcast stations "to function in the 'public interest, convenience and necessity' is fundamentally premised" on their "economic viability."[24] With regard to local news services specifically, financially struggling television stations will be unable to maintain (and certainly unable to improve or expand) costly news and other local programming. Numerous studies, including one

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[23] *See Fox Television Stations*, 8 FCC Rcd at 5352 (examining the advertising revenues of the proposed newspaper/television combination and finding that such combination did not "endanger Commission policy of preventing undue concentration of economic power").

[24] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992).

of the Commission's 2007 studies, have linked television station profitability and the provision of news and public affairs programming.[25]

Moreover, as NAB has previously explained in detail, the cost of maintaining a local news operation has increased in recent years, while, at the same time, local news programs were suffering ratings declines.[26] Due to rising costs and falling audience shares, news profitability (*i.e.*, news operations that operate at a profit) has reached an all-time low.[27] When coupled with local stations' loss of network compensation and the financial burdens of the digital television transition, the ability of stations to maintain the quantity and quality of their local news operations is clearly compromised.[28] Thus, it is hardly surprising that a number of television stations, especially in medium and small

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[25] *See, e.g.*, *Shiman Ownership Structure Study* at I-21; Philip Napoli, *Television Station Ownership Characteristics and News and Public Affairs Programming: An Expanded Analysis of FCC Data*, 6 Info: The Journal of Policy, Regulation, and Strategy for Telecommunications, Information and Media 112 (2004); Raymond Carroll, *Market Size and TV News Values*, 66 Journalism Quarterly 49, 55-56 (1989); R.E. Park, Rand Corp., *Television Station Performance and Revenues*, P-4577 (Feb. 1971).

[26] *See* NAB Comments at 96, citing Project for Excellence in Journalism, *The State of the News Media: An Annual Report on American Journalism, Local TV/Audience* at 2-3 (2006); BIA Financial Network, *Economic Viability of Local Television Stations in Duopolies* at 8-9 (Oct. 23, 2006), Attachment H to NAB Comments; Smith Geiger, *Newsroom Budgets in Midsize (51-100) and Small Markets (101-210)* (Dec. 2002), attached to NAB Comments in MB Docket No. 02-277 (filed Jan. 2, 2003). *See also 2002 Biennial Review Order*, 18 FCC Rcd at 13685 (citing evidence in record of rising news costs).

[27] *See* Bob Papper, *News, Staffing and Profitability Survey*, Communicator at 36 (Oct. 2005).

[28] *See* NAB Comments at 94-98. *See also 2002 Biennial Review Order* at 13685 (recognizing that certain factors, including "declines in network compensation and the costs of transitioning to DTV, are likely to place some broadcasters under financial pressures which could cause them to choose a less expensive option than producing their own local programming").

markets, have cut back or discontinued local news operations entirely.[29] Given these developments, allowing the cross-ownership of television stations, particularly financially struggling ones, by newspapers can "increase the amount of local news disseminated through the affected media outlets in the combination."[30] The Commission should therefore consider the financial condition of both the broadcast station, as well as the newspaper, in determining whether a newspaper/broadcast combination will serve the public interest. This would be consistent with Commission precedent and would permit local news outlets – both broadcast and newspaper – to better serve their communities and audiences.

II. Retention Of The Current Arbitrary And Capricious Television Duopoly Rule Is Inappropriate As A Matter Of Law And Policy

As adopted in 1999, the television duopoly rule allows an entity to own two television stations in the same DMA only if at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned and operating commercial and noncommercial full power television stations would remain in the DMA after the combination (the "top four/eight voices" test). The November 13 news release states that "any further relaxation in the radio or

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[29] *See* Media General *Ex Parte* in MB Docket Nos. 06-121 and 02-277 (July 26, 2006) (listing dozens of examples of curtailments in local television newscasts since 1998); *TV News: Down the Tube*, Columbia Journalism Review at 8 (Sept./Oct. 2002) (identifying eight television stations in markets such as Kingsport, TN, Evansville, IN and Marquette, MI that "have scrapped their locally produced newscasts" due to a slumping economy, a drop in network compensation, and digital transition costs). Owners of newspapers in small markets, such as Farmington, NM, have noted the loss of all local television news broadcasts because stations can no longer afford news operations. *See* Frank Ahrens, *FCC Chief Offers New Plan on Cross-Ownership*, Washington Post at D01 (Nov. 14, 2007) (quoting newspaper owner who noted that "smaller markets" were "losing television news" and "need the relief of cross-ownership").

[30] *Cross-Ownership News Release* at 3 (proposed rule § 73.3555(d)(3)(i)).

television broadcast markets should not be allowed" and, consequently, "no changes" are proposed to the television duopoly rule. *Cross-Ownership News Release* at 2. NAB cannot support the proposal to make no changes to the television duopoly rule, which is not justifiable as a matter of law and does not serve the public interest.

In 2002, the U.S. Court of Appeals for the District of Columbia Circuit found that the Commission had failed to justify its exclusion of nonbroadcast media, including cable television, from the duopoly rule's eight voice threshold. *Sinclair*, 284 F.3d at 165. The D.C. Circuit consequently held that the limitation of "voices" in the duopoly rule to broadcast television stations was arbitrary and capricious, and remanded the rule to the Commission for further consideration. *Id*. at 169. The proposed continued maintenance of this arbitrary and capricious duopoly rule cannot be justified, especially given that the levels of competition and diversity offered by cable television, other multichannel providers, and the Internet are much greater now than in 2002 and that multiple studies have shown that television duopolies promote program diversity and localism. *See* Section 202(h), 1996 Telecommunications Act (the FCC must review its broadcast ownership rules every four years to determine if they "are necessary in the public interest as the result of competition").[31]

A. Numerous Studies Have Demonstrated the Public Interest Benefits Derived from Common Ownership of Television Stations in Local Markets

In its 2002 biennial review, the Commission concluded that the top four/eight voices duopoly standard -- which the November 13 news release now proposes to maintain -- did "not promote, and may even hinder, program diversity and localism."

[31] Pub. L. No. 104-104 § 202(h), 110 Stat. 56 (1996), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

2002 Biennial Review Order, 18 FCC Rcd at 13668. The Third Circuit moreover agreed with the Commission that media other than broadcast television contributed to viewpoint diversity in local markets, and agreed that common ownership of television stations "can improve local programming." *Prometheus*, 373 F.3d at 414-15. Beyond the studies relied upon by the Commission and the Third Circuit to make these determinations, numerous additional studies conducted in this proceeding clearly demonstrate the public interest benefits of common ownership of local television stations.

The Commission's duopoly study conducted in this proceeding concluded that the co-ownership of television stations in the same market "has a large, positive, statistically significant impact on the quantity of news programming." *Shiman Ownership Structure Study* at I-21. "For each additional co-owned station within the market, there is an increase in the amount of news minutes by 24 per day about a 15% increase." *Id.*

Beyond increasing the quantity of news, a very recent study by Economists Incorporated demonstrated that television stations commonly owned or operated (via a local marketing agreement or local service agreement) with another station in the same DMA are more likely to carry local news, public affairs or current affairs programming.[32]

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[32] *See* Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage: An Update* (Nov. 1, 2007), Attached to NAB Ownership Study Reply Comments ("*E/I Duopoly News Study*"). This study is consistent with an earlier Economists Incorporated study, which was specifically cited by the Third Circuit in *Prometheus* (373 F.3d at 415-16) as supporting the FCC's finding that television duopolies can promote localism. *See* Bruce Owen, Kent Mikkelsen, Rika Mortimer, and Michael Baumann, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage, Quantity and Quality*, Economic Study B attached to Comments of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Co., Inc. and Telemundo Communications Group, Inc., and Viacom in MB Docket No. 02-277 (filed Jan. 2, 2003) (finding that television stations part of a local duopoly or local marketing agreement are "significantly more likely to carry local news than other stations").

This new study concluded that commonly owned or operated stations are significantly more likely to carry local news and public affairs programming than other stations, even after controlling for other factors. Specifically, a station in a same-market combination is 6.2% more likely to carry such programming than a station that is not in such a local combination. *E/I Duopoly News Study* at 6-7.

In fact, Consumers Union, *et al.*'s own research on the amounts of news and public affairs programming available on a market level indicated that television "duopolies may lead to more local news and public affairs." Consumers Union, *et al*. Comments at 98. Although Consumers Union, *et al*. generally continued to insist that "[a]s market concentration increases, local news and public affairs decreases," they also found "duopolies appear to work in the opposite direction." *Id*. Thus, the research of those opposing reform of the local ownership rules provide further evidence of the public interest benefits that flow from the common ownership of television stations in local markets.

Beyond promoting local news and public affairs programming specifically, at least two studies have demonstrated that the acquired stations in duopolies experience increases in their local audience share and revenue share following their acquisition.[33] The more recent study found that the acquired stations experienced an 11.0% increase in their audience shares and a 15.4% increase in their revenues shares from pre-acquisition

[33] *See* NAB Comments at Attachment H, *BIA Financial Network, Economic Viability of Local Television Stations in Duopolies* (Oct. 23, 2006) ("*2006 Duopoly Study*"); Comments of Coalition Broadcasters, MB Docket No. 02-277 (filed Jan. 2, 2003), at Attachment A (BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?*). This earlier study was specifically relied upon by the Third Circuit in upholding the FCC's finding that television duopolies promoted localism. *See Prometheus*, 373 F.3d at 415-16.

levels. *See 2006 Duopoly Study* at 6. Thus, the formation of duopolies enables stations to improve their overall programming service by offering programs preferred by more of their local viewers.[34] Clearly, the Commission's previous determination, upheld by the Third Circuit, that common ownership of television stations in local markets enhances programming diversity and localism was correct. Retaining the current restrictive top four/eight voices duopoly standard – which prevents the formation of even a single duopoly in most markets – does not comport with the public interest.

B. The Maintenance of the Current Arbitrary and Capricious Duopoly Rule Cannot Be Justified in Light of Continued Growth in Competition to Television Broadcasters

As discussed above, the D.C. Circuit found the current television duopoly rule arbitrary and capricious because it failed to take nonbroadcast media, particularly cable television, into account. If the Commission's failure to account for nonbroadcast media such as MVPDs made the top four/eight voices duopoly standard arbitrary and capricious in 2002, then the continued maintenance of that rule certainly cannot be warranted today.

The record in this proceeding clearly demonstrates how increases in cable and satellite viewing and advertising have adversely affected the competitive position of local broadcast television stations. As of 2005, on average nationally 44.0% of total television viewing was attributable to in-market broadcast television stations. This figure represents a 20% decrease in the total viewing shares earned by local in-market television stations

[34] As explained above, the fact that same-market combinations also allow stations to improve their revenue shares is also significant due to the demonstrated relationship between financial strength and the offering of costly programming such as local news. *See supra* pages 13-14 & note 25.

just since 1997.[35] And in DMAs 101+, only 38.4% of total viewing was attributable to local broadcast stations. *BIA Out-of-Market Voices Study* at 11. In other words, 61.6% of the total viewing in these smaller markets went to the MVPD and out-of-market broadcast competitors of the local television stations. But even in the 25 largest markets, only about 52% of the total television viewing in 2005 was attributable to in-market broadcast television stations. The ten largest markets have in fact seen the percentage of in-market viewing decrease by nearly one third from 1997-2005. *Id*. at 11-12. The Commission itself has documented the fragmentation of the broadcast television audience and the growth of cable and satellite viewership, at the expense of broadcast stations and networks.[36]

Beyond competing with local television stations for viewers, cable outlets are also increasingly strong competitors for advertising dollars in the local video advertising market, as are Internet-based media.[37] Overall, from 1999 to 2004, the compound annual growth of local cable system advertising revenue was 10%, compared to only 2% for local television stations. In the top ten DMAs, the average share of local television advertising earned by local cable nearly doubled from 1999-2004, growing from approximately 9.6% of local market television ad revenues to 18.3%. In DMAs 11-25, local cable systems' average share of all television advertising revenue rose from 9.4% in

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[35] BIA Financial Network, *A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance* (Oct. 23, 2006), Attachment C to NAB Comments ("*BIA Out-of-Market Voices Study*").

[36] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, 2550-51 (2006) ("*Twelfth Annual Competition Report*").

[37] *See, e.g.*, NAB Comments at 29-35; NAB Reply Comments at 61-63; NAB *Ex Parte* in MB Docket No. 06-121 at 10-11; 21 (filed Nov. 1, 2007).

1999 to 16.6% in 2004. Even in smaller markets (DMAs 26-50 and 51-100), cable's average share of local television ad revenues grew by approximately 50% and 40%, respectively, from 1999-2004.[38] The cable industry estimates that its local/spot advertising revenues alone grew from $167 million in 1985 to over $4.75 billion this year.[39]

In addition to the competition for viewers and advertisers posed by cable and satellite, Internet-based media (which were just developing when the D.C. Circuit decided *Sinclair* in 2002) have become formidable competitors to broadcast television in just a few short years.[40] Moreover, cable and satellite television and Internet-based media clearly contribute to diversity and must also be taken into account when considering the diversity rationale for retaining an arbitrary and capricious duopoly rule.[41] Indeed, even four and a half years ago, the Third Circuit agreed with the

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[38] David Gunzerath, Ph.D., *Local Television Market Revenue Statistics* (2006), Attachment F to NAB Comments.

[39] *See* http://www.ncta.com/ContentView.aspx?contentID=70 (last visited Dec. 10, 2007). The FCC has reported that cable local advertising revenues increased 12.2% from 2003 to 2004 and 12.0% from 2004 to 2005. *See Twelfth Annual Competition Report*, 21 FCC Record at 2521, Table 4.

[40] *See, e.g.*, NAB Comments at 32-35; NAB Reply Comments at 62-63: NAB *Ex Parte* in MB Docket No. 06-121 at 10-11 (filed Nov. 1, 2007); Comments of Tribune Company in MB Docket No. 06-121 at 16-26 (filed Oct. 23, 2006); Comments of Newspaper Association of America in MB Docket No. 06-121 at 46-64 (filed Oct. 23, 2006).

[41] NAB and other commenters have discussed at great length how the rise of new multichannel video and audio distributors and the Internet have produced an exponential increase in programming and service choices available to viewers and listeners at all levels, including local. *See, e.g.*, NAB Comments at 5-22; 49-54; NAB Reply Comments at 16-34; NAB *Ex Parte* in MB Docket No. 06-121 at 8-26 (filed Nov. 1, 2007); Reply Comments of the Newspaper Association of America on Media Ownership Research Studies in MB Docket No. 06-121 at 15-21 (filed Nov. 1, 2007); Media General Reply Comments on FCC Research Studies on Media Ownership in MB Docket No. 06-121, at 17-24 and Appendix B (filed Nov. 1, 2007).

Commission that "cable and the Internet contribute to viewpoint diversity." *Prometheus*, 373 F.3d at 400.

Moreover, the current rule prevents the creation of even a single duopoly in many mid-sized and smaller markets, where the need for television stations to form more competitively viable ownership structures is the most acute. As the Commission previously recognized, "the ability of local stations to compete successfully" in the video marketplace has been "meaningfully (and negatively) affected in mid-sized and smaller markets," in large part because "small market stations are competing for disproportionately smaller revenues than stations in large markets." *2002 Biennial Review Order*, 18 FCC Rcd at 13698.[42] NAB has submitted further information in this proceeding demonstrating the "different economics of station ownership depending on market size." *2002 Biennial Review Order*, 18 FCC Rcd at 13698. For example, the average television station in Louisville, KY (DMA #50) earned about one-eighth the level of advertising revenue as the average station in the New York DMA, while the average station in Evansville, IN (the 100th ranked DMA) earned only about one-fourteenth the level of revenue as the average New York station. *See Local Television Market Revenue Statistics* at 2. Clearly, stations in smaller markets compete for far smaller total revenues that do stations in larger markets, and thus face more economic hardship from new competition for viewers and advertisers.

NAB has also demonstrated the progressively more difficult financial position of lower-ranked television stations in mid-sized and smaller markets in several studies and

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[42] *Accord Crawford Television Programming Study* at 25 (finding that larger markets "have statistically and economically significantly higher advertising prices").

filings. One recent submission focused on lower performing stations in medium and small markets for all years 1996-2005. This submission showed that the lower 25% of stations in *all* market ranges 51+ suffered declining profitability during this period, as well as actual losses in most of these years.[43] These findings are consistent with previous NAB submissions of television financial data and earlier studies comparing the differing financial condition of high-rated and low-rated network affiliates in medium and small markets.[44] Accordingly, the Commission has no basis for maintaining an arbitrary and capricious top-four/eight voices restriction that prevents the formation of duopolies that would improve the financial and competitive position of struggling stations (especially those not the highest rated) in smaller markets. A rule found arbitrary and capricious in 2002 for failing to account for the competition and diversity provided by other outlets (including nonbroadcast) cannot today be "necessary in the public interest as the result of competition," given the continued growth in competition to local broadcast television stations over the past five and a half years. Section 202(h), 1996 Telecommunications Act.

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[43] *See* NAB *Ex Parte* in MB Docket No. 06-121 at 30-31 and Attachment A (filed Nov. 1, 2007). Financial data for these stations were obtained from the annual NAB, BCFM Television Financial Reports for the years 1996-2005. This is an annual survey of all commercial television stations conducted by NAB since the early 1980s in conjunction with an outside accounting firm. In each of these years 1996-2005, approximately two-thirds of all commercial television stations reported their revenue and expense information directly to the independent accounting firm. No one at NAB saw any of the individual stations' completed survey data.

[44] *The Declining Financial Position of Television Stations in Medium and Small Markets* (Sept. 2007), Attachment B to NAB *Ex Parte* in MB Docket No. 06-121 (filed Sept. 25, 2007) (showing that low-rated network affiliates in markets 50+ are generally declining financially, especially in comparison to high-rated stations); Attachments E & F to NAB Sept. 25 *Ex Parte* (showing that the lower 25% of stations in markets 50+ overall experienced declining profitability from 1997-2005 and actual losses in most of the years examined).

III. While The Proposal Appropriately Declines To Roll Back Levels of Local Radio Ownership, The Commission Should Consider Continuing The Process Of Deregulation

With regard to changes to the current local radio ownership limitations, NAB agrees with the proposal's rejection of calls by some parties in this proceeding to further restrict the levels of common radio ownership expressly approved by Congress in 1996.[45] Given the substantial record in this proceeding that common ownership of radio stations promotes programming diversity and does not harm competition, NAB urges the Commission to consider continued relaxation of the local radio restrictions set by Congress over a decade ago in a less competitive and diverse marketplace.

As NAB described in detail in earlier submissions, the Commission's own studies support continued relaxation of the local radio restrictions. For example, the *Stroup News Radio Study* found that "[h]aving a sibling news station in the market appears to increase a [radio] station's propensity to adopt a news format by about 50%."[46] The *Lynch Radio Airplay Study* concluded that radio stations "owned by parents having more

[45] Indeed, the Commission cannot properly rely on the quadrennial review provision to cut back on the levels of common ownership specifically permitted by Congress in the 1996 Telecommunications Act. As previously discussed in detail by NAB, the language of the quadrennial review statute (with its emphasis on repealing or modifying unnecessary rules) and the clear deregulatory intent of Congress when adopting the review requirements, would not appear to give the Commission the authority to re-regulate local radio markets by adopting numerical ownership limits more strict than the ones expressly set by Congress in 1996. *See* NAB Comments in MM Docket Nos. 01-317 and 00-244 at 4-15 (filed March 27, 2002). *See also* NAB Reply Comments at 6-8; NAB Comments at 3-5.

[46] FCC, Craig Stroup, *Factors that Affect a Radio Station's Propensity to Adopt a News Format* at III-16 (2007).

pervasive radio operations are more likely to air informational programming."[47] In particular, "stations owned by parents with more extensive radio operations, both in- and out-of-market, aired a significantly greater quantity of public affairs programming overall." *Id.* at II-22. Specifically, "an additional in-market station owned by the parent increased the quantity of public affairs programming" by "about 10%." *Id.* at II-23.

Numerous studies by several parties have shown that common ownership of radio stations leads to greater radio programming diversity. A major radio study conducted in 2007 for the Commission found that "more concentrated markets are associated with more, not less, program variety" and that "consolidation of radio ownership does not diminish the diversity of local format offerings."[48] Indeed, "[i]f anything, more concentrated markets have less pile-up of stations on individual format categories and large national radio owners offer more formats and less pile-up." *Chipty Radio Programming Study* at 44. Beyond the Chipty study, NAB's earlier comments identified eight additional studies finding that common ownership of radio stations resulted in the offering of more diverse and more targeted programming to audiences.[49] Moreover, listeners "served by large radio groups, as measured by the number of commercial

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[47] FCC, Kenneth Lynch, *Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay* at II-1 (July 30, 2007).

[48] Tasneem Chipty, CRA International, Inc., *Station Ownership and Programming in Radio* (June 24, 2007) ("*Chipty Radio Programming Study*").

[49] *See* Comments of NAB in MB Docket No. 06-121 at 21-22 (filed Oct. 22, 2007). This has included greater numbers of stations airing programming targeted to members of niche groups including minority groups, such as Spanish and other foreign language speaking listeners and African American listeners. *See* BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences* at 8-16 (Oct. 23, 2006), Attachment G to NAB Comments.

stations owned nationally by in-market owners, listen more," and "stations operating in markets with other commonly owned stations achieve higher ratings" than "independent stations." *Chipty Radio Programming Study* at 42-43. Clearly, the common ownership of radio stations leads to the airing of improved programming preferred by greater numbers of listeners.

In addition to promoting more diverse and targeted programming, the common ownership of radio stations in local markets "has no statistically significant effect on advertising prices." *Id*. at 40. Common ownership nationally in fact has a "statistically significant, negative effect on advertising prices." *Id*. at 41. The results of the Chipty study on advertising rates are further consistent with several previous studies of the radio industry.[50]

Indeed, it is hardly surprising that several empirical studies have concluded that radio groups do not exercise undue market power in today's media marketplace, given the ever increasing levels of competition radio stations face for listeners and vital advertising dollars.[51] Due to the growing numbers of audio outlets and increasing

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[50] A recent academic study concluded that ownership changes after 1996 have not caused increases in advertising pricing. *See* Joel Waldfogel & Julie Wulf, *Measuring the Effect of Multimarket Contact on Competition: Evidence from Mergers Following Radio Broadcast Ownership Deregulation*, 5 B.E. J. Econ. Analysis & Policy 1, Article 17 (2006). *See also* NAB Comments at 74-76 (discussing several earlier studies of the radio industry showing that common ownership has not led to the exercise of market power by radio groups or to higher ad prices); Charles Romeo and Andrew Dick, *The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes*, 27 Rev. Ind. Org. 351, 354 (2005) (concluding that format changes by smaller radio groups or individual stations can counter or defeat the potential exercise of market power by any radio group that acquires a substantial share of a particular audience demographic through merger).

[51] *See* NAB Comments at 12-22; 31-35; NAB Reply Comments at 32-33; NAB *Ex Parte* in MB Docket No. 06-121 at 10-11 (filed Nov. 1, 2007) (describing how satellite radio

audience fragmentation, even market leading stations must continually find new ways to earn audience share, and stations find it increasingly challenging to maintain listenership shares, particularly among younger listeners.[52]

In short, the record in this proceeding, including the FCC's recent studies, clearly support the November 13 proposal's rejection of calls by some parties to increase restrictions on local radio ownership. To the contrary, the diversity benefits and lack of competitive harm resulting from common ownership should lead the Commission to continue the relaxation of these decade-old limits.

IV. Conclusion

NAB urges the Commission to act expeditiously on the November 13 proposal to revise the blanket ban on newspaper/broadcast cross-ownership. There is no empirical or policy justification for retaining this 32-year-old ban, especially given the Commission's previous determination, subsequently upheld by the court, that the ban was no longer in the public interest. In fact, as discussed in detail above and in numerous prior submissions, a more extensive revision of newspaper cross-ownership restrictions would be entirely appropriate.

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and new Internet applications and devices, including streaming, podcasting, and iPods, now all compete with traditional radio stations in local markets for listeners and advertisers). *See also* BIA Financial Network, *A Review of the Future of Music Coalition Study: Missing a Basis in the Reality of the Radio Industry* at 2-3; 9-12 (Nov. 1, 2007), NAB *Ex Parte* in MB Docket No. 06-121 (filed Nov. 1, 2007) (discussing how competition is impacting terrestrial radio, including listening levels, advertising and stock prices).

[52] *See, e.g.*, NAB Comments at 73-74; 84-86; NAB Reply Comments at 51-52; *Aggregate Shares of Top 5 Stations in Top 100 Arbitron Markets: Spring 2006 vs. Spring 2001and Spring 1996*, Attachment D to NAB Comments.

NAB also agrees with the proposal not to roll back the current levels of local radio ownership, and indeed urges the Commission to consider the continued relaxation of the local radio limitations set by Congress over a decade ago in a less competitive and diverse marketplace. However, the proposal to make no changes to the existing television duopoly rule is inconsistent with prior judicial decision and the public interest. Continued maintenance of this arbitrary and capricious rule cannot be justified on competition, diversity or localism grounds. Retaining an arbitrary and capricious rule for five and a half years is long enough, and NAB urges the Commission to act expeditiously to reform the local television restrictions so as to allow duopolies more freely in market of all sizes.

Respectfully submitted,

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