Before the
DOCKET FILE COPY ORIGINAL 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
	)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies	)	MB Docket No. 04-228
	)	
Public Interest Obligations of TV Broadcast Licensees	)	MM Docket No. 99-360

REPORT AND ORDER AND ORDER ON RECONSIDERATION

Adopted: December 18, 2007 **Released: February 4, 2008**

By the Commission: Chairman Martin issuing a statement; Commissioners Copps and Adelstein dissenting and issuing separate statements; Commissioners Tate and McDowell issuing separate statements.

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I. INTRODUCTION

1. In this Report and Order and Order on Reconsideration ("Order"), we conclude our 2006 Quadrennial Review of the broadcast ownership rules. Our review encompasses the newspaper/broadcast cross-ownership rule, the radio/television cross-ownership rule, the local television ownership rule, the local radio ownership rule, and the dual network rule.[1] We review these rules under Section 202(h) of the Telecommunications Act of 1996 ("1996 Act"),[2] which requires the Commission to review its ownership rules (except the national television ownership limit) every four years and "determine whether any of such rules are necessary in the public interest as the result of competition."[3] Under Section 202(h), the Commission "shall repeal or modify any regulation it determines to be no longer in the public interest."[4] We modify the newspaper/broadcast cross-ownership rule, and we generally retain the other broadcast ownership rules currently in effect.[5] We also address petitions for reconsideration of the Commission's

[1] The Commission's broadcast ownership rules are contained in 47 C.F.R. § 73.3555. For the local television ownership rule, the radio/television cross-ownership rule, and the newspaper/broadcast cross-ownership rule that are currently in effect, see 47 C.F.R. § 73.3555(b)-(d) (2002); for the local radio ownership rule, see 47 C.F.R. § 73.3555(a) (2006). The dual network rule is contained in 47 C.F.R. § 73.658(g) (2006).

[2] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-112, and Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (codified at 47 U.S.C. § 303 note (2006)) ("2004 Consolidated Appropriations Act").

[3] In 2004, Congress revised the then biennial review requirement to require such reviews quadrennially. Congress also eliminated the national television multiple ownership rule from the quadrennial review requirement. *See* 2004 Consolidated Appropriations Act, 118 Stat. at 3. Consumer Federation of America and Consumers Union ("CFA/CU Petition") ask for reconsideration of the 2002 biennial review of the Commission's broadcast ownership rules concerning issues relating to the national television ownership limit. CFA/CU Petition at 5-10. Because Congress subsequently set national television ownership limits by statute and excluded this rule from the quadrennial review requirement, those arguments are moot. *See Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372, 395-397 (3d Cir. 2004) ("*Prometheus*"). In this Order, "Petition" refers to a petition for reconsideration filed in response to the *2002 Biennial Review Order*, *see* note 6, *infra*.

[4] 1996 Act, 110 Stat. at 111-12.

[5] Although we are basically retaining the local television ownership rule as currently in effect, we are reinstating the failed station solicitation rule. *See* Part V ("Local Television Ownership Rule").

Report and Order in its 2002 biennial review of its broadcast ownership rules (the "*2002 Biennial Review Order*") and the remand of that Order by the U.S. Court of Appeals for the Third Circuit in *Prometheus Radio Project, et al. v. FCC* ("*Prometheus*").[6]

II. BACKGROUND

2. *History of the Proceeding.* We initiated this 2006 Quadrennial Review proceeding with the *Further Notice of Proposed Rule Making* ("*Further Notice*").[7] In addition to inviting comment on whether the ownership rules remain "necessary in the public interest as the result of competition," under the Section 202(h) standard, the *Further Notice* invited comment on how to address the issues raised by the U.S. Court of Appeals for the Third Circuit in its *Prometheus* decision[8] and those raised by the U.S. Court of Appeals for the District of Columbia Circuit in *Sinclair Broadcast Group, Inc. v. FCC*.[9] This Order addresses all of those issues.

3. The *Prometheus* decision reviewed the *2002 Biennial Review Order*,[10] which addressed all of the Commission's broadcast ownership rules. The Commission concluded that neither the newspaper/broadcast cross-ownership rule nor the radio/television cross-ownership rule remained necessary in the public interest. Accordingly, it replaced those rules with new cross-ownership regulations called the cross-media limits. The Commission also revised its market definition and the way it counts stations for purposes of the local radio ownership rule, revised the local television ownership rule, modified the national television ownership cap, and retained the dual network rule. Several parties sought appellate review of various aspects of the *2002 Biennial Review Order*; others filed petitions for reconsideration.

4. The Third Circuit stayed the effectiveness of the new rules pending review.[11] In its subsequent decision on the merits, the court affirmed some of the Commission's decisions in the *2002*

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[6] *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, MB Docket No. 02-277, MM Docket Nos. 01-235, 01-317, 00-244, 03-130, 18 FCC Rcd 13620 (2003), *aff'd in part and remanded in part, Prometheus*, 373 F.3d at 435, *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004) ("*Prometheus Rehearing Order*"), *cert. denied*, 545 U.S. 1123 (2005).

[7] *2006 Quadrennial Regulatory Review – Review of The Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rule Making, MB Docket Nos. 06-121, 02-277, MM Docket Nos. 01-235, 01-317, 00-244, 21 FCC Rcd 8834 (2006). In this Order, "Comments" refers to comments in response to the *Further Notice* that were due to be filed by October 23, 2006, and "Reply" refers to reply comments that were due to be filed by January 16, 2007. We issued a Second Further Notice of Proposed Rule Making to set forth in greater detail proposals offered by the Diversity and Competition Supporters ("DCS" or "MMTC") to promote broadcast ownership by women and minorities. *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*, Second Further Notice of Proposed Rule Making, MB Docket Nos. 06-121, 02-277, MM Docket Nos. 01-235, 01-317, 00-244, 22 FCC Rcd 14215 (2007) ("*Second Further Notice*"). We address those proposals concurrently in a separate order. *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, adopted Dec. 18, 2007, Press Release (FCC 07-217) ("*Diversity Order*").

[8] *See Further Notice*, 21 FCC Rcd at 8835-48, ¶¶ 1-35.

[9] *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 163-65 (D.C. Cir. 2002) ("*Sinclair*"). The *Further Notice* invited comment on how to address the *Sinclair* decision. *See* 21 FCC Rcd at 8842, ¶ 18.

[10] 373 F.3d at 381.

[11] *See Prometheus Radio Project, et al. v. FCC*, No. 03-3388 (3d Cir. Sept. 3, 2003), *Stay Order*, 2003 WL 22052896.

Biennial Review Order and remanded others for further justification or modification.[12] On September 3, 2004, in response to the Commission's petition for rehearing, the court allowed certain revisions to its local radio ownership rules – "specifically, using Arbitron Metro markets to define local markets, including noncommercial stations in determining the size of a market, attributing stations whose advertising is brokered under a Joint Sales Agreement to a brokering station's permissible ownership totals, and imposing a transfer restriction (collectively, the 'Approved Changes')" - to go into effect, but continued its stay of the other revisions.[13] Accordingly, except for the Approved Changes, the ownership rules that were in effect prior to the *2002 Biennial Review Order*, including the previously existing newspaper/broadcast cross-ownership prohibition, radio/television cross-ownership rule, and local television ownership rule, remain in effect.

5. In response to our *Further Notice* and *Second Further Notice* in this proceeding, we received many comments from a broad range of commenters, including broadcasters, newspapers, public interest groups, unions, and individual citizens. While many commenters believe that relaxation of the media ownership rules is necessary to promote our goals and that the current rules must be revised or eliminated under the statutory standard, many other commenters expressed significant concerns about the general level and potential consequences of media consolidation, including concerns that such consolidation results in a loss of viewpoint diversity and negatively affects competition. In addition, the Commission conducted or commissioned ten studies and received numerous other studies in the record of the proceeding.[14] The Commission also conducted six media ownership hearings around the country and heard widely divergent testimony from a number of commenters and speakers at open microphones as to whether the media ownership rules should be relaxed, retained, or even tightened.[15] We have carefully reviewed these comments, as well as the studies and the testimony.[16] Our approach herein is a cautious approach. By modestly loosening the 32-year prohibition on newspaper/broadcast cross-ownership, our approach balances the concerns of many commenters that we not permit excessive consolidation with concerns of other commenters that we afford some relief to assure continued diversity and investment in local news programming. We believe that the decisions we adopt today serve our public interest goals, appropriately take account of the current media marketplace, and comply with our statutory

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[12] *See generally Prometheus*, 373 F.3d at 389-435.

[13] *See Prometheus Radio Project, et al. v.* FCC, No. 03-3388 (3d Cir. Sept. 3, 2004) ("*Prometheus Rehearing Order*").

[14] See *FCC Seeks Comment on Research Studies on Media Ownership,* Public Notice, DA 07-3470, MB Docket No. 06-121 (rel. July 31, 2007) for a description of the studies. The studies are available on the Commission's website: http://www.fcc.gov/ownership/studies.html. In this Order, "Comments to Media Ownership Studies" and "Reply to the Media Ownership Studies" refers to comments in response to the Public Notice that were due to be filed by October 22, 2007 and reply comments that were due to be filed by November 1, 2007.

[15] Media Ownership hearings were held in Los Angeles and El Segundo, California (Oct. 3, 2006); Nashville, Tennessee (Dec. 11, 2006); Harrisburg, Pennsylvania (Feb. 23, 2007); Tampa, Florida (April 30, 2007); Chicago, Illinois (Sept. 20, 2007); and Seattle, Washington (Nov. 9, 2007). Transcripts of the hearings are filed in MB Docket No. 06-121 (there is no transcript for the Nashville hearing). In addition, transcripts and audio webcasts of the hearings are available on the FCC website at http://www.fcc.gov/ownership/hearings.html.

[16] Capitol Broadcasting Company, Inc. ("Capitol") believes that the Commission's method of analyzing each rule individually in the *2002 Biennial Review Order* was insufficient, and it asks the Commission to conduct a comprehensive analysis of the collective impact of the new rules. Capitol Petition at 12-13. The Commission retains the discretion to best determine how to conduct its proceedings, *see* 47 U.S.C. §§ 154(i),(j), and we have conducted a comprehensive and thorough review of our ownership rules, considering them all together in one proceeding in light of our policy goals.

responsibilities.[17]

6. *Media Marketplace*. As discussed in succeeding sections in more detail, today's media marketplace remains a dynamic arena, albeit one in which the traditional "mainstream media" still maintain leading roles in many respects and are learning to adapt to the new digital and online environment. In 2002, the Commission noted the substantial evolution of traditional media (*i.e.*, daily newspapers and full-power television and radio stations) and the emergence of new modes of media (*e.g.*, portable devices, the Internet).[18] Whereas the years immediately preceding 2002 were largely characterized by dramatic technological advancements, the current record reflects that many noteworthy developments appear more in the nature of technological and marketplace refinements than the advent of wholly new media. The online medium in particular is well-recognized as another platform for the delivery of audio, video and written content.[19] Today, media companies both old and new are working to identify the best use of technology in order to maintain their competitive positions.[20]

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[17] The Office of Communication of the United Church of Christ, Inc., Black Citizens for a Fair Media, Philadelphia Lesbian and Gay Task Force, and Women's Institute for Freedom of the Press ("UCC") ask the Commission to reconsider its refusal to require a certain percentage of programming time for independent producers. UCC Petition at 42. In addition, the American Federation of Television and Radio Artists ("AFTRA") and the Screen Actors Guild ("SAG") ask the Commission to require the networks to devote 25 percent of prime-time programming slots to independent programmers. AFTRA Comments at 24-25; SAG Comments at 9-12. Finally, the Center for the Creative Community and the Association of Independent Video and Filmmakers ("CCC") seek a rule that promotes source diversity in the production of television programming, arguing that 77.5 percent of the new television programs for 2002 were owned in whole or part by the four major networks. CCC Petition at 7-8, 13-16. Although we received some testimony, invited and received comment on the issue of independent producers in response to the *Further Notice*, and commissioned a study that addressed some aspects of the issue (see "Vertical Integration and the Market for Broadcast and Cable Television Programming," by Austan Goolsbee, University of Chicago, Graduate School of Business; American Bar Foundation; and National Bureau of Economic Research (April 2007) ("Media Ownership Study 9"), *available at* http://www.fcc.gov/ownership/studies.html), upon further review of the scope of this issue, we decline to address those matters within this Order. We note that the rules that we are required to review under Section 202(h) are limited to the media ownership regulations addressed in this Order. Indeed, in the *2002 Biennial Review Order*, the Commission explicitly held that this issue was outside the scope of the proceeding. 18 FCC Rcd at 13864-69, ¶¶ 640-56. While the independent producer issues raised by these commenters may be pertinent to the broader issue of source diversity in the media, we find that they are more appropriately addressed elsewhere.

[18] *2002 Biennial Review Order*, 18 FCC Rcd at 13647-49, ¶¶ 86-89.

[19] Thus, for example, Communications Workers of America ("CWA") contends that the Commission should focus primarily on the ownership of newspapers and television stations because they continue to be the dominant sources of local news and information, despite the growth of cable, satellite, and the Internet. CWA Comments at 17-18, 54. CWA opposes including the Internet, particularly websites owned by the newspaper and media outlets, as an independent source of local news and information in the Commission's measurements of local media diversity. *Id.* at 21-24, 27. It argues that the Internet continues to serve primarily as an alternative distribution platform for traditional media outlets, citing several surveys and reports showing that most websites merely republish, repackage, and redesign information originated for their newspapers and television stations. *Id.* at 22-27. The Office of Communication of the United Church of Christ, Inc., National Organization for Women ("NOW"), Media Alliance, Common Cause, and Benton Foundation ("UCC") contend that the Internet and other forms of non-traditional media do not displace Americans' reliance on broadcast and newspapers for news and should be "treated as a supplement rather than a competitor of traditional media." UCC Comments at 43.

[20] *See, e.g.*, Newspaper Association of America ("NAA") Comments at 25-27; Media General Reply at 8-12; *see also The State of the News Media 2007, Online: Audience*, Project for Excellence in Journalism (2007) at http://www.stateofthenewsmedia.org/2007/narrative_online_audience.asp?cat=2&media=4 (Growth trends in the online audience of newspapers suggests that "the newspaper audience may not be shrinking, ... But it reinforces the imperative that the Internet model needs to figure out a way to 'monetize' those readers. Otherwise the resources available to cover the news may shrink."). *See also, e.g., FCC Annual DTV Ancillary/ Supplementary Services*
(continued...)

7. Five years ago, the Commission recognized that digital technologies were beginning to translate into more options for consumers.[21] Since that time, it has become clear that additional consumer choices also bring audience fragmentation.[22] That development, in turn, has consequences for the business models that support the operation of traditional media companies – including, but not limited to, those entities' gathering and disseminating of news and information to their local communities. The record shows that the number of traditional media outlets has remained largely static since the Commission last considered its media ownership rules,[23] even as online-only outlets have grown.[24] As a result, traditional media entities have been trying to find ways to maintain revenue growth while implementing new models of distribution.[25] With attention turned to the online and digital environment, consolidation among owners of broadcast stations appears to have slowed,[26] while the stability of once-

(Continued from previous page)
Report, 18 FCC Rcd 23972 (2003); 47 U.S.C. § 336 (a), (e). DTV allows broadcasters to use part of their digital bandwidth for subscription video, datacasting, and other pay services. To date, the provision of ancillary and supplementary services has been modest.

[21] *2002 Biennial Review Order*, 18 FCC Rcd at 13647-49, ¶¶ 86-89.

[22] *See, e.g.*, NAA Comments at 40-41; Gannett Comments at 15-16; Cox Comments at 18-23; and Belo Comments at 18. As cable subscribership continues to grow, and as the total number of non-broadcast networks continues to increase, broadcast television stations' audience share continues to fall. *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503, 2550-51, ¶ 93 (2006) ("*2005 Video Competition Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Eleventh Annual Report, 20 FCC Rcd 2755, 2804-05, ¶ 77 (2005) ("*2004 Video Competition Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, Tenth Annual Report, 19 FCC Rcd 1606, 1669, ¶ 94 (2004). The introduction and increasing adoption of competing MVPD technologies has resulted in the decline in market share of cable operators in recent years. *See, e.g., 2005 Video Competition Report*, 21 FCC Rcd at 2617, Table B-1; *2004 Video Competition Report*, 20 FCC Rcd at 2869, Table B-1.

[23] *See* "Ownership Structure and Robustness of Media," by Kiran Duwadi, Scott Roberts, and Andrew Wise, FCC (2007) ("Media Ownership Study 2") at 2, *available at* http://www.fcc.gov/ownership/studies.html ("In the TV industry, the data reveal a slight increase in the number of stations and a slight decrease in the number of owners.... For the radio industry, the number of stations increased moderately."). *See also* Broadcast Station Totals 1990 to Present, FCC, *available at* http://www.fcc.gov/mb/audio/totals/index.html.

[24] Media General Comments at 44-45; NAA Comments at 60-64; Tribune Comments at 22; Cox Comments at 20-23; NAB Reply at 26.

[25] Cox Comments at 17-18; Media General Comments at 59-60; NAA Comments at 25-30.

[26] *See* Media Ownership Study 2 at 2 ("Media ownership was fairly stable over the period studied. This contrasts with the previous [September 2002 FCC] study, which revealed substantial consolidation across most forms of media, especially following the 1996 Telecommunications Act."). At least one major broadcasting company seems to suggest that it is uninterested in this rulemaking because its focus is elsewhere:

> The Walt Disney Company is not advocating and does not seek any relaxation of the Commission's Broadcast Ownership Rules.... [T]he Walt Disney Company owns 10 television stations that collectively have a theoretical aggregate reach of less than 24% of U.S. Television Households, well below the statutory cap of 39%. Disney has not bought a television station in more than 10 years. Disney sold any interest in newspapers years ago. Disney also [has divested] a large number of its owned radio stations.
>
> Given the increase in, and attractiveness of, new media outlets, in Disney's view, the Commission may soon find itself considering ways to incent, rather than restrict, ownership of over-the-air broadcast stations.

Walt Disney Comments at 2.

storied newspaper publishing companies has become open to question.[27]

8. Yet while the marketplace is fragmenting and the revenue needed to maintain traditional media operations appears to be declining,[28] the data also show that mainstream media continue to hold a major position in the marketplace, particularly in the markets for the provision of news and information. Commission-sponsored studies and those of third parties indicate that consumers still rely most heavily on broadcast television stations and daily newspapers for local news and other non-entertainment fare.[29] Consumers rely on broadcast radio stations to a lesser extent.[30] Moreover, studies focused on the specifics of Internet usage to obtain news show that sites operated by newspapers and broadcast television stations capture a significant percentage of consumer attention.[31] This appears to be due in part to the power of "branding" in a competitive marketplace; existing newspapers and broadcasters enjoy the benefits of years of consumer familiarity and trust.[32] This also may be due to the fact that traditional media still largely provide the original newsgathering and reporting on which consumers – and many of the new media outlets such as aggregator sites and bloggers – rely.[33] Although the future landscape of the online media world is difficult to predict, for the foreseeable period ahead it appears that traditional media outlets will remain important sources of news and information, especially at the local level.

9. *Policy Goals.* The media ownership rules are designed to foster the Commission's longstanding policies of competition, diversity, and localism. We set these policies out in detail in the

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[27] *See, e.g.*, NAA Comments at 43; Media General Comments at 65.

[28] *See, e.g.*, NAA Comments at 42; Tribune Comments at 34. *See also*, *e.g.*, Jonathan Levy, Marcelino Ford-Livene, and Anne Levine, *Broadcast Television: Survivor in a Sea of Competition*, OPP Working Paper No. 37 (Sept. 2002) at 26 ("OPP Working Paper No. 37"), *available at* http://www.fcc.gov/osp/workingp.html ("the fact that the gap in broadcast and cable network prime time audience size is narrowing suggests once again that cable will continue to expand its advertising revenue share at the expense of broadcasting"); Peter Appert, *Newspaper Stocks: Values or Value-Traps?*, Goldman Sachs: Publishing News8Views, Apr. 20, 2006, at 3 (In view of "the ever increasing fragmentation in the local media marketplace, we believe we are experiencing a permanent downward shift in valuation levels").

[29] *See e.g.*, How People Get News and Information, survey by Nielsen Media Research, Inc. (2007) ("Media Ownership Study 1"), *available at* http://www.fcc.gov/ownership/studies.html; Consumers Union, Consumer Federation of America, and Free Press ("CU Comments"), Attach., Study 7 "Media Usage: Traditional Outlets Still Dominate Local News information" by Mark Cooper, and CU Comments, Attach., Study 8 "The Internet and Local News and Information" by Mark Cooper.

[30] *See* NAB Comments at 53-54. *See also* CU Comments, Attach., Study 7 and Study 8.

[31] *See* Pew Internet, Latest Trends, Internet Activities http://www.pewinternet.org/trends.asp (72 percent of Internet users report ever using the Internet to get news, and 37 percent report using the Internet to get news "yesterday" (the day prior to the date of the survey)); Pew Research Center for The People & The Press, "Online Papers Modestly Boost Newspaper Readership: Overview" (July 30, 2006), *available at* http://people-press.org/reports/display .php3?ReportID=282 (finding 31 percent of people surveyed use the Internet three or more times per week to access news, compared to 25 percent in 2005 and 2 percent in 1996); The State of the News Media 2007: Online: Audience, Project for Excellence in Journalism (2007), *available at* http://www.stateofthenewsmedia.org/2007 /narrative_online_audience.asp?cat=2&media=4. *See also* Newspaper Websites: Total Web Audience, Newspaper Association of America, *available at* http://www.naa.org/TrendsandNumbers/Newspaper-Websites.aspx (number of unique visitors to newspaper websites has increased from 41 million in January 2004 to 59 million in August 2007).

[32] CU Comments, Attach., Study 8.

[33] *See, e.g.*, NAA Comments at 55-57; CU Comments at 10-13 (citing to their own Studies 7 and 8). State of the News Media 2006: Online: Content Analysis, Project for Excellence in Journalism (2006), *available at* http://www.stateofthenewsmedia.org/2006/narrative_newspapers_economics.asp?cat=4&media=3 ("Virtually all original newsgathering, though, was still being done by the old media, and some of the major new Internet-only challengers appeared to have made less progress in content over the previous year than the sites of the old media.").

2002 Biennial Review Order,[34] and we reaffirm those goals. We address localism more fully in a separate report intended to enhance broadcasters' commitment to serving their local markets.[35] In addition, in the *Diversity Order*, we adopt a number of measures to enhance diversity by promoting entry of small businesses, including those owned by women and minorities,[36] and invite comment on other proposals to promote those goals.

10. *Section 202(h) Analysis.* Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review quadrennially[37] its broadcast ownership rules to "determine whether any of such rules are necessary in the public interest as a result of competition."[38] The statute further requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest."[39] In *Prometheus*, the Third Circuit concluded that "necessary in the public interest" is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'"[40] It further concluded that the second sentence of Section 202(h) requires the Commission to repeal or modify any regulations that it has determined do not satisfy the standard set forth in the first sentence.[41]

11. Moreover, the court explicitly rejected the argument that Section 202(h) is a "one-way ratchet" that the Commission may use only to eliminate existing regulations, reasoning that this construction ignores the word "modify" and the requirement that the Commission act "in the public interest."[42] Thus, the court rejected contentions that Section 202(h) imposes "rigid limits on the Commission's ability to regulate in the public interest"[43] and instead held that the statute requires only

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[34] 18 FCC Rcd at 13627-45, ¶¶ 17-79.

[35] UCC claims that the Commission also failed to ensure that any cost savings resulting from consolidation would be used to provide more and better local news and public affairs programming. UCC Petition at 2-10. As noted above, issues related to localism are being addressed in a separate localism report.

[36] In the *2002 Biennial Review Order*, the Commission stated that it would commence a separate proceeding to examine proposals to advance broadcast ownership opportunities for minorities and women. 18 FCC Rcd at 13634, 13636, ¶¶ 46, 50. The *Prometheus* court, noting that the Commission had deferred consideration of certain proposals for advancing broadcast ownership by minority and disadvantaged businesses and for promoting diversity in broadcasting for a future Notice of Proposed Rulemaking, stated that "the Commission's rulemaking process in response to our remand order should address these proposals at the same time." 373 F.3d at 421 n.59. Accordingly, we concurrently adopt the *Diversity Order*, which adopts a number of proposals to enhance diversity of ownership. A number of parties, including the MMTC, NOW, and National Association of Black Owned Broadcasters, Inc. and the Rainbow/PUSH Coalition, Inc. ("NABOB"), had petitioned for reconsideration of the *2002 Biennial Review Order*, arguing that the new rules did not address minorities and suggesting proposals that the Commission could adopt to enhance diversity in media ownership. *See, e.g.*, MMTC Petition at 10-28. In addition, UCC sought reconsideration of a number of issues relating to the Commission's promotion of its diversity goals. UCC Petition at 2-10. *See also* Future of Music Coalition and American Federation of Musicians Reply ("FMC Reply ") at 13-14, Attach., "False Premises, False Promises," by Peter DiCola, Research Director, Future of Music Coalition (Dec. 2006) ("DiCola Study") at 85-90 (proposing a new diversity measure). The Commission addresses these diversity proposals in the *Diversity Order*, *supra* note 7.

[37] Congress amended the statute in 2004 to make the review requirement quadrennial rather than biennial. *See 2004* Consolidated Appropriations Act, 118 Stat. at 3.

[38] 1996 Act, 110 Stat. at 111-12.

[39] *Id.*

[40] 373 F.3d at 394.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 382.

that the Commission "'monitor the effect of ... competition ... and make appropriate adjustments' to its regulations."[44] In sum, Section 202(h) requires us to periodically examine these rules, and repeal or modify them if they do not remain useful in the public interest.[45] In this Order, we examine each of these rules in turn.

12. *Severability.* Although all of the ownership rules that we review in this Order are designed to further diversity, competition and/or localism, each serves a particular function in the media marketplace independently of the others. Therefore, it is our intent that each of those rules shall be severable. If any of the rules is declared invalid or unenforceable for any reason, it is our intent that the remaining rules shall remain in full force and effect.[46]

III. NEWSPAPER/BROADCAST CROSS-OWNERSHIP

13. In this section we address the newspaper/broadcast cross-ownership rule to determine whether it is necessary in the public interest. The 1975 cross-ownership ban is the only Commission media ownership rule that has remained in effect without modification for over three decades. Today, we make a modest change in the rule that has the primary effect of presuming that certain limited combinations of newspaper and broadcast facilities in the largest markets are in the public interest.[47] In this order, we take a modest step in loosening the complete ban on cross-ownership. We adopt a

[44] *Id.* at 391 (quoting *2002 Biennial Review Order*, 18 FCC Rcd at 4726-27, ¶ 5).

[45] *Id.* at 395. The vast majority of commenters agree that *Prometheus* sets forth the legal standard guiding this proceeding. FMC recommends that the Commission use a standard of "in the public interest" and not "necessary in the public interest." Future of Music Coalition Petition at 5-6 ("FMC Petition"). Similarly, UCC protests the view that Section 202(h) carries a deregulatory bent. UCC Petition at 10-17. Clear Channel, however, continues to argue that we should construe "necessary" in the context of Section 202(h) to mean "absolutely required," "indispensable," or "essential." *See* Clear Channel Comments at 5-6. Both the Third Circuit and the D.C. Circuit explicitly rejected this proposed construction, and we decline to adopt it here. *See Prometheus*, 373 F.3d at 393-94; *Cellco Partnership v. FCC*, 357 F.3d 88, 97-98 (D.C. Cir. 2004) (affirming Commission's interpretation of "necessary in the public interest" in the context of the biennial review requirements of Section 11 of the Act, 47 U.S.C. § 161, and concluding that the definition of "necessary" was not constrained by prior court decisions).

[46] *2002 Biennial Review Order*, 18 FCC Rcd at 13874, ¶ 679.

[47] On November 13, 2007, the Chairman issued a news release, which shared with the public a proposed change to the newspaper/broadcast cross-ownership rule and his proposal to retain the other media ownership rules currently under review. He invited public comment on his proposals and indicated that any such comment should be filed by December 11, 2007, which was the day when, absent a waiver, the Sunshine Period would begin for the Commission's December 18 meeting. *See* "Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule" (rel. Nov. 13, 2007). In this Order, "12/11/07 Comments" refer to public comments submitted in response to the news release. Several commenters criticize the Chairman for seeking public comment outside the scope of agency procedures and question whether the news release complies with Administrative Procedure Act ("APA") requirements. Communications Workers of America and American Federation of Television & Radio Artists ("CWA/AFTRA 12/11/07 Comments") and Consumers Union, Consumer Federation of America, and Free Press ("CU 12/11/07 Comments") request that the Commission publish the final rule in the Federal Register prior to its adoption. CWA/AFTRA 12/11/07 Comments at 2; CU 12/11/07 Comments at 36-41. *See also* Media Access Project ("MAP") 12/11/07 Comments at 1-2; The Office of Communications of the United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, Benton Foundation, Consumers Action, Massachusetts Consumers' Coalition, NYC Wireless, Democracy Now!, Wayne Caswell, and James S. Elekes ("UCC 12/11/07 Comments") at 2-4. We disagree and find that the Commission has satisfied the APA notice of proposed rulemaking requirements. The *Further Notice* was adequate under Section 553 of the APA, which only requires notice of the "terms or substance of the proposed rule *or a description of the subjects and issues involved*." (emphasis added). 5 U.S.C. § 553(b)(3). Because the original NPRM was adequate for APA compliance purposes, it is immaterial whether the recent news release complied with APA requirements. Indeed, any Commissioner was free to issue a press release sharing with the public his or her suggested changes to the media ownership rule prior to the December 18 meeting.

presumption, in the top 20 Designated Market Areas ("DMAs"), that it is not inconsistent with the public interest for one entity to own a daily newspaper and a radio station or, under the following limited circumstances, a daily newspaper and a television station, if (1) the television station is not ranked among the top four stations in the DMA and (2) at least eight independent "major media voices" remain in the DMA. In all other instances, we adopt a presumption that a newspaper/broadcast station combination would not be in the public interest, with two limited exceptions, and therefore emphasize that the Commission is unlikely to approve such transactions. Taking into account these respective presumptions, in determining whether the grant of a transaction that would result in newspaper/broadcast cross-ownership is in the public interest, the Commission will consider the following factors: (1) whether the cross-ownership will increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the Nielsen DMA; and (4) the financial condition of the newspaper or broadcast outlet, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations. Our cautious approach addresses the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

A. Background

14. Adopted in 1975, the newspaper/broadcast cross-ownership rule prohibits common ownership of a full-power broadcast station and a daily newspaper when the broadcast station's service contour encompasses the newspaper's city of publication.[48] In the *1998 Biennial Review Order*, the Commission concluded that the newspaper/broadcast cross-ownership rule continued to serve the public interest because it furthered diversity, and therefore should be retained.[49] The Commission noted, however, that the rule might not be necessary to achieve its intended public interest benefits under all circumstances.[50]

15. In the *2002 Biennial Review Order*, the Commission eliminated the newspaper/broadcast cross-ownership ban, which did not account for either market size or the number of available outlets in a market, finding that it failed to promote competition, localism, or diversity.[51] The Commission held that, because newspapers and broadcast stations do not compete in the same economic market, elimination of the ban could not harm competition.[52] The Commission also found that efficiencies resulting from cross-ownership can actually promote localism because newspaper-owned television stations tend to produce local news and public affairs programming in greater quantity and of a higher quality than non-

[48] For AM radio stations, the service contour is the 2mV/m contour, 47 C.F.R. § 73.3555(d)(1) (2002); for FM radio stations, the service contour is the 1mV/m contour, *id.* § 73.3555(d)(2) (2002); for TV stations, the service contour is the Grade A contour, *id.* § 73.3555(d)(3) (2002). A daily newspaper is one that is published in the English language four or more times per week. *Id.* § 73.3555 n.6. As discussed below, the rule was revised in the *2002 Biennial Review Order*, and appears in the current print of the Code of Federal Regulations. The revised rule was remanded and stayed by the Third Circuit in *Prometheus*.

[49] *1998 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*, MM Docket No. 98-35, Biennial Review Report, 15 FCC Rcd 11058, 11105, ¶ 88 (2000).

[50] *Id.* at 11109, ¶ 95. The Commission recognized that there may be instances, because of the size of a market or the size and type of the newspaper and broadcast outlet involved, that sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed. Therefore, it initiated a rulemaking to develop a more complete record to determine the circumstances in which the cross-ownership rule may not be necessary to achieve its intended public interest benefits. In addition, it planned to examine whether the rule should be tailored to address contemporary market conditions.

[51] 18 FCC Rcd at 13748, ¶ 330.

[52] *Id.* at 13748-49, ¶¶ 331-32.

newspaper-owned stations.[53] Furthermore, the Commission determined that the blanket ban was not needed to promote diversity given the vast array of media outlets available in many markets.[54] The Commission replaced the ban with new cross-media limits, which were targeted more precisely at specific types of markets in which particular combinations could harm diversity.[55] The cross-media limits were derived from the Diversity Index (the "DI"), which analyzed and measured the availability of outlets that contributed to viewpoint diversity in local media markets.[56]

16. The Third Circuit affirmed the Commission's decision to eliminate the complete ban, finding the Commission's conclusions that the ban undermined localism and that it was unnecessary to protect competition or diversity to be reasonable.[57] It agreed that the Commission reasonably concluded, given the conflicting evidence in the record on whether ownership influences viewpoint, that it did not have enough confidence in the proposition that commonly owned outlets have a uniform bias so as to warrant maintaining the prohibition.[58] The court concluded, however, that the specific cross-media limits adopted were not supported by reasoned analysis, and remanded those limits for further justification or modification. The court found that the Commission placed too much weight on the Internet as a source of local news in its DI, did not support the equal-sized competitor assumption on which the DI was based, and inconsistently derived the cross-media limits from its DI results.[59] Numerous parties also objected to the DI, claiming that its methodology and the measures based upon it were flawed.[60] In addition, parties

[53] *Id.* at 13753-60, ¶¶ 342-54.

[54] *Id.* at 13760-62, ¶¶ 355-59.

[55] *Id.* at 13775, ¶ 390. The cross-media limits also replaced the existing radio/television cross-ownership rule. *Id.* The new cross-media limits prohibited newspaper/broadcast and radio/television cross-ownership in markets with three or fewer television stations. *Id.* at 13797-801, ¶¶ 452-61. The revised rules did not, however, bar a broadcast station from starting a new newspaper in its market. *Id.* at 13799, ¶ 456. For purposes of counting the number of stations in a market under the cross-media limits, the Commission counted both commercial and noncommercial full power television stations assigned to the DMA. *Id.* at 13798, ¶ 454. In markets with between four and eight stations, the Commission held that an entity could own a combination that includes a newspaper and either (a) one television station and up to 50 percent of the radio stations that could be commonly owned under the applicable radio cap, or (b) up to 100 percent of the radio stations allowed under the applicable radio cap. *Id.* at 13803, ¶ 466. In markets with nine or more television stations, cross-media combinations were permitted without limit under the cross-media limits, so long as they complied with the applicable local television and local radio ownership limits. *Id.* at 13804, ¶ 472-73.

[56] *Id.* at 13775-76, ¶ 391. The DI, modeled after the Herfindahl-Hirschman Index ("HHI") used for determining market concentration, assigned a weight to each type of outlet based on its relative use by consumers. *Id.* at 13776-79, ¶¶ 393-400.

[57] 373 F.3d at 398-99, 399-400.

[58] *Id.* at 399-400. The court also found the Commission did not violate Section 202(h) by concluding that (1) repealing the cross-ownership ban was necessary to promote competition and localism, and (2) retaining some limits was necessary to ensure diversity. Furthermore, the court held that the Commission's continued regulation of cross-ownership was constitutionally sound. *Id.* at 400-02 (citing *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 801-02 (1978)) ("*NCCB*").

[59] *Id.* at 402-03.

[60] American Federation of Labor and Congress of Industrial Organizations and the Department for Professional Employees, AFL-CIO ("AFL-CIO") Comments at 56; NAA Comments at 85-89. UCC and CFA/CU assert that the DI is rife with flawed assumptions. Among the problems they assert are (a) inclusion of the Internet in the index, despite the fact that the major providers of Internet news and information own other media outlets, and (b) inclusion of outlets regardless of whether they offer local news, whether they reach the entire DMA, and whether they have reportable audience shares within the DMA. CFA/CU contends that the DI is not procedurally or substantively sound. For example, they take issue with the fact that certain television stations within the New York DMA, including a community college station and a station with a home shopping format, are weighted more heavily than (continued...)

contended that because the DI was the basis for the cross-media limits, the deficiencies in the DI were fatal to the adopted limits.[61]

17. In light of the extensive and detailed criticism of the DI, we tentatively concluded in the *Further Notice* that the DI is an inaccurate tool for measuring diversity and that some aspects of diversity may be difficult to quantify.[62] We affirm that conclusion here, and accordingly reject any use of the DI. In addition, the court held that because the cross-media limits are based upon the DI, its deficiencies are fatal to the cross-media limits. Thus, on remand and reconsideration, we will not reinstate the cross-media limits or rely on the DI.[63] Instead, we will modify the newspaper/broadcast cross-ownership rule as described below.

B. Discussion

18. As an initial matter, we reaffirm the Commission's decision to eliminate the blanket ban on newspaper/broadcast cross-ownership and replace it with a presumption that waivers of the ban are in the public interest in certain limited circumstances set forth below. The *Prometheus* court agreed that the ban is not necessary to promote competition, diversity, or localism. First, the court agreed that the ban is not necessary to promote competition in local markets because most advertisers do not view newspapers and television stations as close substitutes.[64] Second, the court agreed that the ban could undermine localism by preventing efficient combinations that would allow for the production of high-quality local news.[65] Third, the court found that the ban is not necessary on grounds of diversity because of insufficient evidence that ownership influences viewpoint.[66] Finally, the court affirmed that a complete ban is unwarranted due to the presence of other media sources in local markets, such as the Internet and cable.[67]

19. Evidence in the record continues to support the Commission's earlier decision that retention of a complete ban is not necessary in the public interest as a result of competition, diversity, or localism. Many commenters agree that an absolute ban is not necessary in order to achieve our competition, localism, or diversity goals.[68] We agree and remain unconvinced that a blanket ban would

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The New York Times in the DI. Procedurally, CFA/CU fault the Commission for failing to seek public comment on the index. *See, e.g.,* CFA/CU Petition at 3-4, 14-15.

[61] UCC Petition at 34-38; CFA/CU Petition at 3-4.

[62] 21 FCC Rcd at 8848, ¶ 32.

[63] Because our new cross-ownership rule does not rely on the DI and we are abandoning the cross-media limits, we dismiss as moot the petitions challenging the DI and the cross-media limits.

[64] *See* 373 F.3d at 398.

[65] *Id.* at 398-99.

[66] *Id.* at 399-400.

[67] *Id.* at 400.

[68] Belo Comments at 17-18; Cox Comments at 5-7; Fox Comments at 25-26; Freedom of Expression Foundation, Inc. ("FOEF") Comments at 9-10; Media General Comments at 43-44, 63; Gannett Comments at 6-14; Hearst Comments at 47-48; NAA Comments at 2, 17-18; NAB Comments at 110-11; Tribune Comments at 7-9; *see also* Remarks by Vincent Malcolm, Vice President and General Manager of KTLA Channel 5 (Tribune Broadcasting Company), Media Ownership Hearing in El Segundo, California (Oct. 3, 2006), Transcript at 23-28; Remarks by Pat Roberts, President of Florida Association of Broadcasters, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 83; Remarks by Congressman Jim Davis, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 95-97; Remarks by Bob Gremillion, President, CEO and Publisher of the South Florida Sentinel, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 221-25.

(continued...)

continue to serve the public interest, particularly in the largest markets. As the Commission stated in adopting the newspaper/broadcast cross-ownership ban in 1975, "an agency's view of the extent to which its public interest mandate requires it to take newspaper ownership into account can change over the years," and that prior statements "on what policy best serves the public interest does not mean that the agency is excused from its continuing responsibility to seek to further the public interest which may cause it to reach a different conclusion twenty-two years later."[69] We have ample evidence in the record that marketplace conditions have indeed changed and thus justify a recalibration at this time. As discussed below, the record indicates that the largest markets contain a robust number of diverse media sources and that the diversity of viewpoints would not be jeopardized by certain newspaper/broadcast combinations. The record also shows that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers. In addition, because the presumption we adopt today that waivers of the ban are in the public interest is generally limited to combinations of a single broadcast outlet and a daily newspaper in the largest markets, it will ensure that such synergies can be captured without impairing diversity. In short, our new rule lifts the complete ban but does so in a modest manner in order to ensure both that our goals of competition, localism, and diversity are not compromised and that we may achieve the economic benefits of allowing certain combinations.

20. We now adopt a presumption that generally will permit certain newspaper/broadcast station combinations in the largest 20 markets, and generally will preclude them in all other markets.[70] Specifically, we establish a presumption that a waiver of the cross-ownership ban is in the public interest in the following circumstances: when a daily newspaper seeks to combine with a radio station in a top 20 DMA, or when a daily newspaper seeks to combine with a television station in a top 20 DMA and (1) the television station is not among the top four ranked stations in the market and (2) at least eight "major media voices" would remain in the DMA. We will continue to presume that all other proposed newspaper/broadcast station combinations are not in the public interest, subject only to two limited exceptions. In evaluating transactions to determine whether a waiver is warranted, we will look at every transaction on a case-by-case basis, mindful of these presumptions. We provide specific factors that the Commission will consider in conducting that analysis to determine whether a proposed combination will

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But see AFL-CIO Comments at 52-56 and Reply at 26; AFTRA Comments at 20; CWA Comments at 4, 54; CU Comments at 6, UCC Comments at 60, 63 and Reply at 26; Joint Resolution of State, Regional and National Association of Free Community Papers Comments at 1; Free Community Papers of New England Comments at 1; Free Community Papers of Michigan Comments at 1; Free Community Papers of New York Comments at 1; Remarks by Congresswoman Maxine Waters, Media Ownership Hearing in Los Angeles, California (Oct. 3, 2006) Transcript at 19-23; Remarks by The Honorable Diane Watson, Media Ownership Hearing in Los Angeles, California (Oct. 3, 2006) Transcript at 23-27; Remarks by Dr. Mark Cooper, Director of Research for the Consumer Federation of America, Media Ownership Hearing in El Segundo, California (Oct. 3, 2006) Transcript at 56-60; Remarks by Emily Rush, Citizen Participant, Media Ownership Hearing in El Segundo, California (Oct. 3, 2006) Transcript at 74-76; Remarks by Steve Erlanger, Publisher of Hometown News, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 51-57; Remarks by Professor Eric Klinenberg, New York University, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 67-72; Remarks by Patrick Manteiga, Editor and Publisher of La Graceta, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 73-78; Remarks by Lowel Stewart Harris, Teacher and Student, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 290-92; Remarks by Lucille Griggs, Citizen Participant, Media Ownership Hearing in Tampa, Florida (Apr. 30, 2007), Transcript at 295-97.

[69] *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Docket No. 18110, 50 FCC 2d 1046, 1051 ¶ 20 (1975) ("*1975 Second Report & Order*").

[70] Our rules will not, however, bar a broadcast station in a market from starting a newspaper, as that would expand, not decrease, diversity. *See 2002 Biennial Review Order*, 18 FCC Rcd at 13798-99, ¶ 456; *see also* Letter from Mark D. Schneider, Counsel for Allbritton Communications Co. to Marlene H. Dortch, Secretary, FCC (Nov. 19, 2007).

be in the public interest. Our cautious approach balances the need to support the availability and sustainability of local news and informational programming with the needs to preserve diversity and to avoid significantly increasing local ownership concentration.

21. *Relevant Marketplace Developments.* The Commission has tailored its approach to common ownership of newspapers and broadcast stations several times in its history as the media marketplace evolved. As discussed below, the current ban prohibiting the cross-ownership of newspapers and broadcast stations arose 32 years ago in an era when two mature industries – daily newspapers and broadcasting – constituted the only "mass media" providing local news and information to most American communities. In 1975, moved by a newly heightened concern about media diversity at the local level, the Commission reversed what had been its decades-old policy of encouraging newspaper/broadcast combinations.[71] The data before us now show that the media environment has changed considerably over the past three decades. The emergence of new forms of electronic media in recent years has come at the expense of traditional media, and of newspapers in particular. Changes include a diminished number of newspaper outlets, ebbing popularity with consumers, and a notable shift in the role that traditional media outlets play in gathering and disseminating news and information. Faced with these facts, we, like our predecessors, remain cognizant of our obligation to adjust our regulations to "adequately reflect the situation as it is, not was."[72] And we are now, of course, under a statutory obligation to do so under Section 202(h) of the 1996 Act. We find that the state of the marketplace today warrants a measured readjustment of the newspaper/broadcast rule. We believe that our revised regulation will continue to serve our goal of preserving media diversity in local markets while also providing some flexibility for new, efficient combinations in appropriate circumstances.

22. In the early days of broadcasting, when the success of the then-new medium was not assured, the Commission had actively encouraged newspaper owners to apply for newly available licenses in their local communities.[73] Regulators hoped that such established local media entities would bring both expertise and financial support to the development of broadcasting as a viable mass medium.[74] By the 1970s, however, the Commission determined that television and radio broadcasting operations had come into their own and no longer needed the help of local newspaper publishers to survive:

> Now, unlike [the early days of broadcasting], the broadcasting medium has matured. While not all have made profits, for the most part, it is the particular market situation, or the newness of the operation that is the cause. Thus, the special reason for encouraging newspaper ownership, even at the cost of a lessened diversity, is no longer generally operative in the way it once was. Nor are newspapers the sole reservoir of experience on which reliance has to be placed. To the extent that television (or radio) facilities are worth applying for, qualified and experienced applicants can be expected to step forward. Newspapers are not the only interested parties. The Commission is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was.[75]

Given these developments, and mindful of its obligations to take action in the public interest, the Commission's concern shifted to media diversity – specifically, its "long standing policy of promoting diversification of ownership of the electronic mass communications media" on the basis that "ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of

[71] *See generally 1975 Second Report & Order*, 50 FCC 2d 1046.

[72] *Id.* at 1074-75, ¶ 100.

[73] *See Id.* at 1066, 1074-75, ¶¶ 70, 100.

[74] *Id.*

[75] *Id.* at 1074-75 ¶ 100.

presentation, all of which are a critical aspect of the Commission's concern with the public interest."[76]

23. To that end, the Commission in its 1975 *Second Report and Order* concluded that it no longer served the public interest to permit one entity to own both a local daily newspaper and a broadcast station in the same community.[77] The Commission based part of its rationale for adopting a cross-ownership ban on the relatively limited resources available at that time for the dissemination of ideas on a community-wide scale. In 1975, a person wishing to provide local news to reach a mass audience on a frequent basis in his or her local community had only two reliably effective options: (1) produce a written publication, or (2) acquire a full-power broadcast license.[78] Neither option was without significant transaction costs that raised high hurdles against entry into the mass media arena.[79] Given the then-extant harms of highly consolidated cross-ownership and the high barriers to entry, the Commission adopted the ban, which continues to this day.

24. The media marketplace today is profoundly different. In absolute terms, dramatic changes have occurred over several decades with respect to the number and types of media "voices" competing for the public's attention. With the increase in media voices has come a marked fragmentation of audience share as viewers, listeners and readers gravitate toward new sources of information and entertainment. The modern era of fragmentation began in the late 1970s, with the emergence of what has grown to be hundreds of video programming channels available over cable and, later, by satellite distribution. Many of the media outlets now vigorously competing for audiences simply did not exist at the time the Commission's rule prohibiting newspaper/broadcast combinations was adopted. For example, there are currently approximately 11.6 million subscribers to satellite radio, a service which did not exist in 1975.[80] In addition, approximately 86 percent of U.S. households subscribe to video service provided by an MVPD, which includes cable, SMATV systems, direct broadcast satellite (DBS), fiber-optic network service, wireless cable, and other such delivery systems that either did not exist or existed only in limited form in 1975.[81] Moreover, increased efficiencies in the use of terrestrial broadcast

[76] *Id.* at 1048, 1050, ¶¶ 9, 14.

[77] *Id.* at 1075, ¶ 101.

[78] The relatively limited options available to a person attempting to reach a wide audience within his or her community stands in stark contrast to the means by which new entrants today can participate in the marketplace of ideas in an effective way. The widespread availability of home publishing devices that Americans now enjoy in the form of personal computers, printers, and copy duplication equipment existed only in limited, cost-prohibitive, and primitive form – if they existed anywhere at all. William Blinn Communications, *A Short Jaundiced History of Desktop Publishing*, Random Thoughts: Communications With a Purpose, July 2004, *available at* http://www.blinn.com/news/2004-07.pdf (visited Dec 10, 2007). The Internet, which today stands as the premiere means by which ordinary citizens and startup media companies communicate with a worldwide audience, was in 1975 little more than a handful of linked university and Defense Department research computers transmitting relatively miniscule amounts of information, none of it for public consumption. Katie Hafner & Matthew Lyon, *Where Wizards Stay Up Late: The Origins of the Internet* 211 (1996) (MIT's Artificial Intelligence Lab passed only 9,925 messages over ARPANET, the Internet's predecessor, during the first quarter of 1976).

[79] The number of traditional newspapers operating in the United States during the period between 1945 and 1980 remained relatively stable, which suggests that the newspaper market was operating at or near capacity and generally was unlikely to support additional entrants. In 1947, there were 1,854 daily newspapers; in 1958, there were 1,778 daily newspapers; in 1970, there were 1,748; in 1980, there were 1,745. *Statistical Abstracts 1951-1994*, US Department of Commerce, Bureau of the Census, *available at* http://www.census.gov/prod/www/abs/statab1951-1994.html (visited Nov. 15, 2007). On the broadcasting side, by 1975 the Commission noted that it was very possible that a newspaper owner applying for a broadcast license in its local community might well be applying for the last available broadcast channel in the area, due to the fact that "the number of channels open for filing ha[d] vastly diminished" as compared to earlier years. *See 1975 Second Report & Order*, 50 FCC 2d at 1075, ¶ 101.

[80] *See* NAA Comments at 24-37.

[81] *Id.* at 30.

spectrum allowed for increased numbers of television and radio stations on the air since 1975; the number of radio stations increased by approximately 76 percent, while there has been an 83.5 percent growth in the number of television stations over the same period.[82] The later dawning of the Internet as a major distribution channel for content has accelerated this audience fragmentation.[83] As new digital technologies are being introduced, audiences continue to splinter, and advertising dollars continue to shift with the changing structure of the marketplace.[84] All of these post-1975 marketplace developments obviate the need for an across-the-board ban on newspaper/broadcast combinations.

25. On its surface, the fragmented state of media audiences today seems a rather benign consequence of technological progress. Media audiences in overall terms continue to grow,[85] as do advertising revenues that are generated by the various media that reach those audiences.[86] In many respects, the evolution of the modern media marketplace has been a positive social advancement in terms of its potential for increased distribution of news and information.

26. How well the traditional media are adapting to the current phase of media evolution – and what the consequences may be for the gathering and reporting of news and information – is a matter of considerable debate. Some evidence suggests that while television originally diverted audiences from radio and newspapers, the Internet and handheld devices may be helping to bring audiences back to these traditional forms of media.[87] In fact, unique visitors to newspaper websites have increased over the past

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[82] *Id.* at 24 n.84.

[83] Internet resources may be used as a primary source for news and information, or they may be used in conjunction with broadcast stations and newspapers. *See* John B. Horrigan, Pew Internet & American Life Project, *Online News: For many home broadband users, the Internet is a primary news source.* (Mar. 22, 2006), *available at* http://www.pewinternet.org.pdfs/PIP_News.and.Broadband.pdf. Many local broadcast stations and newspapers now have a dedicated website for their media outlets. Not only are these new online sources providing information to the public, they are also competing with traditional media for audiences and advertising revenue. Online advertising was up more than a third in 2006, exceeding $16 billion. However, according to PEJ, projections for continued growth in online advertising will begin to slow in 2008, and could drop to single digit growth before the end of the decade. Project for Excellence in Journalism, The State of the News Media 2007: An Annual Report on American Journalism: Economics, *available at* http://stateofthemedia.org/2007/narrative_online_economics.asp? cat=4& media=1.

[84] *See* OPP Working Paper No. 37 at 102-113. *See also* Hitwise, US News & Media Report at 2 (Apr. 2007), *available at* http://www.hitwise.com/registration-page/us-news-media.php ("The market share of visits to the top 10 News and Media websites declined by 3.8% from March 2006 to March 2007, indicating that news consumption is beginning to fragment as users expand their range of news sources to non-traditional news websites").

[85] *See* Research Central, Market Track, Trends in Television, Television Households, TVB.org, *available at* http://www.tvb.org/rcentral/mediatrendstrack/tv/tv.asp?c=tvhouseholds (showing the number of TV households increasing). *See also 2005 Video Competition Report*, 21 FCC Rcd at 2617, Table B-1; *2004 Video Competition Report*, 20 FCC Rcd at 2869, Table B-1 (showing MVPD subscribers increasing); US Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United States: 2001-2006, Section 24: Informal and Communications, *available at* http://www.census.gov/prod/www/statistical-abstract-2001_2005.html (visited Dec. 21, 2007).

[86] *See* Research Central, Market Track, Trends in Advertising Volume, Estimated Annual US Advertising Expenditures, 2004-2006, 2001-2003, 1998-2000, TVB.org, *available at* http://www.tvb.org/rcentral /mediatrendstrack/Trends_In_Advertising_Volume.asp (showing total national and local advertising expenditures rising over time). *See also* NAA, *Advertising Expenditures, 1950-2006, available at* http://www.naa.org/ TrendsandNumbers/Advertising-Expenditures.aspx (visited Nov. 26, 2007).

[87] *See* Pew People and the Press Report, *Online Newspaper Readership Countering Print Losses* at 5-7, *available at* http://peoplepress.org/reports/pdf/248.pdf (visited Nov. 26, 2007); Project for Excellence in Journalism, *The State of the News Media 2007, Online: Audience, available at* http://www.stateofthenewsmedia.org/2007/narrative_online_ audience.asp?cat=2&media=4 (growth in online audience suggests that "the newspaper audience may not be shrinking, something also evident in survey data. But it reinforces the imperative that the Internet model needs to (continued...)

several years from 41 million in January 2004, to 43 million in January 2005, 57 million in January 2006, and 59 million in January 2007.[88]

27. Other sources, however, paint a more pessimistic picture.[89] Even as the population of the country has increased more than 80 percent in the last half-century,[90] the number of daily newspapers being published and their readership have decreased significantly.[91] In 1975, there were more than 1,756 daily newspapers, with a total circulation of about 60.7 million readers.[92] By 2005, the number had dropped to 1,452 daily newspapers, with a total circulation of 53.3 million.[93] In the six-month period ending September 2007, the Audit Bureau of Circulations shows further declines in circulation for 700 daily newspapers across the country.[94] Of the top 25 papers in daily circulation, only four showed gains. Circulation for newspapers such as *The New York Times, The Washington Post, The Denver Post*, and *The Boston Globe* showed declines ranging from 3.2 percent to 10 percent.[95]

28. The steep reduction in newspaper circulation in recent years has triggered a cascade of negative impacts on the media industry. One such effect – which has particular import for the public interest – is the recent and sharp reduction in the number of professional journalists employed in the newspaper industry.[96] In 2006, the industry began with roughly 3,000 fewer full-time newsroom staff

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figure out a way to 'monetize' those readers.... Online news consumption may also be undercounted because people don't consider the places they go to be 'news' sites. More than half the people said they got campaign news last year from blogs, candidate sites, government Web sites, comedy sites, and interest-group sites, where often they were reading wire stories.").

[88] NAA, *Newspaper Websites: Total Web Audience*, *available at* http://www.naa.org/TrendsandNumbers/Newspaper-Websites.aspx (visited Nov. 26, 2007).

[89] *See, e.g.*, NAA Comments at 41-43 ("While newspaper circulation has been declining at a rate of one percent each year since 1990, these losses accelerated in 2005 ... [when] [c]irculation went down 2.6 percent for daily newspapers and 3.1 percent for Sunday newspapers." NAA describes how "[a]dvertising revenue also has taken a substantial hit" and how analysts have been lowering their revenue predictions for the newspaper industry. NAA observes the declining share price of *The New York Times*, Knight Ridder's "forced sale," and turmoil at the Tribune Company. *See also*, Tribune Comments at 33-34 (compared to every other medium of mass communications, newspaper readership is the only category to decline steadily in use since 2000).

[90] According to the 1990 Census, there were 151,325,798 people in the United States in 1950, and according to the 2000 Census there were 281,421,906 people in the United States, an increase of 86 percent. *See 1990 Census of Population and Housing, available at* http://www.census.gov/prod/www/abs/decennial/1990.htm (visited Dec. 27, 2007); *Population Change and Distribution 1990 to 2000, available at* http://www.census.gov/prod/2001pubs/c2kbr01-2.pdf (visited Dec. 10, 2007).

[91] Brendan Buckley, Mike Simonton, *et al.* FitchRatings, *U.S. Media Outlook*, Jan. 18, 2007 at 4; NAA, *The Source: Newspaper by the Numbers* at 22, 24; U.S. Dept. of Commerce, Bureau of the Census, *Abstracts 2007, available at* http://www.census.gov/prod/2006pubs/07statab/infocomm.pdf.

[92] U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstracts 1951-1994, available at* http://www.census.gov/prod/www/abs/statab1951-1994.htm (visited Nov. 15, 2007).

[93] U.S. Dept. of Commerce, Bureau of the Census, *Statistical Abstracts 2007*, Information and Communications 711, *available at* http://www.census.gov/prod/2006pubs/07statab/infocomm.pdf. (visited Nov. 15, 2007). NAA states in its comments that as of September 30, 2005, the total circulation of daily newspapers was approximately 55 million, a drop from roughly 58 million in 2003. NAA Comments at 25.

[94] Jennifer Saba, *First FAS-FAX Numbers: Many Top Papers Take Big Hits*, Editor & Publisher, Nov. 5, 2007, *available at* http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1003667950.

[95] This is consistent with recent trends in the industry generally. *See*, note 89, *supra*.

[96] Our concern is based on the recognition that significant reductions in the capacity of a newsgathering organization to effectively gather news carries with it the concomitant risk of degradation in the quality of the news output.
(continued...)

than it had at its peak of 56,400 in 2000.[97] NAA provided detailed data concerning the economic pressures faced by newspapers in recent years, which have resulted in significant layoffs of professional journalists and the shuttering of news bureaus by major newspapers around the country.[98] For example, Gannett announced in November 2007 that it would cut 45 newsroom positions (equal to 9 percent of its staff) for its *USA Today* publication in response to a decline in revenue of 6.6 percent over the prior year. NAA also noted additional announced cuts occurring solely in or for the year 2007 at a number of major newspapers, including *The Boston Globe* (24 newsroom staff cut in 2007, including two Pulitzer Prize-winning journalists), *The Minneapolis Star-Tribune* (50 newsroom staff cut in 2007), *The San-Jose Mercury News* (17 percent newsroom reduction in 2007), *The Rocky Mountain News* (20 newsroom staff cut in 2007), *The Denver Post* (16 journalists in voluntary buy-outs and 5 journalists laid off in 2007), *The Spokesman-Review* (announcing 8-12 layoffs in 2007), *Detroit Free Press* (announcing 16-22 newsroom staff cuts in 2007), *Detroit News* (announcing 6 newsroom staff cuts in 2007), *Los Angeles Times* (70 newsroom staff cut in 2007), *The San Francisco Chronicle* (25 percent newsroom staff reduction in 2007, equal to about 100 jobs), and *The Santa Cruz Sentinel* (8 permanent news staff terminated in July 2007), all reportedly due to recent economic losses at those papers. At some newspapers, the job layoffs have not been simply careful pruning of staff but rather severe reductions at – or wholesale abandonment of – news bureaus located in Washington, D.C., state capitals, and regional centers within their states.[99]

29. We note that the cuts described above comprise only those announced for the year 2007. The record contains evidence of additional significant cuts in newsroom staff in prior years as well.[100] In its comments in this proceeding, CWA emphasizes the conclusions reached in the Project for Excellence in Journalism's *2006 State of the Media* report, that recent job cuts in the media industry have been "ominous."[101] CWA posits that the "deep cuts did not ultimately satisfy Wall Street" and may have even gone too far for purposes of retaining readers and advertisers.[102] As we note in further detail below, concurrent with the loss of circulation over time has been a leveling off of advertising dollars available to

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Accordingly, we view reductions in the number of professional journalists employed in the newspaper industry as a negative effect more likely than not to result in a diminution of service to the public.

[97] *See* Project for Excellence in Journalism, *The State of the News Media 2007: An Annual Report on American Journalism: News Investment, available at* http://www.stateofthenewsmedia.org/2007/narrative_newspapers_newsinvestment .asp?cat=5&media=3 (citing American Society of Newspaper Editors, News Employment Census –Table A, (rel. Apr. 25, 2006)).

[98] *See* Letter from Martha E. Heller, Counsel for Newspaper Association of America, to Marlene H. Dortch, Secretary, FCC, Attach at 1-4 ("NAA Dec. 11, 2007 *Ex Parte*").

[99] *See id.* (reporting, *e.g.*, that the *Pittsburgh Post-Gazette* cut its award-winning Washington bureau to one reporter, the *Sacramento Bee* closed its San Francisco and Los Angeles bureaus, and the *Louisville Courier-Journal* cut three state bureaus).

[100] *Id.* at 2-5. CWA cites to references in the *2006 State of the Media* report by the Project for Excellence in Journalism, that notes: "*The New York Times* cut 60 people from its newsroom, *The Los Angeles Times* cut 85; Knight Ridder's *San Jose Mercury News* cut 16 percent, *The Philadelphia Inquirer* dropped 15 percent, and that after cutting another 15 percent only five years earlier. As recently as 1990, *The Philadelphia Inquirer* had 46 reporters covering the city, in 2005 it had 24." CWA Comments at 46-49.

[101] *Id.*

[102] CWA Comments at 46-49. "In post-mortem after the sale [of Knight-Ridder], a Merrill Lynch analyst acknowledged that 'you can't cut the journalism and still put out a good paper' while a Goldman Sachs analyst concluded that 'financial restructuring is not the answer to what ails the newspaper industry.'" CWA also points out that "[e]ven Wall Street analysts, rarely opponents of costcutting, worried that newsroom cuts were going too far." Peter Appert of Goldman Sachs noted that downsizing was "'dramatic to the point where readers will notice' and circulation and ad losses might follow."' *Id.*

the newspapers still competing in the marketplace, and an attendant shift of those dollars to Internet-based services.

30. The decline in newspapers' print circulation has, predictably, affected the advertising dollars that keep newspapers alive. Advertising revenues, which currently account for slightly more than 80 percent of the industry's total revenues, steadily increased for decades, but appear to have leveled off after 2000.[103] Unfortunately, experts believe that the future looks worse. SNL Kagan, for example, predicts declines in the number of daily newspapers, declines in circulation, and declines in all categories of newspaper advertising revenue, including online ad revenue, through 2011.[104]

Compound Growth Rate (%)		
Years	Total Ad.	GDP
1950-1960	5.9%	6.0%
1960-1970	4.5%	7.0%
1970-1980	10.0%	10.4%
1980-1990	8.1%	7.6%
1990-2000	4.2%	5.4%
2000-2006	-0.7%	5.1%

31. Aside from declining circulations, the Internet has also had a particularly noteworthy effect in taking away advertising from newspapers, particularly classified advertising.[105] Advertising-oriented websites such as craigslist,[106] eBay,[107] and Zillow[108] have siphoned off a large amount of revenue that newspapers large and small have counted on for decades to provide a significant and relatively stable flow of revenue.[109] For instance, there was a $2.3 billion decline in classified revenues over five years, as reported by the NAA, from $19.6 billion in 2000 to $17.3 billion in 2005. Newspapers' hold on classified

[103] *See Advertising Expenditures, 1950-2006*, Newspaper Association of America, at http://www.naa.org/Trendsand Numbers/Advertising-Expenditures.aspx (visited Nov. 26, 2007). *Newspaper Projections*, MEDIA TRENDS 2007, SNL Kagan LLC, at 135.

[104] *Newspaper Projections*, MEDIA TRENDS 2007, SNL Kagan LLC, at 138-139. SNL *Kagan* analysis and estimates are based on NAA, Editor and Publisher, company and industry data.

[105] *See* FOEF Comments at 18; Belo Comments at 18 and NAB Reply at 87. A 2006 Merrill Lynch report raises the concern about the $2.3 billion decline in classified revenues, as reported by the NAA, from $19.6 billion in 2000 to $17.3 billion in 2005. The classified category fell from 40 percent of total advertising revenues in 2000 to 35 percent in 2005. *Merrill Lynch Raises Alarm on Health of Newspaper Industry, available at* http://www.newswatch.in/news-analyses/markets-companies/4938.html (quoting Lauren Rich Fine, former managing director-corporate strategy and research, Merrill Lynch, New York (May 26, 2006). *See also Advertising Expenditures 1950-2006*, Newspaper Association of America, *available at* http://www.naa.org/TrendsandNumbers /Advertising-Expenditures.aspx; Washington Post Company *Annual Report 2006*, at. 2 ("It was a poor year, however, for the business we are named for, *The Washington Post.* Circulation continued to fall and a sharp drop in classified advertising raised questions about the future of the business.").

[106] *See Craigslist Factsheet*, http://www.craigslist.org/about/factsheet.html ("Local classifieds and forums for 450 cities worldwide – community moderated, and largely free.").

[107] *See About eBay*, http://pages.ebay.com/aboutebay.html?_trksid=m40 ("eBay is The World's Online Marketplace®, enabling trade on a local, national and international basis. With a diverse and passionate community of individuals and small businesses, eBay offers an online platform where millions of items are traded each day.").

[108] *See About Zillow Real Estate*, http://www.zillow.com/corp/About.htm ("Zillow.com is an online real estate service dedicated to helping you get an edge in real estate by providing you with valuable tools and information.").

[109] NAA Comments at 42-43; Gannett Comments at 21-22; NAB Comments at 32-33.

advertising was never seriously threatened by the new media rivals that emerged earlier in the 20th Century because neither broadcasting stations nor multichannel video programming distributors such as cable systems were well-suited to compete for short-term, inexpensive ads.[110] Product- or service-oriented advertising websites, on the other hand, may provide as good, or arguably better, means for sellers, particularly small sellers, to reach potential buyers efficiently. Moreover, it is noteworthy that none of the revenues from these sites is used to directly support the operations of newsgathering and reporting functions. Thus, this revenue shift undermines local newsgathering and reporting.

32. The newspaper industry faces other problems as well. At the same time that advertising revenues have flattened and circulation has declined, newspaper operational expenses have continued to rise. An index of input costs for the industry has risen steadily in recent years; climbing from 106.3 in 2000 to 122.9 in 2005 (on an index that sets 1992 input costs at 100).[111] This means that total input costs rose by 6.3 percent in the eight years from 1992 to 2000 and by 15.6 percent in the five years from 2000 to 2005. Newspaper managers responded with renewed cost-cutting efforts, including reductions in professional staff.[112]

33. In the face of these adverse financial conditions, stock prices for many of the major newspaper companies have fallen, and Wall Street analysts that follow the industry closely have expressed concern. In a report released May 26, 2006, Merrill Lynch analysts said, "[W]e are now concluding that the fundamental outlook for newspapers is even more challenging than we had previously thought; in essence profits generated from an almost monopolistic position within classifieds is being eliminated as the core listings business could become a loss leader for other online classified models."[113]

34. CU disagrees that a downward trend exists in the newspaper industry and states that consolidation is not necessary for the economic well-being of media companies. CU argues that, over the last three years, newspaper and television properties have sold at healthy multiples of cash flow and are experiencing profit margins comparable to other media properties. CU also claims that smaller chains and stand-alone properties are thriving.[114] However, we find that the evidence in the record, reviewed above, shows that that the newspaper industry is struggling. In particular, we find that the statistics over the past decade show an industry containing fewer newspapers, facing declining circulation, bringing in stagnant revenues, suffering from increased costs, and employing fewer journalists. Based on these competitive conditions, numerous commenters stress the need for relaxation of the newspaper/broadcast

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[110] *See, e.g.*, Media General Comments at 5-6; FOEF Comments at 18.

[111] Moody's Economy.com Industry Reports, Consumer & Health Services Sector, Newspaper Section, at 43 (May 2006).

[112] *Newspaper Newsroom Workforce 1977-2005*, The State of the News Media 2006, Project for Excellence in Journalism, *available at* http://www.stateofthenewsmedia.org/2007/chartland.asp?id=198&ct=line&dir=&sort=&col1_box=1&col2_box=1; Journalism.org, *The State of the News Media 2007*, (citing American Society of Newspaper Editors, News Employment Census – Table A, released Apr. 25, 2006), *available at* http://www.stateofthenewsmedia.org/ 2007/narrative_newspapers_newsinvestment.asp?cat=5&media=3 (visited Nov. 15, 2007). *See* NAB Reply at 88; CWA Comments at 46-49.

[113] *See Merrill Lynch Raises Alarm on Health of Newspaper Industry*, http://www.newswatch.in/news-analyses/markets-companies/4938.html (quoting Lauren Rich Fine, former managing director-corporate strategy and research, Merrill Lynch, New York) (May 26, 2006).

[114] CU Comments at 16-17, Attach., Study 9, "Local Media and the Failure of the Consolidation/Conglomeration Model" by Mark Cooper at 157-69, and Attach., Study 10 "The Special Concerns About the Impact of Cross Ownership on Print Journalism," by Mark Cooper and Steven Cooper at 196-206; *see, also*, UCC 12/11/07 Comments at 5-7. CWA/AFTRA contends that when media owners tap into the opportunities to gain readers and advertising revenue from new distribution platforms such as the Internet and digital television opportunities, they will discover new business models that will enable them to regain their "traditional strength in newsgathering and quality entertainment." CWA/AFTRA 12/11/07 Comments at 3-4.

cross-ownership ban so that newspapers can remain competitive by providing information and news to consumers across other platforms, such as a broadcast station, and thereby strengthen the local newsgathering and reporting operations of both newspapers and broadcast stations.[115]

35. Notwithstanding the significant challenges that face newspaper operators in today's media marketplace, newspapers continue to play a critical role in the production of news and information in our society.[116] Newspapers and, to a somewhat lesser extent, broadcast stations still continue to serve as the most organized, systematic gatherers of news and information in their communities. Newspapers provide this news and information directly to citizens and also, through their online operations, offer the core content necessary to popular aggregator websites such as Google News and Yahoo News.[117] Newspaper and broadcast content also feeds online outlets such as blog sites, which typically provide commentary rather than original news reporting.[118] In light of the important role and current state of the newspaper industry, it is therefore critical that our rules do not unduly stifle efficient combinations that are likely to preserve or increase the amount and quality of local news available to consumers via newspaper and broadcast outlets.

36. Our decision to modestly relax the 32-year-old newspaper/broadcast cross-ownership ban is also bolstered by the way in which Internet use by both consumers and competitors is changing how traditional news media operate, not merely by fracturing their traditional advertising-based business models[119] but also by altering how newspapers and broadcasters gather information, respond to their

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[115] *See, e.g.*, Block Comments at 6-9; Bonneville Comments at 5-7; Cox Comments at 5-7, 17-18; Media General Comments at 94; Media General Reply at 8-12; NAB Comments at 29-38; NAA Comments at 41-43; Tribune Comments at 33-34, 82.

[116] CU Comments, Attach., Study 7 and Study 8; *see also* Project for Excellence in Journalism, *State of the Media 2007*, *available at* http://stateofthemedia.org/2007/narrative_newspapers_newsinvestment.asp ("Gannett charges its newsrooms with seven tasks. On the traditional side are a strong watchdog function and local news effort. In addition, though, the newsrooms are asked to develop rich databases, convene community conversations, develop custom content for consumers, and expand multimedia and varied digital content").

[117] Hitwise US News & Media Report at 2 (Apr. 2007), *available at* http://www.hitwise.com/registration-page/us-news-media.php ("Search engines, portal frontpages, and news aggregators were the leading sources of traffic to News and Media websites in March 2007. The share of visits to News and Media websites from search engines increased over the past year, with traffic from Google increasing by 29.7 percent for Print websites and 35.9 percent for Broadcast Media websites."); Pew Research Center for The People & The Press, *Online Papers Modestly Boost Newspaper Readership*, Sec. I, (July 30, 2006), *available at* http://people-press.org/reports/display.php3?ReportID=282 ("As a whole, news aggregators such as Google News, Yahoo News and AOL News are a major source of online news. Not only are they frequently volunteered as websites used most often for news, but nearly half (45%) of Americans who regularly get news online (and 18% of the public overall) say they regularly visit these websites to get news. Roughly a third (32%) of online news consumers say they regularly visit the news sites of television networks such as CNN.com, MSNBC.com and ABCnews.com.").

[118] *State of the News Media 2006: Online: Intro, Project for Excellence in Journalism* (2006), *available at* http://www.stateofthenewsmedia.org/2006/narrative_newspapers_economics.asp?cat=4&media=3 ("Rivals on the Web that offer classified listings or aggregate other people's work, but produce very little journalistic content of their own, were continuing to steal revenues away. There still appears no clear path for transferring to this new medium all the wealth that has long financed journalism for the good of civil society. For now, unless things change, it appears that the resources devoted to skilled journalism will continue to shrink as the Web grows."); *id.* ("Virtually all original newsgathering, though, was still being done by the old media, and some of the major new Internet-only challengers appeared to have made less progress in content over the previous year than the sites of the old media.")

[119] *See* above at paragraphs 24-27; *see, e.g.*, Belo Corp Comments at 18; Media General Comments at 63-66.

audiences, and compete for consumer attention.[120] Although the ultimate impact of the Internet on the old media is difficult to predict, developments since the Commission last reviewed its rules show that the diminishment of mainstream media power over information flow is real.[121]

37. As discussed above, the Commission's newspaper/broadcast cross-ownership ban arose in an era when daily newspapers and broadcast stations enjoyed relatively unrivaled power in their local markets to collect information and to decide what constituted "news" worth transmitting to their audiences.[122] They thereby influenced what topics people considered important, even if they had less power to shape the positions people took on those topics.[123] It is clear today that these "gatekeeping" aspects of the traditional media's role are in turmoil. The new and broader array of inputs from online sources[124] available to the American public not only affects mainstream journalists' decisions on what to report and how to report it,[125] but websites also act as competing outlets – even, at times, as work-around

[120] *See, e.g.*, Bruce A. Williams & Michael X. Delli Carpini, *Monica and Bill All the Time and Everywhere: The Collapse of Gatekeeping and Agenda Setting in the New Media Environment*, 47 AM. BEHAV. SCI. 1208, 1210 (May 2004) ("Williams and Delli Carpini"); Scott Lambert, *To Post Or Not To Post: Gatekeeping Effects of Breaking News On Internet Newspaper Websites*, Published at the Symposium on Online Journalism, at 2-5 ("Lambert"); Aaron Delwiche, *Agenda-Setting, Opinion Leadership, and the World of Web Logs*, FIRST MONDAY (2005), *available at* http://www.firstmonday.org/issues/issue10_12/delwiche/index.html ("Delwiche").

[121] The Internet remains a rapidly evolving medium. We expect that the trends supporting our conclusion that traditional media sources no longer enjoy the same degree of control over the gathering and delivery of news and information will grow stronger as the Internet and other communications networks develop.

[122] *See* Williams and Delli Carpini at 1208-1230 (discussing historical development of concept of journalists as "gatekeepers"); Lambert at 2-5 (same). The gatekeeping function was identified as early as the 1920s by Walter Lippman, *see* Williams and Delli Carpini at 1210. The Commission's 1975 Order indicates that the agency focused on the editorial processes involved in gatekeeping. *1975 Second Report & Order*, 50 FCC 2d at 1050, ¶14 ("[t]he significance of ownership from the standpoint of 'the widest possible dissemination of information' lies in the fact that ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation, all of which are a critical aspect of the Commission's concern with the public interest").

[123] *See generally* Delwiche (discussing the traditional agenda-setting power of the press throughout most of the 20th century).

[124] The development of new avenues of content distribution (as discussed below) has had the tandem effect of encouraging amateur journalists (or so called "citizen journalists") to participate by making available raw material online. For example, video sharing website YouTube allows users to upload and share video content with anyone with an Internet connection. *See* http://www.youtube.com /signup?next=/my_videos (visited Nov. 19, 2007). Additionally, growing numbers of professional, semiprofessional, or dedicated amateur bloggers reporting de facto eyewitness accounts at major news events also contribute to the availability of news content for consumers. *See* James Poniewozik, *The Beast With A Billion Eyes*, TIME, Dec. 25, 2006, at 64 ("Poniewozik") (discussing availability of front-line footage of events in war zone areas in Iraq).

[125] News media organizations are driven by two essential forces: first, the need to identify and then gather content that will be of interest to consumers; and second, the need to gather enough of that interesting content to fill the "news hole" of that organization's published or broadcast product. *See* Lambert at 2-5 (discussing function of news organizations in selecting news to cover and gathering information for publication). Traditionally, the selection of news source inputs – that is, the fundamental decision-making process about what stories are worthy for dissemination to the public – has been a largely one-way process, with editors and journalists using their own judgments, plus a stable circle of sources, to decide what stories to cover. *Id.* It has been observed that in the pre-Internet era, traditional media often relied upon active, ongoing relationships with government officials and other "elites" as a main source for news and information, particularly in the political/civic affairs sphere, which was then passed along to a largely passive citizenry. *See* Williams and Delli Carpini at 1208 ("the most profound impact of the new media environment may well be the way it undermines the ability of any elite to play [the] central role [of gatekeeper for politically relevant information]").

channels of information in cases where the mainstream media has been slow or reluctant to react.[126]

38. The nearly instantaneous speed with which consumers can now communicate via the Internet has created a vastly improved two-way flow in the sharing of ideas between traditional news gatherers and news consumers, with a consequent power to affect the priority that the traditional media place on coverage of certain events and topics.[127] Many previously passive consumers of news are already taking advantage of the opportunities the Internet allows to influence the newsgathering process.[128] More than ever before, readers and audiences are themselves communicating with news gatherers to demand, directly and indirectly, coverage of specific topics.[129] There are many high-profile examples of news organizations slow to pick up on a story which, after percolating among bloggers and others in the online arena, grows into an issue that traditional news media eventually cover.[130] The erosion of newspapers' traditional gatekeeping power convinces us that newspaper combinations no longer pose the same threat to diversity that they once did. For this reason as well, a total ban on cross-ownership can no longer be justified as necessary to protect viewpoint diversity.

39. *Policy Goals.* In the *2002 Biennial Review Order*, the Commission concluded that efficiencies from the common ownership of two media outlets may increase the amount of diverse, competitive news and local information available to the public.[131] We continue to find evidence that

[126] The most dramatic changes to the traditional role of media outlets have occurred with respect to the aggregation and dissemination of content. Text, video, and audio content can be and already is widely delivered, live or recorded, via the Internet. In addition, the ongoing deployment of new content delivery applications made specifically for use by handheld mobile devices is likely to further erode the market share of traditional media outlets, which must compete for eyes and ears with these new entrants in the content delivery marketplace. With respect to the role of broadcasters and publishers as aggregators, we note that the Internet is rapidly developing new ways to aggregate content, particularly by means that allow individual consumers to tailor the types and amount of content that is delivered to them. Aggregation sites are rapidly growing in popularity, with the most popular sites reaching audiences that dwarf all but the largest and most widely distributed traditional media outlets.

[127] *See* Joel David Bloom, *The Blogosphere: How a Once-Humble Medium Came to Drive Elite Media Discourse and Influence Public Policy and Elections*, presented at the Second Annual Pre-APSA Conference on Political Communication: *Mass Communication and Civic Engagement*, and at the 2003 Annual Meeting of the American Political Science Association, August 2003, in Philadelphia, PA, http://darkwing.uoregon.edu/~jbloom/APSA03.pdf (visited Nov. 19, 2007) ("Bloom").

[128] *See, e.g,* Jose Antonio Vargas, *Storming the News Gatekeepers*, WASH. POST, Nov. 27, 2007, at C1.

[129] *See generally* J.D. Lasica, *Blogs and Journalism Need Each Other*, NIEMAN REPORTS, Fall 2003, at 70-74 (noting ability of bloggers to take part in editorial selection of newsworthy subjects).

[130] *See generally* Bloom (discussing effect of online discussion on the evolution of news coverage of Senator Trent Lott's public comments on Sen. Strom Thurmond's 1948 campaign for president); Poniewozik at 63-64 (discussing effect of online discussion on several high-profile news stories in 2006).

[131] *2002 Biennial Review Order*, 18 FCC Rcd at 13756-57, ¶¶ 347-49. In the *2002 Biennial Review Order*, the Commission defined advertising as the primary economic market in which broadcast stations and newspapers derive their primary sources of revenue. *Id.* at 13748-49, ¶ 331. The Commission also concluded that for purchasers of advertising time, "newspapers, television, and radio are not good substitutes and therefore make up distinct product markets." *Id.* at 13749, ¶ 332. The relevant product market was not challenged on appeal. We continue to support that conclusion and find no reason to deviate from the defined product market. UCC contends that we incorrectly focused on advertising dollars, instead of on whether newspapers and television compete for the provision of local news. UCC Petition at 33-34. In the *2002 Biennial Review Order*, the Commission did take this into consideration and concluded that consumers experience print and electronic media in very different ways: "These differences are significant from a competitive standpoint both for consumers and, as described above, for advertisers. For consumers this means that the programming or content is different between newspapers and broadcast TV." 18 FCC Rcd at 13753, ¶ 341. In conclusion, the Commission found that newspaper/broadcast combinations cannot adversely affect competition in any relevant product market. We continue to support this conclusion. *Id.*

cross-ownership in the largest markets can preserve the viability of newspapers without threatening diversity by allowing them to spread their operational costs across multiple platforms. In doing so, they can improve or increase the news offered by the broadcaster and the newspaper. Numerous media owners provide examples of cost savings and shared resources leading to more local coverage and better quality news coverage.[132]

40. Numerous parties cite to examples of the introduction of new or additional newscasts due to cross-owned combinations in markets.[133] Cox offers examples of its local programming and community service efforts in markets where it owns same-market broadcast stations and newspapers.[134] Media General notes that its six cross-owned stations provide between 20.5 and 32 hours of local news per week.[135] Media General adds that newspapers are similarly launching hyper-local initiatives including new daily, weekly, and other special-interest publications; web publication; podcasting; and enlistment of "citizen journalists."[136] Media General explains that several newspapers have launched free local publications over the past several years, which are intended to complement their subscription services and boost readership by delivering more accessible and more local content. In addition, Media General states that newspaper companies are also launching new Spanish-language publications and hyper-local inserts, such as *Neighbors,* which are tailored weekly magazine inserts that Belo Corp. distributes to 16 local communities as part of *The Dallas Morning News.*[137] Gannett points to its critically acclaimed Phoenix combination, which provides more and better local news, including lengthy investigative reports, while retaining separate editorial viewpoints.[138] In markets in which Belo currently owns and operates television duopolies, including Seattle-Tacoma and Phoenix, it cites to the introduction of daily newscasts for the first time on its stations.[139] Media General also notes that newspapers are utilizing Wi-Fi and mobile technologies to give their readers "on-the-road" access.[140] NAA indicates that

[132] Belo Comments at 13-16; Clear Channel Comments at 80-90; Media General Comments at 7-11; Morris Reply at 5-6; NAA Comments at 66-79. *But see* CU Reply at 35. CU objects to cross-owned facilities sharing resources because it claims that in order to save costs, the consolidated company will share personnel and content emphasizing national, rather than local, programming. It cites the example of NBC's acquisition of Telemundo, which resulted in the closure of five local Telemundo news bureaus in areas with large Hispanic populations and relocation of those operations to one location in Dallas. *Id.* In 2003, after NBC purchased Telemundo, Robert Okun, Vice President and head of NBC's Washington Office, explained on *NewsHour with Jim Lehrer* that "in terms of a network-owned station on average we do 30 percent better than a non-network-owned station in terms of local news.... [W]e would argue we do a heck of a good job, sometimes better than even independent stations." NewsHour with Jim Lehrer Transcript, "Showdown at the FCC," PBS, *available at* http://www.pbs.org/newshour/bb/media/jan-june03/FCC_05-15.html.

[133] Belo Comments at 22-23 (stating that television duopolies lead to new daily newscasts on three stations); Cox Comments at 12-17 (citing to examples of local programming and community service efforts in markets where it owns newspaper/broadcast combinations); Gannett Comments at 26-31; Media General Comments at 3, 9-10 (citing to the Tampa, Florida market, where it owns a grandfathered newspaper/television combination and an online news publication); Morris Comments at 13-20; NAB Reply at 82-84 (citing numerous studies that found cross-ownership increases the quantity and quality of news and local programming).

[134] Cox Comments at 12-17 (citing to examples of local programming and news specials in the Atlanta market where it owns a newspaper/broadcast combination).

[135] Media General Reply at 6.

[136] *Id.* at 8. Media General defines hyper-local news as news coverage of local events such as video of high school sports, local pageants and festivals, local weather emergencies and disasters, and local charities. *Id.*

[137] *Id.* at 9.

[138] Gannett Comments at 26-31.

[139] Belo Comments at 22-23.

[140] Media General Reply at 9.

39 of the nation's top 40 daily newspapers now offer video on their websites, including complete newscasts. Media General and NAB cite to studies that demonstrate that newspaper/television combinations are likely to produce more news than stand-alone stations in the same market.[141] NAB cites studies that found that programming diversity increases when group ownership increases.[142]

41. In contrast, AFL-CIO objects to relaxation of the cross-ownership ban, asserting that media concentration diminishes localism in news media because it puts pressure on media firms to lower costs by decreasing local news coverage.[143] AFL-CIO lists budget and job cuts that resulted from reductions in local coverage.[144] AFL-CIO also cites to an example of how cross-owned media properties could serve as "a cross-promotional vehicle rather than as an independent editorial voice."[145] CCVM contends that only independent owners, not large conglomerates, are able to focus on a community's needs and therefore many communities lack sufficient local news, political discussion, and diverse programming choices.[146]

42. We have a considerable amount of empirical evidence in the record on both sides concerning the relationship between newspaper/broadcast combinations and localism. On balance, we believe the evidence suggests that some newspaper/broadcast cross-ownership combinations can enhance localism. Three Media Ownership Studies analyzed the effects of newspaper/broadcast cross-ownership on television news coverage and local content. Study 6 concluded that "local television newscasts for cross-owned stations contain on average about 1-2 minutes more news coverage overall, or 4 to 8 percent

[141] Media General Comments at 23-29, App. 5, "Review of the Increases in Non-Entertainment Programming Provided in Markets with Newspaper Owned Television Stations: An Update" by Michael Baumann, Economists, Inc. (Oct. 2006)at 1-2. The Commission acknowledges that this study provides, at best, limited evidence of higher amounts of non-entertainment programming in markets with cross-ownership. As the peer review correctly notes, the study fails to adjust for unobserved market characteristics, and the sample is small and thus may not be representative of markets with and without cross-ownership. *See* Media General Study Peer Review by Kenneth C. Wilbur, Asst. Prof. of Marketing, Marshall School of Bus., Univ. of So. Ca., *available at* http://www.fcc.gov/mb /peer_review/reviews.html. Media General also cites to several additional materials: 1975 Commission Study, 50 FCC 2d at 1078 n.26, App. C, Belo Comments submitted in the *1998 Biennial Media Ownership* proceeding, MM Docket No. 98-35 (July 21, 1998), S. Robert Lichter, Ph.D., "Review of the Increases in Markets with Newspaper Owned Television Stations," submitted in Media General's Comments in MM Docket No. 01-235 (Dec. 2001), Victor B. Miller and Kevin R. Grunech of Bear Stearns & Co., Inc., Miller Study (cited in *2002 Biennial Review Order*, 18 FCC Rcd at 13761, ¶ 357, n. 800), and Thomas C. Spavins, *et al.* "The Measurement of Local Television News and Public Affairs Programs," (Sept. 2002) ("MOWG Study No. 7") (cited in *2002 Biennial Review Order*, 18 FCC Rcd at 13754, ¶ 343 n. 760). *See also* NAB Comments at 117-19 (citing John C. Busterna, *Ownership, CATV & Expenditures for Local TV News*, 57 J.Q. 287, 289 (1980) and Stanley Besen & Daniel O'Brien, Charles Rivers Assoc., Inc., "An Economic Analysis of the Efficiency Benefits from Newspaper- Broadcast Co-Ownership," attached as App. B to Gannett Comments submitted in MM Docket No. 98-35 (July 21, 1998) (finding that consumers of information may experience higher prices, less attractive product offerings, or slower innovation than if owners of broadcast stations and newspapers were free to operate under common ownership)).

[142] NAB Reply at 38-40.

[143] AFL-CIO Comments at 22-33. *See also* Remarks by Robert Dardenne, Assoc. Prof. Journalism and Media Studies, USF-St. Petersberg, Media Ownership Hearing in Tampa Bay, Florida (Apr. 30, 2007), Transcript at 39-40 (questioning whether streamlined news operations produces better quality local news).

[144] AFL-CIO Comments at 22-25 (citing to newsroom cutbacks at *The LA Times* when bought by Tribune and layoffs at the *San Jose Mercury News*, *The Philadelphia Inquirer* and *The Daily News*).

[145] *Id.* at 26 (citing to MidWest Families Comments submitted in MM Docket No. 01-235, which provided examples of the results from radio/newspaper combinations.)

[146] Center for Creative Voices In Media ("CCVM") Comments at 9.

more than the average for non-cross-owned stations."[147] The author further concluded that newspaper cross-ownership is also "significantly and positively associated with both local news coverage and local political news coverage," finding that cross-owned stations show 7-10 percent more local news than do non-cross-owned stations. The study author also found that on average, cross-owned stations broadcast about 25 percent more coverage of state and local politics.[148] The author also generally noted that newspaper/broadcast cross-ownership is associated with more candidate coverage, more candidate speaking time and more coverage of opinion polls.[149] Study 3 analyzed the relationship between the

[147] "The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News," by Jeffrey Milyo, Center for Applied Econ., Univ. of Kansas, School of Bus. and Dept. of Econ. and Truman School of Public Affairs, Univ. of Missouri (Rev. Sept. 2007) ("Media Ownership Study No. 6"), *available at* http://www.fcc.gov/ownership/studies.html, at abstract. Media Ownership Study 6 underwent two peer reviews, one by Matthew Gentzkow ("Gentzkow review") and one by Kenneth Goldstein, Matthew Hale, and Martin Kaplan ("Goldstein, *et al.* review"). *See* Media Ownership Study 6 Peer Review, *available at* http://www.fcc.gov/mb/peer_review/peerreview.html. In response to the Gentzkow review, the study author submitted a revised study that corrected some data errors and added the average marginal effects of cross-ownership for all variables in the report. As such, we find that all issues raised in the Gentzkow review have been dealt with. The Goldstein, *et al.* review raises six problems with the conclusions of Study 6, essentially due to what the reviewers term "*empirical data in the study [that] are so limited that the study's conclusions do not and cannot possess the reasonable level of confidence necessary to provide policy makers with useful evidence on which to base their regulatory decisions*" (emphasis in the original.) We first note that, in contrast, the Gentzkow review found that the data for Study 6 are of "very high quality" and "give a rich, fine-grained picture of the news coverage of local television stations unlike anything that was available before." The Goldstein, *et al.* review then states that (1) it cannot be assumed that Study 6's sample of evening news is representative of stations' news coverage, (2) there is evidence that the quantity of news coverage immediately before an election is different than that over the entire campaign, (3) there is evidence that the quality of news coverage immediately before an election is different than that over the entire campaign, (4) Study 6's author was mistaken in coding state political stories as "local" stories, (5) a key indicator of bias went unmeasured due to the types of stories included in the dataset, and (6) the study emphasizes statistically weak findings supporting newspaper/television cross-ownership while downplaying "possibly stronger" findings that argue against cross-ownership.

These criticisms, either in whole or in part, do not invalidate the findings of Study 6. Most importantly, the findings of Study 6 concerning newspaper/television cross-ownership agree with Studies 3 and 4 on this matter. Thus, Study 6 is only an exemplary snapshot within the larger picture of the effect of cross-ownership on news production. This answers criticism (6) of the Goldstein, *et al.* review: while it is possible to disagree with the methods or conclusions of Study 6, we find that it provides part of a larger picture and thus is useful even accepting reasonable criticism. We note that the author of Study 6 acknowledges the limitations of his data, which is sufficient for the Gentzkow review, and, we find, answers criticisms (1) through (3) and (5) of the Goldstein, *et al.* review. Criticism (4) simply involves a judgment call on what to define as "local" news, and we find that Study 6 made a reasonable judgment that may be disputed but that is not inherently incorrect. For these reasons, we reject the argument by the Institute for Public Representation that relying on Study 6 would violate the Data Quality Act. *See* Letter from Angela J. Campbell, Institute for Public Representation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 29, 2007) ("IPR Nov. 27, 2007 *Ex Parte*"). We find that Study 6 has sufficient "objectivity" within the meaning of the Data Quality Act, the implementing guidelines issued by the Office of Management and Budget, and our own data quality guidelines. *See* Section X, note 462, *infra.*

[148] Media Ownership Study 6 at abstract and Tables 2-5.

[149] *Id. But see* Further Comments of Consumers Union, Consumer Federation of America, and Free Press ("CU Comments on Media Ownership Studies") at 78, 190, 213, etc. (questioning Study 6's findings on the basis that it uses unrepresentative data, overstates (or fails to explain) findings that might be taken to support newspaper/television cross-ownership, and downplays findings that show the much more significant negative impact of radio cross-ownership on television station local news). As noted above, we reject the complaint concerning unrepresentative data because Study 6 represents one piece of evidence in a larger body of evidence. *See* note 147, *supra.* We accept that it may not represent the behavior of all news outlets all the time, but it does provide evidence consistent with overall trends and patterns for the period of time that it studies. In regard to the findings that the author of Study 6 highlighted as opposed to other findings, every study performs multiple regressions and must (continued...)