

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

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

**REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA
ON THE FCC’S MAY 25, 2010 NOTICE OF INQUIRY**

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July 26, 2010

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The Newspaper Association of America (“NAA”) hereby submits its reply comments in response to the May 25, 2010 *Notice of Inquiry* in the FCC’s 2010 Quadrennial Review.¹ The vast majority of commenters who addressed the Commission’s newspaper/broadcast cross-ownership rule (the “NBCO rule”) demonstrate that relaxing the rule will serve the public interest without harming competition or viewpoint diversity.² As they repeatedly have done in response to the FCC’s prior inquiries concerning the NBCO rule, commenters confirm once again that newspaper/broadcast combinations enable traditional media to operate more efficiently and, thus, to increase their focus on local news in remarkably diverse and competitive markets.³ Further, commenters explain convincingly, and based on real-world experiences, why relaxation

¹ *2010 Quadrennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Inquiry, FCC 10-92, MB Docket No. 09-182 (rel. May 25, 2010).

² *See generally* Comments of A. H. Belo Corporation, MB Docket No. 09-182 (July 12, 2010) (“A. H. Belo Comments”); Comments of Bonneville International Corporation, *et al.*, MB Docket No. 09-182 (July 12, 2010) (“Bonneville Comments”); Comments of Media General, Inc., MB Docket No. 09-182 (July 12, 2010) (“Media General Comments”); Comments of Morris Communications Company, LLC, MB Docket No. 09-182 (July 12, 2010) (“Morris Comments”); Comments of the National Association of Broadcasters, MB Docket No. 09-182 (July 12, 2010) (“NAB Comments”); Comments of Tribune Company, Debtor-in-Possession, MB Docket No. 09-182 (July 12, 2010) (“Tribune Comments”).

³ *See, e.g.*, A. H. Belo Comments at 2, 8-13; Bonneville Comments at 6-15; Media General Comments at iii, 10-12; Morris Comments at 8-13; NAB Comments at 72-76; Tribune Comments at 2-3, 18-68.

of the NBCO restrictions is more pressing than ever given the extreme financial and competitive pressures faced by traditional media today.⁴

A small handful of commenters, however, continue to insist that the outdated NBCO restriction should remain in place or even be tightened. As shown herein, these comments are based on a fundamental misunderstanding of the realities of the current media marketplace, misplaced skepticism regarding the incentives of traditional media that long have provided outstanding services to their communities, and a stubborn failure to recognize the high cost of producing local news and information.⁵ For example, the Office of Communication of United Church of Christ, Inc. and its co-filers argue that the FCC should grant newspaper/broadcast cross-ownership waivers only when a proposed merger qualifies for an irrebuttable positive presumption under the stringent standards set forth in the current NBCO rule.⁶ They further submit that the Commission should eliminate any and all exceptions to these standards, including the ability to rebut a negative presumption under the “four factors” or “local news” tests.⁷ Other commenters similarly maintain that the Commission went “too far” by establishing any presumption in favor of cross-ownership and that the agency should revert to an absolute restriction under which waivers would be considered only for “failing” or “failed” properties.⁸ The inflexible approach advocated by these parties would disserve the public interest, fail to

⁴ See, e.g., A. H. Belo Comments at 2-3, 13-18; Media General Comments at iii, 12-19; Morris Comments at 13-14; NAB Comments at 63-71; Tribune Comments at 85-92.

⁵ See generally Comments of Communications Workers of America, *et al.*, MB Docket No. 09-182 (July 12, 2010) (“CWA Comments”); Comments of Free Press, MB Docket No. 09-182 (July 12, 2010) (“Free Press Comments”); Comments of Office of Communication of United Church of Christ, Inc., *et al.*, MB Docket No. 09-182 (July 12, 2010) (“UCC Comments”).

⁶ UCC Comments at 9.

⁷ *Id.*

⁸ CWA Comments at ii, 30-31.

provide even a modicum of relief in markets that need it the most, and deny prospective cross-owners any meaningful safety valve from an unnecessarily rigid rule.⁹

I. NOTWITHSTANDING A HANDFUL OF ASSERTIONS TO THE CONTRARY, NEWSPAPER/BROADCAST CROSS-OWNERSHIP ENHANCES LOCALISM, AS THE COMMISSION AND THE COURTS HAVE REPEATEDLY AGREED.

Several commenters obstinately continue to assert, without offering any credible supporting evidence, that newspaper/broadcast cross-ownership reduces the amount of local news provided by co-owned outlets.¹⁰ However, empirical studies repeatedly have shown that the opposite is true,¹¹ the opening comments and the record of prior ownership review proceedings are replete with real-life evidence demonstrating that newspaper/broadcast combinations provide exceptional local news and community-oriented programming,¹² and both the Commission and the courts have agreed that newspaper/broadcast cross-ownership enhances localism.¹³ As NAA has explained to the Commission on many occasions, these consistent results are unsurprising, because cross-ownership allows broadcast outlets to benefit from a daily newspaper's extensive news gathering and reporting resources while enabling a newspaper to spread the high cost of those resources to other outlets.¹⁴ Further, the only evidence cited in

⁹ Moreover, this approach ignores the fact that the FCC must give serious consideration to all meritorious requests for waiver and that "a system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties." *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *see also* Comments of the Newspaper Association of America, MB Docket No. 09-182, at 9 n.17 (July 12, 2010) ("NAA Comments").

¹⁰ *See* Free Press Comments at 6 ("[E]vidence suggests that consolidation does not increase the provision of local news programming."); CWA Comments at vii ("Newspaper/broadcast cross-ownership . . . has led to less news and bankruptcy. . ."); *see also id.* at 10 ("Most consolidations are being done for efficiencies and that means less content, fewer journalists and less diversity in both content and staff.") (quoting Bernie Lunzer, TNG-CWA President, Media Ownership Workshop, Tampa, FL, Apr. 20, 2010).

¹¹ *See* NAA Comments at 23-24 n.79.

¹² *See supra* note 2; *see also* NAA Comments at 24 n.80.

¹³ *See* NAA Comments at 5 & n.5.

¹⁴ Although some commenters attribute a negative connotation to the word "efficiencies," in reality, efficiencies enable newspapers and broadcasters to devote more resources to local news, which is extremely expensive to produce.

support of the illogical proposition that cross-ownership reduces news—a study conducted by Consumers Union in 2007¹⁵—was found to be flawed and accordingly was rejected by the FCC in the *2008 Order*.¹⁶

II. THE ENDURING FINANCIAL PROBLEMS FACED BY THE NEWSPAPER INDUSTRY HAVE BEEN CAUSED PREDOMINATELY BY STAGGERING DECLINES IN ADVERTISING REVENUES, NOT CONSOLIDATION.

Several public interest groups further suggest that the current problems in the newspaper and broadcast industries are short-term and, in fact, have been triggered by consolidation.¹⁷ For example, Communications Workers of America (“CWA”) claims that the severe financial challenges faced by the newspaper industry have been caused by reductions in the quality of content, which, CWA maintains, has driven readers away in “stunning numbers.”¹⁸ CWA further makes the simplistic declaration that “a strategic focus on quality and innovation” will be the panacea for the industry’s financial woes.¹⁹ The notion that newspapers are not sufficiently focused on the quality of their content or innovating their business models is wholly unsupported and, NAA submits, woefully inaccurate.²⁰

In any case, this outlook completely misses the fundamental point. The problems in the newspaper industry have been produced first and foremost by a dramatic decrease in advertising

¹⁵ See Free Press Comments at 6 & n.13.

¹⁶ For a number of reasons, the FCC questioned the reliability of the conclusions reached in the study conducted by Consumers Union. *2006 Quadrennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2037 (¶ 44) (2008) (“*2008 Order*”) (“Due to numerous difficulties with CU’s analysis, we find that we cannot rely on its conclusions.”). Notably, the Commission concluded that the empirical evidence demonstrated that newspaper/broadcast cross-ownership can enhance the quality and quantity of local news. See *id.* at 2038 (¶ 46).

¹⁷ See, e.g., CWA Comments at 7, 9; Free Press Comments at 7-9; UCC Comments at 5-7.

¹⁸ CWA Comments at vii.

¹⁹ *Id.*

²⁰ See Comments of the Newspaper Association of America, GN Docket No. 10-25, at 4-7 (May 7, 2010) (“NAA Future of Journalism Comments”). NAA’s Future of Journalism Comments are appended hereto as Attachment A.

revenue, which itself has been brought about by the advent of online advertising competitors and has been exacerbated by the recent economic recession.²¹ These advertising declines are not cyclical, short-term losses, as commenters would have the FCC believe, but are systemic. Despite any modest upticks over the past few months, moreover, these challenges inevitably will continue for the foreseeable future.²² Accordingly, notwithstanding commenters' dismissive statements, these problems should not simply be ignored by the FCC as a temporary distraction. In addition, the problems of traditional media have not been "caused" by consolidation. To the contrary, allowing outlets to join forces through cross-ownership would help ease the economic constraints on newspapers and broadcasters, allowing them to increase resources devoted to in-depth investigative journalism and to better serve their local markets with high-quality news coverage.

III. SUGGESTIONS THAT THE MEDIA MARKETPLACE HAS CHANGED LITTLE SINCE THE IMPLEMENTATION OF THE NBCO RULE ARE INCORRECT AND SHORT-SIGHTED.

Finally, several commenters would have the Commission believe that, at least for purposes of evaluating the NBCO rule, the media marketplace is the same as it was when the ban was adopted in 1975. In support of this position, CWA and Free Press emphasize that daily newspapers and broadcast television stations continue to be the most popular sources of local news and information, while the Internet has not yet surpassed traditional newspapers and

²¹ See NAA Comments at 12-14.

²² See *id.* at 16-18; see also Ken Doctor, Nieman Journalism Lab (The Nieman Foundation for Journalism at Harvard), *The Newsonomics of the Dead Cat Bounce* (July 15, 2010), available at <http://www.niemanlab.org/2010/07/the-newsonomics-of-the-dead-cat-bounce/> (last visited July 23, 2010) (noting that, in 2009, the newspaper industry's "ad revenue results had all the spring of a dead cat — down some \$10 billion and 27 percent" and that in 2010 "with things less worse than they were in the disastrous 2009" there may be "a bit of a bounce — but not one to crow about . . . [u]nless, that is, you don't have much else to crow about, and that's the predicament, circa mid-2010, of most newspaper companies").

broadcast outlets in this respect.²³ According to these parties, this fact is the only marketplace consideration that should weigh into the FCC's analysis of the NBCO rule. NAA submits that this narrow view ignores the multitude of other news providers that now exist and compete for consumer attention, fails to account for obvious trends demonstrating the rapid growth of the Internet as a national and local news source,²⁴ and simply cannot be reconciled with reality. Further, while NAA repeatedly has acknowledged that newspapers and broadcasters are still primary originators of local news,²⁵ this does not diminish the fact that the Internet also plays a major role in the creation and dissemination of, as well as boosting the range of perspectives on, local news. What is more, the continued prominence of traditional media as local news originators shows the scale and resources that are needed to produce local news and informational content and, therefore, why the FCC should protect and foster the continuing viability of the newspaper and broadcast industries through the elimination or substantial relaxation of the NBCO rule.²⁶

²³ See CWA Comments at 25-29; Free Press Comments at 4-5.

²⁴ For example, the Pew Project for Excellence in Journalism just recently reported that “[o]n a typical day, 61% of Americans get news online, which puts the Internet just behind television as a news source and *ahead of newspapers*.” Pew Project for Excellence in Journalism, *The State of the News Media 2010: An Annual Report on American Journalism*, Online, Audience Behavior (March 2010) (emphasis added), available at http://www.stateofthemediamedia.org/2010/online_audience.php (last visited July 23, 2010). Similarly, in 2009, the Pew Project found that “the number of Americans who said they got ‘most of their national and international news’ online increased 67% in the last four years.” Pew Project for Excellence in Journalism, *The State of the News Media 2009: An Annual Report on American Journalism*, Online, Audience Behavior (March 2009), available at http://www.stateofthemediamedia.org/2009/narrative_online_audience.php?cat=2&media=5 (last visited July 23, 2010).

²⁵ See NAA Comments at 26-27.

²⁶ NAA's opening comments explain that the popularity of the Internet is increasing and that this ubiquitous medium has become a critical player in today's local media landscape, providing concrete examples of websites that focus exclusively on local news, information, and community affairs in markets throughout the country. See NAA Comments at 18-23; see also A. H. Belo Comments at 15-16; Media General Comments at 13-16; Tribune Comments at 78-80; NAA Future of Journalism Comments at 14-17. Although CWA cites statements by the U.S. Court of Appeals for the Third Circuit in *Prometheus* to support its contention that most websites do not contribute to viewpoint diversity, the Court distinguished between aggregator websites that merely repackage and republish news that has already been reported and independent media outlets that also serve “‘a distillation function (making a judgment as to what is interesting, important, entertaining, etc.)’” and provide “‘accuracy and depth in local news.’” CWA Comments at 27-28 (citing *Prometheus Radio Project v. FCC*, 373 F.3d 372, 405-07 (3d Cir. 2004)). Notably, as demonstrated in NAA's opening comments, an increasing number of websites meet these criteria for an

IV. CONCLUSION

For the reasons set forth in NAA's comments and further noted here, the FCC must move forward expeditiously to eliminate or, at a minimum, to materially loosen the restriction on newspaper/broadcast cross-ownership.

Respectfully submitted,

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independent media outlet, and thus contribute to viewpoint diversity under the Court's standards. *See* NAA Comments at 18-23.

ATTACHMENT A

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Examination of the Future of Media and) **GN Docket No. 10-25**
Information Needs of Communities in a Digital)
Age)
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COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

I. INTRODUCTION AND SUMMARY

The Newspaper Association of America (“NAA”)¹ hereby submits its comments in response to the FCC’s January 21, 2010 Public Notice launching its “Examination of the Future of Media and Information Needs of Communities in a Digital Age.”² As explained herein, the unprecedented financial challenges facing the daily newspaper industry are having a real and substantial impact on the extensive resources that newspapers must have at their disposal in order to best serve their local communities. In light of these marketplace realities, it is more critical than ever for the FCC and other branches of government to eliminate unnecessary regulatory burdens and afford newspapers the flexibility to adapt their business models in ways that will enable them to continue funding local journalism.

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

² *FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, Public Notice, DA 10-100 (rel. Jan. 21, 2010) (“*Future of Media PN*”).

Because daily newspapers have an unmatched commitment to local news and investigative journalism, NAA submits that the current state of the newspaper publishing industry has significant implications for the public interest. Notwithstanding the severe economic challenges they are facing, daily newspapers in markets across the country continue to deliver outstanding local service to their communities. As demonstrated in a recent empirical study by the Pew Project for Excellence in Journalism, newspapers do by far the most “enterprise reporting” of any local media, and other local outlets rely heavily on the information originated by daily newspapers. Without the work that daily newspapers do, day in and day out, a critical element of the local news and information “ecosystem” would be missing.

Historically, daily newspapers have been able to rely primarily on advertising revenue, and secondarily on circulation revenue, to finance the enormous investments they make in in-depth news reporting. Over the past three years, however, intense competition from the Internet and other new media, in combination with the recent economic recession, have taken an immense toll on newspapers’ traditional business model. Hit with severe declines in revenue, newspapers have been left with no choice but to cut back on the scale of their news reporting and to lay off thousands of highly valued journalists. Local broadcasters are facing similar long-term and recession-related challenges and, as a result, are in the midst of a serious economic retrenchment that is affecting their ability to continue producing high-quality local news.

NAA submits that, in addition to weighing the dire economic realities newspapers are facing, the FCC and other governmental agencies must take into account the multifaceted and game-changing impact that the Internet has had, and will continue to

have, on newspapers and other news media. First, online community journalism is a growing and highly innovative phenomenon that the Commission must factor into its media-related policies. While many community journalism websites are start-ups that depend on daily newspapers and other traditional media for original newsgathering, they nonetheless provide consumers with an increasingly important alternative for local information and commentary. Second, online aggregators, search engines, and news forums increasingly are reproducing newspaper content for their own commercial gain, without sharing in the enormous cost of producing such content. Especially in light of the fact that these same Internet-based enterprises are competing fiercely for the advertising revenue that is the lifeblood of daily newspapers, it is easy to see why this practice is placing tremendous strain on the already limited resources of newspaper publishers.

Taking all of these factors into consideration, NAA believes there are several steps that the FCC and other branches of government can take to bring their policies in line with the current marketplace and to help ensure that newspapers will be able to continue their local journalism missions in the digital era. In making these recommendations, NAA remains committed to rigorous adherence to the principles embodied in the First Amendment, in order to ensure the continued existence of a free and independent press that is protected from governmental intervention into the newsgathering and editorial processes.

First, there is no question that the FCC finally must move forward to eliminate the woefully outdated and counterproductive ban on newspaper/broadcast cross-ownership. Among many other flaws, the restriction is directly contrary to the FCC's goals in this

proceeding of “facilitat[ing] a vibrant media” and ensuring that Commission policies do not “hinder innovation.”³ Second, NAA submits that newspapers must be able to obtain reasonable compensation from Internet-based entities that reproduce their content for commercial purposes. In particular, it may be appropriate for the government to provide newspapers with greater copyright protections in order to achieve this goal, perhaps through the creation of a statutory license for breaking news reports that would be conceptually analogous to the retransmission consent regime that applies to cable and satellite carriage of local broadcast signals. Third, the U.S. Postal Service no longer should intervene in the preprint advertising marketplace through the imposition of postal rates that favor other types of direct mailers over newspapers and thereby harm the ability of newspapers to finance quality journalism.

II. BECAUSE DAILY NEWSPAPERS ACROSS THE COUNTRY REMAIN PREMIER PROVIDERS OF LOCAL JOURNALISM, THE HEALTH AND LONG-TERM VIABILITY OF THE NEWSPAPER INDUSTRY HAVE BROAD PUBLIC INTEREST IMPLICATIONS.

In-depth local news and investigative journalism are at the core of daily newspapers’ operating missions and business models. Notwithstanding the severe financial challenges facing newspapers today, this remains the case in markets of all sizes across the country. The extensive coverage of local breaking news, local politics, and civic events that daily newspapers offer every day is unmatched by any other media. Consequently, as the FCC aptly recognizes in its Public Notice in this proceeding, newspapers can have a substantial impact on the “health of communities” and the ability of citizens “to hold their leaders and institutions accountable.”⁴

³ *Future of Media PN*, Introduction.

⁴ *Id.*

Provided below are just a few salient examples of the local, in-depth, and investigative coverage that NAA's daily newspaper members recently have provided and of the ways in which newspapers can have a significant and lasting impact on their communities. In each instance, these valuable reports undoubtedly have involved hundreds of hours of fact gathering and tremendous dedication by veteran journalists:

- The *Milwaukee Journal Sentinel*'s 2009 "Cashing in on Kids" series exposed poor oversight of the State of Wisconsin's \$350 million taxpayer-subsidized child-care system and resulting fraud and other criminal activity. These important stories prompted criminal probes and indictments and led to new state laws aimed at eliminating fraud and keeping criminals out of the day care business.⁵
- After the City of Reno announced in late 2008 that it was considering significant public safety budget cuts, including layoffs of public safety employees, the *Reno Gazette-Journal* decided to dig into the city's finances. After prevailing in court against the city's efforts to withhold relevant salary data, the *Gazette-Journal* discovered that the financially strapped city was spending 2.5 times more in overtime pay than other local municipalities. Driving the expense was a questionable overtime policy used in the fire department that forced the city to pay overtime to cover vacations, even if straight-time was a viable option. A report detailing these conclusions was published in February 2009. In response to the story, the firefighters offered to relax their overtime rules, a change that not only saved the City of Reno \$1.4 million, but also eliminated the need for layoffs.⁶
- In December 2009, the Bristol (VA) *Herald Courier* published an in-depth series illuminating the murky mismanagement of natural-gas royalties owed to thousands of land owners in southwest Virginia, spurring remedial action by state lawmakers. While some of the natural gas belongs to landowners, residents are forced by the state to lease their mineral rights to private energy corporations. The series revealed that, instead of putting royalties into the pockets of mineral owners, the state funneled thousands of dollars every month into an escrow fund that

⁵ Reporter Raquel Rutledge received a 2010 Pulitzer Prize for local reporting for her work on the series. Bill Glauber, *Journal Sentinel Reporter Wins Pulitzer Prize*, JSONLINE, Apr. 12, 2010, available at <http://www.jsonline.com/watchdog/watchdogreports/90617104.html> (last visited May 5, 2010).

⁶ Susan Voyles, *Overtime Eats Reno City Budget*, RENO GAZETTE-J., Feb. 1, 2009, at 1A.

royalty owners cannot monitor or access without clearing enormous legal hurdles.⁷

- *The Indianapolis Star* devoted significant newsroom and legal resources throughout 2009 to an effort to expose teacher misconduct. After nearly a year in court, the newspaper successfully unsealed hundreds of pages of depositions, personnel files, and memos detailing four cases in which the district had substantiated incidents of teachers abusing or harassing children, but had allowed the problem teachers to quietly resign. In August 2009, the newspaper published a series of articles about the secret agreements and posted the case files on its website. In response, a coalition of legislators introduced a bill to close the loophole that allowed the secret agreements and several of the school boards involved in the stories called for laws requiring more transparency. Since the publication of the series, the Indiana Department of Education has opened cases against all of the teachers in *The Star's* stories.⁸
- After spending months in early 2009 examining the complexities of Ohio's distressed public pension system, the *Cincinnati Enquirer* published a three-day series in April 2009 explaining the growing liability of taxpayers for a generous public pension system and the increasing problem caused by public officials' decisions to put off funding these pensions. The reports revealed that many local pension promises were far above the national average for public retirees and that elected officials had routinely balanced budgets by deferring pension payments. The articles led to a comprehensive review of the city's pension office. One top pension official resigned, another was fired, and a third was demoted.⁹

⁷ *Herald Courier* reporter Daniel Gilbert received a 2010 Pulitzer Prize for public service for his work on the series. See Daniel Gilbert, *Underfoot, Out of Reach: A Series on the Conflicts Over Southwest Virginia's Natural Gas Wealth*, TRICITIES.COM, available at http://www2.tricities.com/tri/special_sections/mineral_rights/ (last visited Apr. 24, 2010).

⁸ Andy Gammill, *Lawrence District Seeks Change in Firing Law*, THE IND. STAR, Aug. 25, 2009, at 1A, available at <http://www.indystar.com/apps/pbcs.dll/article?AID=/20090825/NEWS14/908250365> (last visited May 5, 2010); Andy Gammill, *Bennett: Secret Deals at Schools Should End*, THE IND. STAR, Aug. 22, 2009, at 1A; Andy Gammill and Mark Alesia, *Accused Teachers' Exits Cloaked in Secrecy*, THE IND. STAR, Aug. 16, 2009, at 1A, available at <http://www.indystar.com/article/20090816/NEWS14/908160374/> (last visited May 5, 2010); Andy Gammill and Mark Alesia, *The Accusations*, THE IND. STAR, Aug. 16, 2009, at 11A.

⁹ Barry M. Horstman, *Governments Search for Systemic Reforms*, CINCINNATI ENQUIRER, Apr. 6, 2009, available at http://www.floridamayors.org/index.asp?Type=B_PR&SEC={7A3B38FB-550A-4FF8-A137-74F19DA0E3E7}&DE={7EBBF432-720A-4683-AC75-DBE194B3ADA1} (last visited May 5, 2010); Barry M. Horstman, *City's Pension Funds Tank*, CINCINNATI ENQUIRER, Apr. 5, 2009; Barry M. Horstman, *Generous Pensions in Deep Hole*, CINCINNATI ENQUIRER, Apr. 3, 2009, available at <http://news.cincinnati.com/apps/pbcs.dll/article?AID=/20090405/NEWS01/107120008> (last visited May 5, 2010).

- “Tainted Justice,” a year-long series published by *The Philadelphia Daily News* recently exposed the questionable tactics of a police narcotics squad. The project began in February 2009 with a story about a drug informant who claimed that he and a Philadelphia narcotics officer had lied about evidence in at least two dozen cases to gain illegal entry into homes and make arrests. Subsequent stories reported that members of the Narcotics Field Unit had frequently raided small “mom-and-pop” shops, many of which were owned by immigrants, and reportedly stole cash and merchandise.¹⁰
- In 2009, the *Sarasota Herald-Tribune* published a six-day series that exposed billions of dollars in real estate fraud across the state of Florida. The series focused on illegal property flipping and revealed more than 100 people who facilitated the fraud in the Sarasota area. The series triggered local and state efforts to curb such abuses.¹¹

A growing body of empirical evidence confirms that newspapers can have a significant effect on their communities. For example, the critical role that daily newspapers play in the local news and information “ecosystem” was documented recently by the Pew Research Center’s Project for Excellence in Journalism in a January 2010 study of local news and informational output in Baltimore, Maryland over a one-week period.¹² The study concluded that “while the news landscape has rapidly expanded” in the Baltimore marketplace, “most of what the public learns is still overwhelmingly driven by traditional media—particularly newspapers.”¹³ More

¹⁰ The series won a 2010 Pulitzer Prize for investigative reporting. See David O’Reilly, *Daily News Wins Pulitzer Prize*, THE PHILA. INQUIRER, Apr. 13, 2010, available at http://www.philly.com/inquirer/local/philadelphia/20100413_Daily_News__Jennifer_Higdon_win_Pulitzer_Prizes.html (last visited Apr. 24, 2010).

¹¹ The reporters who worked on the series were 2010 finalists for a Pulitzer Prize in investigative reporting. See *Herald-Tribune’s Series on Flipping Is Pulitzer Finalist*, HERALDTRIBUNE.COM, Apr. 14, 2010, available at <http://www.heraldtribune.com/article/20100414/ARTICLE/100419842> (last visited Apr. 24, 2010).

¹² Pew Project for Excellence in Journalism, *How News Happens: A Study of the News Ecosystem of One American City*, January 2010, available at http://www.journalism.org/analysis_report/how_news_happens (last visited Apr. 27, 2010) (“PEJ Baltimore Local News Study”).

¹³ *Id.* at 1.

specifically, the study found that nearly half of the enterprise reporting was done by general interest newspapers, such as *The Baltimore Sun*, and another 13% was conducted by specialty newspapers.¹⁴ These original stories, the study further found, “then tended to set the narrative agenda for most other media outlets.”¹⁵ The study thus confirms that, at the same time that newspapers are facing unprecedented competition for consumer attention, they continue to play a pivotal role in their communities.

In addition, a study released by Princeton University in 2009 analyzed the impact that daily newspapers can have on their readers. The study examined communities that lost newspaper coverage due to the closing of *The Cincinnati Post* in 2007.¹⁶ As a result of the *Post*’s demise, the *Cincinnati Enquirer* was the only daily newspaper covering Cincinnati and its suburbs in southern Ohio and northern Kentucky. The study concluded that, in towns that previously had been covered by the *Post*, voter turnout dropped, fewer people ran for public office, and more incumbents were re-elected after the paper ceased publication.¹⁷ While the study was small in scope and its results were not statistically significant, it suggests that the absence of, or reductions in coverage by, daily newspapers can have far-reaching implications for local communities. As the study’s authors found,

¹⁴ *Id.* at 3. The study further found that local television stations and their websites accounted for 28% of the enterprise reporting on the major stories of the week, while radio stations accounted for 7%. *Id.*

¹⁵ *Id.* at 2.

¹⁶ Sam Schulofer-Wohl and Miguel Garrido, Woodrow Wilson School of Public and International Affairs, *Do Newspapers Matter? Evidence from the Closure of The Cincinnati Post*, March 2009 (“*Do Newspapers Matter?*”), available at <http://www.scribd.com/doc/13360606/Do-Newspapers-Matter> (last visited May 5, 2010).

¹⁷ *Id.* at 10-11, 17. As the study documents, the loss of the paper was particularly significant in the affected northern Kentucky communities, where the *Post* historically had dominated circulation and had provided more than 80% of the combined local news coverage in the two papers. *Id.* at 1.

“newspapers—even underdogs such as the *Post*, which had a circulation of just 27,000 when it closed—can have a substantial and measurable impact on public life.”¹⁸

III. SEISMIC SHIFTS IN THE MEDIA INDUSTRY ARE THREATENING THE ECONOMIC MODEL THAT SUPPORTS LOCAL JOURNALISM.

A. Unprecedented Financial Challenges Are Eroding the Ability of Daily Newspapers to Provide In-Depth Local News and Investigative Reporting.

While daily newspapers across the country remain highly dedicated to cost-intensive local journalism, it is beyond any question that the U.S. newspaper publishing industry is in the midst of a severe financial crisis. At the root of the industry’s economic troubles are unprecedented declines in newspapers’ two primary sources of revenue: advertising and circulation. As is painfully evident in many corners of the marketplace, these losses have posed a direct and substantial threat to newspapers’ ability to sustain their enormous investments in local, national, and investigative journalism.

During 2009 alone, daily newspapers experienced a 26% decline in advertising revenue, bringing the total loss over the past three years to 43%.¹⁹ Given that advertising traditionally has accounted for as much as 80% of newspaper earnings, these losses can only be viewed as monumental. Earnings from classified advertising have been on an especially dramatic downward slide and, over the past decade, have tumbled a staggering 70%.²⁰ Although some industry observers have speculated that the growth in online

¹⁸ *Id.*, Abstract.

¹⁹ Pew Project for Excellence in Journalism, *The State of the News Media 2010*, March 2010, (“*PEJ 2010 State of the News Media Report*”), Newspapers, Summary Essay at 1, available at <http://www.stateofthemedial.org/2010/> (last visited Apr. 27, 2010).

²⁰ Rick Poynter, *Classified Ad Revenue Down 70% in 10 Years, With One Bright Spot*, POYNTER ONLINE – THE BIZ BLOG, Feb. 1, 2010, available at <http://www.poynter.org/column.asp?id=123&aid=177005>”) (last visited May 5, 2010) (finding that the overall decline in the newspaper industry’s classified ad

advertising will offset print advertising losses, that has not yet turned out to be the case.

Advertising on newspaper websites declined approximately 10% in 2009 and, in any event, currently accounts for less than 10% of newspapers' overall revenue.²¹

Newspaper circulation has been equally hard hit. While circulation has been falling for at least a decade, the losses reported last year were unprecedented.²² In October, it was reported that daily newspaper circulation was at its lowest point since the 1940s.²³ Overall, newspapers have lost approximately 17% of their circulation in three years and nearly 26% since 2000.²⁴ Moreover, while circulation losses at daily papers may have “peaked” last year, it is expected that “[b]ig declines are almost certain to continue in 2010.”²⁵

earnings during the past decade “was a stunning 70 percent – from \$19.6 billion in 2000 to roughly \$6 billion in 2009.

²¹ *PEJ 2010 State of the News Media Report*, Newspapers, Economics at 17; see also Erik Sass, *Newspapers To Hit Bottom in 2010 . . . Maybe?*, MEDIA DAILY NEWS (MediaPost), Dec. 16, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=119282 (last visited Feb. 9, 2010).

²² *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 2.

²³ See Richard Pérez-Peña, *U.S. Newspaper Circulation Falls 10%*, N.Y. TIMES, Oct. 27, 2009, available at <http://www.nytimes.com/2009/10/27/business/media/27audit.html> (last visited May 5, 2010). As the FCC recognized in its most recent *Quadrennial Review* of its broadcast ownership restrictions, sharp declines in newspaper circulation have occurred over the past several decades notwithstanding substantial growth in the U.S. population: “Even as the population of the country has increased more than 80 percent in the last half-century, the number of daily newspapers being published and their readership have decreased significantly. 2006 *Quadrennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2026 (¶ 27) (2008) (“2008 Order”).

²⁴ See Pérez-Peña, *supra* note 23 (noting that “[t]he two-decade erosion in newspaper circulation is looking more like an avalanche” and that “after years of slipping,” circulation has “accelerated sharply downward . . .”); Frank Ahrens, *The Accelerating Decline of Newspapers*, WASH. POST, Oct. 27, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/26/AR2009102603272.html> (last visited Feb. 9, 2010) (noting that “[a]verage daily circulation of all U.S. newspapers has been in decline since 1987”).

²⁵ *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 1.

The recent economic recession unquestionably is an important factor in these trends. Advertisers across the country have cut spending drastically to stem their own revenue losses, and this practice has had an inordinate impact on newspaper publishers.²⁶ However, the end of the recession almost certainly will not lead to a full recovery of the newspaper industry's lost revenues. Newspaper publishers have been, and undoubtedly will continue to be, subject to intense and growing competition from Internet companies and other new media, as well as traditional media outlets, for consumers' attention. As a result, newspapers are facing a serious, long-term threat to the revenues that make their cost-intensive, public service-oriented journalism feasible.

Whether or not daily newspapers eventually will be able to recoup some of their lost revenues, there is no question that, in the current environment, many are struggling to sustain their news operations. According to one recent estimate, newspapers will devote \$1.6 billion less to news reporting in 2010 than they were able to do just three years ago.²⁷ Moreover, approximately 15,000 full-time reporting and editing jobs have been eliminated since 2007, leaving newsrooms 27% smaller than they were at that time.²⁸ In a further effort to curb expenses, a number of publishers have been forced to close domestic and foreign news bureaus²⁹ and/or to reduce the scope of their news coverage.³⁰

²⁶ Joe Mandese, *Nielsen: U.S. Ad Spending Plummets \$3.8 Billion*, MEDIADAILYNEWS (MediaPost), June 8, 2009, available at http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=107497 (last visited May 6, 2010) (reporting that ad spending in the first quarter of 2009 was down 37.7% in Sunday newspaper supplements, which "experienced the greatest erosion of any major U.S. ad medium," with ad spending in national newspapers close behind at a 27.7% drop).

²⁷ *PEJ 2010 State of the News Media Report*, Newspapers, Summary Essay at 1.

²⁸ *Id.*

²⁹ For example, *The Washington Post* announced in November 2009 that it would close its three remaining national bureaus in New York, Los Angeles, and Chicago. Howard Kurtz, *Washington Post Shuttters Last U.S. Bureaus*, WASH. POST, Nov. 24, 2009, available at <http://www.washingtonpost.com/wp->

At least one recent empirical study confirms that newspapers have had to reduce the quantity of their news coverage. The Pew Project for Excellence in Journalism concluded in its analysis of the Baltimore news market that “[t]he local papers . . . are . . . offering less [news coverage] than they once did.”³¹ More specifically, the study found that in 2009 “the [Baltimore] Sun produced 32% fewer stories on any subject than it did in 1999, and 73% fewer stories than in 1991, when the company still published an evening and morning paper with competing newsrooms.”³² Further, a comparison of one major story during the week studied—about state budget cuts—found that “newspapers in the area produced only one-third as many stories in 2009 as they did the last time the state made a similar round of budget cuts in 1991, and the Baltimore Sun one seventh as many.”³³

[dyn/content/article/2009/11/24/AR2009112403014.html](http://online.wsj.com/article/2009/11/24/AR2009112403014.html) (last visited May 5, 2010). Similarly, *The Wall Street Journal* revealed plans last October to close its Boston bureau. Shira Ovide, *Wall Street Journal Closes Boston Bureau*, WALL ST. J., Oct. 29, 2009, available at <http://online.wsj.com/article/SB10001424052748704317704574503480514474764.html> (last visited May 5, 2010). Cox newspapers shut down its Washington, D.C. news bureau along with five international bureaus in April 2009. *Cox Newspapers to Close Washington Bureau*, THE HUFFINGTON POST, Dec. 2, 2009, available at <http://www.huffingtonpost.com/huff-wires/20081202/cox-newspapers/> (last visited May 5, 2010). In March 2009, Media General similarly closed its Washington, D.C. News Service Bureau, which had been in existence for 30 years. John Reid Blackwell, *Media General Closing Washington News Bureau*, RICHMOND TIMES-DISPATCH, Mar. 14, 2009, available at http://www2.timesdispatch.com/rtd/business/local/article/B-MEDI14_20090313-211607/231243/ (last visited May 5, 2010).

³⁰ Last year, both *The Washington Post* and the *Atlanta Journal-Constitution* eliminated their stand-alone Business Sections. Robert MacMillan, *Washington Post to Cut Business Section*, REUTERS, Mar. 13, 2009, available at <http://www.reuters.com/article/newsOne/idUSTRE52C5NP20090314> (last visited May 5, 2010); *Atlanta Newspaper to Merge Sections to Cut Costs*, ABC NEWS ONLINE (Associated Press), Feb. 23, 2009, available at <http://abcnews.go.com/Business/wireStory?id=6939345> (last visited Feb. 9, 2010).

³¹ *PEJ Baltimore Local News Study*, at 2.

³² *Id.*

³³ *Id.*

B. Local Broadcasters Also Are in the Midst of a Serious Financial Retrenchment That Is Making It Increasingly Difficult to Fulfill Their Local Service Missions.

Local broadcasters also are facing serious financial setbacks. As the Pew Project for Excellence in Journalism recently concluded, the revenue at local television stations was “in free fall” in 2009.³⁴ At the end of the year, earnings had sunk to “levels not seen since the mid-1990s.”³⁵ On-air advertising income, which represents more than 90% of TV station earnings, declined nearly 22% in 2009 and appears unlikely to rebound significantly in the near future.³⁶ Local broadcast news operations have not been immune to these revenue shortfalls. Because of the “structural challenges” facing the television industry, many “[n]ewsgathering operations are getting smaller,” and “[s]tations, after years of declines in audience, may be nearing a point where they no longer can add new newscasts or [pursue] new revenue opportunities....”³⁷ While the overall amount of local television news increased slightly in 2009, this trend was accomplished in the face of budget cuts, declines in the size of the average newsroom, and reductions in newsroom salaries.³⁸ Thus, stations that are seeking to boost their news offerings generally are being forced to do so “with fewer people and fewer resources.”³⁹

³⁴ See *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1.

³⁵ *Id.*, Economics at 7.

³⁶ *Id.*, Summary Essay at 1; see also *Broadcast Television Ad Revenues Were Down 22.6% in 3rd Quarter*, TELEVISION BUREAU OF ADVERTISING, Dec. 18, 2009, available at http://www.tvb.org/rcentral/AdRevenueTrack/revenue/2009/ad_figures_1.asp (last visited Feb. 9, 2010); *PEJ 2010 State of the News Media Report*, Local TV, Economics, at 10 (reporting that, in the first nine months of 2009, automobile advertising – the most important advertising category for local television stations – was down 52%, and that revenue from 24 of the top 25 categories of local television advertisers was down sharply during this time period).

³⁷ *PEJ 2010 State of the News Media Report*, Local TV, Summary Essay at 1.

³⁸ See Katy Bachman, *Study: Broadcasters Doing More With Less*, MEDIAWEEK, Apr. 15, 2010, available at http://www.mediaweek.com/mw/content_display/news/local-

C. **The Internet Has Had a Profound Impact on the News and Information Marketplace as Well as Newspapers' Business Models.**

The game-changing impact of the Internet must be squarely considered in any evaluation of the state of the newspaper publishing and other traditional media sectors. Online news providers that produce original local news and commentary are a growing and highly innovative phenomenon. While many of these services are start-ups that admittedly do not have nearly the same level or caliber of newsgathering resources as most daily newspapers, they nonetheless play a tangible role in the news and information ecosystem and are competing with newspapers for consumer attention. Another Internet-based trend that must be taken into account is the heavy reliance of many aggregators and other online operators on the investments that newspapers make in local journalism. Such providers routinely reproduce newspaper content for their own commercial benefit without sharing in the enormous costs of creating such content, a practice that is placing tremendous strain on the already depleted resources of newspaper publishers.

1. Online community journalism plays a unique, and increasingly important, role in the provision of local news and information.

Internet-based news outfits, including many that focus on local and regional issues, are playing an increasingly important role in the gathering and dissemination of news and information. In the aftermath of the downsizing at many traditional newspapers, numerous locally oriented online services are being founded or staffed by former professional newspaper journalists. As the Pew Project for Excellence in Journalism recently concluded in its annual State of the News Media report, “[c]itizen

broadcast/e3iceae27f23a68f24b9de26a5d307db18f (last visited May 6, 2010); see also *PEJ 2010 State of the News Media Report*, Local TV, News Investment at 14.

³⁹ *Id.* Radio revenues also declined markedly in 2009. See *Radio Revenue Trends*, RADIO ADVERTISING BUREAU, available at <http://www.rab.com/public/pr/yearly.cfm> (last visited April 28, 2010).

journalism at the local level is expanding rapidly and brimming with innovation.”⁴⁰ The 2010 report further noted that “[w]hile the frequency of reporting seems insufficient for many [community journalism websites] to operate as full news operations, the focus on important community matters suggests the sites could serve as valuable supplements.”⁴¹ Although most independent online news services currently do not have full-fledged newsgathering operations, and many in fact depend on the original reporting done by newspapers and other outlets, the presence and availability of such providers to consumers nonetheless has fundamentally changed the “gate-keeping” role that traditional media once played in disseminating news. NAA submits that these sources accordingly must be taken into consideration in media-related policy initiatives.

By way of example, the Pew Research Center’s recent study of the Baltimore news and information marketplace noted the presence of several news-oriented local websites, including Baltimore Brew (www.baltimorebrew.com), a local news website produced mostly by former *Baltimore Sun* staffers, and Investigative Voice (www.investigativevoice.com), a local watchdog reporting website started by previous *Baltimore Examiner* employees.⁴² Although the study concluded that the majority of original local news reporting was being done by local newspapers and other traditional outlets, it noted during the one-week period analyzed at least one story—which involved a plan by the state to put listening devices on buses to deter crime—that was originally

⁴⁰ *PEJ Baltimore Local News Study*, at 5.

⁴¹ *PEJ 2010 State of the News Media Report*, Special Reports, Community Journalism, at 16.

⁴² *Pew Baltimore Local News Study*, at 5. The study also noted the presence of five local blogs, one of which is called Inside Charm City, a hyperlocal general interest blog produced by a single person. *Id.* In addition, the study noted that there are more than 30 local blogs that exist inside the universe of the *Baltimore Sun* newspaper website. *Id.*

reported by a local blog and subsequently picked up by the local newspaper and other media outlets.⁴³

Similar online news services have been launched in markets across the country.

Just a few of the scores of impressive examples include the following:

- *The Texas Tribune* (www.texastribune.org) is a non-profit, nonpartisan public media organization with a mission of promoting civic engagement and discourse on public policy, politics, government, and other matters relevant to the State of Texas.
- In Hartford, Connecticut, *The Connecticut Mirror* (www.ctmirror.org), a nonprofit online site covering state government and politics, was launched in February 2010. The site has been described by the *New York Times* as a high-powered political journal” that “specialize[s] in relentlessly local and interactive coverage...”⁴⁴ It is staffed by an editor and four reporters, and has funding to last for four years.⁴⁵
- In Minneapolis/St. Paul, the *Twin Cities Daily Planet* (www.tcplanet.net), a project of the nonprofit organization Twin Cities Media Alliance, provides “broad coverage at both the local and state level” and recently “featured stories on such matters as challenges facing St. Paul schools, interviewing St. Paul Public School superintendent Valeria Silva, and a report on the ‘tea party’ movement and its potential for joining with the Independence Party in Minnesota.”⁴⁶ A regular feature, “The Capitol Report,” focuses on the Minnesota state legislature.
- *Voices of San Diego* (www.voiceofsandiego.org), is a public-service, non-profit news organization that provides in-depth reporting on issues relevant to the San Diego region’s quality of life, including its politics, the economy, environmental issues, education, and housing.
- *Oakland Local* (www.oaklandlocal.com), a community site founded by Web entrepreneur Susan Mernit, is funded through both a start-up grant and advertising. Topics covered include the environment, food,

⁴³ *Id.* at 3; After a newspaper reporter picked up the story on the blog, it was repeated in the paper, which led the state to rescind the plan.

⁴⁴ Peter Applebome, *It Won’t Line a Bird Cage, but It’s Still News*, N.Y. TIMES, Feb. 17, 2010, available at <http://www.nytimes.com/2010/02/18/nyregion/18towns.html> (last visited May 5, 2010).

⁴⁵ *Id.*

⁴⁶ *PEJ 2010 State of the News Media Report*, Special Reports, Community Journalism, at 16.

development, and local education. In a recent month, the site had 65,000 page views, 40,000 visits and 25,000 unique visitors.⁴⁷

- *Wyofile* (www.wyofile.com), an independent, nonprofit news service, offers “news reporting that is quite traditional in character” about people, places, and policy in Wyoming.⁴⁸

2. Aggregators and other online operators routinely make use of and profit from newspaper content.

Another facet of the online news environment that must be taken into account is the prevalence of aggregators, search engines, and online news forums that routinely copy or summarize links to newspaper content, often with the goal of selling their own advertising around the content. This exploitation of the extensive investments that newspapers make in original local, in-depth, and investigative journalism is taxing the limited resources of newspaper publishers.

An abundance of empirical and real-world evidence confirms that it is commonplace for Internet providers to make use of newspaper content for their own commercial gain. For example, Attributor, Inc., a provider of content tracking services, recently conducted a month-long study of the manner in which news travels over the Internet, which concluded that the average American newspaper story was copied 4.4 times in full or in significant part by unauthorized websites.⁴⁹ Based on an analysis of 101,000 news articles published by 157 newspapers, the study found that more than 75,000 websites posted 112,000 copies of the articles almost verbatim and that an

⁴⁷ *Id.* at 14.

⁴⁸ *Id.* at 16.

⁴⁹ See Andrew Edgecliffe-Johnson and Kenneth Li, *News Groups Open New Online Front*, FT.COM, Dec. 1, 2009, available at <http://www.ft.com/cms/s/0/50dbe576-de09-11de-b8e2-00144feabdc0.html> (last visited Apr. 13, 2010).

additional 520,000 copies of the articles were posted in part.⁵⁰ Likewise, in its recent analysis of local news output in the in the Baltimore marketplace, the Pew Research Center found “numerous examples of websites carrying sections of other people’s work without attribution and often suggesting original reporting was added when none was.”⁵¹

While it has been argued that online aggregation services benefit newspapers by driving traffic to their websites, the reality is often the opposite—that such services reduce the amount of traffic that newspaper websites otherwise would receive. For example, research firm Outsell recently found in its third annual “News User” report that “[a] full 44 percent of visitors” to one of the leading online news aggregators “scan headlines without accessing newspapers’ individual sites.”⁵² The study’s author thus concluded that, although aggregators “driv[e] some traffic to newspapers,” they also “tak[e] a significant share away.”⁵³ In any event, NAA submits, the more important point is that numerous online services are profiting from the utilization of newspaper content without contributing to the investments made in local, professionally administered journalism.

⁵⁰ *Id.*

⁵¹ *PEJ Baltimore Local News Study*, at 2.

⁵² See Robin Wauters, *Report: 44% of Google News Visitors Scan Headlines, Don’t Click Through*, TECHCRUNCH.COM, Jan. 19, 2010, available at <http://techcrunch.com/2010/01/19/outsell-google-news/> (last visited Apr. 28, 2010).

⁵³ *Id.*

IV. THE FCC, AND OTHER BRANCHES OF GOVERNMENT, MUST TAKE STEPS TO ELIMINATE UNNECESSARY OBSTACLES AND ENSURE THAT NEWSPAPER PUBLISHERS WILL BE ABLE TO CONTINUE TO PROVIDE HIGH-QUALITY, IN-DEPTH LOCAL NEWS AND INFORMATION.

To help alleviate the severe economic hardships facing the newspaper industry and thereby to help ensure that newspapers will be able to continue their local journalism missions in the digital era, NAA believes there are several steps that the FCC and other branches of government should take. To be clear, NAA does not believe that direct government assistance to the newspaper industry is appropriate, given that the industry's core mission must involve disseminating and analyzing information about the government and its activities. Further, in making these recommendations, NAA remains committed to rigorous adherence to the principles embodied in the First Amendment and strongly opposes any form of governmental intervention into the newsgathering and editorial processes.

A. The FCC Finally Must Eliminate the Newspaper/Broadcast Cross-Ownership Ban.

The Public Notice in this proceeding states that an overriding objective of the FCC's Future of Media inquiry is to "do no harm."⁵⁴ In this vein, the Commission stresses that "many of the challenges encountered in today's media environment" should be addressed by the "private for-profit and non-profit sectors" without "government intervention."⁵⁵ The Commission further notes that "[g]overnment policy should at a

⁵⁴ *Future of Media PN*, Introduction.

⁵⁵ *Id.*

minimum avoid hindering innovation and, when appropriate, should facilitate a vibrant media.”⁵⁶

The now 35 year-old newspaper/broadcast cross-ownership ban is directly contrary to these laudable objectives. Based on remarkably extensive and incontrovertible record evidence, the FCC determined in its two most recent media ownership reviews—the *2002 Biennial Review* and the *2006 Quadrennial Review*—that the cross-ownership ban as originally adopted in 1975 no longer is necessary to serve the FCC’s stated policy goals of preserving competition, localism, and viewpoint diversity.⁵⁷ In reviewing the FCC’s *2002 Biennial Review* decision, the U.S. Court of Appeals for the Third Circuit expressly agreed that the blanket ban no longer serves the public interest.⁵⁸

Nonetheless, the restriction remains in effect. While the FCC addressed the rule in its *2006 Quadrennial Review*, it opted to keep the newspaper/broadcast ban in place and adopted only exceedingly “modest” and “cautious” changes to the rule’s waiver standards that are designed to ensure that waivers will be unavailable “[i]n the vast majority of cases.”⁵⁹ Moreover, the revised waiver standards include “positive” and “negative” presumptions applicable in specified circumstances, meaning that even those

⁵⁶ *Id.*

⁵⁷ *2002 Biennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620 (2003) (“*2003 Order*”), *aff’d in part, remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *2006 Quadrennial Regulatory Review – Review of the Comm’ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008) (“*2008 Order*”).

⁵⁸ *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

⁵⁹ See *2008 Order*, 23 FCC Rcd at 2018-19, 2040 (¶ 13, 52).

applicants that otherwise meet the strict criteria for a waiver will be subject to “case-by-case” review. Thus, the minimal revisions to the rule subject newspaper publishers and broadcasters to an unreasonable degree of uncertainty and, for all practical purposes, provide virtually no regulatory relief.⁶⁰

By maintaining the ban, the FCC needlessly is precluding daily newspapers and local broadcasters from combining their newsgathering resources and expertise in a manner that would enable both types of outlets to operate more efficiently and bolster the financial viability of their news operations. Because these traditional media outlets now are in dire need of new means for meeting the high, and increasingly prohibitive, costs of maintaining top-quality local news operations, retention of the ban is more troubling than ever in the current economic environment.

What is more, the ban effectively precludes daily newspapers from enhancing the quality and quantity of local broadcast news. Given the extensive newsgathering resources that daily newspapers bring to the table, it makes perfect sense that newspaper/broadcast cross-ownership enhances localism. Moreover, the positive relationship between cross-ownership and localism has been proven time and again by a series of empirical studies as well as the operations of grandfathered and other existing newspaper/broadcast combinations.⁶¹ The evidence in the FCC’s most recent media ownership reviews unequivocally has shown that, in addition to the benefits it affords to television news efforts, newspaper cross-ownership has an especially positive impact on

⁶⁰ See, e.g., Comments of Newspaper Association of America on Kevin J. Martin’s Proposed Revision to the Newspaper/Broadcast Cross-Ownership Rule, MB Docket Nos. 06-121, et al. (filed Dec. 11, 2007).

⁶¹ See, e.g., Comments of Newspaper Association of America on Media Ownership Research Studies, at 8-15, MB Docket Nos. 06-121, et al. (filed Oct. 22, 2007).

the news operations of radio stations.⁶² Despite these strong benefits and the FCC's repeated acknowledgments that newspaper/radio cross-ownership has little impact on marketplace diversity,⁶³ the FCC has yet to relax its restrictions on newspaper/radio cross-ownership beyond the *de minimis* changes to the waiver standards adopted in the *2006 Quadrennial Review*.

In sum, NAA submits that maintaining restrictions on newspaper/broadcast cross-ownership, particularly in light of the severe challenges now facing the newspaper publishing and broadcasting industries, is counterproductive to the FCC's traditional public interest goals. While NAA intends to address the adverse policy implications and legal infirmities of maintaining the ban in more detail in the FCC's *2010 Quadrennial Review* proceeding, the problems inherent in the ban are directly inimical to the FCC's goal in this proceeding of ensuring that consumers have "access to vibrant, diverse sources of news and information...."⁶⁴

B. Newspaper Publishers Must Have the Ability To Be Fairly Compensated for Their Content.

As explained above, aggregators, search engines, and other online news forums benefit greatly from the investments that newspapers make in local journalism. Producing original and in-depth news content is labor intensive and costly, while distributing such content on the Internet is relatively inexpensive. In essence, therefore, the current situation is one in which newspaper publishers bear the enormous cost of

⁶² *Id.* at 12-13 (citing Craig Stroup, *Factors that Affect a Radio Station's Propensity to Adopt a News Format*, FCC Media Study 4, Section III, at III-14-III-15, available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5).

⁶³ See *2008 Order*, 23 FCC Rcd at 2052 (¶ 73).

⁶⁴ *Future of Media PN*, Introduction.

producing news and information, while unrelated online entities often reap the rewards of these efforts without making any contribution to them.

In order for newspapers to continue investing in the production of high-quality news, NAA submits that they must be able to obtain reasonable compensation from Internet-based entities that reproduce newspaper content for a commercial purpose. To be clear, NAA and its members do not object to the personal use of newspaper-generated content, which the majority of newspaper publishers willingly offer for free to individual Internet users. To the extent that individual newspaper publishers implement policies that charge consumers for access to online news and information, those decisions clearly can be addressed by the marketplace and do not call for any type of government intervention.

A number of industry observers and policymakers have suggested that amendments to existing copyright laws may be necessary in order to preserve local journalism. For example, federal circuit judge Richard Posner has stated that “[e]xpanding copyright law to bar online access to copyrighted materials without the copyright holder’s consent, or to bar linking to or paraphrasing copyrighted materials without the copyright holder’s consent,” may be necessary as to a means to “keep free riding on content financed by online newspapers from ... impairing the incentive to create costly news-gathering operations....”⁶⁵ Senator John Kerry, at a 2009 hearing at which he emphasized the importance of newspapers to democracy and raised concerns

⁶⁵ Posting of Richard Posner to The Becker-Posner Blog (June 23, 2009), *available at* http://www.becker-posner-blog.com/2009/06/the_future_of_n.html (last visited Apr. 14, 2010).

that newspapers today “look like endangered species,”⁶⁶ agreed that newspapers should have greater rights to protect their “intellectual property.”⁶⁷ Stephen Nevas, the Executive Director of the Law and Media Program at Yale Law School, similarly has noted that changes in copyright law may be needed to address the problem of “track[ing] down and bringing to account those Web site operators who regularly scrape, aggregate and monetize the headlines and stories of others without permission [and] without paying anything....”⁶⁸ At the FCC’s recent Media Ownership Workshop in Tampa, Florida, Bernard Lunzer, President of the Newspaper Guild and Vice President of the Communications Workers of America, similarly urged that news aggregators should have an obligation to pay for content in a meaningful way.⁶⁹

NAA agrees that increased copyright protection could be critical to newspapers as they seek to alter their revenue models in a manner that will continue to support cost-intensive local journalism. One potential avenue that lawmakers or regulators could consider to ensure that newspapers can be compensated for commercial use of their content is the establishment of a principle of “consent for content” for breaking news coverage. Such a framework could be conceptually analogous to the “retransmission consent” regime that was established by Congress in the 1992 Cable Act. There, cable

⁶⁶ Press Release, Senator John Kerry, *Kerry Statement on the Future of Journalism* (May 6, 2009), available at <http://kerry.senate.gov/cfm/record.cfm?id=312584> (last visited Apr. 14, 2010).

⁶⁷ See Tony Rogers, *Old and New Media Clash At Senate Hearing on Future of Newspapers*, ABOUT.COM GUIDE, available at <http://journalism.about.com/od/trends/a/senatehearing.htm> (last visited May 5, 2010).

⁶⁸ Stephen Nevas, Information Society Project, Yale Law School, *An Income Model for Digital Journalism, Back to the Future*, Testimony, Future of Journalism Workshop, Federal Trade Commission (March 10, 2010), available at <http://ftc.gov/opp/workshops/news/mar9/docs/nevas.pdf> (last visited Apr. 15, 2010).

⁶⁹ Bernard Lunzer, Newspaper Guild, *Newspaper/Broadcast Cross-Ownership Impact on Competition and Diversity in the Media Marketplace*, Testimony, Media Ownership Workshop, Federal Communications Commission (Apr. 20, 2010).

systems and others that carry, and profit from the carriage of, local broadcast stations need permission to carry their signals. This system serves as a critical means for broadcasters to get a fair return on their content, and its underlying rationale could be extended to Internet entities wishing to benefit financially from the reproduction of newspaper content.⁷⁰

C. The U.S. Postal Service Should Remain Neutral When Its Actions Affect Competitive Advertising Markets.

Over the years, the United States Postal Service repeatedly has set postal rates for advertising mail in a manner that has distorted an otherwise competitive marketplace to the detriment of newspapers. In particular, the Postal Service, a part of the Executive Branch, deliberately has set advertising mail rates to induce advertisers to choose other types of direct mail providers over daily newspapers. This practice has deepened the economic adversities facing newspapers and thereby further depleted the resources they have available for local journalism.

A major portion of newspaper advertising today consists of free-standing inserts, called “preprints,” which are placed inside the folded newspaper delivered to subscribers. In addition, newspapers supplement their coverage with “Total Market Coverage” (“TMC”) campaigns, through which preprinted ads reach both newspaper subscribers (via inserts in the print product) and non-subscribers (via mail delivery of the same inserts). Nearly 85 percent of daily newspapers offer a TMC product to non-subscribers.

⁷⁰ Newspaper publishers and other businesses are exploring new technologies to enable newspapers and other content providers to track, detect, and license online content. For example, the Associated Press is beta testing the AP News Registry, a new system designed to track its content across the Internet. Emma Heald, *Associated Press Launches 'News Registry' to Track Content and Protect Copyright*, EDITORSWEBLOG.ORG, July 24, 2009, available at http://www.editorsweblog.org/newsrooms_and_journalism/2009/07/associated_press_launches_news_registry.php (last visited Apr. 28, 2010). In addition, Attributor, Inc. uses proprietary software to track online uses of newspaper content and provides anti-piracy services to newspaper publishers and news agencies. Attributor FAQ, http://www.attributor.com/how_it_works/faq.php.

Like all advertising media, newspaper preprint advertising is offered in a highly competitive market. In particular, direct mailers (most importantly, saturation advertising mailers) compete directly with newspapers for preprinted inserts. Thus, a major factor affecting newspaper ad rates and revenues is Standard Mail postal rates. The relevant rates are “saturation” rates used by saturation advertising mailers, and higher-priced “high density” rates primarily used by newspapers for the delivery of preprints to homes that do not subscribe to the print newspaper.

The Postal Service repeatedly has favored saturation advertising mailers over newspapers when setting advertising mail rates. This rate discrimination has dramatically increased in recent years. In May 2007, the Postal Service doubled the rate advantage granted to saturation mailers to at least 1.8 cents per piece, or \$18 per thousand pieces—a significant rate advantage in the highly competitive preprint market. The Postal Service increased the rate difference enjoyed by direct mailers again in May 2008, to 1.9 cents per piece and most recently expanded this rate preference in May 2009 to the current 2.6 cents. That equates to an 18.3 percent rate advantage given by the government to saturation mailers over newspapers. At the same time, the Postal Service instituted a new incentive of 4 cents per piece to encourage saturation mailers to increase volume and serve new areas. This amounts to a further 28 percent rate discount for such “new” mail, and a total rate advantage for such saturation mail pieces of 6.6 cents (10.2 cents compared to 16.8 cents) or 65 percent, compared to the rates paid by newspapers.

Although general economic conditions have affected the advertising market for all participants, there is no question that the Postal Service’s favoritism of saturation advertising mailers has had a direct and significant impact on newspaper advertising

revenues in the past several years. In some markets, the leading supermarket no longer purchases preprinted inserts from the daily newspaper. This is a key loss, because groceries and supermarkets typically serve as the anchor for preprinted insert packages and make the packages attractive to other local advertisers. In other markets, lower saturation mail postage rates have forced newspapers to cut their advertising rates in order to retain customers.

The net result, however, is the same—less advertising support for newspaper editorial content due to government favoritism of one type of market participant in the preprint advertising market, and thus less resources to fund the provision of news and information for the public. NAA believes that the U.S. Postal Service should not take sides in the “upstream” market for preprint advertising, but rather should remain neutral in the competition between newspapers and direct mail in a manner more consistent with its statutory mission “to bind the Nation together through the personal, educational, literary, and business correspondence of the people.”⁷¹

⁷¹ 39 U.S.C. §101(a).

V. **CONCLUSION**

NAA appreciates the opportunity to participate in this proceeding and submits that it is more critical than ever before for the FCC and other branches of government to update their policies to free daily newspapers from counterproductive regulatory requirements and afford them much-needed flexibility in the current marketplace.

Respectfully submitted,

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May 7, 2010