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

In the Matter of	)	
	)	
2010 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. 09-182

<u>COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA ON THE FCC'S MAY 25, 2010 NOTICE OF INQUIRY</u>

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The Newspaper Association of America ("NAA")[1] hereby submits its comments in response to the May 25, 2010 *Notice of Inquiry* in the FCC's 2010 Quadrennial Review.[2] Throughout the series of inquiries and rulemakings the Commission has conducted over the past decade to reevaluate and reform its newspaper/broadcast cross-ownership rule (the "NBCO rule"), NAA consistently has advocated repeal of the restriction. The outdated rule does not serve any of the FCC's stated public interest goals. To the contrary, because it disadvantages traditional media outlets with a long history of supporting local journalism and frustrates transactions that would enhance local news and informational services, the ban in reality is a hindrance to these objectives.

[1] NAA is a nonprofit organization representing nearly 2,000 newspapers and their multiplatform businesses in the United States and Canada. NAA members include daily newspapers, as well as non-dailies, other print publications and online products.

[2] *2010 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Inquiry, FCC 10-92, MB Docket No. 09-182 (rel. May 25, 2010) ("*2010 Quadrennial Review NOI*" or "*NOI*").

I. INTRODUCTION AND SUMMARY

Although the FCC appropriately states in the *NOI* that it intends to take a "forward-looking" approach in its latest broadcast ownership review, NAA submits that the long and tortured history of the NBCO rule also must factor into this proceeding. The Commission twice has ruled during the past seven years that the blanket cross-ownership ban no longer serves the public interest and a reviewing court has agreed with this conclusion. Yet, the rule has been in a continuous state of limbo due to a repetitious cycle of inquiries, rulemakings, and litigation. In fact, the absolute cross-ownership ban, adopted 35 years ago, remained in place until just a few months ago.

Further, while the revised NBCO waiver standards adopted by the Commission in 2008 recently took effect, those modifications, for all practical purposes, fail to provide any meaningful relief to newspaper publishers or broadcasters. Even those few combinations in the nation's largest markets that meet all of the stringent criteria for a "positive presumption" under the new standards are not guaranteed to be permissible, while all others—those representing "the vast majority of cases"—presumptively will be precluded. In addition, the lack of specific relief for newspaper/radio combinations under the revised rule is troubling and unsatisfactory, especially in light of the FCC's well-supported conclusions that "radio is generally not as influential a voice as is television" and that newspaper/radio combinations are "less likely to raise concentration concerns" than other combinations. NAA submits that the FCC must move forward promptly and decisively in this proceeding to rectify these inadequacies and to finally eliminate, or at the very least to make meaningful changes to, the NBCO rule.

During the protracted period in which the rule has been in regulatory limbo and/or subject to exceedingly modest reform efforts, the cumulative changes in the media landscape have rendered restrictions on newspaper/broadcast cross-ownership irrelevant and increasingly burdensome. Of most pressing concern to NAA and its members, the ban has become a significant impediment to the ability of newspapers and broadcasters to sustain local news operations. Over the past several years, intense and growing competition from the Internet and other new media outlets, along with the recent nationwide recession, have presented the newspaper and broadcast industries with unprecedented financial challenges. NAA submits that the economic pressures facing the traditional media must be a central consideration in this proceeding. In particular, NAA urges the FCC to evaluate carefully the impact that continued enforcement of NBCO regulations will have on the ability of newspaper publishers and broadcasters to continue to serve their local communities with in-depth and highly costly news and information, to weather the economic downturn, and to adapt to new and ever-increasing competitive challenges.

In addition, the time is overdue for the FCC to implement a regulatory scheme that truly reflects the enormous competitive impact that the Internet has had on traditional media and the new paradigm that it already has created with respect to the creation, dissemination, and consumption of news and information. The pervasiveness of the Internet no longer can be questioned. Perhaps even more relevant to the questions under consideration in the *NOI*, the Internet has achieved a position on par with, and in some respects surpasses, the traditional media as a go-to outlet for both national and local news and information. While the FCC has gone through the exercise of accounting for the Internet in prior ownership reviews, its monumental impact has not been reflected in the agency's previous decisions.

The NBCO rule also continues to be counterproductive to localism, competition, and viewpoint diversity. The substantial benefits to local broadcast journalism that arise from newspaper/broadcast cross-ownership have been established repeatedly and conclusively in prior proceedings. These inherent benefits should be a principal consideration in this review and finally should be reflected in substantive rule changes. Further, NAA agrees with the FCC's suggestion that, separate and apart from its localism goal, the Commission should consider the impact of its rules on investigative journalism. In so doing, the agency must recognize that restrictions on cross-ownership undermine potential investments in in-depth accountability and investigative news reporting.

It has been established in prior proceedings that newspapers and broadcasters are not direct competitors for advertising revenue and, accordingly, that the NBCO rule is not needed to protect competition. However the FCC chooses to frame its analysis this time, there can be no question that NBCO restrictions are not necessary to preserve, and do not promote, competition. If anything, the ban is an impediment to a competitive marketplace because it precludes traditional media from fully and effectively vying against their ever-growing, and largely unregulated, rivals.

Given its well-founded conclusions that the NBCO rule is not needed to maintain either localism or diversity, the FCC hinged its most recent decision to maintain the restriction on lingering, but unsupported and ill-defined, viewpoint diversity concerns. Yet, the supposition that cross-ownership restrictions are needed to preserve viewpoint diversity is contrary to both logical reasoning and empirical evidence. Accordingly, the Commission's imprecise diversity concerns, which never have been tied to a concrete marketplace problem, no longer can serve as an adequate justification for maintaining the NBCO rule.

For the reasons shown herein, NAA strongly believes that repeal of the long outdated NBCO rule is a fully justified and necessary outcome of this proceeding. Should the FCC decide to retain a cross-ownership rule at the conclusion of this review, however, it should, at a minimum, cure the flaws in the existing rule by: (1) establishing bright-line rules that would permit newspaper/broadcast combinations in clearly delineated circumstances; (2) creating a mechanism for meaningful consideration of waivers from any such rules; (3) providing for deregulation that would permit newspaper/television cross-ownership in a much larger number of markets and under less restrictive circumstances and (4) eliminating all restrictions on newspaper/radio cross-ownership.

II. THE FCC SHOULD CONDUCT ITS 2010 MEDIA OWNERSHIP REVIEW WITH THE GOAL OF SIGNIFICANTLY AND EXPEDITIOUSLY REFORMING THE NBCO BAN.

The NBCO rule has been in a continuous state of flux since the FCC began calling for revisions to the rule well over a decade ago.[3] Although the Commission as early as 1996 stated its intention to complete a proceeding to reform the NBCO rule "expeditiously,"[4] the ensuing years have brought a seemingly endless cycle of redundant inquiries, rulemakings, and litigation. Throughout this protracted sequence of media ownership reviews, NAA and other parties repeatedly have demonstrated the extensive benefits inherent in newspaper/broadcast cross-ownership, and both the Commission and the U.S. Court of Appeals for the Third Circuit concluded that a blanket cross-ownership restriction no longer serves the public interest.[5]

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[3] *See Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888 (¶ 87); *see also id*. at 5906 (statement of then-FCC Chairman Reed E. Hundt expressing concern that "there is reason to believe . . . the newspaper-broadcast cross-ownership rule . . . is right now impairing the future prospects of an important national source of education and information: the newspaper industry").

[4] *Id*. at 5888 (¶ 87).

[5] *See 2002 Biennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,767 (¶ 369) (2003) ("*2003 Order*"), *aff'd in part*, *remanded in part*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *2006 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2021 (¶ 19) (2008) ("*2008 Order*"); *Prometheus*, 373 F.3d at 398.

Notwithstanding the exhaustive proceedings and the extensive record evidence proving that cross-ownership fosters local journalism without harming diversity or competition,[6] no meaningful relief from the newspaper/broadcast cross-ownership ban has been achieved.

During the many years in which the cross-ownership restriction has been in limbo, the media landscape has undergone revolutionary changes that have transformed the ways in which news, public affairs, and entertainment programming are created and consumed by the American public. These developments have overtaken the purpose for which the NBCO rule was created in the first place—to spur a "mere hoped for gain in diversity."[7]

Although the Commission appropriately is taking a "forward-looking" approach in this proceeding "based on the media marketplace of today, not on marketplace factors as they may have existed in the past," the agency's proposal to reconsider in the first instance whether the NBCO rule serves competition, localism, and diversity and whether any changes to the rule are warranted at all is off-base.[8] In light of the rule's long and tortured history and the transformative changes in the media marketplace since the NBCO rule was adopted 35 years ago, the starting point of the Commission's inquiry no longer can be *whether* the ban should be modified, but *how* the agency can provide the newspaper and broadcasting industries with material and much-needed regulatory relief in a timely manner. In this regard, NAA submits that the FCC must move forward quickly and decisively to finally eliminate the ban, or, at a minimum, to significantly reform it.

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[6] *See, e.g.*, *2003 Order*, 18 FCC Rcd at 13,761 (¶ 358) ("It appears that the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints."); *see also infra* Sections V.A-V.D.

[7] *Multiple Ownership of Standard, FM & Television Broad. Stations*, Second Report and Order, 50 F.C.C.2d 1046 (¶ 109) (1975), *aff'd FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978).

[8] *2010 Quadrennial Regulatory Review NOI* ¶¶ 1, 3.

III. THE FCC'S MINIMAL ADJUSTMENTS TO THE NBCO WAIVER STANDARDS IN 2008 FAILED TO PROVIDE ANY MEANINGFUL RELIEF FROM THE ABSOLUTE CROSS-OWNERSHIP BAN.

Despite the unequivocal record evidence and clear determinations of both the Commission and a reviewing court that the NBCO restriction does not serve the public interest, the FCC's last periodic review of its broadcast ownership rules provided only a modicum of regulatory relief to the newspaper publishing and broadcast industries. In its most recent decision (the "*2008 Order*"), the Commission took what it described as "a *modest* step in loosening the complete ban on cross-ownership" by allowing only "certain *limited* combinations of newspaper and broadcast facilities in the largest markets."[9] In reality, the revised NBCO rule affords very few opportunities for newspaper/broadcast cross-ownership and, even in the nation's largest media markets, offers no certainty as to whether any specific combination ultimately will be deemed permissible.

The revised rule in fact retains an absolute ban on cross-ownership of a newspaper and broadcast outlet, but establishes highly circumscribed presumptive standards for consideration of waiver requests on a case-specific basis. Under these standards, only a very limited range of cross-ownership relationships are presumed to serve the public interest—namely, those combinations of a daily newspaper and a single broadcast station located in the top 20 Nielsen Designated Market Areas (DMAs).[10] Any cross-ownership involving a TV station is subject to further restrictions.[11] Even those few combinations in the nation's largest markets that meet all

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[9] *2008 Order*, 23 FCC Rcd at 2018 (¶ 13) (emphasis added).

[10] *Id.* at 2040 (¶ 53).

[11] With regard to combinations involving a television station, to qualify for the positive presumption (i) the station must not be ranked among the top four stations in the DMA; and (ii) at least eight independent "major media voices" – counting only full-power television stations and major newspapers – must remain in the DMA. *Id.* at 2040-46 (¶¶ 53-62).

of the criteria for a positive presumption are not assuredly permissible, because the presumption is subject to rebuttal and agency approval of such transactions will be on a case-by-case basis.[12]

In the remaining 190 television markets (*i.e.*, the "vast majority of cases"),[13] cross-ownership of a newspaper and broadcast station is presumed to be inconsistent with the public interest, subject "only to two limited exceptions."[14] Unless applicants qualify for one these rigid exceptions, the negative presumption applies to proposed combinations in all markets ranked 21 and below, regardless of the multitude of diverse media outlets in a particular market and regardless of the amount and caliber of local news and information that can be provided to the community through the cross-owned properties. Further, the negative presumption restricts cross-ownership in mid-sized and smaller markets where newspaper publishers and broadcasters are struggling to maintain their news operations and where regulatory relief is most urgently needed. Although the rule allows parties to rebut a negative presumption if they can demonstrate by clear and convincing evidence that "the merged entity will increase the diversity of independent news outlets . . . and increase competition among independent news sources in the relevant market,"[15] the evidentiary standard is stringent, and the agency stated at the outset that

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[12] *Id*. at 2047 (¶ 64).

[13] *Id*. at 2040 (¶ 52).

[14] *Id*. at 2022, 2046 (¶¶ 20, 63). The FCC will reverse the negative presumption and instead apply a positive presumption in only two specified circumstances: (i) if either the newspaper or broadcast station meets the criteria for a "failed" or "failing" outlet; or (ii) if a new owner will initiate at least seven hours of local news programming per week on a broadcast station that was not offering local newscasts prior to combined operations. *Id*. at 2047-49 (¶¶ 65-67). Notably, the latter category is so narrowly prescribed that a commitment by a potential owner to significantly increase the amount of news and public affairs programming on a broadcast station with minimal existing local news offerings is not encompassed within the exception.

[15] *Id*. at 2049 (¶ 68). In making this determination, the Commission's analysis is informed by four factors: (i) whether cross-ownership will increase the amount of local news disseminated through the affected media outlets; (ii) whether each affected media outlet will exercise its own independent news judgment; (iii) the level of concentration in the DMA; and (iv) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations. *Id*. These factors involve fact-specific inquiries into content and editorial-related aspects of the newspaper and broadcast outlet operations, which, NAA submits, are constitutionally suspect.

waiver applicants have "a high hurdle to cross to win Commission approval."[16] Thus, instead of ensuring that waivers will be granted in any and all instances where a proposed transaction will serve the public interest, as required under long-established principles of administrative law,[17] the Commission stated that it expects grant of such waivers to be "rare."[18]

NAA submits that the uncertainty inherent in a case-by-case, subjective review of proposed NBCO waivers is a significant impediment to orderly transaction planning. It seems overly optimistic, if not misguided, for the FCC to conclude that "the built-in presumptions and the public interest test provide adequate predictability for the industry."[19] To the contrary, the case-specific nature of the waiver review process most likely is having a chilling effect on all newspaper/broadcast transactions. Moreover, the NBCO rule is considerably more restrictive than any of the Commission's other "bright-line" local broadcast rules, with no justification provided for this striking regulatory disparity. The other local broadcast rules definitively permit certain types of multiple ownership in even the smallest markets, whereas the vast majority of newspaper/broadcast combinations are presumably not in the public interest. The broadcast-only rules also permit a considerably greater degree of station multiple or cross-ownership than the current NBCO rule.[20]

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[16] *Id.*

[17] Indeed, the availability of waiver relief in appropriate circumstances must be part and parcel of any rational regulatory scheme. Agencies must give "serious consideration [to] meritorious applications for waiver, and a system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties." *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *see also KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1191 (D.C. Cir. 1983). Given that the FCC already has a well-established obligation to give all meritorious requests for waiver serious consideration, the agency's purported modification of the standards for waiver of the NBCO rule through codification of a limited range of permissible grounds for relief cannot logically be considered an adequate change to the underlying rule.

[18] *2008 Order*, 23 FCC Rcd. at 2047 (¶ 64).

[19] *Id*. at 2041 (¶ 54).

[20] Under the FCC's current ownership rules, for example, one entity may own up to two full-power TV stations and as many as six or seven radio stations in the same market. Even in the smallest markets, a single owner may operate one TV station and one radio station. 47 C.F.R. 73.3555(b), (c). Similarly, under the FCC's existing local radio

The lack of specific relief for newspaper/radio combinations under the revised rule also is troubling. Newspaper/radio cross-ownership currently is subject to the same onerous restrictions as newspaper/television cross-ownership, notwithstanding the Commission's conclusion in the *2008 Order* that "radio is generally not as influential a voice as is television" and, thus, that newspaper/radio combinations are "less likely to raise concentration concerns."[21] Further, the decision to place radio and television combinations on the same uncertain regulatory footing was made in the face of concrete record evidence demonstrating that cross-ownership positively correlates with the quality of radio programming and that newspaper-owned radio stations are more likely to have a news-based format.[22] Although the *2008 Order* vaguely indicates that it may be "less difficult for newspaper/radio combinations to overcome the negative presumption," it provides no specific guidance as to how the review standards will differ for prospective newspaper/television and newspaper/radio combinations.[23] Thus, for all practical purposes, the standards are the same for both types of cross-ownership.

For the reasons shown herein, NAA strongly believes that repeal of the long outdated NBCO rule is a fully justified and necessary outcome of this proceeding. Should the FCC decide to retain a cross-ownership rule at the conclusion of this review, however, it should, at minimum, rectify the flaws in the existing rule by: (1) establishing bright-line rules that would permit newspaper/broadcast combinations in clearly delineated circumstances and that would give

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ownership rule, one company may own as many as eight radio stations in a single market, and up to five stations in the smallest markets. *Id.* § 73.3555(a)(1).

[21] *2008 Order*, 23 FCC Rcd at 2052 (¶ 73).

[22] *See* Comments of Newspaper Association of America on Media Ownership Research Studies, MB Docket No. 16-121 (Oct. 22, 2007) ("Media Ownership Studies Comments"); Craig Stroup, *Factors that Affect a Radio Station's Propensity to Adopt a News Format*, FCC Media Study 4, Section III, at III-14-III-15, *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf (last visited July 9, 2010); Tasneem Chipty, *Station Ownership and Programming in Radio*, FCC Media Study 5, at 43 (June 24, 2007), *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A6.pdf (last visited July 9, 2010).

[23] *2008 Order*, 23 FCC Rcd at 2052 (¶ 73).

newspapers and publishers regulatory certainty that specified types of combinations will be permitted; (2) creating a mechanism for meaningful consideration of any meritorious requests waivers from any such rules; (3) providing for deregulation that would permit newspaper/television cross-ownership in a much larger number of markets and under less restrictive conditions; and (4) eliminating all restrictions on newspaper/radio cross-ownership.

IV. SINCE THE FCC LAST EVALUATED THE NBCO RULE, PROFOUND MARKETPLACE CHANGES HAVE MADE THE NEED FOR REPEAL OF THE LONG OUTDATED BAN MORE URGENT AND HAVE EVISCERATED ANY CONCEIVABLE JUSTIFICATION THERE ONCE MAY HAVE BEEN FOR THE RULE.

Over the past 35 years, cumulative changes in the media landscape have rendered the NBCO rule superfluous and counterproductive. The rule was adopted at a time "when two mature industries—daily newspapers and broadcasting—constituted the only 'mass media' providing local news and information to most American communities."[24] There can be little question that today's media marketplace is fundamentally different. In stark contrast to the limited media options available to consumers when the NBCO rule was put in place, today a plethora of alternative sources of news, information, and entertainment are widely available and vigorously competing for audiences and revenues, as detailed in exhaustive showings made in prior proceedings and acknowledged by the Commission in the NOI.[25]

Even in the short period that has passed since the FCC's previous review of the ownership rules, the availability of new media outlets and the penetration of the Internet have continued to grow, further obviating any justification the original NBCO ban may once have had.

[24] *Id.* at 2023 (¶ 21).

[25] *See*, *e.g.*, Comments of the Newspaper Association of America, MB Docket No. 01-235, at Section III.C (Dec. 3, 2001) ("NAA 2001 Comments"); Comments of the Newspaper Association of America, MB Docket No. 06-121, at Section III.A-B (Oct. 23, 2006) ("NAA 2006 Comments"); s*ee also 2010 Quadrennial Review NOI* ¶ 10 ("Th[e economic] contraction is accompanied by an increase in content from Internet and mobile platforms, resulting in dramatic changes in the marketplace for news, public affairs programming, and entertainment programming.").

In essence, the "hoped for" increase in diversity that the Commission visualized in 1975 already has come to fruition in the evolving media landscape. In the meantime, the NBCO ban, a regulation designed for a different era, is increasingly impeding the ability of newspaper publishers and broadcasters to adjust to new economic realities and to maintain their local news-oriented missions in today's marketplace.

A. <u>Unprecedented Financial Challenges Are Threatening the Economic Model That Traditionally Has Supported Local Journalism.</u>

Over the past two and a half years, intense and growing competition from the Internet and other new media outlets, along with the recent nationwide recession, have presented the newspaper and broadcast industries with tremendous financial challenges. NAA submits that the dire financial conditions facing traditional media, and both the recession-based and the more enduring causes of those conditions, must be important factors in this proceeding. In particular, NAA urges the Commission to consider carefully the impact that continued enforcement of the NBCO rule will have on the ability of newspaper publishers and broadcasters to continue to serve their local communities with in-depth news and information, to weather the negative economy, and to adapt to new and ever-increasing competitive challenges.

As the Commission recognized in the *NOI*, the newspaper publishing industry is experiencing a financial crisis that has taken a substantial toll on its traditional business model.[26] Newspapers historically have relied primarily on advertising revenue, and secondarily on circulation revenue, to finance their extensive newsgathering and reporting investments. Both of these revenue sources have witnessed unprecedented declines even in the brief time since the FCC last considered the relevance and impact of the NBCO rule.

[26] *See 2010 Quadrennial Review NOI* ¶¶ 6-11.

In 2009 alone, newspaper advertising revenue, including revenues from both print and online sectors, dropped 26%—a rate of decline that was more than 50% steeper than just a year earlier and that brought total losses over the past three years to a staggering 41%.[27] While the rate of decline may have slowed to some degree in recent months, additional losses are in the offing for 2010.[28] Because advertising traditionally has accounted for as much as 80% of newspaper earnings, these shortfalls must be recognized as monumental. Perhaps most dramatically, classified advertising has shifted almost entirely to alternative online options.[29] As Commissioner Baker aptly has noted, "the success of Craigslist and eBay has significantly reduced highly profitable classified ads."[30] In total, newspapers' classified revenues have fallen 70% over the last decade, from $19.6 billion in 2000 to $6 billion in 2009,[31] and experts do not expect that newspapers ever will be able to recapture this advertising spending.[32] Indeed, a

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[27] Pew Project for Excellence in Journalism, *The State of the News Media 2010: An Annual Report on American Journalism,* Executive Summary (March 2010), *available at* http://www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited June 28, 2010) ("*PEJ 2010 State of the News Media Report*"); *see also* Eric Pfanner, *Preserving Journalism, If Not Papers*, N.Y. TIMES, June 13, 2010, *available at* http://www.nytimes.com/2010/06/14/business/media/14cache.html (last visited June 28, 2010) (observing that U.S. newspaper industry revenue fell 30 percent from 2007 to 2009 and noting "just how much worse the newspaper business is faring in the United States than in other . . . countries").

[28] *U.S. Newspaper Ad Revenue Falls 10 Percent in 1Q*, BLOOMBERG BUSINESSWEEK (Associated Press), May 27, 2010, *available at* http://www.businessweek.com/ap/financialnews/D9FVAEG80.htm (last visited June 28, 2010) (stating that advertising revenue at U.S. newspapers fell 10 percent to $6 billion in the first quarter of 2010 from the same period last year, the lowest rate of decline in more than two years).

[29] *See PEJ 2010 State of the News Media Report*, Newspapers: Economics, *available at* http://www.stateofthemedia.org/2010/newspapers_economics.php (last visited June 29, 2010).

[30] *Hands off the Journalist*, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295867A1.pdf (last visited Feb. 4, 2010).

[31] *See PEJ 2010 State of the News Media Report*, Newspapers: Economics, *available at* http://www.stateofthemedia.org/2010/newspapers_economics.php (last visited June 29, 2010); *see also* Rick Poynter, *Classified Ad Revenue Down 70% in 10 Years, With One Bright Spot*, POYNTER ONLINE – THE BIZ BLOG, Feb. 1, 2010, *available at* http://www.poynter.org/column.asp?id=123&aid=177005 (last visited June 28, 2010) (finding that the overall decline in the newspaper industry's classified ad earnings during the past decade "was a stunning 70 percent – from $19.6 billion in 2000 to roughly $6 billion in 2009").

[32] *See PEJ 2010 State of the News Media Report*, Newspapers: Economics, *available at* http://www.stateofthemedia.org/2010/newspapers_economics.php (last visited June 29, 2010).

further 14% slide in classified revenue has been reported for the first quarter of 2010.[33] Because classified advertising traditionally was the profit driver that enabled local newspapers to fund cost-intensive accountability and investigative journalism, these losses have critical public interest ramifications.

Another contributing factor to newspaper advertising losses is the prevalence of aggregators, search engines, and online news forums that copy or summarize links to newspaper content, often with the goal of selling their own advertising around the content. This practice, which is carried out by operators that are not subject to any FCC ownership restrictions, diverts revenues away from newspapers and taxes their limited resources.[34] Contrary to popular perception, moreover, online newspaper advertising has not come close to compensating for Internet-driven reductions in print spending. Since mid-2007, newspaper advertising rates have *declined*, despite online audience growth.[35] There now is simply too much online advertising inventory available on mega Internet sites such as Yahoo and Google, saturating what had long been the province of local media.[36] In any case, online advertising accounted for a mere 10% of newspapers' overall revenue last year.[37]

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[33] Erik Sass, *Red Ink: Newspaper Revs Drop 9.7%*, MEDIA DAILY NEWS (MediaPost), May 27, 2010, *available at* http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=129119&passFuseAction=PublicationsSearch.showSearchReslts&art_searched=newspapers&page_number=2 (last visited June 28, 2010) (noting that declines in newspaper advertising revenue in the first quarter of 2010 were led by classified advertising, which fell 14.4% to $1.25 billion, while national advertising fell 8.3% to $1.04 billion and retail advertising slid 11.2% to $2.96 billion).

[34] *See* Comments of the Newspaper Association of America, GN Docket No. 10-25, at 17-18 (May 7, 2010) ("Future of Journalism Comments").

[35] *Id*; *see also* Mike Taylor, *U.S. Newspapers Face Declining Share of Digital Ad Revenue*, MEDIABISTRO.COM (June 28, 2010), *available at* http://www.mediabistro.com/fishbowlny/newspapers/us_newspapers_face_declining_share_of_digital_ad_revenue_166059.asp (last visited June 28, 2010) (reporting that, although one-third of online readers frequent newspaper websites, newspapers' share of the ad-revenue market is far less than that, and that in 2009, newspaper sites commanded 11% of digital ad revenue, down from 16% in 2004).

[36] *PEJ 2010 State of the News Media Report*, Newspapers: Economics, *available at* http://www.stateofthemedia.org/2010/newspapers_economics.php (last visited June 29, 2010).

[37] *Id.*

On top of steep declines in advertising revenues, newspaper publishers are experiencing accelerated drops in print circulation. In 2009, daily newspaper circulation plummeted 10.6% and Sunday newspaper circulation fell 7.1%, representing reductions in print audiences of 31.5% and 27%, respectively, from peak totals in the last 25 years.[38] Overall, newspapers have lost approximately 17% of their circulation in three years and almost 26% since 2000.[39] Moreover, it is expected that "[b]ig declines [in newspaper circulation] are almost certain to continue in 2010."[40]

While local journalism remains the core mission of virtually every daily newspaper, it is undeniable that revenue declines have left most, if not all, struggling to sustain their cost-intensive news operations. Faced with the steep earnings losses noted above, newspapers have been forced to make difficult cuts, including scaling back their news reporting operations and laying off highly-valued journalists. As noted in the Pew Project for Excellence in Journalism's ("PEJ") *2010 State of the Media Report*, "[a]dvertising losses . . . [have] left newspapers downsizing everything—the physical dimensions of the paper, the space devoted to news and, most painfully, their roster of news professionals."[41] Approximately 15,000 full-time reporting

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[38] *Id.*, Newspapers: Audience, *available at* http://www.stateofthemedia.org/2010/newspapers_audience.php (last visited June 28, 2010); *see also* Erik Sass, *ABC: Newspapers Slammed With More Circ Declines*, MEDIA DAILY NEWS (MediaPost), Apr. 26, 2010, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=126907&passFuseAction=PublicationsSearch.showSearchReslts&art_searched=newspapers&page_number=0 (last visited June 28, 2010) (reporting that average weekday circulation of 604 American newspapers declined 8.7% from March 2009 to March 2010, and that Sunday circulations for 548 newspapers with Sunday editions declined 6.5% during this time period, according to figures from the Audit Bureau of Circulations).

[39] *PEJ 2010 State of the News Media Report*, Newspapers: Summary Essay, *available at* http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited June 28, 2010); *see also* Richard Pérez-Peña, *U.S. Newspaper Circulation Falls 10%*, N.Y. TIMES, Oct. 27, 2009, *available at* http://www.nytimes.com/2009/10/27/business/media/27audit.html?_r=1 (last visited June 28, 2010) (noting that "[t]he two-decade erosion in newspaper circulation is looking more like an avalanche" and that "after years of slipping," circulation has "accelerated sharply downward").

[40] *PEJ 2010 State of the News Media Report*, Newspapers: Summary Essay, *available at* http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited June 28, 2010).

[41] *Id.*

and editing jobs disappeared during the past three years, falling from a total of 55,000 to roughly 40,000 and leaving newsrooms 27% smaller than they were in 2006.[42] During this same timeframe, daily newspapers also have had to take other drastic measures to curb expenses, such as shuttering domestic and foreign news bureaus[43] and significantly reducing the scope of their news coverage.[44] The near future does not appear to promise a significant reversal of these trends. According to PEJ's recent estimate, newspapers will devote $1.6 billion less annually to news reporting in 2010 than they were able to do just three years ago.[45]

Local broadcasters are experiencing similar economic challenges and, as a result, the broadcast industry also is undergoing a serious economic retrenchment that is affecting the ability to continue producing high-quality local news. As PEJ concluded, local television station revenues were "in free fall" in 2009, and by the end of the year, earnings had sunk to "levels not

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[42] *Id.*

[43] *Id.*, Newspapers: News Investment, *available at* http://www.stateofthemedia.org/2010/newspapers_news_investment.php (last visited June 28, 2010) (noting that the "[h]orrible recession and accelerating ad losses" forced "[s]tatehouse and Washington bureaus" to be "gutted or closed" at many newspapers in 2009 and early 2010). For example, under pressure to cut costs, *The Washington Post* announced in November 2009 that it would close its three remaining domestic bureaus in New York, Los Angeles, and Chicago. Howard Kurtz, *Washington Post Shutters Last U.S. Bureaus*, WASH. POST, Nov. 24, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/11/24/AR2009112403014.html (last visited June 28, 2010). Likewise, In October 2009, The Wall Street Journal revealed plans to close its Boston bureau. Shira Ovide, *Wall Street Journal Closes Boston Bureau*, WALL ST. J., Oct. 29, 2009, *available at* http://online.wsj.com/article/SB10001424052748704317704574503480514474764.html (last visited June 28, 2010).

[44] In the past two years, for example, *The Washington Post* and the *Atlanta Journal Constitution* eliminated their stand-alone Business Sections, *The New York Times* cut its separate Metro News and Sports sections, and the *Washington Times* slashed its coverage of local news, sports and features. *See* Robert MacMillan, *Washington Post to Cut Business Section*, REUTERS, Mar. 13, 2009, *available at* http://www.reuters.com/article/newsOne/idUSTRE52C5NP20090314 (last visited June 28, 2010); Russell Adams, *New York Times Sets Plan to Merge Sections*, WALL ST. J., Sept. 6, 2008, *available at* http://online.wsj.com/article/SB122066387069906077.html (last visited June 28, 2010); *Atlanta Newspaper to Merge Sections to Cut Costs*, BrietBart.com (Associated Press), Feb. 23, 2009, *available at* http://www.breitbart.com/print.php?id=D96HDKR00&show_article=1 (last visited June 28, 2010); Jennifer Harper, *TWT Announces New Structure, Layoffs*, WASH. TIMES, Dec. 3, 2009, *available at* http://www.washingtontimes.com/news/2009/dec/03/twt-announces-new-structure-layoffs/ (last visited June 28, 2010).

[45] *PEJ 2010 State of the News Media Report*, Newspapers: Summary Essay, *available at* http://www.stateofthemedia.org/2010/printable_newspaper_chapter.htm (last visited June 28, 2010).

seen since the mid-1990s."[46] Specifically, local television stations' earnings from on-air advertising—which represents more than 90% of their total revenues—is estimated to have dropped 22% in 2009, a decrease of 25% from the previous non-election year.[47] These losses are attributed in part to the fact that the local television news audience is eroding "at an accelerating pace,"[48] with many viewers turning to the Internet for their news content.[49] Indeed, just last week, it was reported that that the four major broadcast networks had the smallest number of prime-time viewers in two decades of record-keeping.[50] Due to the "structural challenge" facing the television industry, "[s]tations, after years of declines in audience, may be nearing a point where they no longer add new newscasts or new revenue opportunities."[51] Radio stations similarly have been facing financial setbacks, with 2009 on-air advertising revenues down 18% compared to 2008.[52]

Although the economic recession has exacerbated the downward trends in the newspaper and broadcast industries,[53] a full recovery of lost revenues is not anticipated in the aftermath of

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46 *Id.*, Local TV: Summary Essay, Economics, *available at* http://www.stateofthemedia.org/2010/printable_local_tv_chapter.htm (last visited June 28, 2010).

47 *Id.*

48 *Id.*, Local TV: Audience, *available at* http://www.stateofthemedia.org/2010/local_tv_audience.php (last visited June 29, 2010).

49 *See* Pew Research Center for People & the Press, *Audience Segments in a Changing News Environment: Key News Audiences Now Blend Online and Traditional Sources* 3 (Aug. 17, 2010) (showing that the percentage of adults who regularly watch local news has decreased from 65% in 1996 to 52% in 2008, while the percentage of adults who went online for news at least three days a week increased from 2% to 37% during that same period).

50 *See* David Bauder, *Broadcast Viewership Hits Record Low*, WASH. TIMES, July 8, 2010, *available at* http://www.washingtontimes.com/news/2010/jul/08/americans-arent-watching-tv/print/ (last visited July 9, 2010).

51 *PEJ 2010 State of the News Media Report*, Local TV: Summary Essay, Economics, *available at* http://www.stateofthemedia.org/2010/printable_local_tv_chapter.htm (last visited June 28, 2010).

52 *Id.*, Audio: Summary Essay at 2, *available at* http://www.stateofthemedia.org/2010/printable_audio_chapter.htm (last visited June 28, 2010).

53 In particular, advertisers have cut spending steeply in order to stem their own revenue losses. *See*, *e.g.*, Wayne Friedman, *Nielsen: U.S. Ad Spend Falls 11.5%*, MEDIA DAILY NEWS (MediaPost), Dec. 10, 2009, *available at* http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=118897 (last visited June 28, 2010) (reporting that overall U.S. advertising spending declined 11.5% during the first nine months of 2009, compared to the same time period a year ago).

the recession.[54] The media landscape promises to become even more diverse as new technologies proliferate in the marketplace, which will lead to greater fragmentation of audiences and increased competition with Internet companies and other new media outlets for advertising dollars and consumers' attention. Thus, in considering reforms to the NBCO rule, it is imperative for the FCC to bear in mind that the economic challenges facing these industries inevitably will continue in the coming years.

B. The FCC No Longer Can Ignore the Seismic Impact That the Internet Has Had on the News and Information Marketplace.

In addition to considering the economic challenges facing the newspaper and broadcast industries, the Commission must take into account the game-changing impact that the Internet has had, and certainly will continue to have, on the media marketplace. While the FCC has gone through this exercise in prior broadcast ownership reviews, the monumental presence of the Internet has not been reflected in the agency's previous decisions or in any lasting rule changes. Rather, during the same period in which the Internet first came into prominence and eventually came to dominate the media landscape, the FCC's ownership rules generally have remained frozen in time. NAA submits that, in the *2010 Quadrennial Review*, the Commission finally should implement a regulatory scheme that truly reflects the enormous competitive impact that the Internet is having on traditional media and the new paradigm that it already has caused with respect to the creation, dissemination, and consumption of news and information.

[54] *See*, *e.g.*, *Moody's Sees Smaller Ad Decline for Papers in 2010*, ABC NEWS (Associated Press), June 3, 2010, *available at* http://abcnews.go.com/Business/wireStory?id=10815869 (last visited June 28, 2010) (citing a report by Moody's Investors Service expecting the newspaper industry's advertising revenues to drop another 5 to 10 percent in 2010 and noting that its outlook could become negative in 2012 "as the snap-back in ad revenue brought by the economic recovery fades").

The Internet has become pervasive, with 74% of Americans having Internet access in their homes.[55] With respect to high-speed broadband access in particular, nearly two-thirds of American adults have broadband at home, representing a substantial increase in broadband connectivity rates in the past two years alone.[56] As shown in a 2010 "Participatory News Consumer Study" conducted by the Pew Internet & American Life Project, the tremendous growth in the availability of Internet access has allowed the Internet to achieve a position on par with traditional media outlets as one of Americans' primary sources of news and information.[57] The study concludes that "the internet has surpassed newspapers and radio in popularity as a news platform on a typical day and now ranks just behind TV."[58] Furthermore, the study confirms the central importance of the Internet as a news resource for an increasing segment of the population, finding that on a "typical day" 61% of Internet users access news online, while 71% do so "at least occasionally."[59] Among consumers that rely on only a single medium for news, 36% relied solely on the Internet, a higher figure than for any other medium.[60]

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[55] John B. Horrigan, Ph. D., *Broadband Adoption and Use in America*, Omnibus Broadband Initiative ("OBI") Working Paper Series No. 1, at 3, 13 (Feb. 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf (last visited June 28, 2010) ("Broadband Adoption Working Paper") (finding that 74% of Americans have Internet access at home).

[56] FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010), Chapter 3: Current State of the Broadband Ecosystem, at 23, *available at* http://download.broadband.gov/plan/national-broadband-plan-chapter-3-current-state-of-the-broadband-ecosystem.pdf (last visited June 28, 2010); *see also* Broadband Adoption Working Paper at 3 (finding that 65% of American adults use high-speed Internet connections to go online from home); John Horrigan, *Home Broadband Adoption 2009,* at 3, 9 (June 2009), *available at* http://www.pewinternet.org/~/media//Files/Reports/2009/Home-Broadband-Adoption-2009.pdf (last visited June 28, 2010) (noting that home broadband adoption stood at 55% as of May 2008).

[57] *See* Pew Internet & American Life Project, *Understanding the Participatory News Consumer*, at 2 (Mar. 1, 2010) *available at* http://www.pewinternet.org/~/media//Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf (last visited June 28, 2010) ("Participatory News Consumer Study") ("Six in ten Americans (59%) get news from a combination of online and offline sources on a typical day, and the internet is now the third most popular news platform, behind local television news and national television news.").

[58] *Id.* at 3.

[59] *Id.* at 10.

[60] *Id.* at 11. With respect to national news in particular, the Internet is now well-established as an integral platform for national news consumption. Notably, fully 73% of Internet users reported getting news and information about

Not only has the Internet's accessibility contributed to its importance as a source of news and information, but its interactivity also has made the Web an increasingly vital part of many Americans' daily news consumption. The interactive nature of the Internet allows users to filter and select content specific to their interests and to contribute their own information, commentary, and opinions. A recent study found that today more than 50% of social networking users get news from people they follow on popular sites like Facebook and MySpace.[61] Beyond consumption, the interactive nature of the Internet also helps users to participate in news creation. A full "37% of Internet users have contributed to the creation of news, commented on it, or disseminated it via postings on social media sites like Facebook or Twitter."[62] The Commission appropriately has recognized these trends, noting that "Twitter and other social media have emerged as powerful tools for disseminating information and mobilizing citizens."[63]

Internet technology also has facilitated the development of many new local media ventures. In the wake of the recession-driven downsizing of traditional media providers over the past couple of years, these startups are playing an important role in the evolving journalism community.[64] In particular, community, niche, and citizen news sites have proliferated, offering

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national events online. *Id.* at 24; *see also* Broadband Adoption Working Paper at 16 (reporting that 73% of all Internet users and 77% of broadband users specifically indicated that they use the Internet to get international or national news).

[61] *See* Participatory News Consumer Study at 40, 44 (also noting that 23% of this group specifically gets news from news organizations or individual journalists that they follow on social networking sites).

[62] *Id.* at 2; *see id.* at 40, 44 (finding that on a typical day, 51% of social networking site users get news from people they follow on sites such as Facebook or MySpace, 23% of this group specifically gets news from news organizations or individual journalists that they follow on social networking sites, and 17% of Internet users have posted links and thoughts about news on a social networking site).

[63] *2010 Quadrennial Review NOI* ¶ 10.

[64] As recently noted in a Columbia School of Journalism analysis, "[t]he Internet and those seizing its potential have made it possible—and often quite easy—to gather and distribute news more widely in new ways. This is being done not only by surviving newspapers and commercial television, but by startup online news organizations, nonprofit investigative reporting projects, public broadcasting stations, university-run news services, community news sites with citizen participation, and bloggers. Even government agencies and activist groups are playing a role. Together, they are creating not only a greater variety of independent reporting missions but different definitions of news." Leonard Downie Jr. & Michael Schudson, Columbia School of Journalism, *The Reconstruction of American*

innovative "hyperlocal" community coverage that cannot be efficiently produced by major media organizations. Estimates suggest that there are now more than 1,500 citizen journalism sites,[65] along with over 4,700 niche news sites.[66] While these ventures generally cannot boast the same level of consistent, professional coverage as traditional media organizations,[67] they are increasingly providing original reporting and content,[68] have facilitated more efficient news distribution,[69] significantly have expanded the availability of perspectives and commentary on local issues, and in many instances have become important additional gatekeepers within the news cycle. In direct support of the FCC's localism goals, these local operations also have created a whole new means for consumers to become involved and engaged in the production and consumption of local news.

Journalism 2 (2009), *available at* http://www.journalism.columbia.edu/cs/ContentServer?pagename=JRN/Render/DocURL&binaryid=1212611716626; *see also PEJ 2010 State of the News Media Report*, Executive Summary, *available at* http://www.stateofthemedia.org/2010/chapter%20pdfs/2010_execsummary.pdf (last visited June 28, 2010) (noting that "[c]itizen journalism at the local level is expanding rapidly and brimming with innovation").

65 Pew Project for Excellence in Journalism, *The State of the News Media 2008*, Online: Citizen Media (2008), *available at* http://www.stateofthemedia.org/2008/narrative_online_citizen_media.php?cat=6&media=5 (last visited July 6, 2010). The 2010 Pew study suggests that this number is growing. *See PEJ 2010 State of the News Media Report*, Special Report: Community Journalism, *available at* http://www.stateofthemedia.org/2010/specialreports_community_journalism.php (last visited July 6, 2010) (citing 2008 State of the Media Report and noting that "highly promising citizen and alternative sites are emerging daily").

66 *PEJ 2010 State of the News Media Report*, Newspapers: Economics, *available at* http://www.stateofthemedia.org/2010/newspapers_economics.php (last visited June 29, 2010).

67 Stephen Lacy, Margaret Duffy, Daniel Riffe, Esther Thorson & Ken Fleming, *Citizen Journalism Web Sites Complement Newspapers*, NEWSPAPER RESEARCH J. 42-43 (Spring 2010) (reporting that "citizen journalism Web sites (news and blog sites) are generally not acceptable substitutes for daily newspaper Web sites").

68 *See, e.g., PEJ 2010 State of the News Media Report*, Special Report: Community Journalism, *available at* http://www.stateofthemedia.org/2010/specialreports_community_journalism.php (noting that "43% of the lead stories [in a sixty-site sample of the most highly-regarded community journalism sites] were new, original reports").

69 *Id.*; *see also* Pew Project for Excellence in Journalism, *How News Happens: A Study of the News Ecosystem of One American City* (Jan. 2010), *available at* http://www.journalism.org/analysis_report/how_news_happens (last visited July 12, 2010) ("*PEJ Baltimore Local News Study*").

Although there are thousands of startup media sites dedicated to local journalism across the country, a list of a few examples reveals the impressive capabilities of these new contributors:[70]

- The *MinnPost* (www.minnpost.com) is a nonprofit startup by professional journalists that focuses its content on subjects related to Minnesota, and especially the Twin Cities metropolitan area. Although the site was started with angel grants and foundational support, it boasts more than 1,700 independent donors.[71]

- The *New Haven Independent* (www.newhavenindependent.org) offers community news five days a week about the town of New Haven, Connecticut. It features "daily reports on news about New Haven neighborhoods, government, politics, criminal justice, schools, business, arts and culture."[72] The *New York Times* has said that its founder, Paul Bass "has become one of the most watched exemplars of scrappy, low-budget, high-impact local journalism."[73]

- *NewJerseyNewsroom.com* (www.newjerseynewsroom.com) was started by a group of 40 journalists who perceived a gap in local news stories. They focus much of their coverage on New Jersey, but also publish articles based upon the interests of their community of readers.[74]

- *New Castle Now* (www.newcastlenow.org/) was started when the local newspaper in New Castle, NY went out of business. The website "produces a full range of news and commentary and listings about the local community along with citizen comments."[75]

- The *Appalachian Independent* (http://www.appindie.org/) is based out of Frostburg, Maryland. It was started with a foundational grant, and aims to provide "edgy" local news that is absent from major newspaper coverage.[76]

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[70] For additional examples, *see* Future of Journalism Comments at 16-17.

[71] *See* MinnPost, *About Us*, http://www.minnpost.com/about/ (last visited June 29, 2010).

[72] *See* New Haven Independent, *About The New Haven Independent*, http://newhavenindependent.org/index.php/about_us/ (last visited June 29, 2010).

[73] Peter Applebome, *It Won't Line a Bird Cage, but It's Still News*, N.Y. TIMES, Feb. 18, 2010, at A19, *available at* http://www.nytimes.com/2010/02/18/nyregion/18towns.html.

[74] *See* NewJerseyNewsroom.com, *About Us*, http://www.newjerseynewsroom.com/about-us (last visited June 29, 2010).

[75] Pew Project for Excellence in Journalism, *The State of the News Media*, Special Reports: Citizen-Based Media (2009), *available at* http://www.stateofthemedia.org/2009/narrative_special_citzenbasedmedia.php?cat=0&media=12 (last visited June 29, 2010).

[76] *See* The Appalacian Independent, *AppIndie's History*, http://www.appindie.org/index.php/our-history (last accessed June 29, 2010).

- *Oakland Local* (http://oaklandlocal.com) features coverage of community issues such as "the environment, food, development and education," and boasts as many as 65,000 page views in a month, with more than 25,000 unique visitors.[77]

The bottom line is that the Internet has catalyzed scores of news outlets for the American public. News consumers have the flexibility to make unprecedented personalized choices about how they want to consume content. Recent studies suggest that they are taking advantage of this opportunity, and combining consumption across media platforms.[78] As a result, new media providers fundamentally have changed the way that national and local news distribution works in this country, and this new paradigm at last should be reflected in the FCC's long outdated broadcast ownership rules.

V. ELIMINATING THE NBCO BAN WILL FOSTER EACH OF THE FCC'S STATED PUBLIC INTEREST OBJECTIVES.

A. NBCO Restrictions Are Inimical to the FCC's Localism Goals.

Throughout the past decade of cross-ownership analysis, the results have been consistent and clear: cross-ownership significantly enhances the quality and quantity of local news coverage provided by newspaper-owned television and radio outlets. This conclusion has been validated, exhaustively and repeatedly, both by FCC-commissioned empirical analyses[79] and by

[77] *PEJ 2010 State of the News Media Report*, Special Reports: Community Journalism, *available at* http://www.stateofthemedia.org/2010/specialreports_community_journalism.php (last visited July 6, 2010).

[78] *See* Pew Research Center for People & the Press, *Audience Segments in a Changing News Environment: Key News Audiences Now Blend Online and Traditional Sources,* at 1-5 (Aug. 17, 2010) (noting that for the first time, a majority of Americans "consider themselves 'news grazers'" who consumer news throughout the day, and that an increasing number of Americans use a combination of new and traditional news sources).

[79] Most recently, in connection with the 2006 Quadrennial Review, five of the 13 empirical studies commissioned by the FCC provided evidence that cross-ownership advances broadcast news and community oriented programming. *See* Media Ownership Studies Comments. For example, one of the studies found that "cross-owned stations show 7%-10% more local news than do non-cross-owned stations" and that "cross-owned stations broadcast about 25% more coverage of state and local politics." *See* Jeffrey Milyo, *Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, FCC Media Study 6, at 1 (Sept. 2007), *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf (last visited June 20, 2010). In addition to the five studies released by the Commission in 2007, one of the Media Ownership Working Group ("MOWG") studies commissioned by the FCC in 2002 similarly concluded that "[a]ffiliates co-owned with newspapers experience noticeably greater success under our measures of quality and quantity of local news programming than other network affiliates." Thomas C. Spavins, *The Measurement of Local Television News and Public Affairs Programs*,

real-world examples from existing cross-owners.[80] While the proposition that newspaper cross-ownership boosts localism already is firmly established, NAA is confident that a definitive and positive correlation will be confirmed once again if the agency pursues further study on this issue.

In light of this incontrovertible evidence, the FCC commendably has acknowledged the NBCO rule's incompatibility with its localism objectives. In 2003, the Commission found that that "efficiencies may increase the amount of diverse, competitive news and local information to the public and allow the combined entities to compete more effectively in an increasingly fragmented and competitive market."[81] Based on this information, the agency ultimately concluded that "the current rule is not necessary to promote our localism goal and . . . and in fact, is likely to hinder its attainment."[82] The Third Circuit agreed that the agency's localism mission was incompatible with the NBCO rule,[83] and the Commission reached a similar conclusion in the

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at 2 (Sept. 2002), *available at* http://www.fcc.gov/ownership/materials/already-released/measurement090002.pdf (last visited July 5, 2010). Specifically, the study reveals that newspaper-owned affiliates provide an average of 50% more weekly hours of local news and public affairs programming than their standalone counterparts and substantially outperform other stations in news ratings and industry awards. *See id.* at 5, 6. Likewise, a 2003 Project for Excellence in Journalism study found that television stations that are cross-owned with a same-market daily newspaper are more than twice as likely as other stations to receive an "A" grade. Project for Excellence in Journalism, *Does Ownership Matter in Local Television News? A Five-Year Study of Ownership and Quality Cross Ownership,* at 1 (April 29, 2003), *available at* http://www.journalism.org/node/243 (last visited July 5, 2010). On the whole, this study determined, cross-owned stations also are more likely to do stories focusing on important community issues and to provide a wide mix of opinions. *See id.*

[80] In at least four separate sets of comments filed over the past decade, NAA has provided detailed examples of the many ways in which existing newspaper/broadcast cross-owners are able to increase and enhance their local news offerings. *See, e.g.,* NAA 2001 Comments at Section IV.A; Reply Comments of the Newspaper Association of America, MB Docket No. 01-235, at Section II (filed Feb. 15, 2002); Comments of the Newspaper Association of America, MB Docket No. 02-277, at Section III.A. (filed Jan. 2, 2003) ("NAA 2003 Comments"); NAA 2006 Comments at Section III.C.1.

[81] *2003 Order*, 18 FCC Rcd at 13,760-761 (¶ 347).

[82] *Id.* at 13,752 (¶ 337).

[83] *Prometheus*, 373 F.3d at 398-99 (agreeing that "[n]ewspaper/broadcast combinations can promote localism" and that arguments to the contrary failed to "unsettle the Commission's conclusion that the newspaper/broadcast cross-ownership ban undermined localism").

2006 Quadrennial Review.[84] In spite of these repeated and well-supported conclusions that the NBCO rule is not only unhelpful, but actually harmful, to localism, the FCC has failed to respond in a meaningful way. NAA submits that the long-proven benefits inherent in cross-ownership should be a principal consideration in this proceeding, and finally should be reflected in substantive rule changes.

B. <u>Cross-Ownership Restrictions Hinder the Provision of Investigative Journalism and Other Forms of In-Depth News Reporting to Local Communities.</u>

NAA agrees with the FCC's suggestion in the *NOI* that, separate and apart from its localism goal, it should consider the impact of its rules on investigative journalism.[85] In so doing, the agency must recognize that restrictions on cross-ownership undermine the potential quality and quantity of investigative news reporting and should be eliminated.

Through its First Amendment jurisprudence, the Supreme Court has identified two primary benefits that investigative journalism offers to society. First, watchdog journalists can expose wrongdoing to the public.[86] Second, by publicizing such news, the press also can help to deter future transgressions.[87] While this secondary benefit is inherently intangible, it

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[84] Reiterating its 2003 conclusion "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," the agency "continue[d] to find evidence" that permitting some cross-ownership "can preserve the viability of newspapers without threatening diversity" and "can improve or increase the news offered by the broadcaster and the newspaper." *2008 Order*, 23 FCC Rcd at 2032-23 (¶ 39). In this vein, the FCC found that record evidence "shows that newspaper/broadcast combinations can create synergies that result in more news coverage for consumers." *Id.* at 2022 (¶ 19).

[85] *See 2010 Quadrennial Review NOI* ¶ 78.

[86] *See*, *e.g.*, *New York Times v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring) ("Only a free and unrestrained press can effectively expose deception in government."). For examples of noteworthy, prizewinning investigative journalism in recent years, *see* Future of Journalism Comments at 5-7.

[87] *See*, *e.g.*, *Leathers v. Medlock*, 499 U.S. 439, 447 (1991) ("The press plays a unique role as a check on government abuse.").

nevertheless represents an important check on the government that directly serves the public interest.[88]

In analyzing these benefits in the context of the instant proceeding, it bears emphasis that investigative journalism is an incredibly expensive and resource-intensive undertaking. In order to produce original, in-depth news reports, media outlets typically must engage in months of costly and time-consuming fact-gathering and research. By limiting the ability of newspaper publishers and broadcasters to function efficiently and to spread operational and newsgathering costs across outlets, the NBCO rule needlessly precludes these local media from devoting their limited resources to in-depth reporting. As a direct result of the rule, news organizations are forced to spend more money on back-office administration, and less money on expensive investigative news stories that are directly in the public interest. The rule also precludes outlets that simply could not shoulder the cost of investigative journalism on a stand-alone basis from doing so by relying in part on cross-ownership.

Further, newspapers play a critical role in the provision of investigative and in-depth journalism. Many downstream media channels are practically dependent upon the original reporting efforts of the traditional media, especially newspapers, for their investigative and in-depth story generation.[89] Recent studies have demonstrated this fact in a variety of ways. One recent Pew Internet report found that over 99% of all blog news links were to traditional news

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[88] *See generally* Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. B. FOUND. RES. J. 521 (1977).

[89] *See* Suzanne M. Kirchoff, Cong. Research Serv., *The U.S. Newspaper Industry in Transition* 9 (2009) ("Many radio and television stations piggyback on reporting done by much larger newspaper staffs, both locally and nationally, and will be hardpressed to pick up the slack—especially as they impose their own cost-cutting in response to falling revenues.").

media providers, namely newspapers or broadcasters.[90] Another targeted local study in Baltimore had a similar result, painting the picture of a news ecosystem with newspapers as its bedrock. Researchers found that almost 95% of the local journalism in Baltimore originated with traditional media sources, predominantly newspapers.[91] Although various digital media sources greatly expanded the range of news offerings for consumers, these new media outlets often were reliant upon the traditional media to research and create the stories.[92]

These studies provide a concrete illustration of the common-sense proposition that, through cross-ownership, investigative journalism inherently will be spread to and provided by a larger number of broadcast outlets. More broadly, the studies also demonstrate that the NBCO rule affects not only newspapers and broadcasters, but the entire news ecosystem. By inhibiting the creators of the majority of original investigative and in-depth content, the NBCO rule impairs the production and distribution of important public interest journalism throughout radio, broadcast television, and new media.

C. <u>The NBCO Rule Does Not Protect or Advance Competition.</u>

The FCC asks a broad range of questions in the *NOI* concerning how it should determine whether its broadcast ownership rules increase or decrease competition.[93] However the FCC chooses to frame its analysis in this regard, NAA submits that there can be no question that restrictions on newspaper/broadcast cross-ownership are not necessary to protect, and do not in any sense promote, competition. If anything, the ban is an impediment to a truly competitive

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90 Pew Project for Excellence in Journalism, *New Media, Old Media: The Blogosphere*, May 23, 2010, *available at* http://www.journalism.org/analysis_report/blogosphere (last visited Jun. 23, 2010). Newspapers originated approximately twice as many stories as broadcasters did. *Id.*

91 *See PEJ Baltimore Local News Study*.

92 *See id.*

93 *See 2010 Quadrennial Review NOI* at ¶¶ 31-53.

marketplace because it precludes traditional media from fully and effectively vying against their ever-growing, and largely unregulated, rivals.

In its past broadcast ownership reviews, the Commission repeatedly has found that newspapers and broadcasters are not direct rivals for advertising revenue and, accordingly, that the NBCO rule does not impact competition.[94] An empirical study commissioned by the FCC in conjunction with the 2002 Biennial Review, which demonstrates that local advertisers do not view newspapers and broadcast outlets as close substitutes, amply supports these prior conclusions.[95] Moreover, the Third Circuit affirmed the FCC's finding that newspaper/broadcast combinations do not adversely affect competition, and this issue is not under consideration in the pending appeal of the *2008 Order*.[96] Accordingly, it is not necessary for the Commission to fully re-examine this well-settled conclusion yet again in this proceeding.

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[94] As the Commission succinctly stated in the *2008 Order*, "the Commission found [in the *2003 Order*] that newspaper/broadcast combinations cannot adversely affect competition in any relevant product market. We continue to support this conclusion." *2008 Order,* 23 FCC Rcd at 2032-33 and n. 131 (¶ 39). Going back to the *2003 Order*, the Commission found "that most advertisers do not view newspapers, television stations, and radio stations as close substitutes," and "newspaper-broadcast combination[s], therefore, cannot adversely affect competition in any relevant product market." *2003 Order*, 18 FCC Rcd at 13749, 13753 (¶¶ 332, 341). The Commission further observed that "the synergies and cost reductions of joint-ownership may translate into increased, rather than decreased competition within each service," and that "[b]y precluding the efficiencies inherent in combinations, the rule likely harms consumers by limiting the development of new, innovative media services that would flow from a more efficient, combined entity." *Id*. at 13,752 (¶ 337).

[95] Specifically, one of the FCC-commissioned studies analyzed whether there is a single local media market or several distinct markets for newspaper, radio, and television advertising. C. Anthony Bush, *On the Substitutability of Local Newspaper, Radio, and Television Advertising in Local Business Sales*, MB Docket No. 02-277 (September 2002) ("Study #10), *available at* http://www.fcc.gov/ownership/materials/already-released/substitutability090002.pdf (last visited July 9, 2010). Using a random sample of 45 DMAs and relying on various sources of local radio, television, and newspaper advertising revenue and price data, Study # 10 constructed a model to evaluate the behavior of local businesses in purchasing advertising from each of these media. For a theoretical local business, Study # 10 specifically derived the elasticity of substitution as well as the cross-price elasticity between these media. As Study # 10 explained, an elasticity of zero would indicate that there is no substitutability between two media, while perfect substitution would be represented by the theoretical limit of infinity. *Id.* at 11-12. Based on this model, Study # 10 concluded that there is "weak substitutability" between newspapers and broadcast outlets for purchasers of local advertising. *Id.* at 12. Compared to the theoretical limit of infinity, Study # 10 found that the elasticity of substitution between newspaper retail advertisements and local radio ads was merely 1.17 and that the elasticity of substitution between newspapers and television stations was only .91. The Study also noted that while these numbers were "very small," they were statistically significant. *Id.* at 12.

[96] *See Prometheus*, 373 F.3d at 399-400.

Because advertising continues to be the primary revenue source for both newspaper publishers and broadcasters, NAA believes that it is appropriate for the FCC to continue to use local advertising as the relevant product market to assess the competitive impact of newspaper/broadcast cross-ownership restrictions. Since the Commission last closely analyzed this issue, the local advertising marketplace has become even more diverse and fragmented and, accordingly, it is less likely today that advertisers would view daily newspaper and broadcast outlets as close substitutes.[97] Given the differing attributes of the wide range of outlets now available to local advertisers, local businesses have the ability to employ a multi-media advertising strategy in which they use newspapers, broadcast stations, and other options for different purposes. As NAA members will attest, advertisers generally have strong incentives to select one or more of the many available local media based on the specific information to be conveyed, the audience they seek to reach, and budgetary considerations.[98]

If, on the other hand, the Commission were to conclude that advertisers regard radio and television stations as sufficiently close substitutes to daily newspapers to place them in the same product market, it also would be compelled to take into account all other forms of media that local advertisers view as equally close substitutes. Any advertising market that is broad enough to encompass such distinct media as newspapers and broadcast stations also must cover a wide range of alternatives, including at a minimum direct mail, all forms of online advertising, out-of-home/outdoor advertising, local cable systems, Internet Yellow Pages, local magazines, mobile marketing, and email marketing. The presence of these many additional outlets is sufficient to

[97] To give just one example of the fast-paced changes in this arena, the Interactive Advertising Bureau recently released a study concluding that spending on Internet advertising in 2008, which amounted to a staggering $23.4 billion, surpassed the amount spent on radio advertising, outdoor advertising, and the Yellow Pages. Hamilton Consultants, *Economic Value of the Advertising-Supported Internet Ecosystem*, published by the Interactive Advertising Bureau (June 10, 2009), *available at* http://www.iab.net/media/file/Economic-Value-Report.pdf (last visited July 12, 2010).

protect against any prospect of "market dominance" by newspaper/broadcast combinations, and therefore ensures that there is no need for cross-ownership restrictions.

The FCC also inquires in the *NOI* whether it should examine competition from the perspective of consumer welfare and how the declining audience shares of traditional media outlets vis-à-vis the Internet and other "new media" should factor into its analysis.[99] As shown above, the Internet has siphoned off a tremendous amount of advertising dollars from traditional media.[100] Thus, while newspapers and broadcasters are not direct rivals for advertising revenue, both media are facing intense advertising competition from the Internet and other alternative media. Particularly when combined with the impact of the recent economic recession, this competition seriously has eroded the ability of newspapers and broadcasters to fund local journalism, to the obvious detriment of consumer welfare. Given these competitive trends, it is all the more imperative for the Commission to realize that the continued existence of the NBCO rule unnecessarily limits the resources traditional media can devote to the creation and improvement of locally-oriented informational content. In this respect, the NBCO rule serves as a substantial obstacle to a competitive marketplace and, by extension, to consumer well-being.

D. The Ban Has Never Been Shown to, and in Fact Does Not, Promote Viewpoint Diversity.

After determining in the *2008 Order* that the NBCO rule does not serve either competition or localism,[101] the FCC justified its decision to retain the rule solely on the rationale

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[98] *See* NAA 2003 Comments, at Section IV.

[99] *See 2010 Quadrennial Review NOI* ¶¶ 33-38, 45-51.

[100] *See supra* Section IV.A.

[101] *See 2008 Order,* 23 FCC Rcd at 2033, n.131 (¶ 39) (noting that the FCC continues to support the conclusion that "newspaper/broadcast combinations cannot adversely affect competition in any relevant product market"); *see also id*. at 2032 (¶ 39) (finding that newspaper/broadcast cross-ownership "can improve or increase the news offered by the broadcaster and the newspaper"); *see id*. at 2034 (¶ 42) ("On balance, we believe the evidence suggests that some newspaper/broadcast cross-ownership combinations can enhance localism.").

that the restriction remains necessary to preserve viewpoint diversity. This determination was devoid of evidentiary support and, instead, was propped up by the agency's assertions that it was "not in a position to conclude that ownership can *never* influence viewpoint" and that it was unable to "quantify nontraditional media outlets' contribution to diversity."[102]

The supposition that cross-ownership restrictions are needed to preserve viewpoint diversity is contrary to both logical reasoning and empirical evidence. As NAA and numerous existing cross-owners have explained in prior proceedings,[103] commonly owned newspapers and broadcasters do not tend to present monolithic viewpoints and in fact have strong incentives to differentiate the perspectives they offer to local audiences. One of the studies commissioned by the FCC in the 2006 Quadrennial Review confirms that these incentives exist and are embodied in the practices of existing newspaper/broadcast cross-owners. The study, which analyzed the partisan "slants" of both cross-owned and independently owned television stations, conclusively determined that cross-ownership does not have a statistically significant effect on viewpoint diversity.[104]

Even more fundamentally, such ill-defined concerns cannot justify retention of restrictions on newspaper/broadcast cross-ownership, much less the stringent rule adopted in the *2008 Order*. If the FCC cannot pinpoint the existence of an actual marketplace problem that is

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[102] *Id*. at 2039 (¶ 49).

[103] *See, e.g.,* NAA 2006 Comments, at Section III.C.2.

[104] *See* Jeffrey Milyo, *Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, FCC Media Study 6, at 25 (Sept. 2007), *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf (last visited June 20, 2010). The study examined evening newscasts on major network affiliates in every market with a cross-owned newspaper/television combination for the same three day period during the week prior to the November 2006 general election. The study then evaluated various factors - including the speaking time of candidates, time devoted to all candidate coverage, time devoted to issues favored by one party or the other, and time devoted to polls favoring one party or the other - to determine the effect of cross-ownership on the partisan "slant" reflected in the newscasts. Analyzing this data, Professor Milyo found that "newspaper cross-ownership is not consistently and significantly related to partisan slant in local television news." *Id.* at 29-30. The study also found that cross-owned stations devote more time to local news coverage overall than non-cross-owned stations. *See id.* at 17, 30.

affirmatively solved through a cross-ownership prohibition, then both longstanding administrative law principles and Section 202(h) dictate that the NBCO rule must be eliminated.[105] This time, NAA submits, it is imperative that the FCC define its heretofore amorphous "viewpoint diversity" concerns and carefully consider whether any such concerns truly justify retention of NBCO restrictions. A careful analysis of this issue will demonstrate definitively that the answer is no.

In particular, NAA believes that the FCC's analysis of viewpoint diversity should focus on the breadth of options available to consumers in today's marketplace, rather than the relative popularity of specific outlets at any given point in time. So long as local audiences have an adequate variety of local news and informational choices at their disposal, the audience reach, market share, or popularity of one outlet versus another should be irrelevant. Accordingly, there is no need to weight the media outlets in any given community in order to assess viewpoint diversity. Once diversity is viewed from this logical perspective, there can be no doubt that consumers will have access to a more than sufficient range of perspectives on any given national or local issue, regardless of the existence of the outdated NBCO ban.

[105] *See, e.g, Quincy Cable TV, Inc. v. FCC*, 768 F.2d 1434, 1463 (D.C. Cir. 1985) ("[T]he Commission has failed entirely to determine whether the evil the rules seek to correct 'is a real or merely a fanciful threat.'") (citing *HBO, Inc.*, 567 F.2d 9, 50 (D.C. Cir. 1977)).

VI. CONCLUSION

NAA urges the FCC to finally eliminate or, at a minimum, materially modify the NBCO rule in this proceeding. It is now more critical than ever for the FCC to examine the rule in light of marketplace realities and to finally remove the uncertainty that has surrounded this restriction for well over a decade.

Respectfully submitted,

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