of which transactions comply with the ownership limitations and allows for timely processing of assignment/transfer applications. We seek comment on these tentative conclusions.

71. We tentatively conclude that we will continue to determine market size based on the number of commercial and noncommercial radio stations in the relevant local market.[156] This tentative conclusion is consistent with our goal of promoting competition among local broadcast radio stations and the Commission's decisions in the previous two media ownership proceedings not to consider nonbroadcast programming in the rule itself.[157] However, to the extent we determine it is appropriate to consider these alternative sources in our rule, we seek comment on whether to count these alternative sources in defining market size to determine how many stations an entity may own, and, if so, how. To what extent does the presence of these alternatives vary by market (*e.g.*, Internet-based audio services) or remain constant across markets (*e.g.*, satellite radio)? Should we consider broadband deployment and/or adoption in a particular local market when determining whether to count Internet-based audio services? Should we consider fixed or wireless broadband, or both? How much online radio listening is devoted to streams of broadcast radio stations, and how should this amount impact the weight of the impact of internet audio streaming in local markets? Should we consider availability and/or adoption of satellite radio in local markets?

72. *Numerical Limits*. We tentatively conclude that we should retain the existing numerical ownership limits for each existing market size tier. The Commission retained these numerical limits in the last media ownership proceeding, finding that public interest would not be served either by relaxing the numerical limits or by making the numerical limits more restrictive.[158] In light of the degree of consolidation in the broadcast radio market following the relaxation of the local radio ownership limits in the 1996 Act, we continue to believe that further relaxation of the numerical limits is not appropriate. Furthermore, we continue to believe that making the limits more restrictive would be inconsistent with Congress's decision to relax the ownership limits and too disruptive to the radio marketplace. In light of these considerations, we tentatively conclude that it is appropriate to continue to retain the numerical ownership limits adopted by Congress in the 1996 Act.

73. We seek comment, however, on whether to adopt any changes to the numerical ownership limits. Is there evidence that the existing limits no longer serve our policy goals or have caused specific harm to the radio broadcast industry? Do changes in the marketplace require modification of these limits, or do the characteristics of certain markets justify increasing the ownership limits in those markets? For example, should we allow additional common ownership in markets with substantially more than 45 stations, now the top tier? Some larger radio markets may contain more than 100 stations, yet the ownership limit is the same – eight stations – in each. Should we, as Clear Channel suggests, allow for increased common ownership in larger markets by creating additional tiers?[159]

74. As an alternative to considering nonbroadcast audio programming in determining the size of a radio market, to the extent we determine it is appropriate to consider these sources in our rule, we seek comment on whether to include these sources when setting the numerical limits and, if so, how we would do so. For example, we could allow for ownership of an additional station in markets where

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[156] *See 2002 Biennial Review Order*, 18 FCC Rcd at 13726-28, ¶¶ 279-86 (providing geographic market definitions for Arbitron Metros and areas not located in Arbitron Metros).

[157] *See 2006 Quadrennial Review Order*, 23 FCC Rcd at 2071, ¶ 114; *2002 Biennial Review Order*, 18 FCC Rcd at 13715, ¶ 245.

[158] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2072, ¶ 117.

[159] Clear Channel suggests an increase from eight to ten in the number of stations a single entity may own in markets with between 55 and 64 stations and from eight to twelve the number of stations that a single entity may own in markets with 65 or more stations. Clear Channel Comments at 33.

alternative sources of audio programming are available, even though the market tier was established solely by the number of broadcast radio stations in the market. If we do so, how should we determine whether such sources are available? For example, are Internet-based audio services consistently available across markets of similar sizes? Should we take adoption rates into account? For example, satellite radio is generally consistently available across a local market, but the number of subscribers remains low compared to the total number of radio listeners. How should this factor into our consideration of the impact of satellite radio in local markets?

75. *AM/FM Subcaps*. In the *NOI*, we sought comment on whether to retain the AM/FM subcaps.[160] The Commission previously concluded that retaining the subcaps serves the public interest by promoting new entry into broadcast radio ownership, particularly by small businesses, including minority- and women-owned businesses.[161] The Commission also concluded that technical and marketplace differences between AM and FM stations supported retention of the subcaps, consistent with the Commission's goal to protect competition in local radio markets.[162]

76. Those advocating elimination of the subcaps argue that recent advances in technology, including online streaming, HD radio technology, and the use of FM translators to augment AM station broadcast signals, have improved the ability of AM radio to compete in the marketplace.[163] In addition, they assert that many of the top stations in large and small markets are AM stations, which undercuts any argument that AM radio will flounder if the subcaps are removed.[164] Some broadcasters also assert that lifting the subcaps will create new ownership opportunities of divested station for entities, which include minorities, women, and small businesses, because broadcasters will buy and sell certain in-market stations to strengthen existing station clusters.[165] In addition, they state that the owners of these station clusters would then be in better financial positions to devote additional resources to local programming.[166] Mt. Wilson, however, asserts that subcaps remain necessary to promote competition in local radio markets.[167]

77. We propose to retain the current AM/FM subcaps for the reasons set forth in the *2006 Quadrennial Review Order*.[168] We continue to believe that this rationale supports retention of the subcaps, and we seek comment on this proposal.

78. In addition, we seek comment on the impact, if any, of the ongoing introduction of digital radio on the AM/FM subcaps. AM stations face unique technical limitations with respect to FM stations, such as lesser bandwidth and inferior audio signal fidelity. In addition, unlike FM signals, AM signal propagation varies with the time of day (*i.e.*, AM signals travel much farther at night than during the day), and many AM stations are required to cease operation at sunset. As a result, FM stations tend to have greater listenership and revenues than AM stations, though this is not necessarily true of all stations in all

[160] *NOI*, 25 FCC Rcd at 6112, ¶ 86.

[161] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2079-80, ¶ 133.

[162] *Id.* at 2080, ¶ 134.

[163] *See, e.g.*, Entercom Reply at 1-2; Alpha Broadcasting *et al.* Reply at 3-4; Letter from Lawrence R. Sidman, Representative of Clear Channel, to Marlene H. Dortch, Secretary, FCC (Oct. 11, 2011) (Clear Channel Oct. 11 Ex Parte).

[164] Entercom Reply at 2; *see also* Monterey Comments at 2, 5-6; Galaxy Reply at 4.

[165] Alpha Broadcasting *et al.* Reply at 5-6; Clear Channel Oct. 11 Ex Parte Letter at 1.

[166] *Id.*

[167] Mt. Wilson Reply at 9-10. Indeed, Mt. Wilson suggests that even more restrictive subcaps, along with divestitures, should be adopted. *Id.*

[168] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2078-80, ¶¶ 130-34.

markets. The Commission has previously stated that digital radio may help AM stations to even the playing field with FM stations.[169]

79. What is the impact of digital radio on the technological and economic differences between AM and FM stations? We note that, unlike the digital television transition, radio stations have no obligation to operate in digital mode.[170] At present, far more FM stations have provided the Commission with a notice of commencement of digital operations than AM stations, though the vast majority of stations in both services have not provided such notice.[171] How, if at all, should these facts inform our analysis of the impact of digital operations on the AM/FM subcaps? At this stage, has digital radio helped address the technical disadvantages of AM stations, such as fidelity and signal propagation, and led to a more balanced competition between AM and FM stations generally? Is it premature to consider the impact of digital radio, given the lack of widespread digital radio options (both AM and FM)? How, if at all, should the lack of a deadline to operate in digital affect this decision? Should we also consider the level of consumer adoption when determining the impact of digital operations on the subcaps? What are the current levels of commercial availability and consumer adoption of radios capable of receiving digital signals?

80. Some broadcasters support elimination of the subcaps so they can acquire additional AM stations in order to aggregate AM stations to provide full signal coverage in large geographic areas or in areas with mountainous terrain.[172] We note that the Commission recently changed the FM translator rules "to allow AM stations to use currently authorized FM translator stations to retransmit their AM service within their AM stations' current coverage areas."[173] Approximately 500 AM stations are currently retransmitting their signals via FM translators, which has allowed some AM stations to operate at night for the first time and – according to anecdotal reports – has allowed certain AM stations to more effectively serve their communities.[174] In light of this success, we recently sought comment on whether to extend this rebroadcast authority to new FM translators with applications for authorization on file as of May 1, 2009.[175] What has been the impact of the revised FM translator rule on the ability of AM stations to provide expanded coverage in their service areas without the need to acquire additional AM stations? If these stations are now able to provide expanded coverage in their service areas without acquiring additional AM stations, is elimination of the AM/FM subcaps also necessary to address signal coverage

[169] *See, e.g., 2002 Biennial Review Order*, 18 FCC Rcd at 13734, ¶ 294 n.628.

[170] *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, MM Docket No. 99-325, Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10351, ¶ 15 (2007).

[171] Of the 9,950 licensed FM stations (commercial and educational), 1,667 have notified the Commission that they have commenced digital operations (approximately 16.8 percent), while only 296 of the 4778 licensed AM stations have filed such notifications (approximately 6.2 percent). FCC staff analysis of current CDBS data and broadcast station totals as of December 31, 2010 reported in *Broadcast Station Totals as of March 31, 2011*, Press Release (MB, rel. May 16, 2011) ("*March 31, 2011 Broadcast Station Totals Press Release*"), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306575A1.pdf.

[172] *See, e.g.*, Entercom Reply at 2.

[173] *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, MB Docket No. 07-172, Report and Order, 24 FCC Rcd 9642, 9642, ¶ 1 (2009).

[174] *Creation of a Low Power Radio Service*, MM Docket No. 99-25, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986, 10000, ¶ 36 (2011) ("providing hundreds of these [AM] stations with their first nighttime authority and the opportunity to operate viably at night. Anecdotal reports from many AM licensees repeatedly emphasize their vastly increased ability to cover local community, governmental and school events, and, generally, to better serve the needs of their communities.").

[175] *Id.* at 10000-01, ¶ 37.

concerns? Why or why not? How, if at all, has this rule change impacted other AM technical/competition concerns, aside from the signal coverage issue raised by some broadcasters?

81. *Market Size Waivers.* The Commission has previously declined to adopt a specific waiver standard for the local radio ownership rule; instead, parties "may seek a waiver under the 'good cause' waiver standard in [the Commission's] rules."[176] Given the significant amount of common ownership currently permitted, is a specific waiver standard warranted, or should applicants continue to be required to justify a waiver of the rule under our general waiver standard? If we determine that a specific waiver standard is warranted, what are appropriate waiver criteria? Should such a waiver standard apply equally to all markets, regardless of size, or should we adopt different standards based on market size? Should we limit the waiver standard to smaller markets? If so, what characteristics of those markets establish the need for a specific waiver standard (to the exclusion of larger markets)?

82. *Minority and Female Ownership.* As noted above, DCS suggests that significant barriers to entry for minority ownership remain in both the traditional and new media industries. We seek comment on DCS' assertion that minority communities are underserved as a result of the lack of minority media ownership, specifically as it relates to the radio market.[177] Moreover, we seek comment on how the local radio rule affects minority and female ownership opportunities. We ask that commenters be as specific as possible when identifying particular aspects of the rule that may impact the opportunity for minority and female entry into the radio business and ownership of broadcast stations. How is any such impact relevant to our goals, in particular promoting viewpoint diversity?

83. Media Ownership Study 7 analyzes the relationship between ownership structure and the provision of radio programming targeted to African-American and Hispanic audiences.[178] Acknowledging that Black and Hispanic listeners have different viewing preferences from the majority White population, the data suggest that there is a positive relationship between minority ownership of radio stations and the total amount of minority radio programming available in the market.[179] The data do not indicate a clear relationship between ownership concentration and programming variety, although the cross-sectional analysis does suggest that concentration promotes variety.[180] A minority-owned radio station may not be more popular with minority audiences than a non-minority-owned radio station providing the same minority-targeted format.[181] If minority-owned stations have smaller coverage areas they will necessarily have lower ratings and therefore appear less popular even though they may be more popular among those consumers that can receive the signal.[182] We seek comment on the methodology and conclusions of Media Ownership Study 7 and how its conclusions should influence our decisions on the proposed local radio rule. We request commenters to provide additional data supporting their positions.

C. Newspaper/Broadcast Cross-Ownership Rule

1. Introduction

84. Newspaper/broadcast cross-ownership was first prohibited in 1975 to preserve viewpoint

[176] *2002 Biennial Review Order*, 18 FCC Rcd at 13746-47, ¶ 326 (citing 47 C.F.R. § 1.3).

[177] DCS Comments at 11-15.

[178] Media Ownership Study 7 at 1.

[179] *Id.* at 13, 24.

[180] *Id.* at 25.

[181] *See id.* at 13.

[182] *See id.*

diversity in local markets.[183] In the 2006 Quadrennial proceeding, the Commission concluded that some limitations on newspaper/broadcast cross-ownership continued to be necessary to promote viewpoint diversity.[184] The Commission recognized, however, that certain newspaper/broadcast combinations may promote its localism goal.[185] It found that the opportunity for sharing newsgathering resources and for realizing other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information.[186] In the *2002 Biennial Review Order*, the Commission determined that a ban on newspaper/broadcast cross-ownership was not necessary to promote its competition goal.[187] The Commission concluded that most advertisers do not consider newspapers, television stations, and radio stations to be close substitutes for each other, and that therefore newspapers and broadcast stations do not compete in the same product market.[188]

85. The newspaper/broadcast cross-ownership rule prohibits common ownership of a full-service broadcast station and a daily newspaper if: (1) a television station's Grade A service contour completely encompasses the newspaper's city of publication; (2) the predicted or measured 2 mV/m contour of an AM station completely encompasses the newspaper's city of publication; or (3) the predicted 1 mV/m contour for an FM station completely encompasses the newspaper's city of publication.[189] In the 2006 Quadrennial proceeding, the Commission concluded that an absolute prohibition on newspaper/broadcast combinations is overly broad.[190] It added waiver provisions to the rule whereby a waiver would be presumed to be not inconsistent with the public interest if a daily newspaper in a top 20 DMA sought to combine with: (1) a radio station or (2) a television station, and (a) the television station was not ranked among the top four stations in the DMA and (b) at least eight independently owned and operated "major media voices" would remain in the DMA after the combination.[191] For purposes of the newspaper/television combinations, major media voices would include full-power commercial and noncommercial television stations and major newspapers.[192] For

[183] *1975 Second Report and Order*, 50 FCC 2d at 1075, 1076, 1079-81, ¶¶ 101, 104, 111-12.

[184] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2038-39, ¶¶ 47-49; *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13793-94, 13797-804, ¶¶ 440, 442, 452-69 (protecting diversity by prohibiting newspaper/broadcast cross-ownership in "at-risk" markets and limiting newspaper/television cross-ownership in small- to medium-sized markets). In 2004, the Third Circuit found that the Commission had "reasonably concluded" that restrictions on newspaper/broadcast cross-ownership are necessary to promote diversity. *Prometheus I*, 373 F.3d at 400-01.

[185] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2038, ¶ 46 (finding that "the weight of evidence indicates that cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets"); *2002 Biennial Review Order*, 18 FCC Rcd at 13753-60, 13760-61, ¶¶ 342-54, 356-58 (citing evidence that broadcast stations owned by newspapers generally produce more and better overall local news programming).

[186] *See 2006 Quadrennial Review Order*, 23 FCC Rcd at 2032-33, ¶ 39 (noting that "[n]umerous media owners provide examples of cost savings and shared resources leading to more local coverage and better quality news coverage"); *2002 Biennial Review Order*, 18 FCC Rcd at 13756-57, ¶¶ 347-49 (describing how sharing news staffs and operational expenses can translate into improved local service). *See also* Media General Comments at 11 (attributing its winning a Pulitzer Prize to its ownership of both a newspaper and a television station in Bristol, Virginia). *But see* AFTRA Comments at 10 (arguing that Tribune's combining of news staffs in Hartford, Connecticut diminished the journalistic standards of its commonly-owned newspaper and television station).

[187] *2002 Biennial Review Order*, 18 FCC Rcd at 13753, ¶ 341.

[188] *Id.* at 13748-53, ¶¶ 331-41; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2032, ¶ 39 n.131.

[189] 47 C.F.R. § 73.3555(d)(1).

[190] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2021-22, 2039, ¶¶ 18-19, 50.

[191] 47 C.F.R. § 73.3555(d)(3).

markets below the top 20 DMAs, the Commission would presume a waiver of the newspaper/broadcast cross-ownership rule to be inconsistent with the public interest.[193]

86. Under the 2006 rule, a waiver applicant could overcome this negative presumption by demonstrating, with clear and convincing evidence, that the merged entity would increase the diversity of independent news outlets and the level of competition among independent news sources in the relevant market.[194] The Commission would reverse the negative presumption in two limited circumstances: (1) when the proposed combination involved a failed/failing station or newspaper, or (2) when the proposed combination was with a broadcast station that was not offering local newscasts prior to the combination, and the station would initiate at least seven hours per week of local news after the combination.[195]

87. Under both presumptions, the following four factors would inform the Commission's review of a proposed combination: (1) the extent to which cross-ownership would serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) the ability of each affected media outlet in the combination to employ its own staff exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station was in financial distress, the owner's commitment to invest significantly in newsroom operations.[196]

88. In *Prometheus II*, the Third Circuit vacated and remanded the newspaper/broadcast cross-ownership rule as modified by the Commission in the 2006 Quadrennial proceeding.[197] The court based its decision on its conclusion that the Commission failed to comply with the notice and comment provisions of the Administrative Procedures Act.[198] The court did not address the Commission's substantive modifications to the rule.[199] Because the court reinstated the former rule, the absolute ban on newspaper/broadcast cross-ownership remains in effect, with no specific provision for waivers.[200]

89. Consistent with previous Commission findings, we tentatively conclude that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect and promote viewpoint diversity. Research shows that newspapers and local television stations, and their affiliated websites, are the primary sources that consumers rely on for local news.[201] We continue to believe,

[192] *Id.* at § 73.3555(d)(3)(ii); *see also NOI*, 25 FCC Rcd at 6095, ¶ 23.

[193] 47 C.F.R. § 73.3555(d)(4); *see also NOI*, 25 FCC Rcd at 6095-96, ¶ 24.

[194] 47 C.F.R. § 73.3555(d)(6).

[195] *Id.* at § 73.3555(d)(7).

[196] *Id.* at § 73.3555(d)(5).

[197] *Prometheus II*, 652 F.3d at 453.

[198] *Id.* at 445, 453.

[199] *Id.* at 445.

[200] *Id.* at 453 n.25.

[201] *See* PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, PEW INTERNET & AMERICAN LIFE PROJECT, AND THE KNIGHT FOUNDATION, HOW PEOPLE LEARN ABOUT THEIR LOCAL COMMUNITY (2011) ("HOW PEOPLE LEARN ABOUT THEIR LOCAL COMMUNITY"), *available at* http://www.knightfoundation.org/media/uploads/publication_pdfs/Pew_Knight_Local_News_Report_FINAL.pdf. The survey asked consumers which source they rely upon most for news and information regarding 16 local topics. *Id.* at 2, Figure 1. Newspapers ranked first, or tied for first, for 11of the 16 topics. *Id.* at 1, 14-15. Newspapers and local television stations together ranked first, or tied for first, for 14 out of 16 topics. *Id.* at 14-15, 17. The survey also found that 74 percent of American adults say they get local information at least weekly from a local television news station broadcast,

however, that a blanket prohibition on newspaper/broadcast combinations is overly broad and does not allow for certain cross-ownership that may carry public interest benefits.[202] We tentatively affirm our earlier findings that the opportunity to share newsgathering resources and realize other efficiencies derived from economies of scale and scope may improve the ability of commonly owned media outlets to provide local news and information,[203] and we seek comment on how cross-ownership may promote our localism goal.[204] We tentatively conclude, as the Commission found in previous ownership reviews, that newspapers and broadcast stations do not compete in the same product market and, therefore, that the rule is not necessary to promote our competition goal.[205]

90. We continue to believe that the nation's largest markets can accommodate some cross-ownership without unduly harming viewpoint diversity.[206] For reasons set forth below, we propose to adopt a rule that includes elements of the 2006 rule, including the top 20 DMA demarcation point, the

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and/or the station's website, the most of any source measured in the survey. *Id.* at 13. In comparison, radio and local newspapers were each listed by about half of the survey respondents. *Id.*

[202] *Prometheus I*, 373 F.3d at 398-400 (affirming that a blanket prohibition on newspaper/broadcast cross-ownership is not necessary to protect diversity and may hinder opportunities to advance localism goals).

[203] *See 2006 Quadrennial Review Order*, 23 FCC Rcd at 2032-33, ¶ 39 (noting that "[n]umerous media owners provide examples of cost savings and shared resources leading to more local coverage and better quality news coverage"); *2002 Biennial Review Order*, 18 FCC Rcd at 13756-57, ¶¶ 347-49 (describing how sharing news staffs and operational expenses can translate into improved local service). Media General contends that its newspaper in Bristol, Virginia, won a Pulitzer Prize in part because of shared resources with Media General's television station in that market. *See* Media General Comments at 11; Letter from M. Anne Swanson, Dow Lohnes PLLC, Counsel for Media General, Inc., to Marlene H. Dortch, Secretary, FCC, at 1-2 (May 20, 2010); Letter from M. Anne Swanson, Dow Lohnes PLLC, Counsel for Media General, Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (Apr. 26, 2010) ("Media General Apr. 26 *Ex Parte* Letter"). *See also* Media General Apr. 26 *Ex Parte* Letter at 2 (providing examples of how cross-ownership in Tampa, Florida, "has helped improve the delivery of breaking news, enterprise reporting, and investigative reporting"). *But see* AFTRA Comments at 10 (arguing that Tribune's combining of news staffs in Hartford, Connecticut diminished the journalistic standards of its commonly-owned newspaper and television station); Letter from Jim Haigh, Mid-Atlantic Community Papers Association, to Marlene H. Dortch, Secretary, FCC, at 1 (Oct. 2, 2010) (warning that "the worst possible outcome for [the community paper] industry, the truly local communities they serve and the greater public interest, would be the widespread formation of outsized cross-media entities leveraging traditional advantages").

[204] We note here the observations of the Information Needs of Communities Report with regard to newspaper/broadcast cross-ownership. STEVE WALDMAN AND THE WORKING GROUP ON INFORMATION NEEDS OF COMMUNITIES, FCC, THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE 349 (2011) ("INFORMATION NEEDS OF COMMUNITIES"), *available at* http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf. The report was written by an ongoing, informal working group that consisted of Commission staff, industry scholars, and consultants. *Id.* at 362. As noted in the report, the views expressed in the report "do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices." *Id.* The report observes that newspaper/television cross-ownership "could lead to efficiencies and improved business models that might result in more reporting resources," thereby promoting the Commission's localism goal. *Id.* at 349. The report cautioned, however, that cross-ownership may instead "simply improve the bottom line of a combined company *without* actually increasing the resources devoted to local newsgathering." *Id.* (emphasis in original).

[205] *2002 Biennial Review Order*, 18 FCC Rcd at 13748-53, ¶¶ 331-41; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2032, ¶ 39 n.131.

[206] The Information Needs of Communities Report found that more television stations offer local news in large markets than in medium and small markets. INFORMATION NEEDS OF COMMUNITIES at 100-01. It determined that 91 of the 92 markets that produced 500 minutes or less of local television news per day (when combining all the stations) were medium or small markets. *Id.* at 101.

top-four television station restriction, and the eight remaining voices test. We tentatively conclude that viewpoint diversity is best achieved by analyzing these elements for proposed newspaper/broadcast combinations on a case-by-case basis. We seek comment on whether alternative approaches or different demarcations and restrictions would promote our diversity goal more effectively. For newspaper/television combinations, we propose to use Nielsen DMA definitions to determine when the rule is triggered, given the lack of a digital equivalent to the analog Grade A service contour.

91. The 2006 rule contained some elements that may not be necessary to promote the public interest. Specifically, as explained below, we seek comment on whether the detailed elements describing what showings are required to overcome the rule's stated presumptions and the showings required of all applicants unnecessarily increased the rule's subjectivity and complexity. We also seek comment on whether to retain some or all of the factors the Commission adopted under the 2006 rule to consider in cross-ownership transactions.[207] We also solicit input on whether to formulate a specific waiver provision that relies on clear, objective, and enforceable standards and a burden of proof standard for waiver requests. Finally, we seek comment on the impact of our newspaper/broadcast cross-ownership proposals on minority and female ownership opportunities.

2. Background

92. In the *NOI*, we asked whether newspaper/television combinations should be treated differently from newspaper/radio combinations, as they are in the 2006 rule.[208] We sought comment on the impact of marketplace changes in the newspaper industry, which has seen increased competition for audiences and declining revenues. We elicited input on the extent to which relaxing the rule could benefit newspapers and result in a net gain of local news and information.[209] In the *NOI*, we noted that consumers are increasingly getting their news from online and mobile platforms and asked about the significance of this trend for the newspaper industry.[210] We sought comment on whether relief from the 2006 rule, if any, should be provided through a revised rule or a waiver standard, and the factors that should apply under either approach.[211] For example, we asked whether distinctions should be drawn based on market size and the number of voices remaining post-transaction.[212] We sought comment also on how to evaluate the efficacy of the rule in terms of our goals and the effects on the market participants.[213]

93. Among the commenters responding to the *NOI*, newspaper and broadcast owners recommend repeal or relaxation of the rule, and public advocacy groups support the rule's retention. Supporters of repeal or relaxation of the rule argue that cross-ownership enhances localism and supports diverse points of view.[214] They describe an evolution of the marketplace, including introduction of the

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[207] *See supra* ¶¶ 86-87.

[208] *NOI*, 25 FCC Rcd at 6112-13, ¶ 87.

[209] *Id.*

[210] *Id.*

[211] *Id.*

[212] *Id.*

[213] *Id.*

[214] *See* Media General Comments at 11-12 (contending that greater resources available because of Media General's multiple news outlets, including television stations and newspapers, permit multi-part award-winning series while also covering other important local developments and noting launch of additional Spanish-language publication); *see also* A. H. Belo Comments at 8-13 (detailing benefits derived from cross-ownership through its experience as owner of a newspaper/broadcast combination in Dallas-Fort Worth); Tribune Comments at 18-68 (detailing benefits derived from cross-ownership through its experience as owner of newspaper/broadcast combinations in five media

Internet and other non-traditional media, such as iPhone applications, that they assert provide local and diverse content.[215] They describe serious economic challenges faced by newspapers and suggest that the only way for them to survive is by entering combinations and creating economies of scale.[216] Commenters state that: newspaper circulation is in a downward spiral since 2008, reaching its lowest point in nearly 70 years in October 2009; advertising revenues, which traditionally make up 80 percent of overall newspaper revenues, have dropped 43 percent from 2007 through 2009; and several newspaper publishers have sought bankruptcy protection, while others have ended their print editions.[217] They state that the newspapers that remain in business have closed domestic and foreign bureaus, laying off thousands of journalists.[218] Newspaper Association of America ("NAA") cites to Project for Excellence in Journalism's ("PEJ") recent estimate that newspapers will devote $1.6 billion less annually to news reporting in 2010 than they were able to do just three years ago.[219]

94. Supporters of the 2006 rule– or a strengthened rule– assert that restrictions remain necessary to protect against further concentration in an industry already characterized by concentrated vertical ownership and consolidated local ownership.[220] They argue that the 2006 rule provides flexibility where cross-ownership efficiencies might benefit the public interest and permit combinations in failing business situations, while requiring maintenance of separate newsrooms for the purpose of diversity.[221] They argue that the only benefits of cross-ownership are financial benefits for the owners, which they assert arise at the cost of diversity and localism for citizens.[222]

95. In our studies, we sought data to help us analyze questions related to the relevance of the newspaper/broadcast cross-ownership rule to our policy goals. Particularly, we measured whether the presence of cross-owned stations affects the amount of local news provided at the local market level and at the individual station level. We also measured localism by analyzing consumer satisfaction with the amount of local news available in markets. In addition, we studied the impact of cross-ownership on viewpoint diversity in media markets. We seek comment on the extent to which our proposed approaches for newspaper/television combinations are supported by data from our studies or other available data.

3. Discussion

96. We tentatively conclude that some restrictions on newspaper/broadcast combinations continue to be necessary to promote viewpoint diversity within local markets. We seek comment on this tentative conclusion. There is evidence that Americans continue to rely on local television stations and

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markets); Letter from M. Anne Swanson, Dow Lohnes PLLC, Counsel for Media General, Inc., to Marlene H. Dortch, Secretary, FCC, Att. 3 at 2 (July 21, 2011) ("Media General July 21 *Ex Parte* Letter") (arguing that the "voluminous" record on these issues over the past decade, including numerous studies, "show definite quantitative and qualitative improvements in news performance by cross-owned TV stations").

[215] *See* Tribune Comments at 11, 73, 75, 81; *see also* Media General Comments at 13-16.

[216] *See* Tribune Comments at 86-92; *see also* Media General Comments at 19; NAA Comments at 12-13, 16-17; A.H. Belo Comments at 17-18; Media General July 21 *Ex Parte* Letter Att. 3 at 1-2.

[217] Media General Comments at 18-19; Tribune Comments at 86; A. H. Belo Comments at 16-17.

[218] A. H. Belo Comments at 17; Media General Comments at 18; NAA Comments at 16.

[219] NAA Comments at 16 (citingPEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM, Newspapers – Summary Essay (2010) ("STATE OF THE NEWS MEDIA 2010"), *available at* http://stateofthemedia.org/2010/.

[220] *See* CWA Comments at 30.

[221] *Id.*

[222] AFTRA Comments at 2, 9.

newspapers for the majority of their local news, despite the rising popularity of the Internet as a platform for access to news.[223] Studies have found that approximately three-quarters of Americans obtain news from a local television station.[224] In addition, although newspaper readership has declined in recent years, in 2010, 37 percent of Americans reported reading a newspaper the preceding day.[225]

97. Although consumers are turning increasingly to the Internet for news and information generally and seeking new platforms on which to access local news, the websites most frequently viewed for news and information are affiliated with legacy media. In the fall of 2009, among the top roughly 200 news websites based on traffic, 67 percent were associated with legacy media, and 48 percent were associated with newspapers in particular.[226] More recently, the Information Needs of Communities Report concluded that "from a traffic perspective, newspapers have come to dominate the Internet on the local level."[227] Along with newspaper websites, local television news websites rank among the most popular news websites.[228] Indeed, Media Ownership Study 6 looks at online local news content and finds very little that is not affiliated with a newspaper or television or radio station.[229] Other websites offering local news presently receive little traffic. Even where there are Internet-only local news outlets, the study suggests that the aggregate weekly quantity of such content is about equal to a single page of a full-size daily newspaper.[230] The PEW Research Center's Baltimore Study similarly finds that the majority of local news content on websites unaffiliated with newspapers or broadcast stations contains only

[223] HOW PEOPLE LEARN ABOUT THEIR LOCAL COMMUNITY at 14-15, 17. Overall, the survey found that local television stations, together with their websites, are the most frequently used source for local news. *Id.* at 13.

[224] *Id.* at 13 (finding that 74 percent of American adults say they get local news at least weekly from a local television station and/or its website); KRISTEN PURCELL *ET AL.*, PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER: HOW INTERNET AND CELL PHONE USERS HAVE TURNED NEWS INTO A SOCIAL EXPERIENCE (2010) ("PEW PARTICIPATORY NEWS CONSUMER"), *available at* http://www.journalism.org/sites/journalism.org/files/Participatory_News_Consumer.pdf (finding that 78 percent of Americans obtain news from a local television station on a typical day). Furthermore, according to the Information Needs of Communities Report, 50 percent of all Americans claim to watch local television news "regularly." INFORMATION NEEDS OF COMMUNITIES at 76. In addition, the amount of local news aired on television stations has increased 35 percent in the past seven years, according to a 2010 RTDNA/Hofstra University Annual Survey. *Id.* at 77.

[225] STATE OF THE NEWS MEDIA 2011 at Newspapers Essay. The study notes that this figure is down from 39 percent in 2008 and 43 percent in 2006. *Id.*

[226] STATE OF THE NEWS MEDIA 2010 at Nielsen Analysis. Similarly, as we noted in the *NOI*, in 2008, 20 of the 25 most-visited news websites were co-owned with a cable television, broadcast television, or newspaper property. *NOI*, 25 FCC Rcd at 6088-89, ¶ 6.

[227] INFORMATION NEEDS OF COMMUNITIES at 55-56. A study of three cities revealed that, in each case, the city's long-standing newspaper was the most popular online source of local news. *Id.* We note that although the websites of newspapers and local television stations rank highly in terms of online traffic, one recent survey found that relative to other news sources, including other online sources, they do not rank among the top sources that respondents say they rely upon for local news and information. HOW PEOPLE LEARN ABOUT THEIR LOCAL COMMUNITY at 5, 27-28.

[228] INFORMATION NEEDS OF COMMUNITIES at 76. The Report found that "[a]lthough newspapers still produce the number one websites in most large markets, local TV stations lay claim to the top local sites in 14 markets, including Minneapolis, Pittsburgh, Raleigh-Durham, and Salt Lake City." *Id.* at 81. In addition, the Report noted the proliferation of "hyperlocal" community websites that have been launched by local television stations. *Id.*

[229] Media Ownership Study 6 at 11, 15.

[230] *Id.* at 23-24.

commentary on the stories and features that originated from traditional media outlets.[231] Given the continuing prevalence of broadcast stations and newspapers as news sources consumers rely on the most, we tentatively find that some newspaper/broadcast restrictions remain necessary to protect viewpoint diversity. We will continue to monitor and assess the Internet's role in the marketplace for local news and information in this regard. We seek comment on these tentative conclusions.

98. The Commission has found evidence previously that some newspaper/broadcast cross-ownership may produce increased local news.[232] What benefits and efficiencies accrue from cross ownership? Media Ownership Study 4 examines the impact of newspaper/television cross-ownership on the amount of local television news at both the station and the market level.[233] The study finds that, other things being equal, a station that is cross-owned with a daily newspaper produces more local news than a stand alone station. However, when the analysis is done at the market level, other things being equal, a market with a cross-owned station offers somewhat less local news than a market without a cross-owned station. Because there was little variation in the extent of newspaper-television cross-ownership during the period studied, the author recognizes that the conclusions of the statistical analysis must be treated with caution. We seek comment on how to weigh the Media Ownership Study 4 findings and how those findings should affect our analysis. Has this rule resulted in the reduction of local news, the loss of journalism positions, and the failure of newspapers? What challenges have newspapers faced because of the current economy and the changing marketplace?

99. *Nielsen DMAs*. As an initial matter, for television stations, we propose to apply any ownership combination restrictions to daily newspapers and stations within the same DMA.[234] We seek comment on our tentative conclusion that we will use Nielsen DMA definitions to determine when the cross-ownership rule is triggered, as there is no digital equivalent contour for the analog Grade A contour specified by the current rule.[235] We seek comment on the impact of changing from a contour-based rule to a DMA-based rule. For any proposed rule, would many more newspaper/television station combinations be implicated by the cross-ownership rule under a DMA-based approach as compared to a contour-based approach? Are there negative consequences to switching to a DMA-based rule? What are the benefits? Our preliminary view is that DMA market definitions would reflect circulation and viewing areas more accurately than the current approach. However, given the large size of some DMAs, we seek comment on whether the rule instead should be triggered only if the newspaper's circulation extends to the community of license of the television station.

100. To the extent the rule relies on DMAs, we propose to grandfather ownership of existing combinations of television stations and newspapers that would conflict with the newspaper/broadcast cross-ownership rule by virtue of the change to a DMA-based approach. Compulsory divestiture is disruptive to the industry and a hardship for individual owners, and any benefits to our policy goals would

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[231] PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY (2010), *available at* http://www.journalism.org/sites/journalism.org/files/Baltimore%20Study_Jan2010_0.pdf; *see also* INFORMATION NEEDS OF COMMUNITIES at 123-24 (referencing several studies to support the conclusion that "the growing number of web outlets relies on a relatively fixed, or declining, pool of original reporting provided by traditional media").

[232] *2002 Biennial Review Order*, 18 FCC Rcd at 13753-60, 13760-61, ¶¶ 342-54, 356-58; *2006 Quadrennial Review Order*, 23 FCC Rcd at 2038, ¶ 46.

[233] Media Ownership Study 4 at 12.

[234] This is consistent with our tentative conclusion to eliminate the use of Grade B contours in conjunction with the local television ownership rule in favor of Nielsen DMAs. *See supra* ¶¶ 36-39.

[235] For further discussion of digital contours, see *NOI*, 25 FCC Rcd at 6116-18, ¶¶ 102-05.

likely be outweighed by these countervailing considerations.[236] We seek comment on these tentative conclusions. Are our policy goals served by allowing grandfathered combinations to be freely transferable in perpetuity, irrespective of whether the combination complies with the newspaper/broadcast cross-ownership rule? What is the effect on the entities if they are sold separately? Is it possible that such a rule could have the unintended consequence of causing a station or newspaper to close?

101. *Proposed Rule.* In taking a fresh look at the rule, we tentatively find that a blanket rule prohibiting all newspaper/broadcast cross-ownership within the same service area is unnecessarily broad. We tentatively conclude that the top 20 DMA demarcation point, the top-four television station restriction, and the eight remaining major media voices test for television/newspaper combinations contained in the 2006 rule are the fundamental elements of a rule that will protect and promote viewpoint diversity while also properly supporting localism most effectively. We note that these criteria are objective standards that can be applied and enforced consistently and fairly, with low cost to the applicants and Commission. We seek comment generally on the benefits of adopting these criteria and specifically on their individual aspects, as detailed below.

102. We propose a rule that prohibits common ownership of a daily newspaper and (1) a full-power commercial television station within the same DMA, (2) an AM station with a predicted or measured 2 mV/m contour service area that encompasses the newspaper's city of publication; or (3) an FM station with a predicted 1 mV/m contour service area that encompasses the newspaper's city of publication.[237] The proposed rule would presume a waiver to be consistent with the public interest if: (1) a daily newspaper in a top 20 DMA sought to combine with a radio station, or (2) a daily newspaper sought to combine with a full-power commercial television station in the same top 20 DMA, and: (a) the television station is not ranked among the top four television stations in the DMA and (b) at least eight independently owned and operated "major media voices" would remain in the DMA after the combination.[238] The rule would presume a waiver to be inconsistent with the public interest in all other circumstances. Below we seek comment on alternative demarcation points for these three key elements of the proposed rule (top-four television station restriction, eight remaining major media voices criterion, top 20 DMA cutoff) and on how in practice these three constraints interact with one another.

103. We tentatively conclude that the case-by-case approach adopted as part of the 2006 rule to consider requests for waivers of the newspaper/broadcast cross-ownership rule would best serve our goal of promoting viewpoint diversity. This approach should provide an appropriate amount of flexibility to allow the Commission to consider specific, individual circumstances. Presumptions either in favor of or against a waiver can be overcome when specific facts so warrant. Under this approach, opponents to a waiver request, even in the largest markets, maintain the ability to argue that specific circumstances overcome a favorable presumption. In addition, parties requesting a waiver in smaller markets are not precluded from demonstrating the benefits of that particular combination in the individual market. We seek comment on these tentative conclusions.

104. Alternatively, we seek comment on whether a bright-line rule addressing newspaper/broadcast cross-ownership would be preferable. Such a rule would allow common ownership of (1) one daily newspaper in a top 20 DMA and one commercial radio station, or (2) one daily newspaper and one full-power commercial television station in a top 20 DMA under the circumstances in

[236] *See, e.g., 1975 Second Report and Order*, 50 FCC 2d at 1080, ¶ 112 (stating that "divestiture should be limited to use in only the most egregious cases"); *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13808, ¶ 484.

[237] See Appendix B for the proposed rule.

[238] For purposes of the waiver, major media voices would include full-power commercial and noncommercial television stations and major newspapers. *See* 47 C.F.R. § 73.3555(d)(3)(ii); *NOI*, 25 FCC Rcd at 6095, ¶ 23.

which the case-by-case approach proposed above would establish a favorable presumption.[239] Other combinations would be prohibited. The purpose of a bright-line rule is to create a clear-cut, readily enforceable standard that provides consistency and certainty to the marketplace. We seek comment on whether this approach would result in a simplified rule that would preserve essentially the same levels of local viewpoint diversity as a case-by-case approach but reduce applicants' costs and make the Commission's review of transfer and assignment applications more objective, predictable, and expeditious. Is a bright-line formula too blunt a tool to account for variable conditions that may exist when considering newspaper/broadcast cross-ownership waivers, even in similarly sized markets? We note that even utilizing a bright-line rule, petitions to deny an application would not be precluded even for a newspaper/broadcast combination within a top 20 DMA or a waiver request in other markets.[240] Would including the determinative criteria in a governing rule alleviate the need to undergo a potentially lengthy and expensive waiver process for applications presumed to be in the public interest? If the results are likely to be the same in most cases, is the flexibility of a tailored review process worth the additional time and expense? We seek comment on the extent to which the structure of the bright-line approach would diminish the likelihood of successfully opposing such a merger. Under a bright line approach, should we adopt specific standards for waivers or rely on our generally applicable waiver standards?

105. *Market Tiers*. We propose to differentiate between markets in the top 20 DMAs and markets below the top 20 DMAs. In the last review of this rule, the Commission found a "notable difference between the top 20 markets and all other DMAs," citing the range of media outlets available in the top 20 DMAs and concluding that "[t]he diversity in the number and types of traditional media outlets in the largest markets ensures that the public is well served by antagonistic viewpoints. Markets outside of the top 20 DMAs do not feature diversity to such an extent."[241] We continue to believe that the top 20 DMAs are notably different from other markets, both in terms of voices and in terms of television and radio households.[242] Based on the range of media outlets available in the top 20 DMAs, we tentatively conclude that diversity in those largest markets is healthy and vibrant in comparison to other DMAs. For example, while there are at least 10 independently owned, commercial television stations in 15 of the top 20 DMAs, none of the DMAs ranked 21 through 25 has even eight independently owned, commercial television stations. Additionally, while 15 of the top 20 DMAs have at least two newspapers with a circulation of at least five percent of the households in that DMA, four of the five DMAs ranked 21 through 25 have only one such newspaper. Moreover, the top 20 markets, on average, have 16 independently owned television stations and major newspapers and approximately 2.5 million television households.[243] By comparison, DMAs 21 through 30 have on average nine major voices and fewer than 1.2 million television households, representing drops of 44 percent and 52 percent from the top 20 markets, respectively. DMAs 31 through 50 have average numbers of voices for each category similar to markets 21 through 30, but even fewer television households on average, 856,700 and 694,500, respectively. DMAs 51 through 210 show even more dramatic drops, with, on average, seven major voices and approximately 236,000 television households, representing drops of 56 percent and 91 percent from the top 20 DMAs, respectively. The diversity in the number and types of traditional media outlets in the largest markets ensures that the public is well served by a variety of viewpoints. Markets outside of the top 20 DMAs do not feature diversity to such an extent.

[239] For purposes of the rule, major media voices would include full-power commercial and noncommercial television stations and major newspapers. *See* 47 C.F.R. § 73.3555(d)(3)(ii); *NOI*, 25 FCC Rcd at 6095, ¶ 23.

[240] *See* 47 U.S.C. § 309(d)(1).

[241] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2041-42, ¶ 56.

[242] Staff analysis of BIA/Kelsey data for Dec. 31, 2009.

[243] *Id.*

106. We seek comment on this analysis of the distinction between the top 20 DMAs and others and on our tentative conclusion that the viewpoint diversity level in the 20 largest DMAs is sufficient to consider adopting a regulatory framework that would accommodate a limited amount of newspaper/broadcast cross-ownership in those markets. We also seek comment on our continued belief that markets below the top 20 DMAs cannot accommodate any such cross-ownership, absent particular circumstances warranting a waiver. We ask commenters to address separately market structure characteristics, such as the number of independent media voices, and market size characteristics, e.g., the number of television households in the market. Market structure characteristics are directly and separately addressed by the proposed top four television station restriction and the proposed eight remaining major media voices criterion. Due to the high fixed costs of television program production (including local programming in general and local news programming in particular), the number of television households in the market affects the revenue base available to support local programming and hence affects the quantity, quality, and diversity of local programming produced in the market, independent of the number of media voices.[244]

107. In addition, we seek comment on whether a different demarcation point would more effectively protect and promote our viewpoint diversity and localism goals. For example, would differential treatment be warranted for newspaper/broadcast combinations in the top 30 DMAs, top 40 DMAs, top 50 DMAs, or at a different market size? Please provide specific market data to support the proposed demarcation point. If we were to maintain the prohibition on combinations involving the top four television stations and the requirement to retain eight major media voices in the market, what is the impact on permitted combinations of varying the demarcation point?

108. *Newspaper/Television Station Combinations: Top-Four Restriction.* We propose to prevent a daily newspaper from combining with a television station that is ranked among the top four television stations in the DMA. We propose that the current criteria would continue to apply when determining what qualifies as a daily newspaper[245] and what qualifies as a television station ranked among the top four stations.[246] We believe that allowing a top-four station to merge with a daily newspaper would create the greatest risk of losing an independent voice in that market. Our analysis shows that there is a decrease in the amount of local news broadcast between the fourth and fifth ranked stations.[247] In larger markets, the fifth ranked station generally provides no more than half the amount of local news of the fourth ranked station.[248] We seek comment on this analysis and on its application to our

[244] For a theoretical discussion of the relationship between product quality and market size in the presence of fixed costs and an application to newspapers, *see* Berry, Steven and Joel Waldfogel; "*Product Quality and Market Size*" 58 Journal of Industrial Economics: 1-31 (March 2010). For a discussion in the context of local television programming, *see* Oberholzer-Gee, Felix and Joel Waldfogel; "*Media Markets and Localism: Does News En Espanol Boost Hispanic Voter Turnout?*" National Bureau of Economic Research Working Paper 12317 (June 2006); revised version published 99 American Economic Review: 2120-2128 (December 2009).

[245] 47 C.F.R. § 73.3555, Note 6 (a daily newspaper must be published at least four days a week, written in the dominant language in the market, and circulated generally in the community of publication).

[246] *Id.* at § 73.3555(d)(3)(i) (a television station's ranking is determined by "the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service"). We note that with regard to the TV duopoly rule, the ranking is determined at the time the application to acquire or construct the station is filed. *Id.* at § 73.3555(b)(1)(i).

[247] We have some evidence that the amount of local news drops off on the fifth-ranked television station and does so more dramatically in higher ranked DMAs. FCC staff analysis of TMS data for the period Nov. 1, 2009 through Nov. 14, 2009 and Nielsen data for the period Oct. 29, 2009 through Nov. 25, 2009.

[248] *Id.* This is not to say that the absolute amount of local news provided by the fifth ranked station is insignificant in all cases.

proposed approaches.

109. Furthermore, we note the dominance of the four major television networks in most local television markets. How commonly are the top four stations in a market affiliated with the four major broadcast networks? We seek comment on the findings in Media Ownership Study 4 that television stations affiliated with one of the four major broadcast networks tend to air more local news than other stations and that there are about 35 additional minutes of local news programming in the market for each additional station in the market that is affiliated with one of the four major broadcast networks.[249] We seek comment on our presumption that, therefore, the top four television stations generally contribute the most local news and information among the television stations within a market.

110. Alternatively, we seek comment on whether a different limit is appropriate. For example, is there evidence to support a cross-ownership restriction between newspapers and the top-five or the top-six television stations in some markets? If so, why? Is there support to prevent combinations between newspapers and stations affiliated with one of the four major broadcast networks? If so, why? Could such combinations potentially harm diversity more than other combinations? Is there evidence that these stations provide more diversity in local markets?

111. *Newspaper/Television Station Combinations: Eight Major Media Voices Restriction.* We tentatively propose to prohibit transactions where less than eight independently owned and operated "major media voices" would remain in the DMA after a transaction. We seek comment, however, on the potential impact of eliminating this voices test. Our examination of the top 20 DMAs indicates there would be no impact in these markets. Under the existing ownership patterns in the top 20 markets, even if all daily newspapers combined with television stations, at least eight major media voices would remain in the market. The existence of the eight voices test in the local television ownership rule also helps retain independent major media voices by limiting commercial consolidation once only eight independent television stations remain in the market. As long as these eight independent television voices remain in the market, consolidation between newspapers and television stations will not reduce the number of major media voices below eight. Is our assessment accurate, and if so, is there any reason to incorporate the eight voices test into a new rule or waiver provision? Is there a reason to require a different number of voices to remain in the DMA, and if so, how would that number better protect our diversity goal? Should our analysis change if we do not distinguish the top 20 DMAs but adopt a different demarcation point? For example, would there be an impact on the market if we eliminate the eight voices test and create a separate tier for the top 30 DMAs?

112. *Newspaper/Radio Station Combinations.* As an alternative to our proposal above to retain the restriction on newspaper/radio combinations,[250] we also seek comment on whether we should eliminate the newspaper/radio restriction in all markets or otherwise relax the restriction.[251] We tentatively conclude that radio stations are not the primary outlets that contribute to local viewpoint diversity. Media Ownership Study 5 finds that at least one commercial radio station with a news and talk

[249] Media Ownership Study 4 at 25; *see also* INFORMATION NEEDS OF COMMUNITIES at 100 (finding that most of the television stations that do not offer local news are not affiliated with a broadcast network).

[250] *See supra* ¶¶ 101-103.

[251] We note that Minority Media and Telecommunications Council ("MMTC") no longer opposes newspaper/broadcast cross-ownership given the economic hardships facing so many newspapers. Transcript of Jan. 27, 2010, Media Ownership Workshop, MB Docket No. 09-182, at 206-07 ("Jan. 27 Workshop Transcript") (remarks of David Honig, President and Executive Director, MMTC; filed in MB Docket No. 09-182 on February 26, 2010); *see also* Morris Comments at 2-3 (arguing that newspaper/radio combinations raise fewer concerns than newspaper/television combinations); CWA Comments at 25-26 (citing evidence that newspapers and television stations remain the dominant sources of local news and information).

format serves most markets and that a public news radio station serves about 40 percent of markets.[252] Research shows, nevertheless, that consumers' main sources for local news and information are television stations, newspapers, and their affiliated websites.[253] Moreover, we tentatively conclude that a substantial amount of news and talk show programming on radio stations is nationally syndicated. We seek comment on our tentative conclusion that radio stations generally are not the dominant source consumers turn to for local news and information, as compared to newspapers and television stations. We seek comment on whether, to the extent radio stations serve as sources of local news and information, viewpoint diversity would be adequately protected by our proposed local radio limits. Because consumers in markets of all sizes rely most heavily on other types of news outlets for local news and information, is there any reason to distinguish between markets in the top 20 DMAs and those below the top 20 DMAs for purposes of newspaper/radio combinations? Would the removal of prohibitions against newspaper/radio combinations have any impact on the ownership, or contribution to local viewpoint diversity, of noncommercial educational FM broadcast stations, given the restriction that they may be licensed only to nonprofit educational organizations?[254] Would common ownership between a radio station and a newspaper increase the quality and quantity of local news programming available on radio stations due to shared newsgathering expertise and resources?[255] Could such combinations provide an opportunity for both radio stations and newspapers that are struggling financially to become more vital participants in the news and information marketplace and what is the likelihood of this outcome? Should we consider a rule that prohibits newspaper-radio combinations in certain markets only when the radio station is among the largest four in the market by audience share?

113. The proposed newspaper/broadcast cross-ownership rule retains the use of radio contours to determine when the rule is triggered. As discussed in Section III.B, Arbitron market definitions are used to delineate a market's geographic boundaries for purposes of the local radio limits and we propose to use DMAs for purposes of triggering the local TV ownership rule and the newspaper/television aspect of the cross-ownership rule. Should we continue to use contours to determine whether the newspaper/broadcast cross-ownership rule is triggered for newspaper/radio combinations? What are the benefits of continuing to rely on contours only for this portion of the rule? Can retaining a contour approach to newspaper/radio combinations be reconciled with our proposed use of geographic market definitions for newspaper/television combinations? Alternatively, should we replace radio contours with Arbitron market definitions for purposes of determining whether the newspaper/broadcast cross-ownership rule is triggered for newspaper/radio combinations? Are there any specific concerns about moving to an Arbitron market definition for this rule? Would more or fewer newspaper/radio station combinations be implicated by the cross-ownership rule under an Arbitron-based approach as compared to a contour-based approach? How would we handle non-Arbitron radio markets? We seek comment.

114. To the extent the rule relies on a different market area, we propose to grandfather ownership of existing combinations of radio stations and newspapers that would conflict with the newspaper/broadcast cross-ownership rule by virtue of the change. Compulsory divestiture is disruptive

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252 Media Ownership Study 5 at 4-5; *but see* INFORMATION NEEDS OF COMMUNITIES at 231 (stating that the number of cities with "all-news radio stations dropped from 50 in the 1980s to 30 in 2010").

253 *NOI*, 25 FCC Rcd at 6088, ¶ 6 (citing PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS, AUDIENCE SEGMENTS IN A CHANGING NEWS ENVIRONMENT 3 (2008), *available at* http://peoplepress.org/files/legacy-pdf/444.pdf).

254 47 C.F.R. § 73.503(a).

255 *See 2006 Quadrennial Review Order*, 23 FCC Rcd at 2038, ¶ 46 (finding that "the weight of evidence indicates that cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets"); *2002 Biennial Review Order*, 18 FCC Rcd at 13753-60, 13760-61, ¶¶ 342-54, 356-58 (citing evidence that broadcast stations owned by newspapers generally produce more and better overall local news programming).

to the industry and a hardship for individual owners, and any benefits to our policy goals would likely be outweighed by these countervailing considerations.[256] We seek comment on these tentative conclusions. Are our policy goals served by allowing grandfathered combinations to be freely transferable in perpetuity, irrespective of whether the combination complies with the newspaper/radio cross-ownership rule? What is the effect on the stations if they are sold separately? Is it possible that such a rule could have the unintended consequence of causing a station or newspaper to close?

115. *Factor Tests.* The 2006 rule included a list of four factors for the Commission to analyze when deciding whether a specific newspaper/broadcast ownership combination was in the public interest. We seek comment on whether we should retain those factors. In 2006, the Commission stated that the factors were intended to address "the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity."[257] Specifically, the 2006 rule required applicants to make showings regarding: (1) the amount of local news that would be produced post-transaction; (2) the extent to which the affected media outlets would exercise independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the applicant, and if financially distressed, the applicant's commitment to invest in newsroom operations.[258] Do the factors provide useful predictability or clarity for applicants applying for a waiver of the newspaper/broadcast cross-ownership rule? Do factors provide specific benefits to the Commission staff reviewing applications and waiver requests? Alternatively, are any of the factors, such as the first two factors, too subjective, or focused on future behavior that may be too difficult to predict or enforce? Do specific factors create unnecessary delay in the application and review process? Should the Commission exclude all of these elements from the new rule and consider applications on a more case by case basis? If so, should the presumptions included in the rule be interpreted as establishing a *prima facie* case in favor of or against a transaction and, once established, shifting the burden of proof regarding the Commission's treatment of an application to those that may seek to overcome the presumption? If so, what should that burden of proof be?[259] Would a well defined exception or waiver standard, as discussed below, sufficiently support the Commission's consideration of specific factual scenarios related to a proposed transaction, including for instance, the financial condition of the entities involved and/or the availability of local news, such that the specification of these additional factors is not necessary? We seek comment.

116. *Exception or Waiver.* We also seek comment on whether to retain or abolish the factors adopted in 2006 to overcome or reverse a negative presumption. Is it better to remove all factors from the rule and rely on the Commission's general waiver standard?[260] Under the 2006 rule, a waiver applicant could overcome a negative presumption by demonstrating, with clear and convincing evidence, that the merged entity would increase the diversity of independent news outlets and the level of competition among independent news sources in the relevant market.[261] Is such a standard sufficiently objective and quantifiable? The 2006 rule further stated that the Commission would reverse the negative presumption

[256] *See, e.g., 1975 Second Report and Order*, 50 FCC 2d at 1080, ¶ 112 (stating that "divestiture should be limited to use in only the most egregious cases"); *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13808, ¶ 484.

[257] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2018-19, ¶ 13.

[258] *Id.* at 2049, ¶ 68.

[259] In the *2006 Quadrennial Review Order*, the Commission stated that "[w]e will require any applicant attempting to overcome a negative presumption about a major newspaper and television station combination to demonstrate by clear and convincing evidence that, post-merger, the merged entity will increase the diversity of independent news outlets (*e.g.*, separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market." *Id.* at 2049, ¶ 68.

[260] *See* 47 C.F.R. § 1.3.

[261] *Id.* at § 73.3555(d)(6).

in two limited circumstances: (1) when the proposed combination involved a failed/failing station or newspaper, or (2) when the proposed combination was with a broadcast station that was not offering local newscasts prior to the combination, and the station would initiate at least seven hours per week of local news after the combination.[262] Is such a standard sufficiently objective and quantifiable? Should we give special consideration to a transaction that involves a station or newspaper that is failed or failing? If so, what showing should an applicant be required to make to qualify as failed or failing? Is a requirement that a waiver applicant show that a proposed combination would increase the number of hours of local news programming overly focused on future behavior that may be too difficult to predict or enforce? Are there other factors that the Commission should adopt that would be more objective or easier to enforce than those adopted in 2006? If so, what would be the benefits of adopting any other proposed factors and what would be the harms? We also seek comment on whether it may be appropriate to adopt specific factors to consider in instance in which an applicant is seeking a waiver of the restriction on combinations involving a top-four television station or the eight voice test.[263] Finally, we seek comment on whether and why such provisions are needed given that filing a waiver petition is always an option under section 1.3 of the Commission's rules?[264]

117. *Minority and Female Ownership.* According to DCS, there are still significant barriers to entry by minority owners in both the traditional and new media industries; DCS supports measures to facilitate minority media ownership.[265] DCS states that minority-owned stations are more likely to provide programming geared towards minority audiences and that minority communities are underserved as a result of the lack of minority media ownership.[266] We seek comment on how the proposed newspaper/broadcast cross-ownership rule could affect minority and female ownership opportunities. We seek comment on how promotion of diverse ownership promotes viewpoint diversity. We request that commenters provide additional data supporting their positions.

D. Radio/Television Cross-Ownership Rule

1. Introduction

118. The current radio/television cross-ownership rule limits the number of commercial radio and television stations an entity may own in the same market, with the degree of common ownership permitted varying depending on the size of the relevant market.[267] The rule allows common ownership of at least two television stations and one radio station in the smallest markets, while in larger markets, a single entity may own additional stations depending on the number of media owners in the market.[268]

[262] *Id.* at § 73.3555(d)(7).

[263] We note that MMTC no longer opposes newspaper/broadcast cross-ownership given the economic hardships facing so many newspapers. Jan. 27 Workshop Transcript at 206-07 (remarks of David Honig, President and Executive Director, MMTC).

[264] *See* 47 C.F.R. § 1.3.

[265] DCS Comments at 3-5, 7-9, 18-20.

[266] *Id.* at 11-14; *see also id.* at 12 (citing Sandoval *et al.* Minority Commercial Radio Ownership in 2009) ("A study published in 2009 shows that approximately 73 percent of minority-owned stations serve the community by broadcasting minority oriented programming . . . .").

[267] An entity may own up to two television stations and four radio stations in a market, as long as at least 10 independently owned media voices would remain post-merger, and a single entity may own up to two television stations and six radio stations, or one television station and seven radio stations, in a market as long as at least 20 independently owned media voices would remain post-merger. In all instances, entities must comply with the local radio and local television ownership limits. 47 C.F.R. § 73.3555(c)(2).

[268] The following media are counted for determining the number of voices for the purpose of applying the radio/television cross-ownership rule: (i) all "independently owned and operating full-power broadcast TV stations

The Commission retained the radio/television cross-ownership rule in the *2006 Quadrennial Review Order* to ensure diversity in local markets.[269] In *Prometheus II*, the Third Circuit upheld the Commission's decision to retain the rule, based in part on the Commission's assertion in the *2006 Quadrennial Review Order* that the rule benefited viewpoint diversity.[270] It noted that the Commission supported retention of the rule in the 2006 Quadrennial proceeding with some evidence that commonly owned stations can share the same viewpoint.[271]

119. Pursuant to our statutory mandate, we consider whether the radio/television cross-ownership rule continues to be necessary to promote the public interest. We tentatively conclude that it does not. We believe that repeal of the radio/television cross-ownership rule is not likely to increase significantly consolidation of broadcast facilities. To the extent that repeal does allow additional consolidation, we seek comment on whether such consolidation would result in greater efficiencies, to be passed through to consumers in the form of enhanced programming choices or other consumer welfare benefits. Moreover, as discussed further below, data suggest that radio/television cross-ownership does not negatively impact the amount of local news available to consumers or the diversity of such programming. Finally, we are persuaded by the evidence from our studies and the changes in the marketplace that the rule is not necessary to ensure sufficient diversity in local markets. Accordingly, we tentatively conclude that in the current media market, our goals of localism and diversity will be adequately protected by the local radio and television ownership rules without this additional limitation. We seek comment on these tentative conclusions. We also seek comment on whether there are any reasons to retain the rule.

2. Background

120. The Commission first restricted combined ownership of radio and television stations in local markets in 1970 to foster competition and promote diversification of programming sources and viewpoints.[272] As discussed in the *NOI*, in 1999 the Commission relaxed the rule to balance diversity and competition concerns against the desire to permit broadcasters and the public to realize the benefits of common ownership.[273] In the *2006 Quadrennial Review Order*, the Commission retained the radio/television cross-ownership rule, based in part on the concern that the local television and radio rules were not sufficient to protect diversity in the media marketplace.[274] After reviewing the record, the Commission determined that radio and television both contributed to the "marketplace of ideas" and thus competed in providing diversity.[275] At the same time, the Commission acknowledged that newspapers

within the DMA of the TV station's (or stations') community (or communities) of license that have Grade B signal contours that overlap with the Grade B signal contour(s) of the TV station(s) at issue;" (ii) all independently owned and operating primary broadcast radio stations that are either licensed to a community within the Arbitron radio Metro market in which the community of license of the television station in question is located or radio stations outside the radio Metro market that Arbitron or another nationally recognized audience rating service lists as having a reportable share in the Metro market; (iii) all independently owned daily newspapers that are published at least four days a week in the DMA at issue and that have a circulation exceeding five percent of the households in the DMA; and (iv) cable systems, which count as a single voice, provided cable service is generally available to television households in the DMA. *Id.* at § 73.3555(c)(3)(i)-(iv).

[269] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2058, ¶ 82.

[270] *Prometheus II*, 652 F.3d 456-58.

[271] *Id.* at 35 (citing *2006 Quadrennial Review Order*, 23 FCC Rcd at 2038-39, ¶ 49)

[272] *2002 Biennial Review Order*, 18 FCC Rcd at 13768, ¶ 372.

[273] *NOI*, 25 FCC Rcd at 6096, ¶ 26; *see also 1999 Ownership Order* at 12948, ¶ 102.

[274] *2006 Quadrennial Review Order*, 23 FCC Rcd at 2059-60, ¶ 84.

[275] *Id.*

and television were "far and away the most important sources" of news and information, with radio "a distant third."[276] On review, the Third Circuit upheld the Commission's decision to retain the rule finding that the rule continues "to ensure that viewpoint diversity is adequately protected."[277]

121. In the *NOI*, the Commission sought comment on whether the current rule continues to be necessary in the public interest. NAB supports repeal of the radio/television cross-ownership rule because it believes that additional cross-ownership will allow broadcasters to better compete for advertising and viewers with the new media sources entering the market[278] and will allow them to invest more in local news and information.[279] Fox also suggests that allowing more common ownership of different types of media in a single market could enhance localism.[280] NAB, Fox, and CBS argue that, in light of the explosion of media outlets and Internet-related media in all markets, and the resulting fragmentation of the local audience, "repeal of the [radio/television cross-ownership] rule will not adversely affect the availability of diverse audio and video programming and viewpoints."[281] Fox contends that in the Internet age "all outlets have an equal capacity to reach the vast majority of citizens (especially now that three-quarters of all American adults use the Internet)."[282] In contrast, AFTRA argues that we should maintain the radio/television cross-ownership rule to prevent further consolidation and promote localism and diversity.[283] AFTRA points out that, between 1996 and 2010, "the number of commercial radio stations increased by about 10 percent . . . . [while] the number of station owners fell by about 40 percent."[284] AFTRA further asserts that, during the same period, "the number of commercial television stations increased by about 15 percent . . . . [while] the number of station owners fell by 33 percent."[285]

122. In our economic studies, which we discuss in more detail in Section V below, we sought data to help us analyze questions related to the relevance of the radio/television cross-ownership rule to our policy goals. Particularly, we measured whether the presence of radio/television cross-ownership affects the amount of local news provided at the local market level and at the individual station level. We

[276] *Id.* at 2060, ¶ 84 n.279.

[277] *Prometheus II*, 652 F.3d at 457.

[278] NAB Comments at 46, 63-72.

[279] *Id.* at 63-72.

[280] Fox Comments Att. 1 at 26 (citing *Prometheus I*, 373 F.3d at 398).

[281] NAB Comments at 77-78 (also arguing that previous ownership studies showed benefits from radio/television cross-ownership); Fox Comments Att. 1 at 27-28; CBS Reply Att. at 27; *see also* CBS Reply Att. at 23-27 (outlining changes in the media marketplace).

[282] Fox Comments Att. 1 at 27. CBS and NAB similarly point to widespread Internet use as ground for repealing the rule. CBS Reply Att. at 24 ("the number of adult Americans using the Internet rose to more than twice the level of usage that existed five years earlier; [the number of] web pages indexed by Google has increased 537 [percent] since 2004," and the development of the blog has added to the variety of new media alternatives); NAB Comments at 16-17, 21 (a recent study shows "that between 2004 and 2009, the number of hours per week that Americans use the Internet increased by 117 percent, while radio use decreased by 18 percent, . . . and television viewing remained constant," and argues that this supports their assertion that there are a "number of alternative outlets offering information and entertainment to consumers").

[283] AFTRA Comments at 2-3; *see generally* NABOB Comments (arguing that relaxation of any of the media ownership rules would contribute to consolidation of ownership in the broadcast industry, which would in turn "exacerbate the lack . . . of minority ownership").

[284] AFTRA Comments at 3.

[285] *Id.* at 4.

also measured localism by analyzing consumer satisfaction with the amount of locally oriented programming available in markets. In addition, we studied the impact of radio/television cross-ownership on the amount of diverse viewpoints available in media markets.

3. Discussion

123. *Competition.* As the Commission has held in the past, we do not believe this rule is necessary to promote competition. Previously, the Commission has concluded that most advertisers do not consider radio and television stations to be good substitutes for their advertising needs, and, therefore, combinations of radio and television stations would not harm competition in local media markets.[286] This conclusion was based in part on Department of Justice assertions that radio advertising constitutes a separate antitrust market.[287] We continue to believe that radio and television are not good substitutes in the advertising market.[288] We seek comment on this tentative conclusion.

124. Similarly, we tentatively conclude that most consumers do not consider radio and television stations to be substitutes for one another. That is, we believe that consumers are not likely to switch between television viewing and radio listening based on the program content of radio and television stations. Nor do we believe it likely that radio or television stations adjust their content in response to changes in the other medium's programming. Accordingly, we believe that repealing the radio/television cross-ownership rule will not negatively impact our competition goals and seek comment on this tentative conclusion.

125. As stated above, broadcasters argue that lifting the radio/television cross-ownership restriction will enable them to compete better in today's marketplace. We seek comment on whether repealing the restriction would allow greater efficiencies through joint operations that can be passed on to consumers through investment in programming. In addition, we seek comment on whether allowing additional radio-television combinations would lead to consumer benefits in the form of additional investment in radio or television news rooms, increased editorial staffs, or additional local news coverage on radio stations.

126. We do not anticipate, however, that eliminating the radio/television cross-ownership rule would significantly contribute to broadcast consolidation. Pursuant to the existing radio/television cross-ownership rule, in the largest markets, entities currently may own, in combination, either two television stations and six radio stations or one television station and seven radio stations. The local radio ownership rule permits an entity to own a maximum of eight radio stations in a single market. Therefore, in the largest markets, absent the current radio/television cross-ownership rule, an entity approaching the limits of the existing cap could acquire only one additional radio station and remain in compliance with the local radio rule. Likewise, an entity with one television station already could acquire only one additional station in the largest markets under the current local television rule. Thus, we believe that the effect of eliminating the radio/television cross-ownership rule will be small, and that the local radio and local television rules will continue to prevent a significant increase in the consolidation of broadcast facilities. We seek comment on these issues. What impact is the proposed action likely to have in small and mid-sized markets? Are there specific examples of markets where repeal of the rule may

[286] *2002 Biennial Review Order*, 18 FCC Rcd at 13770-71, ¶ 377.

[287] *Id.* at 13714, ¶ 243 (citing Complaint at ¶¶ 11-14, *United States v. Clear Channel Comm'ns, Inc.*, No. 1:00CV02063 (D.D.C. Aug. 29, 2000); Complaint at ¶ 12, *United States v. EZ Comm'ns, Inc.*, No. 1:97CV00406 (D.D.C. Feb. 27, 1997)).

[288] *2002 Biennial Review Order*, 18 FCC Rcd at 13672-76, ¶¶ 142-52 (observing that the record suggests that television viewers do not consider non-video entertainment alternatives to be good substitutes for watching television, and that advertisers do not consider radio to a substitute for reaching consumers through the medium of television); *see also* CBS Reply Att. at 28-29.

substantially contribute to broadcast consolidation?

127. *Localism.* As the Commission has held in the past, we do not believe this rule is necessary to promote localism.[289] We tentatively conclude that repealing the radio/television cross-ownership rule will not negatively impact our localism goal. Again, we believe that the local television and local radio rules, as well as the newspaper/broadcast cross-ownership rule, will sufficiently promote and protect our localism goals. Radio and television broadcasters would continue to have the same obligation to serve their local communities in the absence of a radio/television cross-ownership restriction. We also recognize that consumers primarily rely on television and newspapers, and their affiliated websites, for their local news.[290] Moreover, audiences of traditional news sources have moved toward new media, with both Internet and cable news sources growing.[291] We recognize that radio stations that air nationally syndicated news or talk show programming contribute to the overall amount of news and information within their local market. We note that lifting the radio/television cross-ownership rule will not impact the availability of non-commercial news radio stations. We seek comment on our tentative conclusions.

128. In the media ownership studies, we sought to develop data to inform our analysis of whether the radio/television cross-ownership rule promotes localism. In particular, both Media Ownership Study 1 and Media Ownership Study 4 look at whether the level of radio/television cross-ownership in a market is associated with the amount of local television programming provided. Evidence from the studies is mixed with respect to this question.

129. Media Ownership Study 1 examines how cross-ownership is associated with localism, as measured by the amount of local news provided in the market.[292] The study finds that cross-ownership decreases local television news hours but raises ratings, which leads to ambiguous results.[293] We seek comment on these findings and their relevance to our analysis of whether the radio/television cross-ownership rule is necessary to promote our localism goal.

130. Media Ownership Study 4 finds that, at the station level, radio/television cross-owned stations appear to air more local news on average, though the impact is marginal.[294] According to the study, for every additional in-market radio station a parent owns, the television station will air 3.7 more minutes of local news.[295] We seek comment on these study findings and how they should affect our analysis. At the local market level, however, Media Ownership Study 4 finds that increases in radio/television cross-ownership correlate to decreases in the total amount of news minutes provided in the market.[296] As the study notes, however, due to economies of scale, this negative correlation is partially mitigated as the average number of broadcast outlets per cross-owned station group in the market

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[289] *2002 Biennial Review Order*, 18 FCC Rcd at 13772-73, ¶¶ 383-85.

[290] PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS, PRESS ACCURACY RATING HITS TWO DECADE LOW, PUBLIC EVALUATIONS OF THE NEWS MEDIA: 1985-2009, at 4 (2009) ("PEW PRESS ACCURACY REPORT"), *available at* http://people-press.org/files/legacy-pdf/543.pdf (18 percent of respondents get most of their local news from radio, compared to 64 percent for television).

[291] *NOI*, 25 FCC Rcd at 6088, ¶ 6 (citing PEW PARTICIPATORY NEWS CONSUMER). We note that while cable news ratings have generally increased over the last decade, the audience for cable news declined in 2010. STATE OF THE NEWS MEDIA 2011 at Key Findings.

[292] Media Ownership Study 1 at 1.

[293] *Id.* at 16, 21, Table 3.

[294] Media Ownership Study 4 at 28.

[295] *Id.*

[296] *Id.* at 24, 49.

increases.[297]

131. *Diversity*. We tentatively conclude that the radio/television cross-ownership rule is no longer necessary to promote the Commission's goal of encouraging viewpoint diversity. We seek comment on this tentative conclusion, as well as our tentative conclusion that the proposed local television and radio rules and the newspaper/broadcast cross-ownership rule will suffice to protect and promote our diversity goal. We also seek comment on alternatives to this tentative conclusion, including whether or not it is necessary to retain the radio/television cross-ownership rule for diversity purposes. We seek data to support retention of the rule, including any data that the cross-ownership rule is necessary to ensure diverse viewpoints in local markets.

132. Overall, the media ownership studies provide little evidence that cross-ownership, to the degree currently allowed under the radio/television cross-ownership rule, has an effect on viewpoint diversity. Media Ownership Study 8A analyzes the impact of radio/television cross-ownership on viewpoint diversity available in local markets by examining how consumers react to the content delivered to them.[298] The study utilizes variations in viewing patterns of local television news programs as compared to local viewing patterns for national television news programs to develop a measure of diversity of content on local news programs, and relates changes in viewing patterns to changes in local media cross-ownership.[299] The study finds that, in general, radio/television cross-ownership has a negligible effect on viewpoint diversity.[300] Media Ownership Study 8B examines the impact of media ownership, including radio/television cross-ownership, on the amount of programming provided in television news programs in three categories: politics, local programming, and issue diversity (diversity in coverage of news topics).[301] Overall, the study finds little evidence that market structure influences diversity.[302] Nonetheless, with respect to one of the three types of diversity—issue diversity—the study finds that, for the majority of topics for which cross-ownership is statistically significant, increases in cross-ownership are associated with greater diversity.[303] We seek comment on the findings presented in Media Ownership Study 8A and Media Ownership Study 8B. Specifically, we seek comment on how these findings should inform our analysis of whether the radio/television cross-ownership rule remains necessary to promote viewpoint diversity.

133. While consumers continue to rely on television and newspapers, and their affiliated websites, for their local news,[304] they increasingly turn to new media, both the Internet and cable, as news sources.[305] The recent Information Needs of Communities Report finds that the Internet has created more diversity and choice in news and information, and that most communities have seen a rise in the number

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[297] *Id.*

[298] Media Ownership Study 8A, Local Media Ownership and Viewpoint Diversity in Local Television News, by Adam D. Rennhoff and Kenneth C. Wilbur ("Media Ownership Study 8A").

[299] *Id.* at 6-8.

[300] *Id.* at 22.

[301] Media Ownership Study 8B, Diversity in Local Television News 5-10, by Lisa M. George and Felix Oberholzer-Gee ("Media Ownership Study 8B").

[302] *Id.* at 18.

[303] *Id.* at 15.

[304] PEW PRESS ACCURACY REPORT at 4.

[305] *NOI*, 25 FCC Rcd at 6088, ¶ 6 (citing PEW PARTICIPATORY NEWS CONSUMER). We note that while cable news ratings have generally increased over the last decade, the audience for cable news declined in 2010. STATE OF THE NEWS MEDIA 2011 at Key Findings.

and diversity of outlets, as well as more diversity in commentary and analysis.[306] We seek comment on whether these sources contribute significantly to the diversity of news sources available to consumers. As the Third Circuit noted, the traditional media continue to be an important news source.[307] Nonetheless, Internet adoption rates continue to grow, leading to changes in how consumers get their news. Because the primary marketplace for news is shifting, we seek comment on whether the shift in consumption of news supports elimination of the rule. For instance, does the increase in the diversity of news outlets provided by the Internet contribute enough to the marketplace of ideas to ensure that viewpoint diversity would be adequately protected absent this rule? We also note that the Commission previously has rejected the argument that the use of common facilities by cross-owned stations to gather news, traffic, and weather would be harmful to diversity, because such cost-cutting measures allow the vital information to be available to the public through a greater number of outlets.[308] We seek comment on how other changes in the media marketplace affect diversity.

134. We also seek comment on how elimination of the radio/television cross-ownership rule would affect minority and female ownership opportunities. As noted, DCS asserts that significant entry barriers continue to exist for minorities and women in both the traditional and new media industries.[309] Would elimination of the radio/television cross-ownership rule have any effect on such barriers? DCS also states that minority-owned stations are more likely to provide programming geared towards minority audiences and that minority communities are underserved as a result of the lack of minority media ownership.[310] Would elimination of the radio/television cross-ownership rule have any effect on programming geared toward minority audiences?

135. *Digital Transition.* We observe that, following the digital transition for full-power television broadcasters in 2009, the current radio/television cross-ownership rule became at least partially obsolete. The rule relies on analog broadcast television contours as one of its criteria.[311] As broadcast television stations have completed the transition to digital television service and ceased broadcasting in analog, the analog contours are no longer relevant, and comparable digital contours do not exist for all of the analog contours previously employed in the media ownership rules.[312] As discussed in the *NOI*, while the Commission has found the digital noise limited service contour to approximate the larger Grade B contour, the Commission has not found an equivalent for the smaller Grade A contour, which is used to trigger the radio/television cross-ownership rule.[313] If the Commission were to apply the larger Grade B contour, we could allow entities to own more broadcast stations than was the case with the analog

[306] INFORMATION NEEDS OF COMMUNITIES at 119-20.

[307] *Prometheus II*, 652 F.3d at 457.

[308] *See Applications of NewCity Communications, Inc. and Cox Radio, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3929 (1997).

[309] DCS Comments at 3-5, 7-9.

[310] *Id.* at 11-14; *see also id.* at 12 (citing Sandoval *et al.* Minority Commercial Radio Ownership in 2009) ("A study published in 2009 shows that approximately 73 percent of minority-owned stations serve the community by broadcasting minority oriented programming . . . .").

[311] For example, the radio/television cross-ownership rule is triggered if the Grade A contour of a TV station encompasses the entire community of license of an FM or AM station. 47 C.F.R. § 73.3555(c)(1)(i)-(ii). In addition, for purposes of determining the number of voices that would remain in the market post-merger, the rule counts TV stations if they are "independently owned and operating full-power broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license that have Grade B signal contours that overlap with the Grade B signal contour(s) of the TV station(s) at issue . . . ." *Id.* at § 73.3555(c)(3)(i).

[312] *NOI*, 25 FCC Rcd at 6116-17, ¶ 102.

[313] *Id.* at 6116-18, ¶¶ 102-03.