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

In the Matter of	)	
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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. 09-192
	)	
RFQ for Media Ownership Studies	)	MB Docket No. 09-182
	)	

Comments of
Communications Workers of America
The Newspaper Guild/CWA
National Association of Broadcast Employees and Technicians/CWA

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SUMMARY

The Commission's broadcast media ownership rules are based on the First Amendment principle that the widest possible dissemination of information from diverse and antagonistic sources is essential to public welfare. As the Commission has repeatedly stated and as the Courts have consistently confirmed, common ownership of media reduces viewpoint diversity and competition. In 2004, the Third Circuit Court of Appeals ("Third Circuit Court") in *Prometheus v FCC* affirmed the authority of the Commission to regulate media ownership to foster viewpoint diversity, local identity, and prevent undue concentration of economic power. The Third Circuit Court acknowledged that structural rules limiting concentrated ownership of the media are necessary to protect and promote the free and vibrant press that is so vital to our democracy.

The Commission adopted new language in 2008 that weakened the rules for limits on the newspaper/television ownership in the top 20 DMAs. It also provided an exception for the cross-media ownership ban for failed or failing properties that applies outside the top 20 DMAs. While the rule changes have just gone into effect, we believe they went too far by creating a presumption that a combination in the top 20 markets is in the public interest. The CWA acknowledges the newspaper industry is in the midst of a transition of its financial model but to allow more cross-ownership is not necessary at this time. The CWA believes the exception for failed or failing properties should apply to all DMAs.

Even with the explosive growth of social media, such as YouTube, Twitter and Facebook, and the growing number of blogs and web sites devoted to commenting on the news, local newspapers and the handful of local television newscasts continue to be the dominant source by

which Americans get news and information about their local communities. Newspapers are still an important source of local news and information despite the crumbling business model.

The evolving landscape of how citizens consume news, information and entertainment makes judging appropriate rules for broadcast ownership much more complicated. Until the Commission analyzes the media ownership studies proposed by the Media Bureau outlined as part of this 2010 Quadrennial Regulatory Review, the Commission should not take any steps that would further media consolidation. Should the evidence show that more consolidation will not foster competition, localism or diversity, the ability to undo any newly consolidated properties would be like unscrambling an egg. As long as broadcast spectrum is limited, the Commission can best promote competition by limiting broadcast owners' abilities to dominate local markets.

It has been repeatedly shown there is a dearth of minority-owned or female-owned broadcast stations. The relaxing of media ownership restrictions has not led to broadcast ownership that is more reflective of the communities they serve. Nor will any new easing of restrictions of ownership rules improve diversity of ownership for minorities and women. This has a negative impact on the diversity of voices for local news and information for citizens.

While the platform for most local information once was analog broadcast television and radio and daily newspapers, technology now allows us to find local information on multiple platforms. But recent studies show most local news is still produced by local newspapers and broadcasters, regardless of the platform. It is also still true that newspapers and broadcasters are the most viewed sources for local news and information, regardless of the platform.

Even if other platforms of delivery, such as broadband, cable and cell phones contained the vibrant sources of local news as some claim, too much of the population would be left behind if the Commission allowed more media consolidation in the traditional broadcast and newspaper industries. Until broadband is universally accessible, the Commission must greatly discount alternative platforms as a source for local news and information or risk forcing the one-third of the population without broadband to contend with more media concentration in the “offline” world.

Relaxation of television and radio ownership limits over the past decade accelerated the pace of media consolidation and concentration that, in turn, facilitated a decline in both the quality and quantity of local news, information and entertainment programming. Studies of local radio markets illustrate that concentration has resulted in less diversity, higher advertising prices and less local content.

Although too much concentration of ownership in local radio and television duopolies has already meant less diversity of voice, the CWA was relieved the Commission didn’t relax the rules further in 2008. However, the CWA is alarmed by trends in local news and information for television that has occurred and has meant less diversity of voice for citizens even without relaxing the rules.

Television owners recently created local news service (“LNS”) arrangements. A LNS arrangement involves two or more stations and allows a single crew to cover events for participating stations. The first LNS arrangement began in 2009 and the arrangements now exist in 19 DMAs. The agreements reduce diversity and competition in local newsgathering. Unlike a proposed duopoly which must be reviewed by the Commission, participating stations do not share LNS agreements with the Commission. The results of LNS arrangements has been a loss of diversity and competition in news gathering. Diversity and competition are threatened because the LNS arrangements mean that identical stories are aired on all newscasts and are jointly owned. The arrangements eliminate participating stations from an incentive to do enterprise journalism on shared stories. LNS arrangements have allowed television stations to reduce crews, leaving fewer staff for other, non-LNS stories. At the very least, an LNS arrangement is misleading to viewers who watch the local news broadcast because it is not clear the segment is part of a shared reporting arrangement.

To make LNS arrangements transparent, the Commission should investigate whether or not the agreements are in the public interest and require each station to place a copy of the agreement in the station's public file and posted online by the Commission. The Commission should require the stations to disclose on air contributions from joint news gathering. The Commission should implement its rule requiring a standardized programming report from broadcasters (Form 355) and include LNS arrangements as a "similar agreement." The information gathered can help the Commission assess what, if any, additional rules are necessary to protect local competition and diversity.

Another area of concern for local television news are shared services agreements ("SSA") between local television stations. SSAs were created around 2004 after the Court of Appeals for the Third Circuit blocked the Commission's relaxation of the ownership rules. SSAs have the same detrimental impact on diversity, competition and localism as duopolies.

An SSA usually includes a local marketing agreements ("LMA" or "time brokerage agreement") and a joint service agreements ("JSA"). The result is a single news operation for two or three stations. The Commission's attribution rules were amended in 1999 to limit a brokering station from supplying more than 15 percent of the broadcast time on a brokered station. In most instances, the 15 percent limit has allowed the brokering station to provide all the local news on a brokered station under an LMA. The Commission should reduce the 15 percent threshold to prevent television stations from outsourcing local news operations. The outsourcing reduces competition in the local market. A lower attribution threshold would still allow some news content to be provided by the top four local stations to smaller, independent television stations that otherwise wouldn't have any news.

The Joint Sales Agreement (JSA) allows a brokering television station to buy time on a brokered station. When combined with an LMA, this allows the brokering station to control the local newscasts of the brokered station. The typical brokered station is left without staff to do its own reporting. The incentive for the brokered station to compete with the brokering station would necessitate that it employ staff to do reporting, which would defeat the purpose of the JSA agreement with the brokering station. The Commission should reopen the docket from 2004 and finalize the rule that would treat a JSA the same for television as it has applied to radio since 1999.

The reaction of broadcast and newspaper owners to the worst economic downturn since the Great Depression has been to try to keep profit margins up by devoting fewer resources to newsgathering and in-depth investigation and analysis. The answer to financial challenges is not to allow ever more consolidation which will only result in fewer voices and fewer resources devoted to news. Broadcasting financials seem to have stabilized and are poised to grow. Media owners continue to believe that relaxation of ownership rules will allow them to realize "synergies" from joint operations. While common ownership of media properties may enhance efficiencies, the Commission's charge is to protect and enhance media diversity, competition, and local identity—not efficiency. Newspaper/broadcast cross-ownership of properties in local markets has not yet provided the boost to the bottom line that media owners promised. In many cases, the increased debt from purchases has led to less news and bankruptcy, as in the case of the Tribune Company.

Local television and newspapers do not have to merge to survive and grow. Rather, newspapers can ensure financial viability and stem the decline in readers and viewers with a strategic focus on quality and innovation. Newspaper chains are caught in a vicious cycle of decline which is mostly related to the debt taken on by the industry. To make debt payments or to try to keep profit margins up they cut staffing and resources, raise subscription rates and reduce circulation area. But, as the quality of the product declines, readers have departed in stunning numbers. Instead of allowing new mergers which would add what has proved to be burdensome debt, newspapers must use their success on the web to replace the old business model of 80 percent advertising and 20 percent circulation revenue. Newspaper companies have already taken many steps such as raising circulation rates, charging for access online and creating apps for access on phones and tablets like the iPad. While it is true that newspapers continue to struggle with lost revenue opportunities from news gathering which is used by for-profit and non-profit web sites, audiences still want local news. Newspaper companies are still best able to supply that information. The industry needs to keep experimenting before needlessly eliminating more jobs.

Television advertising took a large hit in the recession but appears to be on its way back to better times. The devastation of the radio market caused by the deregulation and debt-fueled acquisitions has left little local news or content. This is an opportunity for the Commission to enact policies to move both markets toward diversity of ownership leading to diversity of voices.

The Commission must set goals to increase diversity, competition and local identity in the media through strong structural ownership limits.

This proceeding is of profound importance to the future of American democracy. Policies that truly promote diversity of voice, localism and competition can reverse lost coverage of local issues by newspapers due to severe job cuts; reduction of voices on television through SSAs, which include LMAs and JSAs; LNS agreements; duopolies; and the consolidation in radio ownership.

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I. INTRODUCTION

The Commission's media ownership rules must promote the objectives of media diversity, competition, and localism. As the Supreme Court noted in 1945, the foundation of our democracy "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[1] As the Commission has stated repeatedly and as the Courts have continually affirmed, common ownership of media reduces viewpoint diversity.[2] The Third Circuit Court in the *Prometheus* decision stated that "ample evidence supported [the Commission's] conclusion that ownership can influence viewpoint"[3] and therefore upheld the constitutionality of the Commission's conclusion in the *2002 Biennial Review Order* that "limiting common ownership of multiple media outlets is the most reliable means of promoting

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[1] *Associated Press v. United States,* 326 U.S. 1, 20 (1945) ("Associated Press").

[2] *See Sinclair Broadcast Group v. FCC,* 284 F.3d 148 (DC Circuit 2002) ("In *Sinclair,* the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to service a legitimate government interest…" Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules*
and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; MB Docket No. 02-277, MM Docket No. 01-235; MM Docket No. 01-317; MM Docket No. 00-244, Sept. 12, 2002 (adopted), 15 ("2002 Notice"). *See also Turner Broadcasting System v. FCC,* 512 U.S. 622, 662 (1994) ("Turner I") ("The Supreme Court has determined that 'promoting the widespread dissemination of information from a multiplicity of sources' is a government interest that is not only important, but is of the 'highest order,' 2002 Notice, 11 (quotation marks omitted); *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations,* 45 F.C.C. 1476, 1477 (1964), 3 ("The Commission has elaborated on the Supreme Court's view, positing that 'the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level," 2002 Notice, 14; *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets,* 16 FCC Rcd 19861, 19877 (2001), 37 ("Commission policy presumes that multiple owners are more likely to provide 'divergent viewpoints on controversial issues,' which the Commission has stated is essential to democracy," 2002 Notice, 117); *FCC v. National Citizens Committee for Broadcasting,* 436 U.S. 775, 779 (1978) ("NCCB") ("It is unrealistic to expect true diversity from a commonly- owned station-newspaper combination. The divergency of viewpoints cannot be expected to be the same as if they were antagonistically run."); *Metro Broadcasting, Inc. v. FCC,* 497 U.S 547, 571 at n. 16 (1990); *Fox Television v. FCC,* 280 F. 3d, 1027, 1042, 1053 ("*Fox*"), *Turner Broadcasting System v. FCC,* 520 U.S. 622, 190 ("*Turner II*") (quoting *Turner I*, 512U.S. at 662-63 ("governmental purpose of the highest order in ensuring public access to a multiplicity of information sources", Notice 13, fn.96.)

viewpoint diversity."[4] Structural rules that protect and promote diverse ownership are essential to preserve and promote the free flow of ideas and information that is so essential to our democracy.

The Communications Workers of America (CWA) represents more than 700,000 workers in many communications, media, manufacturing, airlines and public service. CWA members depend upon the Fourth Estate—a free and vibrant press—for the information, investigation and analysis they need to participate as informed citizens in public affairs. And CWA members depend upon a diverse media to learn about the beliefs and experiences of different people in their local communities, across the country and outside our borders in order to develop the understanding necessary to participate intelligently and empathetically in our increasingly globalized world.

CWA represents more than 45,000 people who work in the various media industries as journalists, technicians, printers, online writers and producers, and customer service and sales representatives. CWA members know first-hand what is happening to the media industry business models. The recession, which has been the worst since the Great Depression, has had a severe negative impact on media companies.

Newspaper companies burdened by debt from decades of ownership consolidation ran head first into the recession and that led directly to a loss of jobs[5] never experienced before in the industry. At the same time, the business model of 80 percent advertising revenue to 20 percent circulation

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[3] *Prometheus Radio Project, et al. v. F.C.C.* 373 F.3d 372 (2004) ("Prometheus"), 480 fn.26.

[4] *2002 Biennial Regulatory Review - Review of the Commission's Broadcast ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 ("2002 Biennial Review Order")* MB Docket 02-277, July 2, 2003 (rel), 26. *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (2003) "*2002 Biennial Review Order")*, *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.* 373 F.3d 372 (2004) ("Prometheus").

[5] *American Society of Newspaper Editors (ASNE)* "Since 2001, American newsrooms have lost more than 25 per cent of their full-time staffers" http://asne.org/article_view/articleid/763/decline-in-newsroom-jobs-slows-763.aspx

revenue[6] is no longer working because of the sharp drop in advertising revenue. Classified revenue has gone from $19.6 billion in 2000 to about $6 billion in 2009.[7] Circulation losses in the recent decade for the industry have been stunning. Daily circulation has fallen from 55.8 million in 2000 to 48.6 million in 2008.[8]

Debt burdens, the recession and the losses in advertising revenue and paid circulation resulted in a series of losses and bankruptcies for newspaper groups. Five companies that filed for bankruptcy – Journal Register Co., Minneapolis Star-Tribune, MediaNews Group, Morris Publishing Co., Sun-Times Media Group – and have exited shed 75 percent of their total debt, going from a combined $2,517 billion to $617 billion. Only the Sun-Times Media Group did not have any debt entering bankruptcy but it had its own unique situation (unpaid taxes). There are other companies that are still in bankruptcy, including the Tribune Co. with $13 billion in debt at the time of filing.[9] Debt burdens are affecting other newspaper groups. See the credit ratings in Table 1.

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[6] *Editor & Publisher, Fitz & Jen Give You the Business: Getting Newspapers to Charge for Online Content, Take 20:* "And as you pointed out earlier, Fitz, newspapers have traditionally relied on advertising revenue more than circulation revenue with a general 20/80 split." http://www.fitzandjen.com/2009/02/getting-newspapers-to-charge-for-online-content.html

[7] *PoynterOnline: The Biz Blog Feb. 1, 2010,* Classified Ad Revenue Down 70 Percent in 10 Years, With One Bright Spot http://www.poynter.org/column.asp?id=123&aid=177005

[8] *Newspaper Association of America: Total Paid Circulation 1940 - 2008*

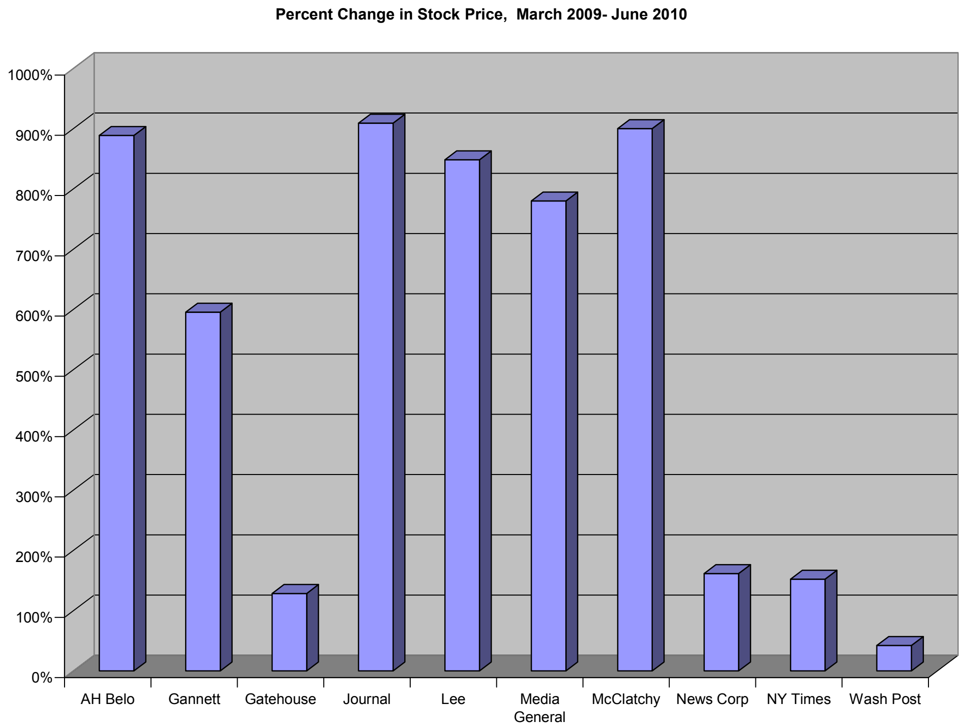
[9] *Reflections of a Newsosaur: Papers exiting bankruptcy dump 75% of debt*, 3/23/2010 http://newsosaur.blogspot.com/2010/03/papers-exiting-bankruptcy-dump-75-of.html

#	Employer	Recent Stock Price	Stock Price 2.5 Years Ago	Percent Change	Credit Rating
2	BLOCK COMMUNICATIONS	Private	Private	Private	B+/Stable
3	SUN-TIMES MEDIA GROUP		Private	Private	Bankruptcy
5	E.W. SCRIPPS	8.10	9.54	-15%	Baa3
7	FREEDOM COMMUNICATIONS	Private	Private	Private	Emerged from Bankruptcy
8	GANNETT	14.54	38.51	-62%	BB/Stable
9	GATEHOUSE MEDIA	0.20	11.62	-98%	CCC/Negative/
10	JOURNAL REGISTER CO.	Private	Private	Private	Emerged from Bankruptcy
12	MEDIANEWS GROUP	Private	Private	Private	Emerged from Bankruptcy
14	MINNEAPOLIS STAR-TRIBUNE	Private	Private	Private	Emerged from Bankruptcy
15	NEW YORK TIMES	8.75	18.46	-53%	B/Stable
18	PHILADELPHIA MEDIA HOLDINGS LLC	Private	Private	Private	Bankruptcy
19	LEE ENTERPRISES	3.05	15.54	-80%	n/a
20	TRIBUNE CO.	Private	Private	Private	Bankruptcy
21	THE McCLATCHY CO	4.34	17.41	-75%	B-/Stable

The result has been severe job losses for the industry. A study by the American Society of Newspaper Editors (ASNE) found journalists working in daily newsrooms in 2010 total 41,500, a level not seen since the mid-1970's.[10] Paper Cuts lists 233 newspapers that have ceased print publication since it began keeping track in 2007.[11]

The news is less bad for the newspaper industry in 2010. Stock prices are up significantly over their lows of 2009, as shown in Table 2.

[10] *ASNE "Decline in newsroom jobs slows*, 4/11/2010 http://asne.org/article_view/articleid/763/decline-in-newsroom-jobs-slows.aspx
[11] *Paper Cuts http://newspaperlayoffs.com/maps/closed/*



This year, Gannett and McClatchy had their debt upgraded by Standard & Poor's.[12] Many newspaper web sites have stopped giving away their content online for free while others plan to do begin various subscription models soon.[13] Google is also working on a system that will allow newspapers to charge for access to the content of newspapers.[14] In addition, newspapers are designing apps for Smartphone, computer tablets and e-readers that often charge for the app or

[12] *See Standard & Poor's Global Credit Portal: McClatchy Co. Rating Raised To 'B-' From 'CC' Upon Close Of Notes Offering; Outlook Stable* 2/11/2010; *See Standard & Poor's Global Credit Portal: Gannett Co., Inc.:* "we believe the risk is now limited that Gannett would have difficulty refinancing large maturities in 2011 and 2012 totaling just over $2.1 billion (at March 2010), absent another disruption to credit markets. Consequently, the rating is unlikely to go lower over the intermediate term." 3/23/2010.

[13] Rupert Murdoch says News Corp will charge for online news, http://www.news.com.au/technology/rupert-murdoch-says-news-corp-will-charge-for-online-news/story-e6frfro0-1225758661415 8/6/2009; "Newsday plans to charge for online news" http://www.reuters.com/article/idINN2625853520090226 2/26/2009; New York Times Ready to Charge Online Readers http://nymag.com/daily/intel/2010/01/new_york_times_set_to_mimic_ws.html; Tallahassee Democrat to charge for online content http://blogs.creativeloafing.com/dailyloaf/2010/06/23/tallahassee-democrat-to-charge-for-online-content/; Poynter Online, The Biz Blog: MediaNews, Journalism Online Set to Start Charging for Content, http://www.poynter.org/column.asp?id=123&aid=185630 June 24, 2010.

[14] *Google developing method to ease sale of news content* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/06/22/BUTU1E2N9T.DTL#ixzz0roLIM27O

access to some or all of the content.[15] The Commission already enacted rules in 2008 for failing or failed media properties.[16] The conditions should be sufficient should the financials worsen for media properties.

The situation in the broadcast industry for CWA-represented members has been pretty bleak, too, because of the economy and changing viewer habits. But, while debt has played a role in the industry, the bigger negative has been the consolidation and the move toward news sharing arrangements for local television news. Agreements by local television stations have had a major impact on the quality of news and diversity of voice. Shared service agreements (SSA), which include joint service agreements (JSA) and local marketing agreements (LMA), usually both, are costing members jobs, too, as they allow a local broadcast television station to produce new for its market rival(s).[17]

CWA members who work in the media know from daily experience that ownership structure matters to quality and viewpoint diversity. Our members know that even with the low barriers of entry for news distribution costs on other platforms, those who own the traditional media outlets still drives most of what gets printed, broadcasted or posted on the internet.[18] The costs of producing content still leaves traditional media gathering the lion's share of news. Since 1996, members have observed the relaxation of media ownership rules that have permitted further consolidation and concentration of ownership into fewer hands and reduced their professional ability to provide high-quality news from diverse and antagonistic sources. Both television and radio ownership has been

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[15] *WSJ for iPad* http://online.wsj.com/public/page/ipad.html
[16] § 73.3555 *Multiple Ownership. (d)(5)(iv) Daily newspaper cross-ownership rule.* 47cfr73.3555.
[17] *Comments of Communications Workers of America and Media Council Hawaii ("CWA and MCH")*, GN Docket No. 10-25, May 7, 2010.
[18] *How News Happens, Pew Research Center's Project for Excellence in Journalism*, Jan. 11, 2010 http://www.journalism.org/analysis_report/how_news_happens.

reduced by more than one-third since Congress relaxed ownership rules for radio and required the Commission to review local television ownership limits (which were adopted in 1999).[19]

In this proceeding, the Commission seeks comment on a number of issues related to its media ownership rules.[20] "Dramatic changes in the marketplace" is how the NOI termed the current media landscape since the previous quadrennial review. It is likely there will be a new set of "dramatic changes" when the Commission does its next review. The Commission rightly wants to understand the marketplace as it is and whether the rules support diversity, localism and competition. The Commission is also rightly studying media consolidation and its impact on the goals of the Telecommunications Act.

The CWA believes that the evidence strongly supports the need for local media ownership limits designed to achieve the important policy goals of diversity, competition and localism. The various rules in place since the passage of the Telecommunications Act have not done enough to foster competition, localism or diversity. There is not sufficient evidence that cross-ownership between newspapers and television has resulted in more competition, more diversity or more localism. For many years, the FCC has granted temporary waivers or not ruled on cross-owned properties that are not supported by existing rules. There are about 50 newspaper/broadcast combinations in local markets. When the rule was adopted in 1975 there were 27 combinations

[19] *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, 4* MB Docket No. 09-182, May 25, 2010. "In 1996 revisions allowed for significant consolidation of radio ownership. In 1996, there were 10,257 commercial radio stations and 5,133 radio owners. Today, there are 11,202 commercial radio stations and 3,143 owners, representing a 39% decrease in the number of owners since 1996. The 1996 Act also required the Commission to review its local television station ownership limits and in 1999, the Commission adopted the current limits. In 1996, there were 1,130 commercial television stations and 450 owners. In 2010, there are 1,302 commercial stations and 303 owners, a 33% decrease in the number of owners."
[20] *Id*.

grandfathered.[21] While the FCC has rules for failing properties, none of the waivers filed were because a property was failing. While a number of newspapers went out of business in recent years, none were "saved" by the FCC rules for failing properties.

While it is true that advertising revenue declined from 2006 to 2008 --13.4 percent for broadcast television stations; 10.7 percent for radio stations; and 23.1 percent for newspapers -- the Commission need not sacrifice chances to increase ownership diversity and competition by allowing more consolidation of media.[22] Recent reports show television revenue hits were due to a cyclical downturn and not a major shift for advertisers.[23] See Appendix 1 for advertising projections for media. The radio business, too, seems to have stabilized, although the consolidation allowed by the Telecommunications Act[24] has resulted in a concentration of media ownership that should be alarming to the Commission.[25]

The rules should protect against further concentration in an industry characterized by concentrated vertical ownership and consolidated local ownership. A rule barring common ownership of a newspaper and television outlet in the same market is essential to preserve diversity and competition in local news, since most local communities have only one daily newspaper and only three or four broadcast stations. Allowing one of these four or five major news outlets to merge would do serious harm to the already limited diversity of ownership among major sources of local

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[21] *FCC MOWG Study 2*, 2002.
[22] Id., 7.
[23] *See Broadcasting & Cable: Local Broadcasters Bullish at SNL Kagan Conference* 6/16/2010; *Advertising Age: TV Upfront Market Heats Up* June 02, 2010; *AP*: *Network spending shows why free TV isn't dead yet*: Revenue at CBS's local stations jumped 29 percent in the first three months of the year from the first quarter of 2009, and revenue at the national network grew 25 percent. After cutbacks at stations during the recession, even more of their revenue now turns to profit. "(In) the local television business, there was a broad, deep recession. That's what happened. (Advertisers) cut back. They didn't cut back 10 percent; they cut back 40 percent," CBS Chief Financial Officer Joe Ianniello told an investor conference in May. "But guess what, they're coming back into the marketplace and there's still a ways to go." 6/2/2010.
[24] 1996 Act, § 202(h)(1); 47 U.S.C. § 303 note; *see infra* ¶ 20.

news and information. Moreover, the Commission has the flexibility under the current rule for a newspaper or television station has failed or is failing. The newspaper and broadcast outlets would maintain separate newsrooms and a cross-media merger would significantly increase the amount of local news in the market.[26]

While there has been a dramatic decline in reporting capacity as estimated by the Pew Research Center's Project for Excellence in Journalism ("PEJ"),[27] the answer is not to allow more media consolidation. The reduction in reporting capacity for newspapers has been so shocking the Commission itself set about a study of the future of media.[28] The FTC, too, held a series of three workshops on The Future of Media and Information Needs of Communities In A Digital Age.[29] CWA members at newspapers are the most concerned about the state of the industry since they are the most directly affected by the crisis. But, as The Newspaper Guild-CWA President Bernie Lunzer pointed out at the Commission's media ownership workshop in Tampa, FL, "Most consolidations are being done for efficiencies and that means less content, fewer journalists and less diversity in both content and staff." He went on to say, "But if all the FCC does is lift the cross-ownership ban entirely, it will have done nothing to preserve or promote quality information. In fact, it will speed up the demise of journalism while preserving a cash flow for some.[30]

While large media companies have been pushing for a relaxation of ownership rules for years, the independently-owned Seattle Times said in an editorial, "decades of timid leadership at the Federal Communications Commission has produced policies that serve big corporations to the

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[25] *In the Matter of 2010 Quadrennial Regulatory Review*, 4.
[26] *FCC Adopts Revision to Newspaper/Broadcast Cross-Ownership Rule*, Dec. 17, 2007.
[27] *2010 Quadrennial Regulatory Review, 9.*
[28]FCC LAUNCHES EXAMINATION OF THE FUTURE OF MEDIA AND INFORMATION NEEDS OF COMMUNITIES IN A DIGITAL AGE, GN Docket No. 10-25, Jan. 21, 2010.
[29] *News Media Workshop* – Comment, Project No. P091200.
[30] Remarks of Bernie Lunzer, TNG-CWA President, Media Ownership Workshop, Tampa, FL, April 20, 2010.

detriment of the public."[31] Indeed. This is the chance for the Commission to serve the public interest, as it should.

Even slimmed down, there is evidence to show that newspapers are delivering most of the local content. In the "How News Happens" study of news in Baltimore, PEJ found that print accounted for 48 percent of the stories, while specialty newspapers accounted for 13 percent.[32] This, in spite of a Factiva database search that found that the Baltimore Sun produced 23,668 in 2009 compared to 86,667 in 1991. In 1986, the Sun was bought by the Times-Mirror company and is now part of the bankrupt Tribune Co. The study also found that there were 53 news outlets in Baltimore but the nine new media outlets accounted for only four percent of the stories.

This raises a more complicated question for the Commission: How to assess how many independent voices are in a market and how much weight to give each voice? The Media Bureau's Study #6 *Local content on the internet* will give the Commission a good start on making an accurate assessment of the media landscape.[33]

II. OWNERSHIP RULES ARE NECESSARY TO PROTECT AND PROMOTE VIEWPOINT DIVERSITY

A. THERE CANNOT BE TRUE VIEWPOINT DIVERSITY WITHOUT REPRESENTATIVE MINORITY AND FEMALE OWNERSHIP

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[31] *Seattle Times: Reassert FCC bans on media monopoly*, May 2, 2010.
[32] How News Happens, Pew Research Center's Project for Excellence in Journalism, Jan. 11, 2010 *General interest newspapers like the Baltimore Sun produced half of these stories—48%—and another print medium, specialty newspapers focused on business and law, produced another 13%. *Local television stations and their websites accounted for about a third (28%) of the enterprise reporting on the major stories of the week; radio accounted for 7%, all from material posted on radio station websites. The remaining nine new media outlets accounted for just 4% of the enterprise reporting we encountered. http://www.journalism.org/analysis_report/how_news_happens.
[33] *Media Bureau Announces the Release of Requests for Quotation for Media Ownership Studies and Seeks Suggestions for Additional Studies in Media Ownership Proceeding*, MB Docket No. 09-182 pg 2.

The CWA Human Rights program helps build a union where members of all cultures, religions, sexual orientations, gender, disabilities, ages and nationalities feel welcomed, respected and heard; and where the leadership reflects the diversity of our membership. CWA members believe media ownership should look like the diverse communities they serve. Commissioner Copps has it right in his statement on this Quadrennial Regulatory Review: "Our country urgently needs a media that is reflective of our diverse communities and interests. While minorities currently comprise roughly 34% of the nation's population, they own only 3.15% of full-power commercial television stations. And, while women make up 51% of the population, they only own 5.87% of full power commercial television stations. These numbers are appalling. If a central tenet of our FCC mandate is to promote diversity in the media, which it is, then we need diverse ownership policies to help that happen. Anyone who actually thinks that who owns the media doesn't significantly affect how our country is being informed is not paying attention. Shortchanging ownership diversity is shortchanging our civic dialogue."[34]

In testimony at the Commission's Tampa Ownership workshop, Bernie J. Lunzer, President TNG-CWA, noted that a 2007 Free Press study found that "while 24 percent of the Tampa television audience represents racial and ethnic minorities, and 48 percent of the population of the city of Tampa is comprised of minorities, only 13 percent of the area's commercial broadcast ownership is minority-owned. I'll point out that this number is likely better than many markets, but still is not good. The American Society of Newspaper Editors, ASNE, has just published a report showing that after all the buyouts and layoffs of the last two and a half years, the number of newspaper workers of minority status has dropped from 7400 in 2007 to 5500 in 2010. That takes the percentage from

[34] Statement of Commissioner Michael J. Copps, 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,

13.43 to 13.26 of the workforce. So we have a loss of actual jobs, and a drop in diversity at a time when the country is becoming more diverse.

"Lack of diversity in newsrooms and in ownership should be cause for alarm. Any hope for these news organizations depends on their relevancy to the populations they serve."[35]

B. CO-OWNED NEWSPAPER/TELEVISION COMBINATIONS REDUCE VIEWPOINT DIVERSITY

Publishers and broadcasters have argued that relaxing ownership rules would allow media owners to realize "synergies" that would provide greater resources to expand local news and information reporting. While these so-called synergies may increase efficiencies, efficiency is not the policy goal—diversity is. And the evidence demonstrates that combined television stations or cross-owned newspaper/broadcast combinations reduce the number of independent voices in a local media market. Whatever other benefits co-ownership may produce for the parent company or even to the community, there is clear constraint of media viewpoint.

Academic researchers who have studied converged newspaper/broadcast operations conclude that common ownership reduces competition in newsgathering. Researcher Jane B. Singer studied convergence at four news organizations in Dallas, Tampa, Sarasota, and Lawrence, Ks., concluding that the journalists find "convergence clashes with traditional newsroom values (of) professional competition." Journalists report they now cooperate across medium where they used to compete.[36] Michel Dupagne and Bruce Garrison's case study of newsroom convergence at Media General's Tampa News Center (home of commonly owned *The Tampa Tribune*, WFLA-TV, and the Tampa

[35] *Media Ownership Workshop*, Tampa, FL, April 20, 2010.

[36] Jane B. Singer, "Strange Bedfellows? The Diffusion of Convergence in Four News Organizations," *Journalism Studies,* 5:1 (2004), 3-18.

Bay Online service) found that the common platform has lead to "a declining sense of internal competition and conflict" between the newspaper and television station. One Tribune senior editor is quoted as saying, "We used to compete against reporters at WFLA…but the strides that we've made as far as sharing resources and information – have come a long way."[37]

Media analysts argue that owners of converged newspaper and broadcast outlets have held back to some degree in realizing all their ambitions to merge their newsgathering operations to realize more extensive "synergies." These analysts contend that some media owners – whose commonly owned newspaper/broadcast combinations are visited by the Commission, researchers, and reporters – fear that if they commingled news operations more extensively at this time, the evidence would lead the Commission to a more restrictive rule. In 2006, newspaper analyst John Morton ascribed these motivations to the Tribune Company, which has newspaper/broadcast cross-owned outlets in Los Angeles, New York, and Hartford as a result of its Times Mirror purchase, plus an existing one in South Florida.

> We suspect Tribune Co. was leery of being aggressive about converging operation at the cross-ownerships until its ability to keep them remained in limbo.[38]

Since that 2006 report, the Tribune Co. was sold to Sam Zell, who took the company private with a debt load of more than $13 billion in December 2008. One year later, Tribune Co. filed for bankruptcy. In March 2009, the Tribune Co. announced it was combining the newsroom operations of the Hartford Courant and WTIC and WTXX.[39] The Tribune Co. is working under the same temporary waiver as in 2006. Now, the Tribune Co. wants to operate one newsroom for three properties. When the Tribune Co. filed for bankruptcy, Zell and other corporate executives said the

[37] Michel Dupagne and Bruce Garrison, "The Meaning and Influence of Convergence: A Qualitative Case Study of Newsroom Work at the Tampa News Center," *Journalism Studies,* 7:2, 2006, 237-255.
[38] John Morton, Morton-Groves Newspaper Newsletter, Oct. 19, 2006, 2.

company had a positive cash flow before debt service was taken into account. Its largest units, including The Times, are profitable on the same basis. "The focus of the filing today is 100% on relieving the pressure on the company from its debt," Zell was quoted as saying.[40]

At the Commission's Ownership workshop, Bernie J. Lunzer, President TNG-CWA, testified about cross-ownership that "Most consolidations are being done for efficiencies and that means less content, fewer journalists and less diversity in both content and staff."[41]

The Commission estimates there are 50 cross-owned properties.[42] Common ownership of newspaper and broadcast properties violates the Commission's core policy objective to facilitate vibrant and diverse democratic discourse by the local news media.

C. COMMON OWNERSHIP OF TELEVISION STATIONS IN THE SAME MARKET REDUCES VIEWPOINT DIVERSITY

Common ownership of television stations also reduces diversity. Under common ownership of local television stations (duopolies and triopolies), station owners are combining management, programming, and news operations. The National Association of Broadcast Employees and Technicians/CWA ("NABET/CWA") has direct experience with what happens when one company owns more than one television station in the same market. The owner merges operations, slashes jobs, and reduces the quantity and quality of the news.

In a 2006 Commission public hearing on media ownership in Los Angeles, NABET/CWA then Vice President James C. Joyce testified about the Los Angeles television market, which he

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[39] http://articles.courant.com/2009-03-31/news/courant-wtic-graziano.art_1_tv-stations-wtic-tribune-broadcasting
[40] http://articles.latimes.com/2008/dec/09/business/fi-tribune9/2
[41] *FCC Media Ownership Workshop*, Tampa, FL, April 20, 2010.
[42] *2010 Quadrennial Regulatory Review*, 4.

noted is a poster child for broadcast media concentration.[43] Since that hearing, the situation has worsened as described by NABET/CWA President Joyce at the Media Ownership Workshop in Stanford, CA in May 2010.[44] Los Angeles has one television triopoly and three duopolies. NABET members have lost jobs at many of these stations, 106 workers at the duopolies of Fox-owned KCOP and KTTV, just as an example.

NBC owns three television stations in Los Angeles: KNBC and two Spanish-language stations KWHY and KVEA. NBC acquired the Spanish-language stations when it purchased Telemundo. Within a year of that purchase, NBC merged the stations into one facility in Burbank. They combined the technical operations, sales and marketing, and the newsroom. Ten percent of the workforce lost their jobs, most of whom were Spanish-speaking employees from Telemundo. The consolidation has now extended into nearby markets as KWHY-TV retransmits its programming to San Diego and Santa Barbara.

Before NBC bought Telemundo, each of the stations had a separate news operation. They were competitors. Now the news operations are commingled. Two assignment editors -- one for English-language KNBC and the other for the Spanish-language stations -- coordinate coverage, and send one crew to shoot video for all three stations.

NBC has taken consolidation one step further. It created a "SuperDesk" to merge the assignment desks of KNBC, KVEA, *KWHY*, the NBC Network, and CNBC and MSNBC in the Burbank, Ca. news facility. As a result, NBC Universal eliminate about 700 jobs, representing five

[43] Remarks of James C. Joyce, Vice President, NABET/CWA, FCC Public Hearing on Media Ownership, Los Angeles, CA, Oct. 3, 2006, MB Docket No. 02-277, *2006 Quadrennial Review*
[44] Remarks of James C. Joyce, President, NABET/CWA, FCC Media Ownership Workshop, Stanford, CA, May 21, 2010,MB DOCKET NO. 09-182.

percent of its workforce.[45]

Fox owns two stations in Los Angeles: KTTV-channel 11 and KCOP-channel 13. Fox acquired this duopoly when News Corp. purchased ChrisCraft after the FCC approved the sale in 2001.[46] After the acquisition, the stations merged technical operations, cutting the number of technicians and engineers by 10 percent. NABET-CWA President Joyce testified in 2006, that there is one General Manager, one News Director, and one assignment editor overseeing both stations. While one production crew sometimes covers the same story, KTTV and KCOP had done a better job than NBC in maintaining separate in-house production crews. But, in his recent testimony in Stanford, NABET-CWA President Joyce noted Fox has now combined once separate newsrooms into one, with only one set of reporters and editorial staff for both stations and the newscast on KCOP is indistinguishable from the newscast on KTTV, in Los Angeles, the nation's second largest television market.

Finally, Viacom-CBS owns both KCAL-channel 9 and KCBS-channel 2. These stations extensively commingle, sharing reporters and often airing the same news story. They even co-brand their news gathering vehicles in this market to highlight their single news operation. The KCBS and KCAL logos are featured side by side on their vehicles. KCBS has cut jobs represented by another union, the International Brotherhood of Electrical Workers.

NABET/CWA also has experience with the Fox television duopoly in New York City created after the Commission granted approval to News Corporation, the parent of Fox Television Stations, to purchase ChrisCraft Industries. As a result, Fox now owns two television stations in New York City (WWOR-TV channel 9 and WNYW-TV channel 5). Prior to the merger, CWA represented the

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[45] Associated Press, "NBC to Cut 700 Jobs in Overhaul," Oct. 19, 2006.

technicians at WWOR-TV in the New York market (the station is physically located in Secaucus, N.J.) and the technicians and news writers at KTTV in Los Angeles. To facilitate union representation at the merged properties, CWA and another union agreed that CWA would represent all technicians and news writers at the Fox properties in Los Angeles, while the other union would represent employees at the Fox properties in New York.

The Fox duopoly in New York City merged station and news management, with one General Manager and one News Director over the two New York City stations. In New York City, Fox moved the operations of WWOR from Secaucus to WNYW's facilities in New York City, cutting the technician workforce by about twenty percent. While this may be more "efficient," merged operations do not advance the diversity policy goal. "We don't have to have two crews at one news event," a Fox executive told Broadcasting and Cable magazine.[47]

Other examples of duopolies that have also merged management and news operations include:

- In Detroit, Viacom's CBS affiliate WWJ-TV dropped its local half-hour news show in November 2002 so as not to compete with its duopoly partner and UPN affiliate WKBD-TV. Scripps-owned WXYZ-TV will produce WKBD-TV's news show under a revenue-sharing arrangement.[48]

- Meredith's Portland Or. duopoly KPTV and KPDX runs a combined newsroom, having shut down the news operation at KPDX, a UPN affiliate.[49]

- There is one general manager over Fox's Orlando, Fl. duopoly[50], one general manager at Viacom's Boston duopoly WSBK-TV and WBZ-TV[51], and one general manager at Fox's Houston duopoly KRIV-TV and KTXH-TV.[52]

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[46] Nationwide, Fox has nine duopolies: New York City, Los Angeles, Chicago, Dallas, Washington DC, Houston, Phoenix, Minneapolis, and Orlando. In New York City, Fox also owns the *New York Pos* and *The Wall Street Journal.*
[47] Dan Trigoboff, "The duopoly marriage in three markets comes with some consolidation," *Broadcasting and Cable,* Aug. 6, 2001.
[48] Dan Trigoboff, "CBS Drops News in Detroit, *Broadcasting and Cable,* Nov. 25, 2002.
[49] Catherine Matacic, *American Journalism Review*, Sept. 2002.
[50] Dan Trigoboff, "Knott lands at duop," *Broadcasting and Cable,* June 26, 2002
[51] Dan Trigoboff, "All News is local," *Broadcasting and Cable,* April 1, 2002

In summary, common ownership of newspaper/broadcast combinations in the same market and television duopolies and triopolies results in commingling of news operations, reducing the number of diverse and competing news outlets in a local market. Given the limited number of independent sources of local news and information programming, rules that permit the elimination of an independently owned news outlet by permitting newspaper/broadcast combinations or more television duopolies and even triopolies seriously undermine the Commission's paramount policy objective to facilitate robust democratic discourse in the media.

D. LOCAL MARKETING AGREEMENTS, LOCAL NEWS SERVICES, SHARED SERVICES AGREEMENTS AND JOINT SERVICE AGREEMENTS OF TELEVISION STATIONS IN THE SAME MARKET REDUCES VIEWPOINT DIVERSITY

Shared services agreements (SSA), which include local marketing agreements (LMA) and joint service agreements (JSA), and local news services (LNS) arrangements- damage viewpoint diversity because the agreements at a minimum break the spirit of the Commission's rules of seeking diversity of voices in local communities. The comments submitted by the CWA and the Media Council Hawaii to the Commission clearly demonstrate the harm done by these agreements:[53] "These arrangements [SSAs and LNSs] are contrary to the public interest because they reduce the amount, diversity, and quality of local news reporting available to the public. In the case of SSAs, they also provide a means for local television stations to circumvent the Commission's local television ownership rules. Thus, CWA and MCH urge the Commission to enforce its existing rules more vigorously, to act on pending petitions raising issues concerning SSAs, and to revise its rules for attributing LMAs and JSAs. We also urge the FCC to adopt rules requiring public disclosure of LNS

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[52] Dan Trigoboff, "All News is local.," *Broadcasting and Cable,* Dec. 12, 2001.

agreements as well as on-air identification of programming obtained through an LNS."[54]

In 1999, the Commission amended its attribution rules on "ownership interest" to attribute ownership of a brokering station that supplies 15 percent or more of the broadcast time of the brokered station because the LMAs confer a significant degree of control over the brokered party's station.[55] The Commission also cited a letter from the Antitrust Division of the Department of Justice which argued that "LMAs are quite similar, in competitive effect, to ownership of the licensee station."[56]

"In practice, the fifteen percent threshold for LMA attribution has allowed the brokering station to provide all of the local news aired on the brokered station. According to a recent RTDNA study, the average total amount of local news programming is 26.4 hours per week,[57] or approximately 15.7 percent of total weekly airtime. Many stations air fewer than the average of 26.4 hours per week—the RTDNA study indicates that stations in DMAs ranked 101 to 150 air only 22.9 hours of local news per week, or only 13.6 percent of total airtime.[58] Thus, many stations can outsource their entire news operations without meeting the 15 percent threshold.

"Providing local news is an attractive option for the brokering stations because even though local news constitutes a relatively small percentage of airtime, local news generates 45 percent of a

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[53] *CWA and MCH)*, GN Docket No. 10-25, May 7, 2010.
[54] *Id.*, 27.
[55] *1999 Attribution Order*, 14 FCC Rcd at 12597; 47 C.F.R. § 73.3555(j).
[56] Letter to Reed E. Hundt, Chairman, Federal Communications Commission, from Joel I. Klein, Acting Assistant Attorney General, Antitrust Division, U.S. Department of Justice, May 8, 1997. See United States v. Raycom Media, Inc., 2008 U.S. Dist. LEXIS 109217, *19 (D.D.C. 2008); United States v. Bain Capital, LLC, 2008 U.S. Dist. LEXIS 71270, *26-28 (D.D.C. 2008); United States v. Clear Channel Communications, Inc., 2001 U.S. Dist. LEXIS 24735, *24 (D.D.C. 2001); United States v. News Corp., 2001 U.S. Dist. LEXIS 24734, *18-19 (D.D.C. 2001).
[57] Bob Papper, Radio Television Digital News association, TV and Radio Staffing and News Profitability Survey 2009 at 1, http://www.rtdna.org/media/pdfs/research/TV%20and%20Radio%20Staffing%20and%20Profitability.pdf.
[58] *Id.*

station's revenue on average.[59] In most of the SSAs we found, the brokered station completely outsourced the news operation to the brokering station. For instance, in Honolulu, Raycom Media operates a single newsroom that provides programming to three participating television stations—the NBC affiliate, the CBS affiliate and the MyNetwork affiliate.[60] In Fort Smith, Arkansas, an SSA between Nexstar and Mission Broadcasting provides that Nexstar's NBC affiliate will provide all of the local news for Mission's Fox affiliate.[61] In Duluth, Minnesota, an SSA between licensees Malara Broadcast Group and Granite Broadcasting provides that Granite will supply news programming for both the local NBC and CBS affiliates, which will be located in the same building.[62]

"SSAs typically involve a joint sales agreement (JSA) as well as an LMA.[63] In a JSA, the brokering station typically pays a flat fee to the brokered station and/or is entitled to all or part of the revenues from the ads its sells on the brokered station.[64] Thus, the brokering station could sell all of the advertising time on the brokered station. For instance, the Duluth SSA includes a JSA which provides that Granite will sell one hundred percent of the advertising time on the station licensed to Malara.[65]

"Granite Broadcasting has entered into two SSAs with Barrington Broadcasting involving stations in Syracuse, New York and Peoria, Illinois. Under these SSAs, Barrington operates three stations in Syracuse—its own CBS and CW affiliates as well as Granite's NBC Syracuse affiliate—

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[59] See PEW Project For Excellence in Journalism, the State of the News Media 2009, Local TV, http://www.stateofthemedia.org/2009/narrative_localtv_intro.php?cat=0&media=8.
[60] Rick Daysog, KHNL-KGMB unveils new lineup, Honolulu Advertiser, Oct. 20, 2009.
[61] *Nexstar Broadcasting, Inc.*, 23 FCC Rcd 3528, 3535 (M.B. 2008).
[62] *See Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (M.B. 2004), *application for review pending*.
[63] *E.g.*, *Nexstar*, 23 FCC Rcd at 3529 (analyzing an agreement providing for both shared services and joint sales); *see also* 47 C.F.R. § 73.3555(k) (defining JSAs).
[64] *See Report and Order, 2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13743 ¶ 316 (2003) (describing radio JSAs).
[65] Malara-Granite Shared Services Agreement, § 2.2.3,

all under one roof. Granite jointly operates three stations in Peoria—an NBC affiliate licensed to Granite, an ABC affiliate licensed to Barrington, and a third station licensed to Venture Technologies.[66] Just as players in a game of Monopoly might trade properties in order for each to obtain a tighter grip on a particular color group, Granite and Barrington have effectively swapped licenses to obtain a de facto duopolies."[67]

Rebroadcasting or simulcasting news from another local station reduces diversity of local voices.[68] "After entering into an SSA, reductions in news personnel invariably follow. For example, the SSA in Honolulu led to sixty-eight layoffs, or more than one-third of the combined news staff of the three participating stations.[69] As a result of the Granite-Barrington SSA, forty newsroom employees were laid off in Syracuse[70] and as many as thirty were laid off in Peoria.[71] With fewer reporters and camera crews on the street,[72] the quality, diversity and quantity of local news coverage is reduced.[73] Ownership and viewpoint diversity is further decreased in communities such as Syracuse, where the SSA transferred management of one of the market's few remaining minority-

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https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101031969&qnum=5100&copynum=1&exhcnum=1.

[66] *See* Granite/Barrington Joint Sales Agreement and Shared Services Agreement, http://www.cnycentral.com/uploadedfiles/wstm/Home/About_Us/WSTMWTVHtransaction.pdf; John Lammers, *Syracuse's Channel 5 shuts down its newsroom*, Syracuse Post-Standard, Mar. 2, 2009, http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html; Steve Tarter, *WEEK-TV taking over WHOI operations*, Peoria Journal Star, Mar. 2, 2009, http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-over-operations-of-WHOI-TV.

[67] *CWA and MCH*, 7 – 9.

[68] Prometheus Radio, 373 F.3d 372, 405-406 (holding that sources which merely republish content do not contribute to local viewpoint diversity).

[69] Rick Daysog, *Honolulu TV stations KGMB, KHNL, K3 will combine operations; will eliminate more a third of their 198 employees*, Honolulu Advertiser, Aug. 19, 2009.

[70] John Lammers, *Syracuse's Channel 5 shuts down its newsroom*, Syracuse Post-Standard, Mar. 2, 2009, http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html.

[71] Steve Tarter, *WEEK-TV taking over WHOI operations*, Peoria Journal Star, Mar. 2, 2009, http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-overoperations-of-WHOI-TV.

[72] Television newsrooms are small even in the absence of *de facto* duopoly consolidations. In 2007, the median newsroom size in the largest markets (DMAs 1-25) was 58. PEW 2009 STUDY, *supra* note 21. In markets ranked below 100, where SSAs have been particularly common, the average newsroom size was only 28. *Id.*

[73] Pew Research Center's Project for Excellence in Journalism, Local TV News Reports a Drop in Revenue, Ratings, Mar. 26, 2009, http://www.journalism.org/commentary_backgrounder/local_tv_sees_drop_revenue_and_ratings (noting that TV

operated stations to a nonminority-owned corporation.[74]

"Thus, from the standpoint of local news programming, SSAs have the same detrimental impact on diversity, competition and localism as do outright duopolies and triopolies. Indeed, broadcasters are deliberately using SSAs to circumvent the duopoly rules. As Granite disclosed in its 10-K, "We are actively pursuing this strategy which includes the creation of *duopoly-type operating arrangements* in our current markets through ownership of one station and a combination of agreements (such as shared services, local services, sales representation, marketing, operating or other agreements) with a second station in that market."[75] This indication that SSAs are designed to circumvent the ownership rules is consistent with the fact that most SSAs seem to have been created beginning in 2004, when the Court of Appeals for the Third Circuit blocked the Commission's attempt to relax the ownership rules."[76] [77]

Local News Service arrangements, while a recent creation, result in job losses and less diversity of voice. But, though recent, their growth is explosive across local markets. While its origins were with stations in the largest DMAs, they are also spreading to other markets.

"Generally, a local news service (LNS) is an arrangement between broadcasters to cooperate in the gathering and production of local news content. Communications Workers of America (CWA) first became aware of LNSs in labor negotiations because they typically involve significant layoffs at participating stations. For example, in Los Angeles, 120 people were laid off at the Fox station KTTV with the advent of their LNS.

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news remains the most popular source for Americans despite recent ratings declines).
[74] Statement of LaVonda Reed-Huff, Assoc. Professor of Law, Syracuse Univ., FCC Minority Media Ownership Workshop (Jan. 27, 2010).
[75] Granite Broadcasting Corp., S.E.C. Form 10-K at 32, Mar. 29, 2004, http://www.sec.gov/Archives/edgar/data/839621/000110465904008726/a04-3748_110k.htm (emphasis added).
[76] Prometheus, 373 F.3d 372.
[77] *CWA and MCH*, 9, 10.

The first local news service began in January 2009 between the Fox and NBC owned and-operated stations in Philadelphia (DMA-4).[78] Over the course of 2009, they [Fox and NBC] launched LNSs in eight of the top nine DMAs. Other station owners quickly hopped on the bandwagon. For instance, in New York, the local Fox, NBC, The CW, and CBS stations have all joined in an LNS,[79] and in Los Angeles, Fox, Telemundo, NBC, and The CW all participate.[80] Altogether, we know of nineteen markets where two or more stations participate in an LNS (see Appendix 1.3).

"Details of many of these LNSs are hard to pin down because the agreements are not required to be disclosed under current Commission rules. Indeed, one executive urged stations to be more clandestine about LNSs to avoid alienating viewers: "Just do the damn things . . . . Don't send out a press release about it."[81] One market analyst blasted ABC for not participating in the LNSs, refuting ABC's concern that LNSs would affect the quality of newsgathering by emphasizing that the "LNS is *invisible to viewers*.[82] [83]

"Furthermore, as LNSs increasingly center around core newsgathering and editorial decision-making, they severely reduce the diversity and depth of local news sources.[84] Under the Boston LNS, each station retains the right to conduct its own "investigative" and "enterprise" reporting. But even if the stations actually exercise this right with respect to some stories, the number of voices

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[78] Michael Malone, *Fox, NBC Dive Into Pool; Launching Local News Service in Philly*, Broadcasting & Cable, Nov. 17, 2008.
[79] Michael Malone, *New York Pool: WNYW, WNBC, WCBS, WPIX*, Broadcasting & Cable, June 8, 2009.
[80] Michael Malone, *Three L.A. Stations to Begin Local News Video Share June 15*, Broadcasting & Cable, June 2, 2009. Both the local NBC affiliate and the local Telemundo affiliate are owned by NBC Universal, operating under a temporary waiver from the FCC which has expired.
[81] Michael Malone, *Swim at your Own Risk; Stations involved in content pools may save money. But they could also jeopardize ratings—and revenue*, Broadcasting & Cable, June 22, 2009.
[82] Michael Malone, *Greenfield: Get in the Pool, ABC*, Broadcasting & Cable, July 9, 2009 (emphasis added).
[83] *CWA and MCH*, 11, 12.
[84] FTC/DOJ JV GUIDELINES, *supra* note 50, at 13 (describing the category of "production collaborations," in which LNSs would fall, as "often procompetitive," but potentially anticompetitive when they involve joint decisionmaking on "competitively significant variables" or otherwise "limit[] independent decisionmaking").

commenting on the jointly produced stories is reduced by the LNS. [85]

"To prevent continued evasion of the ownership limits, the Commission should promptly complete several pending matters regarding sharing agreements and should initiate a new rulemaking to consider other rule changes. Through the combination of eliminating gaping loopholes in the attribution rules, instituting modest disclosure requirements, and enforcing existing ownership regulations, the Commission can foster a healthy diversity of news sources. This multifaceted regulatory approach is necessary to preserve the integrity of the Commission's longstanding ownership rules and to slow the continuing decline in the quality of local news."[86]

III. TELEVISION AND NEWSPAPERS ARE THE DOMINANT SOURCE FOR NEWS AND INFORMATION, PARTICULARLY FOR LOCAL NEWS AND INFORMATION

In the *2002 Biennial Review Order,* the Commission concluded that viewpoint diversity is most easily measured through news and public affairs programming, which also relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media. Based on this reasoning, the Commission appropriately determined that it should focus on how media ownership structures affect local news output, which is more limited than national news outlets.[87]

Newspapers and broadcast television are the dominant sources for news and information, particularly for local news and information. The Commission must protect against combinations that would reduce the number of independently-owned television stations in a local market and the

[85] Prometheus Radio Project v. F.C.C., 373 F.3d 372, 405-406 (3rd Cir. 2004) (holding that sources which merely republish content do not contribute to local viewpoint diversity).
[86] *CWA and MCH, 15.*
[87] *2002 Biennial Review Order,* 32, 35.

number of independently owned newspaper and television stations to ensure the widest possible dissemination of news and information from these "undisputed leaders in contributing to viewpoint diversity."[88] The CWA believes that is still true today.

Despite the growth of cable, satellite and the internet and the loss of circulation for newspapers, most Americans today get their news, particularly their local news, from the daily newspaper and broadcast television news shows.

Newspaper. Almost three-quarters of the adult population (74.3 percent) read or a newspaper or visited a website during a 2008 study by the Newspaper Association of America.[89] ARAnet did a national study in 2009 found that daily newspapers were named 19.4 percent as the source of news and information and another 4.4 percent cited weekly community papers. While the percentage for daily newspapers is down from 23.5 percent the year before it is still higher than the 14.6 percent of consumers who get news and information online. The survey also found that people aged 18-to-34 relied on online 22.2 percent of the time.[90] While readership habits are changing, newspapers are still a significant consumer source for news and information. Moreover, with its much more significant newsgathering resources and staff, the newspaper sets the news agenda for other local media, including television and radio outlets.

Television. Americans also rely on television as the other primary media for local (and national) news and information. The Pew Center's Project for Excellence in Journalism's survey found that 78% of citizens get their news from local television.[91]

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[88] 2002 Notice, 107.
[89] Prepared by Newspaper Association of America, based on Scarborough Research The Newspaper Audience 2008. Available at http://www.newspapermedia.com/.
[90] ARAnet "Survey: Americans Increase Use of Online and Radio News Sources; Daily Newspaper and Television Use Drops", September 24, 2009.
[91] Pew Research Center's Project for Excellence in Journalism, Understanding The Participatory News Consumer (2010), http://www.journalism.org/analysis_report/understanding_participatory_news_consumer ("*Participatory News*

No other type of media comes close to the penetration level of local television and the newspaper for local news and information.

Internet: PEJ found that 61 percent get news online in its survey this year, most of the local news they access is still produced by local broadcasters and newspapers.[92]

The Third Circuit Court emphasized that websites that repackage the news are not independent sources of information and therefore do not contribute to viewpoint diversity. "There is a critical distinction between websites that are independent sources of local news, and websites of local newspapers and broadcast stations that merely republish the information already being reported by the newspaper or broadcast station," the Third Circuit Court wrote. "The latter do not present an 'independent' viewpoint."[93] That is still the case today, as the Pew study on How News Happens demonstrates.[94] Therefore, to count the Internet as an independent news source would be to ignore the amount of news generated by traditional media and to subject those without broadband access or cable to a test that leaves them short of independent choices. Once the FCC's Broadband Plan is implemented, the Commission can reassess this issue.

Most important, the Third Circuit Court distinguished between media outlets that provide "accuracy and depth in local news" and online chatrooms or the websites of organizations, political

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Consumer").

[92] The Participatory News Consumer (2010), (Six in ten American adults (61%) get news online on a typical day, placing it third among the six major news platforms asked about in the survey, behind local television news and national or cable television news. While the internet is growing as a news platform, it has not displaced completely offline news sources for most American adults: A majority of Americans (59%) get news from a combination of online and offline sources on a typical day. Just over a third (38%) rely solely on offline sources, while just 2% rely exclusively on the internet for their daily news.) http://www.journalism.org/analysis_report/news_and_internet.

[93] *Prometheus,* 405-6.

[94] *How News Happen*, (The study, which examined all the outlets that produced local news in Baltimore, Md., for one week, surveyed their output and then did a closer examination of six major narratives during the week, finds that much of the "news" people receive contains no original reporting. Fully eight out of ten stories studied simply repeated or repackaged previously published information. And of the stories that did contain new information nearly all, 95%, came from traditional media—most of them newspapers. These stories then tended to set the narrative agenda for most other media outlets.) http://www.journalism.org/analysis_report/how_news_happens

candidates, local governments, community organizations, or advertisers. The Third Circuit Court defined “media outlets” as those media that serve both “an aggregator function (bringing news/information to one place) as well as a distillation function (making a judgment as to what is interesting, important, entertaining, etc.).” Using this definition, individuals and entities that may use the internet to disseminate information and opinions should not be counted as “media outlets.”

Finally, the Third Circuit Court noted that since almost 30 percent of Americans did not have internet access, the Commission could not justify inclusion of the internet in the Diversity Index, absent a better explanation.[95] More recent data finds that fully one-third of all Americans still do not subscribe to broadband.[96] Since consumers with a broadband internet connection are much more likely to use the internet as a news source, the broadband digital divide based on income and urban/rural geography means that a significant portion of lower-income and rural Americans are much less likely to access the internet for any type of news.[97] There also remains a significant digital divide among low-income, rural, minority, and elderly populations. According to the Commission, 60 percent of those with incomes below $20,000, half of those living in rural areas, 65 percent of older Americans, and 40 percent of African-Americans and half of all Hispanics do not currently subscribe to broadband.[98]

There is no rational reason for including the internet as an independent source of local news and information since most of the information accessed for local news and information is from local newspapers and broadcasters. For local news and information, the internet is still mostly an alternative distribution platform for traditional media such as newspapers, television and radio.

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[95] Citation in *Prometheus,* 407; *see 2002 Biennial Review Order,* 407-8.
[96] Federal Communications Commission, Connecting America: The National Broadband Plan, March 2010, page 167.
[97] 43 percent of broadband users compared to 26 percent of dial-up users to online to get the news. *Id.*, i.
[98] FCC: The National Broadband Plan, page 167.

Most Americans continue to rely on television and newspapers for their local news and information. Television's large audience, powerful visual images, and immediacy give it a unique role among the media. Television dominates local political advertising. Daily newspapers are the dominant media for in-depth reporting, investigation, and analysis. Newspapers are the only media whose primary mission and the preponderance of resources and talent are devoted to newsgathering and analysis.

IV. THE COMMISSION MUST ADOPT STRUCTURAL OWNERSHIP RULES TO PROMOTE DIVERSITY, COMPETITION AND LOCALISM

New media outlets such as cable, satellite, and the internet have not led to a proliferation of independently owned local news and public affairs programming that has had much affect on how consumers get their information. The PEJ study How News Happens found 96 percent of news is still generated by local broadcasting and newspapers.[99] While there are many new ways for consumers to get local news online, for those who don't have access to broadband and/or cable, the new media is not able to create more diverse choices for news. Separately and together, television, radio and newspapers are highly concentrated markets, and have become more concentrated as Congress and the Commission have reduced media ownership limits. The Commission need only let these alternative sources to develop without interference to accomplish more diversity, competition and localism.

The Commission and the Courts have repeatedly affirmed that ownership diversity is a means to promote viewpoint diversity. Therefore, the Commission must adopt strong structural safeguards

[99] *How News Happens,* http://www.journalism.org/analysis_report/how_news_happens.

to protect and promote diverse ownership as a means to advance the First Amendment goal of wide dissemination of news and information from diverse and antagonistic sources.

A. THE COMMISSION SHOULD USE THE FAILED OR FAILING GUIDELINES FOR NEWSPAPER OR BROADCASTERS TO ASSESS WHETHER A NEWSPAPER/TELEVISION COMBINATION SHOULD BE ALLOWED

A meaningful newspaper/broadcast cross-ownership rule helps protect against the losses of only a handful of independently owned local news and information sources. A meaningful rule can also provide more media competition and diversity. This rule is as important today as it was in 1975 when it was first adopted. The CWA believes the Commission got it right in its 1998 Biennial Review Order.[100] As the Supreme Court noted in its 1978 decision upholding the rule, "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[101] In the *Sinclair* decision, the U.S. Court of Appeals upheld the Commission's judgment that common ownership reduces diversity.[102]

The Commission must first assess the results from the Media Bureau's Study #6 for evidence traditional media do not dominate that platform.[103] The internet has not yet proven to be an independent source of news despite that there are independent sources available. The evidence shows the local newspapers and television have come to dominate that platform as well.

In fact, the Commission continues to support that 1) viewpoint diversity is a core goal of the Commission's media rules; 2) ownership affects viewpoint; 2) independent ownership of media

[100] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, Biennial Review Report, 15 FCC Rcd 11058, 11105, ¶ 88 (2000).
[101] NCCB, 779.
[102] Sinclair, 161.

outlets by multiple entities in a market promotes viewpoint diversity; 4) viewpoint diversity is best measured by news and information programming in local markets; 5) newspapers and television are the dominant sources of local news and information programming.

The Commission has the flexibility it needs to issue waivers for failed or failing stations or newspapers. Waiver policy allows the Commission to differentiate places where cross-ownership efficiencies might benefit the public from those instances where efficiencies would simply allow media conglomerates to eliminate competition. Where the Commission would allow a combination due to a failed or failing property, the Commission is right to keep the newsrooms separate for purposes of diversity of voice.

B. THE COMMISSION SHOULD RETAIN THE LOCAL TELEVISION OWNERSHIP RULE

The Commission in the *2006 Quadrennial Review Order* correctly concluded that "restrictions on common ownership of television stations in local markets continue to be necessary in the public interest to protect competition or viewers and in local television markets."[104] The Commission also correctly maintained the Dual Network Rule (that the Third Circuit Court upheld) that prohibits the merger of any stations among the "top-four" networks, i.e. ABC, CBS, Fox and NBC.[105]

The Commission has ample justification for retaining the current rule. However, if it chooses to revise the rule, the Commission should calculate the market shares of television in the relevant geographic market, and permit no merger that would result in fewer than 10-equal-sized voices in the

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[103] *Requests for Quotation for Media Ownership Studies,* MB Docket No. 09-182 pg 2.
[104] *2006 Quadrennial Review Order,* 87.
[105] *2006 Quadrennial Review Order,* 110.

market (or an HHI above 1000).

C. THE COMMISSION SHOULD IMMEDIATELY REVISE ITS RULES FOR SSAs, LMAs, JSAs AND LNSs TO ENSURE THAT THE OWNERSHIP RULES EFFECTIVELY PROTECT THE QUALITY AND DIVERSITY OF LOCAL NEWS

First, the Commission should lower the LMA threshold to a level at which wholesale outsourcing of local content would be considered attributable. By adopting the rule stating that LMAs involving more than fifteen percent of total airtime must be attributable, the Commission has already taken the important first step of recognizing that LMAs can provide brokering stations substantial control over brokered stations. However, the proliferation of SSAs (all of which include an LMA) has demonstrated that the fifteen percent threshold is not adequate to prevent the harms to diversity and competition that the Commission sought to avoid. In light of experience with the 15 percent attribution threshold, the Commission should initiate a rulemaking to consider establishing a lower threshold.

Additionally, revisiting the rule is appropriate at this time because one of the key efficiency justifications for LMAs has been rendered moot by the digital transition. Broadcasters once sought to sell newscasts to other stations because it provided an opportunity to shift the traditional newscast schedule to accommodate viewers who wished to watch the news at atypical hours.

Importantly, reducing the LMA attribution threshold would not categorically forbid LMAs—it would only require that they comply with the limits in the ownership rules. Thus, a top-four local station in a large market might still be able to provide some news content to a small independent station that would otherwise not have any news. But two top-four stations could not combine and simulcast their local news operations, reducing the number of "voices" in a market.[106]

[106] *1999 Duopoly Rules*, 14 FCC Rcd at 12933-34 (indicating that top four stations typically have local newscasts, and

Second, the Commission should reopen MB Docket No. 04-256 and finalize the rule that television JSAs be treated the same as JSAs between radio stations, that is, they should be automatically attributable where more than 15 percent of the advertising time of a station is brokered by another station in the same market.[107]

Third, the Commission should vigorously enforce policies prohibiting the unauthorized transfer of control of broadcast stations. Specifically, the Commission should act on the two pending applications for review on matters involving SSAs and on the pending Honolulu complaint.[108] These cases provide an opportunity for the Commission to reestablish its role in protecting diversity and competition in local news media. Otherwise, by simply structuring a transaction as a shared services agreement rather than as a literal license transfer, broadcasters can reduce competition and diversity without Commission oversight. Although the rule revisions outlined above are necessary to prevent future abuses, the Commission already possesses the legal authority to take action where a de facto transfer of control has occurred and should use that authority to send a clear signal to broadcasters that violations of existing rules will not be tolerated.

Fourth, the Commission should require copies of LNS agreements to be placed in a station's public file.[109] Just as with LMAs and JSAs, disclosure of LNSs will "facilitate monitoring … by the public, competitors and regulatory agencies."[110]

Specifically, disclosure would enable the public, the Commission, and the antitrust enforcement agencies to preemptively identify particularly egregious agreements that on their face

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that the duopoly rule is specifically designed to enable those stations to partner with smaller stations without reducing local news viewpoint diversity).

[107] *2002 Biennial Regulatory Review Report and Order*, MB Docket 02-277, 18 FCC Rcd 13620, 13743-44 (2002).

[108] *Piedmont Television of Springfield License*, LLC, 22 FCC Rcd 13910 (M.B. 2007), *application for review pending*; *Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (M.B. 2004), *application for review pending.*

[109] *See* 47 C.F.R. § 73.3526(e)(16), (e)(14).

[110] *1999 Attribution Order*, 14 FCC Rcd at 12559.

violate the spirit of the Commission's rules and/or antitrust laws. To ensure that these agreements are easily accessible to the public and to researchers, the agreements should be posted online.[111] In addition, the agreements should be filed with the Commission.

To ensure that viewers know the source of their news, the Commission should require that any contribution by an LNS to a report be credited on-air. For instance, just as national news programs often acknowledge any footage or reports that were provided by local affiliates, local stations should disclose on air whenever a joint news operation contributed to a report. Crediting the contribution of the LNS would also be analogous to how a newspaper credits the contributions of wire services to the content of a story. A mandatory disclosure requirement could be structured similarly to requirements the Commission is considering imposing on "video news releases."[112] Just as with video news releases, these disclosures are extremely important because even if a particular LNS is carefully limited so as not to harm localism, diversity, or competition, viewers have a "right to know" the origin of the news content they watch.[113] Without knowledge of the degree of editorial independence exercised in each news report, viewers cannot assess the quality and reliability of the news conveyed.

In addition, the Commission should implement its rules requiring a standardized programming report from broadcasters (Form 355) so that the Commission will have ongoing access to information about how the sharing agreements are operating in practice. The Commission adopted the standardized, comprehensive quarterly report form in early 2008, but the form has never been

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[111] The Commission has already adopted a rule requiring the contents of the public file to be placed online, but has not yet implemented this rule. *Standardized and Enhanced Disclosure Requirements for Television Broadcast License Public Interest Obligations*, 23 FCC Rcd at 1281 ¶ 17; 47 C.F.R. § 73.3526(e)(11)(i).
[112] *See Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd 10682, 10691 ¶ 15 (2008).
[113] *Cf. id.* at 10682 ¶ 1.

implemented.[114] The form would require, among other things, information on the number of hours of "local news programming produced by [an] entity other than the station";[115] whether any local news programming is rebroadcast;[116] and whether the licensee is a party to any LMA, JSA, or "similar agreement."[117] In addition to finally implementing Form 355, the Commission should clarify that "similar agreement" includes local news service agreements and shared services agreements. The Commission should also clarify that any news reports produced with the assistance of an LNS count as "news programming produced by [an] entity other than the station" and must be disclosed on the form. This requirement would provide the Commission and the public with data needed to study the effect of LNSs on the quality and diversity of local news content. From these studies, the Commission can assess what, if any, additional rules are required to ensure that the ownership rules accomplish their intended purpose of protecting local competition and diversity.

D. THE COMMISSION SHOULD RETAIN THE LOCAL RADIO OWNERSHIP RULE

Finally, the Commission should retain local radio ownership rules despite the consolidation. After national limits were eliminated and local ownership limits were severely relaxed in the Telecommunications Act of 1996, consolidation of local radio markets skyrocketed. As the Commission noted: In 1996, there were 10,257 commercial radio stations and 5,133 radio owners. Today, there are 11,202 commercial radio stations and 3,143 owners, representing a 39 percent

[114] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 23 FCC Rcd 1274, 1281 ¶ 17 (2008).
[115] *Id.* at 1305.
[116] *Id.*
[117] *Id.* at 1309.

decrease in the number of owners since 1996.[118] The Commission should consider rules that would encourage more minority and female ownership.

E. THE COMMISSION MUST ADOPT RULES TO STRENGTHEN MINORITY AND WOMEN'S OWNERSHIP OPPORTUNITIES

The Commission has affirmed minority and female diversity as a policy goal, but was criticized by the Third Circuit Court for repealing the Failed Station Solicitation Rule in the *2002 Order*, its only policy aimed at fostering minority television station ownership. Minorities comprise 34 percent of the entire U.S. population, but own only 3.15 percent of all full power commercial television stations and 7.7% of full power commercial radio stations. Women comprise 51 percent of the U.S. population, but own only 5.87 percent of all full power commercial television stations and 6% of full power commercial radio stations. There has been no improvement in the level of minority broadcast television ownership since 1998, even as the total universe of stations has increased by approximately 12 percent. There has been a marked decrease in the total number of black or African-American owned stations, dropping nearly 30 percent since 1998.[119]

The Third Circuit Court instructed the Commission to consider proposals by the Minority Media and Telecommunications Council (MMTC) for enhancing ownership opportunities for women and minorities, which the Commission had deferred for future consideration.[120] As the Commission reviews its local media ownership rules, it must pay close attention to the Third Circuit's strong language regarding the Commission's failure to justify its rule changes in regards to female and

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[118] *2006 Quadrennial Regulatory Review, 2.*
[119] *Promoting Diversification of Ownership in the Broadcasting Services,* Report and Order and Fourth Further Notice of Proposed Rulemaking, MB Docket No. 07-294, 24 FCC Rcd 5896, 5897 ¶ 1 n.2 (2009) (citing Derek Turner and Mark Cooper, "Out of the Picture 2007: Minority & Female TV Station Ownership in the United States," (Oct. 2007) http://www.freepress.net/files/otp2007.pdf; S. Derek Turner and Mark Cooper, "Off the Dial: Female and Minority Radio Station Ownership in the United States," (June 2007) http://www.stopbigmedia.com/files/off_the_dial.pdf. The authors define ownership for purposes of these studies as holding more than 50% voting interest. Free Press Studies at 11).

minority ownership. In addition, the Commission should conduct a comprehensive study of every broadcast radio and television station to determine the true level of female and minority ownership, as well as female and minority employment. The Commission should also revise and simplify the public display of individual Form 3232 station filings and expand the universe of stations that are required to file Form 323.

VII. CONCLUSION

The Commission has the opportunity to set structural ownership limits that will preserve diversity, competition, and local identity. The future of our democracy depends upon a robust media marketplace characterized by wide dissemination of diverse and antagonistic viewpoints. Protecting, preserving, and promoting a multiplicity of owners of media outlets is therefore necessary to serve the public interest. Because the local newspaper and the handful of television stations are still the dominant source of local news and information, the Commission should maintain a strong prohibition against a newspaper/broadcast cross-ownership rule and adopt strong limits on common ownership of television and radio outlets in the same market. The Commission must pay particular attention to the impact of its ownership rules on women and minorities. Finally, if the Commission retains a single cross-media rule, it should follow the careful and rigorous methodology outlined by the Third Circuit Court to protect against undue concentration in local media markets.

Respectfully submitted,

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Dated: July 12, 2010

[120] *Prometheus,* 435 fn. 82.