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

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission's	)	
Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to	)	
Section 202 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Dated: July 12, 2010

I. INTRODUCTION

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA"). AFTRA is a national labor organization with a membership of over 80,000 professional employees working in the news and broadcast, entertainment, advertising and sound recordings industries. On behalf of its members, AFTRA submits these comments in response to the Commission's Notice of Inquiry, MB Docket No. 09-182, issued on May 25, 2010, initiating a comprehensive review of the remaining media ownership rules.

2. AFTRA's membership includes news reporters, anchors, sportscasters, talk show hosts, announcers, disc jockeys, producers, writers and other on-air and off-air broadcast employees as well as actors, singers and other performers on dramatic programs, game shows, talk and variety shows and other entertainment television programming. AFTRA members work at networks and in stations in markets of varying size throughout the United States. In addition, AFTRA represents royalty artists and background singers whose sound recordings are played on radio stations.

3. Entities that employ AFTRA broadcast members include the three major networks and Fox and their owned and operated stations, as well as local radio and television stations owned by over 40 independent and group owners, as well as all the major record labels, advertising agencies and television producers. AFTRA maintains several hundred collective bargaining agreements with these employers nationwide.

4. AFTRA has previously filed comments with the Commission in the matters of MM Docket Nos. 01-235, 01-317, 00-244, 98-35, 98-37, 91-221 and 94-322, relating to the national television ownership rule, the local radio ownership rule, and the effect of consolidation in the

broadcast industry since the passage of the Telecommunications Act of 1996 (the "1996 Act" or "the Act").

5. AFTRA has a uniquely "inside" view of the urgent need to maintain the remaining media ownership rules, because AFTRA represents those professionals who work in the newsrooms and on the programming that have been and will continue to be hurt by further media consolidation.

6. Based on the first hand experience of its members as well as other relevant data, AFTRA submits that it is necessary and appropriate for the Commission to maintain the remaining ownership rules in order to protect 1) viewpoint diversity and 2) local interests in television and radio station program and service options, and 3) to otherwise prevent further harm to the public interest caused by consolidation in media ownership.

II. PROMOTING VIEWPOINT DIVERSITY AND LOCALISM MUST REMAIN THE COMMISSION'S PRIMARY GOALS IN PROTECTING THE PUBLIC INTEREST

7. As the Commission has long maintained, and the courts have confirmed, the promotion of viewpoint diversity is an indispensible component of the Commission's mission to promote the public interest.[1] Notice of Inquiry ("NOI") ¶14. The Supreme Court has long held that ownership limits are a rational, constitutional means of ensuring viewpoint diversity.[2] The Court has gone further, stating that public policy dictates "primary reliance" on ownership limits as a means of promoting such diversity.[3]

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1 *Prometheus Radio Project v. FCC*, 373 F.3d 372, 383 (3d Cir. 2004) (stating that "[t]he Commission has long acted on the theory that diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power."), *stay lifted by, Prometheus Radio Project v. FCC*, 2010 WL 1133326 (3d Cir. Mar. 23, 2010).

2 *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 570-71, n.16 (1990), *overruled on other grounds, Adarand Constructors v. Pena*, 515 U.S. 200 (1995).

3 *Id.* at 570-71.

8. Localism is equally integral to the Commission's stated mission. NOI ¶14. The Supreme Court confirmed as much, when in addition to finding localism to be a permissible basis for restricting ownership, it stated that the importance of preserving local broadcasting outlets "can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the Nation's population."[4]

9. The Commission seeks to determine whether "the current ownership rules are necessary in the public interest as a result of competition." NOI ¶3. Unequivocally, the answer remains "yes." Recent examples of the harmful effects of consolidation confirm that diversity and localism continue to be threatened. Such examples also indicate that new media have exacerbated the threat, far from creating the dispersant effect media executives claimed it would. The current ownership rules are more important now than ever before. In order to give effect to its own policies and the spirit of Supreme Court precedent, the Commission must maintain its ownership rules, and strengthen them where necessary to further its goals.

III. EVEN UNDER EXISTING COMMISSION REGULATIONS, OWNERSHIP CONCENTRATION IS GROWING

A. Radio Station Ownership Is Highly Concentrated

10. Even with Commission rules limiting ownership, ownership concentration has grown dramatically. For radio, between the passage of the 1996 Act and 2010, the number of commercial radio stations increased by about 10 percent.[5] In the same period, however, the number of station owners fell by about 40 percent.[6]

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4 *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663-64 (1994).

5 Edward Wyatt, *F.C.C. Begins Review of Regulations on Media Ownership*, N.Y.TIMES, May 25, 2010 (retrieved on June 14, 2010), *available at* http://www.nytimes.com/2010/05/26/business/media/26fcc.html (citing FCC Notice of Inquiry, *In the Matter of 2010 Quadrennial Regulatory Review* at 3, FCC 10-92/MB Docket No. 09-182 (*released on* May 25, 2010)), *available at* http://www.fcc.gov/ownership.

6 George Williams, *Review of the Radio Industry: 2007*, at 1, 5, FCC Media Ownership Study 10 (2007) (*retrieved on* June 23, 2010), *available at* http://www.fcc.gov/ownership/studies.html.

11. Studies commissioned by the Commission show that the concentration is most prevalent amongst the largest owners. In 1996, the two largest U.S. radio group owners owned 62 and 53 stations, respectively.[7] Today, Clear Channel Communications ("Clear Channel") owns more than 800 stations, [8] down from a high of about 1,100 in 2007.[9] The second largest group, Cumulus Media, Inc. ("Cumulus"), owns about 400 stations today.[10] The Clear Channel-Cumulus oligopoly represents a nationwide trend; the largest two radio station owners in a given market, on average, control 74 percent of the revenue.[11] The largest one, on average, controls 46 percent.[12]

B. Broadcast Television Station Ownership Is Highly Concentrated

12. Much as with radio station ownership, broadcast television station ownership is concentrated with a few large owners, and it continues to grow more concentrated over time. Between the passage of the Act and 2010, the number of commercial television stations increased by about 15 percent. [13] The number of station owners, however, fell by 33 percent during that period. [14]

13. Some of the Commission's existing rules have allowed this concentration trend to grow over time. Following the Commission's 1999 adoption of the "TVDR rule" (allowing ownership of more than one broadcast station—up to two—in some markets), existing owners

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7 *Id.* at 1.

8 *See* Clear Channel website, http://www.clearchannel.com/Radio/PressRelease.aspx?PressRelease ID=1563&p=hidden.

9 Williams, *supra* n.6 at 1-2.

10 *See* Cumulus Form 10-K, March 3, 2010, *available at* http://www.faqs.org/sec-filings/100303/CUMULUS-MEDIA-INC_10-K/#102.

11 *Id.* at 2.

12 *Id.*

13 Wyatt, *supra* n.5.

14 *Id.*

benefited the most.[15] The existing top 25 owners accounted for 76 percent of broadcasting duopolies created in the aftermath of the rule.[16]

14. Concentration by ownership across media ("cross-ownership") poses as great a threat as concentration within a single medium ("multiple ownership"). Cross-ownership by local radio-television combinations increased by 19 percent between 2002 and 2005 alone.[17]

15. The American public is aware of this threat, and opposes further cross-ownership. By a wide margin, those polled favor laws that prohibit cross-ownership of different media outlets in one region. By a margin of 57 percent to 30 percent, Americans favor laws that make it illegal for a corporation to own both a newspaper and a television station in the same media market, with strong majorities agreeing across political, racial geographic and union-affiliation boundaries.[18]

16. Research shows comparably strong opposition to consolidation through multiple-ownership, with 70 percent describing consolidation in any form as a problem, and 42 percent describing it as a "major" problem.[19] Similar to opposition to cross-ownership, concern about multiple-ownership is broad-based.[20]

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15 Allen S. Hammond, IV, Barbara O'Connor & Tracy Westen, *The Impact Of The FCC's TV Duopoly Rule Relaxation On Minority and Women Owned Broadcast Stations, 1999-2006* at 2-3, FCC Media Ownership Study 8 (2007) (*retrieved on* June 23, 2010), *available at* http://www.fcc.gov/ownership/studies.html.

16 *Id.*

17 Kiran Duwadi, Scott Roberts & Andrew Wise, *Ownership Structure and Robustness of Media*, at 7, FCC Media Ownership Study 2 (2007) (*retrieved on* June 23, 2010), *available at* http://www.fcc.gov/ownership/studies.html.

18 Greenberg Quinlan Rosner Research, Study: *Public Opposed to Media Consolidation*, released on October 18, 2007, *available at* http://www.media-democracy.net/files/mdco07m4_public_revised.FINAL_.pdf (The data showed similar levels of support for more curbs on cross-ownership among political liberals (59 percent favor); moderates (58 percent favor); conservatives (56 percent favor); Democrats (63 percent favor), independents (52 percent favor); Republicans (53 percent favor); for older and younger Americans (58 and 55 percent, respectively); for white Americans and people of color (59 and 50 percent); and for union and non-union households (59 and 56 percent). The data featured a sample of 1000 adults over the age of 18. The data were weighted by gender, age, race, education and region. The sample carries a margin of error of +/-3.1 percent).

19 *Id.* (Democrats, independents and Republicans all consider ownership consolidation to be a problem in nearly equal proportions; seventy-one percent of Democrats, 73 percent of independents and 69 percent of

IV. EVEN UNDER EXISTING COMMISSION REGULATIONS, OWNERSHIP CONCENTRATION IS ERODING VIEWPOINT DIVERSITY

A. Ownership Consolidation Poses Serious Threats to Viewpoint Diversity by Decreasing the Number of Minority and Female-Owned Radio and Broadcast Television Stations

17. Congress and the Supreme Court have both avowed the importance and propriety of enhancing viewpoint diversity, particularly through the promotion and preservation of minority and female ownership. As far back as the Communications Act of 1934, Congress declared its policy of promoting minority viewpoints through media licensing.[21] The Supreme Court, in affirming them as a proper exercise of Congressional power, stated that the Commission's minority ownership policies are an "important governmental objective," and that the Court gave "great weight" to the concept of minority ownership promotion as "a critical means of promoting broadcast diversity."[22] The Commission has acknowledged the importance of minority and female ownership in its public statements. NOI ¶66.

18. The available data, however, indicates the large extent to which minority and female viewpoints are being shut out of the market. Between 1999 and 2006, the number of minority-owned television stations dropped by 27 percent.[23] Lest there be any doubt as to the cause, the drop coincided with the Commission's adoption of the TVDR rule, allowing television ownership duopolies in certain markets.[24] Analyzing the 27 percent drop, the drop was much more pronounced in markets entered or occupied by duopolies (where there was a 39 percent drop in minority ownership) as compared to non-duopoly markets (a 10 percent drop).[25]

Republicans believe increasing ownership consolidation is a major or minor problem (with 44 percent, 43 percent and 38 percent describing it as a "major" problem, respectively.)).

20 *Id.*

21 *See Metro Broadcasting,* 497 U.S. at 564-65 (citing Communications Act of 1934, § 1 et seq., *as amended*, 47 U.S.C.A. § 151 et seq.).

22 *Id.* at 566.

23 Hammond, *et al*., *supra* n.15.

24 See ¶13, *infra.*

25 Hammond, *et al*., *supra* n.15.

Looking at the drop more closely, there were 17 minority-owned stations that were sold to nonminority owners soon after the duopoly rule.[26] Research funded by the Commission finds that had these stations not been sold, minority ownership would be 20 percent higher than the existing level in October 2007.[27] Perhaps most tellingly, only one minority-owned duopoly was ever created under the new rules, and it dissolved soon after.[28]

19. For female ownership in television, following the TVDR rule, 36 percent of female owned stations in duopoly markets were sold.[29] All of the stations were sold to non-minority, male owners.[30] Moreover, even as there was a 1.4 percent increase in the number of broadcast television stations between 2002 and 2005, while ownership decreased by about four percent, female ownership remained stagnant.[31]

20. These trends are mirrored in radio station ownership, wherein between 2002 and 2005 the number of female-owned radio stations fell 6.9 percent, while the number of minority owners remained stagnant.[32] This data comports with research funded by the Commission, finding that even now, women comprise 51 percent of the population, but own only 5.87 percent of broadcast commercial television stations and 6 percent of commercial radio stations. NOI ¶75. For minority ownership, the data is even more discouraging, indicating only 3.15 percent ownership of commercial television stations and 7.7 percent ownership of commercial radio stations (despite representing 34 percent of the population). NOI ¶75.

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[26] S. Derek Turner & Mark Cooper, *Out of The Picture 2007:Minority & Female TV Station Ownership in the United States* at 23, Research Paper, Freepress.net (*retrieved on* June 23, 2010), *available at* http://www.freepress.
net/files/otp2007.pdf.

[27] *Id.*

[28] Hammond, *et al.*, *supra* n.15.

[29] *Id.*

[30] *Id.*

[31] Duwadi, *et al.*, *supra* n.17 at 5.

[32] *Id.* at 7.

B. Ownership Consolidation Poses Serious Threats to Viewpoint Diversity As Manifested By Eroding Standards in Television and Radio News Reporting

21. Inherent in the Commission's goal of promoting viewpoint diversity is the preservation of an informed citizenry. The Supreme Court vociferously affirmed this as being Congress' intent in shaping U.S. communications policy, with "the widest possible dissemination of information from diverse and antagonistic sources" being "essential to the welfare of the public" and "a governmental purpose of the highest order."[33] Given that guidance, the Commission must vigilantly protect viewpoint diversity as a proxy for an informed public.

22. Unfortunately, market forces and existing Commission regulations have allowed glaring examples of markets dominated by a single journalistic viewpoint across multiple platforms. The Tribune Company's ("Tribune") activities across the U.S. exemplify such harmful consolidation.

23. Tribune became the first corporation in its time to own and operate a major newspaper and broadcast television station in each of the top three U.S. media markets: Chicago (the *Tribune* newspaper and WGN-TV), Los Angeles (*Los Angeles Times* and KTLA-TV), and New York (*Newsday* and WPIX-TV).[34] In its most conspicuous example of excessive consolidation, Tribune dominates the Chicago media market in every respect, owning, in addition to the *Tribune* and WGN, WGN Radio-720 (the region's top AM station), the area's top local magazine, the area's only local cable news and talk station, the city's top online entertainment and listings guide, a leading sports Web site, the city's most popular Spanish-language daily newspaper and a popular weekday tabloid aimed at younger audiences.[35]

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33 *Turner Broadcasting*, 512 U.S. at 663-64.

34 Eric Klinenberg, *Fighting for Air: The Battle to Control America's Media*, at 116-17 (Metropolitan Books, 1st Ed., 2007). Tribune has since sold *Newsday*, but retains the other properties.

35 *Id.* at 116-23.

24. Exemplifying the harm in such market dominance was Tribune's lack of coverage of the Chicago Housing Authority relocation project. When the Chicago Housing Authority engaged in a large-scale demolition and refurbishment of public housing in the city, involving the relocation of some 25,000 poor, predominantly minority families, Tribune properties engaged in only intermittent coverage, and the project went forward largely unquestioned. A story that on other cities' television and radio coverage might have become major news received negligible coverage in Chicago, by the inaction of one, dominant owner.[36] While there may be financial benefits to such cross-ownership for owners, millions of citizens bear the cost when one entity is able to prevent widespread public debate on newsworthy issues.

25. Consolidation's negative impact on viewpoint diversity is perhaps most alarming when consolidation is itself the story not being covered. In Milwaukee, the CEO of Journal Communications received suspiciously positive press treatment in his own press properties amidst his controversial lobbying activities. As owner of Wisconsin's top-rated newspaper dailies, television and radio stations, Journal's CEO, Robert Kahlor, had also become chairman of the Milwaukee Stadium Commission in 1994. Soon after, he began lobbying on behalf of Journal Communications to secure financing for a baseball stadium for the Brewers, whose games were broadcast in Wisconsin by Journal Communications television and radio stations.[37]

26. While the stadium project itself received widespread coverage in Journal properties, no property ever mentioned Kahlor's conflict of interest.[38] The two major Journal dailies, having the largest circulations in Wisconsin (and one being liberal and one conservative) both ran front-

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[36] *Id.* at 120-23.

[37] CommonCause.org, *A Tale of Five Cities: Why the Newspaper-Broadcast Cross-Ownership Ban Should be Preserved* (*retrieved on* June 11, 2010), *available at* http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=2180335.

[38] *Id.*

page editorials unequivocally supporting the plan.[39] WTMJ-TV and WTMJ-AM, both Journal Communications properties and ratings leaders for local news, did not report any criticism of the public financing plan, with commentators expressing widespread support for the plan.[40] In this respect, consolidation (and the resulting lack of viewpoint diversity) is a self-perpetuating blight, wherein markets saturated by one owners' content lack the information to challenge that control.

27. While cross-ownership manifests itself prominently within single markets, to a troubling extent it exists across markets as well. Tribune pursued a cross-ownership strategy in Hartford, Connecticut, where it acquired both the *Hartford Courant* and WTIC-TV, the Fox affiliate in Connecticut.[41] Soon, Tribune combined the two entities' news staffs in a single newsroom. The consolidation resulted in a single overworked and understaffed news agency. Reporters in the newsroom were soon asked to do cross-platform work with which they were unfamiliar, with journalistic standards diminished as a result.[42]

28. Equally alarmingly, the Tribune consolidation in Hartford may have exceeded the bounds of the temporary waiver allowing the Tribune's ownership in the first place. The waiver of the Commission's newspaper-broadcast television cross-ownership prohibition did not explicitly permit combination of news operations.[43] The consolidation posed enough risk that Connecticut Attorney General Richard Blumenthal wrote to Tribune CEO Sam Zell, saying that the consolidation of news staffs went well beyond what the Commission had envisioned in granting the waiver, and that "to advance [viewpoint diversity], [the company] must expand

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39 *Id.*

40 *Id.*

41 Kenneth Gosselin, *News Operations Of TV's Fox 61 And The Courant Are Sharing Space And Resources*, HARTFORD COURANT (Dec. 6, 2009) (*retrieved on* June 11, 2010), *available at* http://mobile.courant.com/inf/infomo?view =webarticle&feed:a=courant_10min&feed:c=travel&feed:i=50909258&nopaging=1.

42 *Id.*

43 Lynn Doan, *Attorney General Writes Tribune Co. About Courant, WTIC Consolidation*, HARTFORD COURANT (Apr. 9, 2009) (*retrieved on* June 11, 2010), *available at* http://www.courant.com/business/hc-blumenthal-tribune.artapr10,0,414357.story.

access to information and competition, not produce media monopolies that shut out voices, perspectives and important news stories."[44]

29. Tribune is but one of a few oligarchs that have been able to dominate U.S. media markets, restricting viewpoint diversity within and across markets in the process. In Tampa, Media General Corporation occupies a similarly dominant market position, as owner of the city's leading Internet sites, television and newspaper.[45] Like Tribune in Hartford, Media General soon created a "Superdesk" in a consolidated news headquarters, requiring journalists from each platform to pursue convergence opportunities.[46]

30. During the 2006 Winter Olympics, reporters were asked to appear on the nightly television news broadcast, while also writing out the same report out for the newspaper, and then posting it on one of the Media General websites.[47] Based on accounts from reporters, this resulted in employees being asked to take on tasks outside their job duties, such as print reporters being asked to broadcast, or broadcasters being asked to operate cameras.[48] Observers noted that this left journalists with less time to "report, reflect and produce stories," and allowed for less specialization and expertise in each reporting medium.[49]

C. The Threat of Ownership Consolidation on Viewpoint Diversity is Not Mitigated By New Media Alternatives

31. Despite claims to the contrary, the dangers of media consolidation are not alleviated by new media.[50] Much of the content found online, whether from news organizations' sites or via search engines, is repackaged from another news organization, often from the same wire

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44 *Id.*
45 Klinenberg, *supra* n.34 at 126-29.
46 *Id.* at 129.
47 *Id.* at 128-29.
48 *Id.*
49 *Id.* at 129.
50 *Id.*

services being used by countless other websites.[51] With very few exceptions, internet sources do not provide viable alternatives for professional journalism, and do not substantially increase the diversity of viewpoints sought by the Commission.

32. Moreover, much of the news found online is merely re-posted on websites by the same media conglomerates dominating broadcast television and radio ownership (e.g., *Tribune* stories posted on www.chicagotribune.com). In that respect, the same story is simply consumed in multiple formats.[52] Compounding the negative effects on journalism caused by consolidation, new media sources act as an "echo chamber" whereby the visibility of otherwise unimportant or inaccurate stories is over-amplified.[53] The Third Circuit enunciated this concern when stating that websites "that merely republish the information already being reported by the newspaper or broadcast station counterpart . . . do not present an 'independent' viewpoint and thus should not be considered as contributing diversity to local markets."[54]

33. While cases of internet misreporting abound, the recent tragedy at Fort Hood in Texas provides an important reminder of the dangers in relying exclusively on new media sources for news. During the November 5, 2009 shootings at Fort Hood, some misinformation spread quickly, "most notably that there was more than one shooter in the attacks and that one was killed during the incident."[55] Large mainstream press organizations picked up on these reports, repeating them almost verbatim from tweets, while the facts as they eventually emerged proved many early reports incorrect. This led at least one commentator to observe that "we

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51 *Id.*

52 *Id.*

53 Amy Goodman & Juan Gonzalez (Interviewers), Interview with Eric Klinenberg on *Democracy Now*, aired on January 25, 2007 (retrieved on June 24, 2010), *transcript available at* http://www.democracynow.org/2007/1/25/exclusive_911_calls_in_north_dakota. *See also* Klinenberg, *supra* n.34 at 66-68.

54 *Prometheus Radio Project*, 373 F.3d at 404-06.

55 *The Fort Hood Tragedy Highlights the Reporting Role of Social Media*, Journalism.org: Pew Center Project for Excellence in Journalism, November 2009 (*retrieved on* July 9, 2010), *available at* http://www.journalism.org/index_report/fort_hood_tragedy_highlights_reporting_role_social_media.

learned not a single new fact, nor was a single life saved," by the use of Twitter in the Fort Hood reporting.[56]

34. New media also fails to aid viewpoint diversity insofar as new media still remains inaccessible to or unused by large portions of the population. The Pew Center reports that even as of May 2010, about 78 percent of Americans still used local television news as their primary news source, keeping it as the top source of news for American households.[57] While data relied on by the commission cites a large percentage of Americans as getting their news online, those figures do not convey the extent to which television news remains *primary*, even amongst the internet-savvy. NOI ¶48. Further, many Americans remain without access to high speed internet service, or without any access to the internet whatsoever. Whereas traditional news organizations remain the primary and most widely accessible news sources for most Americans, it is important not to overstate the value of new media as an antidote for diminished viewpoint diversity.

V. EVEN UNDER EXISTING COMMISSION REGULATIONS, OWNERSHIP CONCENTRATION CONTINUES, AT THE EXPENSE OF LOCAL INTERESTS

35. As the Supreme Court has stated (and the Commission has acknowledged), "[l]ocal program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community."[58] NOI ¶ 54. Media consolidation, however, directly threatens the likelihood that localities will have those needs served. For example, following the

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56 *Id.*

57 Survey by Pew Internet & American Life Project (*retrieved on* July 8, 2010), *available at* http://www.pewinternet.org/Data-Tools/Explore-Survey-Questions/Roper-Center.aspx?t=304&sdate=01/01/07&edate=07/01/10&k=local%20news.

58 *NBC v. U.S.*, 319 U.S. 190, 203 (1943).

1999 implementation of the TVDR rule, the duopoly stations created were significantly less likely to show local news programming than their same market, non-duopoly counterparts.[59]

36. The realities of media organizations' operations are such that consolidation is financially incompatible with meeting local concerns and interests. The four major television networks (who collectively are the largest owners of television stations in the U.S.) extract heavy fees from their affiliates in exchange for rights to air network-owned or produced content.[60] This centralized structure, itself protective of network interests over localities, compounds the effects of the advertising-based model by which networks make most of their money. As one station owner has commented, "the syndication value of network-owned programs . . . increases when they are broadcast nationwide . . . . [and] networks exert economic leverage over TV stations by threatening to penalize them or terminate their network affiliation if they pre-empt more than a few hours of network programming."[61] Further, the station owner explained that "[networks] are apt to pressure the locals to use [the networks'] own syndicated shows, further reducing regional programming variations."[62]

37. Considering just this financial picture, the Commission's two measures for assessing licensees' compliance with localism requirements would adequately address those concerns (the measures being, 1) the selection of programming responsive to local needs, and 2) local news quantity and responsiveness). NOI ¶54. Those measures, however, do not account with adequate specificity for several catastrophic instances of media consolidation directly leading to local harms.

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59 Hammond *et al.*, *supra* n.15 at 2-3.
60 Klinenberg, *supra* n.34 at 94-95.
61 *Id.*
62 *Id.* at 96.

38. A more adequate measure is needed to account for whether media owners serve the public good when the public needs the media the most. The Minot, ND chemical explosion indicates that the Commission's concern with "programming" may not take into account a basic local need: emergency broadcast notifications. In an oft-invoked incident in January 2002, Minot, ND, the state's fourth-largest city, lacked a functional emergency notification system during a chemical explosion that left one dead and more than 1,000 injured. The area's six main local radio stations having all been bought by Clear Channel, station operations had been outsourced to remote facilities in Texas. Residents looking for guidance during the emergency heard only prepackaged broadcasting streams, aired from those remote facilities.[63]

39. After the train derailment causing the explosion had occurred, and the resulting anhydrous ammonia cloud spread, Minot's 37,000 citizens lacked any notification of the explosion and received no direction for two hours afterward, even as the chemical cloud permeated their homes and left much of the town without power.[64]

40. The radio emergency notification systems (a vital resource in a town lacking local television facilities and for the many motorists in the area) failed because no staff or local radio announcers were present (or once they arrived, able,) to override the automated transmission.[65] There is no more cogent example of consolidation's harm to local communities than in that instance.

41. Another aspect of local concern not captured in the Commission's current measures for localism is the impact of media consolidation on local economies. Surely as vital a consideration as the news and programming reaching residents is the extent to which content

[63] Klinenberg, *supra* n.34 at 2-11; *see also* Matthew Lasar, *Clear Channel still haunted by Minot toxic spill disaster*, Arstechnica.com, May 2010 (*retrieved on* June 23, 2010), *available at* http://arstechnica.com/tech-policy/news/2010/05/will-clear-channel-ever-live-down-the-minot-toxic-spill-disaster.ars.

[64] Klinenberg, *supra* n.34 at 2-11.

[65] *Id.*

owners have harmed those economies by eliminating competition (itself the third of the Commission's major policy goals). NOI ¶30.

42. Taking Clear Channel as an example, Clear Channel fueled its rapid increase in size and station acquisition (corresponding to an increase from 1,354 full-time, year-round employees in 1993 to over 41,000 in 2002) with its simultaneous pursuit of pay cuts and job reduction in local markets.[66] Because of its market dominance, Clear Channel sets the market rate for pay, and spurs layoffs by its competitors.[67] Between 2000 and 2004 alone, Clear Channel eliminated up to 4,500 radio industry jobs, with competitors like Infinity, Fisher and Journal following, leading to a total of 10,000 radio jobs cut in that period.[68]

43. These cuts are compounded by Clear Channel's emphasis on voice-tracking technology, a practice whose deleterious impact on jobs and wages AFTRA has discussed in previous comments submitted to the Commission.[69] Whatever measures of localism the Commission uses should take into account these local economic effects of consolidation.

44. Yet, even under the Commission's existing measures of localism (programming responsiveness and quality) media consolidation poses a threat to local interests. During the 2003 blackout that left much of the northeast U.S. without power, residents of Syracuse, N.Y. lacked local radio news reports on the blackout's impact on their city.[70]

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66 Maria Figueroa, Damone Richardson, Pam Whitefield, *The Clear Picture on Clear Channel Communications, Inc.: A Corporate Profile* at 28-31, School of Indus. & Labor Rel., Cornell University, January 2004 (*retrieved on* June 23, 2010), *available at* http://www.dpeaflcio.org/pdf/clear%20channel%20_final%20report%201-28-04.pdf.

67 *Id.* at 28-29.

68 *Id.* at 30-31. NB: the figures above are included not to necessarily pinpoint employment levels as of this writing, but rather, to illustrate how concentration of ownership can have a significant impact on employment in the market, generally.

69 Am. Fed. of Television & Radio Artists (AFTRA), Comments Submitted to the F.C.C.in the Matter of the 2002 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules, *inter alia,* at 69-71. (submitted January 2, 2003).

70 Goodman & Gonzalez, *supra* n.53.

45. Residents report that Clear Channel, owner of seven radio stations in Syracuse, instead aired a content feed from CNN.com, aired from and for New York City, and reporting primarily on conditions in Manhattan.[71] This left Syracuse residents without the type of extensive local radio coverage they *did* have prior to the Clear Channel acquisitions, even during mundane events like heavy thunderstorms.[72] As this and other local examples convey, media consolidation poses serious threats to local interests, based on a variety of measures.

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71 *Id.*

72 *Id; see also* Klinenberg, *supra* n.34 at 66-68.

V. CONCLUSION

46. AFTRA is strongly opposed to the elimination or relaxing of the remaining media ownership rules mentioned in the Commission's NOI. The rules were created pursuant to Congressional mandates to protect the public good, a mission more important now than ever before. Against the backdrop of heavy concentration of ownership in the hands of a few corporations, viewpoint diversity and local interests have never been more at risk. Public ownership of the airwaves is increasingly a theoretical concern rather than a concrete obligation of owners. The acquisition of new media interests by these owners only exacerbates the potential for harm. The risks are particularly serious for those who have the least means by which to fight back: minorities, local communities, and those with limited access to communications media. The Court of Appeals for the District of Columbia only seeks a rational basis for maintaining the media ownership rules. This comment, along with the many comments filed along with it provides compelling rationales on which the Commission can rely in upholding the rules. We are confident that the Commission will safeguard the trust given to it by the public.

Respectfully submitted,

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