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

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 09-182
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294

COMMENTS OF MORRIS COMMUNICATIONS COMPANY, LLC

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Richard E. Wiley
James R. Bayes
Maria L. Mullarkey
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
202.719.7000

Attorneys for Morris Communications Company, LLC

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I. INTRODUCTION AND SUMMARY

Morris Communications Company, LLC ("Morris") hereby submits its Comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*") issued by the Commission on December 22, 2011 in the above-captioned proceeding.[1] Morris is one of the country's strongest mid-sized, privately held media companies, with diversified holdings that include daily newspapers and broadcast radio stations. Morris currently operates co-located radio/newspaper combinations in Topeka, Kansas and Amarillo, Texas pursuant to temporary waivers.[2] Specifically, MCC Radio, LLC, a Morris subsidiary, is the

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[1] *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 11-186, MB Docket No. 09-182 (rel. Dec. 22, 2011) ("*NPRM*").

[2] *See In re Application of Stauffer Amarillo Radio Trust*, 11 FCC Rcd 14865, 14868 (1996) (granting 12 month waiver of newspaper/broadcast cross-ownership rule to permit common ownership of the Morris newspaper/broadcast combinations in Topeka and Amarillo); *Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (MMB Aug. 11, 1997) (extending waiver until six months after the effective date of the Commission's action in MM Docket 96-197); *Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd 17283, 17268 n.16 (2001) (further extending waiver); *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the*

licensee of WIBW(AM) and WIBW-FM in Topeka, where Morris publishes the *Topeka Capital-Journal*. MCC Radio, LLC is also the licensee of KGNC(AM) and KGNC-FM in Amarillo, where Morris publishes the *Amarillo Globe-News*. Though Morris' Topeka and Amarillo radio and newspaper outlets are separately staffed and operated, the co-owned stations and daily newspapers in these markets reflect Morris' longstanding journalistic heritage and its commitment to serving the news and informational needs of its local communities.

Morris long has advocated repeal of the FCC's ban on newspaper/broadcast cross-ownership (the "NBCO Rule").[3] Although the evidence presented to the FCC in the successive rounds of media ownership review proceedings has only strengthened the case for eliminating the NBCO Rule, particularly with regard to newspaper/radio cross-ownership, the agency has been unable to complete any meaningful reform and once again proposes only exceedingly modest changes that leave in place stringent restrictions

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Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13767 (¶ 369) (2003) ("*2003 Order*"), *aff'd in part*, *remanded in part*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2056-57 (¶ 78 & n.258) (2008) (affording licensees with temporary newspaper/broadcast cross-ownership waivers 90 days after the effective date of order to either amend their waiver/renewal request or file a request for permanent waiver) ("*2008 Order*"), *aff'd in part*, *remanded in part*, *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011); *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order, DA 12-40, MB Docket No. 06-121 (rel. Jan. 12, 2012) (extending deadline for amending waiver/renewal requests or filing a request for permanent waiver until either (i) 90 days after a denial by the Supreme Court of all of the pending petitions for a writ of certiorari, or (ii) in the event that the Supreme Court grants certiorari in any of those cases, 90 days after a final judgment disposing of the challenges to the Commission's modified newspaper/broadcast cross-ownership rule).

[3] *See*, *e.g.*, Comments of Morris Communications Company, LLC, MB Docket No. 09-182 (filed July 12, 2010) ("Morris *NOI* Comments"); Comments of Morris Communications Company, LLC, MB Docket No. 06-121 (filed Oct. 23, 2006); Comments of Morris Communications Corporation, MB Docket No. 02-277 (filed Jan. 2, 2003); Comments of Morris Communications Corporation, MM Docket No. 01-235 (filed Dec. 3, 2001).

on newspaper/broadcast combinations. Largely including elements of the rule adopted in 2008 (the "2008 Rule"), the agency's limited proposal presumptively disfavors cross-ownership in all but the largest markets, providing virtually no regulatory relief to the overwhelming majority of newspaper publishers and broadcast station operators. Notably, the Commission proposes to maintain the same onerous restrictions on both television and radio combinations, despite evidence demonstrating that newspaper/radio cross-ownership poses no credible threat to the FCC's public interest goals and despite the fact that the agency has focused on the popularity of newspaper and television news coverage – not radio – as the supposed basis for continued limitations on cross-ownership.

The proposed changes to the NBCO Rule would leave companies with interests in both newspaper publishing and radio broadcasting at a significant regulatory and competitive disadvantage with respect to their non-broadcast and even broadcast-only competitors, which are able to realize the economic and operational benefits that can result from joint ownership. Further, the proposed restrictions would prohibit Morris from acquiring radio properties in any of the other small- and mid-sized markets in which it currently publishes a daily newspaper, thereby preventing the company from improving the quantity and quality of local news and information available to consumers in those communities.

As evidenced by Morris' combinations in Topeka and Amarillo, newspaper/radio combinations promote localism by giving radio outlets the resources and incentives to increase their commitment to community-oriented programming, often through the adoption or continuation of an all news or informational format. Moreover, these significant public interest benefits are delivered without any sacrifice to the Commission's competition or diversity goals. Accordingly, consistent with its past submissions, Morris urges the Commission finally to take the steps necessary to provide meaningful regulatory relief to newspaper/broadcast cross-owners. At a very minimum, the agency should eliminate any restrictions on newspaper/radio cross-ownership, which are, even more clearly, no longer necessary to serve any of the FCC's public interest objectives.

II. MAINTAINING STRINGENT RESTRICTIONS ON NEWSPAPER/RADIO CROSS-OWNERSHIP IS INCONSISTENT WITH THE RECORD COMPILED DURING AGENCY EXAMINATION OF THE NBCO RULE AND CONTRARY TO THE PUBLIC INTEREST.

A. The Record Provides Compelling Support For Repealing the Ban on Newspaper/Broadcast Cross-Ownership.

The Commission once again is proposing only modest changes to the longstanding newspaper/broadcast cross-ownership ban, relying largely on elements of the 2008 Rule. However, the limited relief that the proposed changes would provide to prospective owners of same-market newspaper and broadcast properties is plainly insufficient in light of the record before the Commission, which shows that complete elimination of restrictions on newspaper/broadcast cross-ownership would greatly serve the public interest and the Commission's localism objectives without harming competition or diversity.

The proposed rule prohibits common ownership of a daily newspaper and broadcast station in the same market, but allows the Commission to consider waivers on a case-by-case basis.[4] Specifically, the proposed rule would presume a waiver to be

[4] *NPRM* at 38 (¶¶ 102-03).

consistent with the public interest only if: (1) a daily newspaper in a top 20 DMA seeks to combine with a radio station; or (2) a daily newspaper seeks 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 in the DMA, and (b) at least eight independently owned and operated "major media voices" would remain in the DMA.[5] A waiver is presumed to be inconsistent with the public interest in all other circumstances, thus leaving broadcasters and publishers in the remaining 190 DMAs with little or no realistic prospect of relief.[6]

The FCC's proposal is out of synch with the record before the agency, which provides compelling support for eliminating the NBCO Rule altogether. In the *NPRM*, the Commission correctly affirms its earlier finding that newspaper/broadcast cross-ownership promotes the agency's localism goal because "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."[7] The record is replete with real-world evidence that newspaper/broadcast cross-owners – including Morris – provide exemplary public service to their local communities and have improved the quantity and quality of news offered by their co-owned properties.[8] The agency also correctly concludes, as it has in

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[5] *Id*. at 38 (¶ 102).

[6] *See id*.

[7] *Id*. at 33 (¶ 89).

[8] *See*, *e.g.*, *id*. at 34-35 (¶ 93 & n.214); Morris *NOI* Comments at 8-13.

previous ownership reviews, that the rule is not necessary to promote competition because newspapers and broadcast stations do not compete in the same product market.[9]

Further, there is no credible support in the record for the FCC's tentative conclusion that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect viewpoint diversity.[10] The agency relies solely on evidence which purports to show that television stations and newspapers and their websites are the most important sources of local news and information, failing to account for the plethora of media sources available to consumers in today's highly competitive and crowded media marketplace.[11] Tellingly, however, the Commission itself observes at the outset that "[t]he proliferation of broadband Internet and other new technologies has had a dramatic impact on the media marketplace," and that "[c]onsumers are increasingly turning to online and mobile platforms to access news content and audio and video programming."[12]

The FCC also notes that in 2010 and early 2011, "satellite radio and TV companies, which offer both satellite and online access to content, have reported growth in subscribership," "content providers are increasingly looking to the Internet and other new media platforms to bypass traditional media and reach consumers directly," and

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9 *NPRM* at 33 (¶ 89).

10 *Id*. at 32 (¶ 89).

11 *Id*.; *see also id*. at 35-37 (¶¶ 96-97).

12 *Id*. at 2 (¶ 2); *see also id*. at 49-50 (¶ 133) ("While consumers continue to rely on television and newspapers, and their affiliated websites, for local news, they increasingly turn to new media, both the Internet and cable, as news sources."); *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 25 FCC Rcd 6086, 6090-91 (¶ 11) (2010) ("*NOI*") (finding that the Internet "has increased the quantity of news and programming available to consumers" and thus "our review must take account of the Internet's role and significance").

"[s]ocial media sites are empowering individuals to share news and information in real time."[13] Citing the comprehensive report written by the FCC's Future of Media Working Group, which describes the diverse media marketplace in great deal and analyzes how media is serving the news and information needs of citizens, the Commission notes the report's conclusions "that the Internet has created more diversity and choice in news and information, and that most communities have seen a rise in the number and diversity of outlets, as well as more diversity in commentary and analysis."[14]

As the number of Americans with Internet access continues to increase, the importance of the Internet as a source of news and information also grows. Notably, the Pew Research Center and the Knight Foundation found in a recent study that "[t]he Internet has already surpassed newspapers as a source Americans turn to for national and international news," and noted that the survey findings "show [the Internet's] emerging role as a source for local news and information as well."[15] Thus, the Commission's insistence that the important role of newspapers and television stations in the provision of local news continues to justify cross-ownership restrictions is short-sighted and belied by

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13 *NPRM* at 2-3 (¶ 2).

14 *Id*. at 49-50 (¶ 133) (citing STEVE WALDMAN & THE WORKING GROUP ON INFORMATION NEEDS OF COMMUNITIES, THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE, at 119-20 (June 2011) ("*Future of Media Report*"), *available at* http://transition fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf (last visited Feb. 23, 2012)).

15 Pew Project for Excellence in Journalism, Pew Internet & American Life Project & the Knight Foundation, *How People Learn About Their Local Community* (Sept. 2011) at 22, *available at* http://www knightfoundation.org/media/uploads/publication_pdfs/Pew_Knight_Local_News_Report_FINAL.pdf (last visited Feb. 23, 2012); *see also Future of Media Report* at 117 ("Some time in 2010, a milestone was hit: more Americans were getting their news online than from traditional printed newspapers. Among younger consumers, more were getting news online than through newspaper *or* TV, according to a 2010 survey.") (citation omitted).

the agency's own observations about the growing prevalence of the Internet and the rise in the number and diversity of media outlets providing information to local communities.

The Commission's proposal to alter the NBCO Rule only minimally is contrary to the extensive evidence showing that newspaper/broadcast cross-ownership advances the agency's public interest goals. The FCC's belief that markets below the top 20 demarcation point cannot accommodate cross-ownership fails to account for the competitiveness and vibrancy of the media marketplace, and its proposal will provide virtually no real opportunities for new cross-ownerships. Further, the FCC's proposal to implement a fixed waiver standard for newspaper/broadcast combinations and to impose negative presumptions on the great majority of waiver requests is in direct tension with its duty to provide a meaningful "safety valve" from its restrictions.[16] And, the inclusion of a negative presumption in the proposed waiver standard is inconsistent with the individualized inquiry that the Commission is obligated to undertake in evaluating waiver requests.[17]

B. **The Record Contains No Persuasive Justification for Retaining Any Limitations on Newspaper/Radio Cross-Ownership.**

As an alternative to recycling the convoluted and extremely limiting waiver standards adopted in 2008, the Commission seeks comment on whether it should eliminate the restriction on newspaper/radio combinations in all markets or otherwise relax this particular restriction, acknowledging that radio stations are not the dominant

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[16] *See WAIT Radio*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.").

[17] *See P&R Temmer v. FCC*, 743 F.2d 918, 929 (D.C. Cir. 1984) (citations omitted) ("Where any administrative rule, although considered generally to be in the public interest, is not in the public interest as applied to particular facts, an agency should waive application of the rule.").

source for local news and information, as compared to newspapers and television.[18] Most importantly from Morris' perspective, the FCC must recognize that there is no satisfactory justification for maintaining *any* restrictions on newspaper/radio cross-ownership, much less for retaining restrictions that are as onerous as any limitations the FCC would keep on newspaper/television combinations.

In tentatively concluding that some cross-ownership restrictions are necessary to protect viewpoint diversity, the Commission relies solely on research "show[ing] that newspapers and local television stations, and their affiliated websites, are the primary sources that consumers rely on for local news."[19] While the FCC emphasizes that "[t]here is evidence that Americans continue to rely on local television stations and newspapers for the majority of their local news, despite the rising popularity of the Internet as a platform for access to news," radio is not even mentioned in the FCC's narrow attempt to justify retention of its outdated restrictions.[20]

The FCC's own statements recognize that newspaper/radio combinations do not raise any appreciable concerns under the agency's public interest objectives. Importantly, the FCC tentatively concludes "that radio stations generally are not the dominant source consumers turn to for local news and information, as compared to newspapers and television stations."[21] The *Future of Media Report* confirms this conclusion, observing that "[w]hether . . . the result of consolidation or other factors—such as the growth of the Internet or the economics of news versus entertainment—it is

[18] *NPRM* at 41-42 (¶ 112).

[19] *Id*. at 32 (¶ 89).

[20] *Id*. at 35-36 (¶ 96).

clear that fewer people are relying on radio for their news."[22] By the agency's own recognition, the continued restriction of newspaper/radio cross-ownership is not necessary to promote viewpoint diversity or otherwise advance the agency's public interest goals.

Moreover, the Commission again proposes to exclude radio from the definition of "major media voices," which includes full-power commercial and noncommercial television stations and major newspapers, for purposes of determining the applicability of a positive or negative presumption under the proposed waiver standards.[23] In excluding radio from this definition, the FCC again effectively concedes that radio stations play a lesser role as sources of news and information.

In proposing repeal of the radio/television cross-ownership rule, the Commission relies on the same evidence concerning the roles of television stations and newspapers in the information marketplace to conclude that the rule is not necessary to promote viewpoint diversity.[24] For example, the FCC observes that it "acknowledged [in the *2008 Order*] that newspapers and television were 'far and away the most important sources' of news and information, with radio 'a distant third.'"[25] If radio/*television* cross-ownership does not raise appreciable viewpoint diversity concerns because radio is not a dominant

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[21] *Id*. at 42 (¶ 112); *see also id*. at 32-33 (¶ 89 n.201).

[22] *Future of Media Report* at 62 (noting further that "[t]he number of people who said that they listened to news on the radio dropped from 54 percent in 1991 to 34 percent in 2010, according to a Pew Research Center study") (citation omitted); *see also id*. at 76-77 (explaining that "the most popular source for local news is television").

[23] *NPRM* at 38 (¶ 102 n.238).

[24] *See id*. at 48 (¶ 127).

[25] *Id*. at 45-46 (¶ 120) (citing *2008 Order*, 23 FCC Rcd at 2060 (¶ 84 n.279)).

source of news and information, then, logically, the Commission should also conclude that radio/*newspaper* cross-ownership does not raise viewpoint diversity concerns.

Morris does not agree with the idea that the role of television and newspapers in origination of news stories warrants restrictions, given the rapidly expanding array of alternative sources of news, analysis, and opinion available in every market. If the FCC follows that logic, however, there is no basis whatsoever for retaining restrictions on newspaper/radio cross-ownership, in the face of the Commission's own observations that radio stations are not primary sources of news.

III. CONTINUED NEWSPAPER/BROADCAST CROSS-OWNERSHIP RESTRICTIONS UNFAIRLY DISADVANTAGE PROSPECTIVE CO-OWNERS OF NEWSPAPER AND BROADCAST PROPERTIES.

The NBCO Rule unjustifiably puts prospective co-owners of newspaper and broadcast properties at a significant competitive disadvantage vis-à-vis their broadcast-only competitors, who are able to fully realize the operational and economic benefits that result from common ownership. In the *NPRM*, the Commission proposes to retain the current local television and local radio ownership rules and to eliminate the radio/television cross-ownership rule, while maintaining stringent limitations on newspaper/broadcast cross-ownership.[26] Under this regulatory scheme, a single entity would be able to own up to two television stations (subject to the top-four prohibition and eight-voices test) *and* between five and eight radio stations in the same market (subject to the AM/FM subcaps). In contrast, a single entity would be presumptively prohibited from owning one daily newspaper and one broadcast station in all but the twenty largest markets. Even in those few markets where a presumption in favor of cross-ownership is

[26] *See NPRM* at 5-6 (¶ 8).

available, a single entity would be permitted to own, at most, only one radio station in addition to a daily newspaper. And the small number of newspaper/radio cross-owners whose properties are grandfathered or held pursuant to waivers are frozen by the NBCO ban, unable to acquire any additional radio stations.

As a result, even with the proposed changes to the NBCO Rule, the cross-ownership restriction will effectively preclude parties with newspaper interests from acquiring broadcast properties, while their broadcast-only competitors can own a full complement of radio stations or a combination of multiple radio and television properties. Moreover, the Commission's proposed case-by-case approach to waiver requests will entail significant regulatory burdens, costs, and uncertainty. Indeed, even in the largest markets where a presumption in favor of cross-ownership may be available, a proposed newspaper/broadcast combination will face obstacles and quantitative limitations that do not exist for non-broadcast or broadcast-only competitors. The current inconsistencies in the broadcast ownership regime also foreclose opportunities for companies like Morris to acquire any additional radio properties in their newspaper markets, even though doing so would enhance the quality and quantity of local news and information available to members of the community in those markets.

This disparate treatment between newspaper publishers and other broadcast-only operators makes no sense from a public interest standpoint. Daily newspapers have vastly more extensive newsgathering resources than other local media outlets, have strong journalistic and business incentives to use these resources to strengthen other commonly-owned outlets and, therefore, are far more likely than other types of media entities to significantly improve the local news and informational offerings of co-owned broadcast stations. In order to end this troubling discriminatory treatment, the FCC should level the playing field for newspaper publishers seeking to retain or acquire co-located radio broadcast properties by eliminating or significantly relaxing the NBCO Rule, or at an absolute minimum, eliminating any restriction on newspaper/radio cross-ownership.

IV. MORRIS' EXEMPLARY PROVISION OF PUBLIC SERVICE IN THE TOPEKA AND AMARILLO MARKETS UNDERSCORES THE PUBLIC INTEREST BENEFITS OF NEWSPAPER/RADIO CROSS-OWNERSHIP.

Morris' co-owned, but separately operated, newspaper and broadcast properties in the Topeka, Kansas and Amarillo, Texas markets have consistently provided exemplary service to their respective communities and continue to provide a high level of local news service. In particular, as Morris demonstrated in its comments in response to the *Notice of Inquiry* in this proceeding, its radio stations in each of these markets are notable standouts in the provision of local news and information. The continuing, exceptional records of public service by these properties demonstrate the substantial public interest benefits that can result from permitting greater levels of newspaper/radio cross-ownership.[27]

Topeka, Kansas: Morris' Topeka radio stations continue to provide exceptional local service to Northeast Kansas. At a time when many radio stations have cut expenses and downsized their news operations, WIBW(AM) and –FM's commitment to local news is only increasing. From 2010 to 2012, the station's newsroom budget increased by 5%,

[27] Morris has not fully integrated the operations of its co-owned newspaper and radio properties due to separate staffing conditions in the original temporary waivers for these combinations and the uncertainties inherent in the Commission's long series of ownership review proceedings. Morris demonstrates herein that its same-market properties have outstanding records of public service, which undoubtedly could be enhanced further if these properties were able to more fully share costs and resources.

improving on increases of 3.6% in 2009 and 2.6% in 2010. Since 2010, WIBW(AM) and -FM have continued to employ a 10-person news team of six full-time and four part-time news personnel, all of whom cover local stories and issues. Absent their association with a newspaper company that highly values local content, the stations most likely would not have the financial support or institutional backing to make these continued investments in local news operations. Simply put, Morris' newspaper division believes strongly that the broadcast stations should have the same caliber of newsgathering and dissemination capabilities as the company's daily newspapers and is willing to devote significant financial resources to ensure that they do.

WIBW(AM) broadcasts a news/talk format with heavy emphasis on local issues. With the support of its news staff, WIBW(AM) has maintained its exceptional level of local service as detailed in Morris' *NOI* Comments and has plans to further expand its locally produced offerings.[28] WIBW(AM) broadcasts 26 locally produced newscasts each weekday and eight newscasts on Saturday and Sunday. More than 50% of the station's weekday programming is produced locally with live on-air talent, and all of its local news and weather content is generated locally. In total, WIBW(AM) airs 67 hours of local programming each week, and the station is in the process of expanding its offerings to add two more hours of local programming each weekday.

WIBW-FM, a country music station, also continues to provide the community with a substantial amount of local programming. As described in Morris' *NOI*

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[28] *See* Morris *NOI* Comments at 9-11. For example, as detailed in the Morris' *NOI* Comments, each weekday morning from 5:00 A.M. to 7:00 A.M., the station airs *Agriculture Roundup*, a locally produced two-hour show that covers local and regional agricultural issues, news, and weather, as well as *NewsDay AM*, an extended news hour from 7:00 A.M. to 8:00 A.M. that includes locally produced news, weather, and sports segments, in addition to talk, sports, and other locally produced shows aired throughout the week addressing issues of local concern.

Comments, the station is locally programmed for 17 consecutive hours each weekday and for 12 to 13 hours on each weekend day.[29] In addition to the station's music entertainment programming, WIBW-FM provides locally produced news, weather, and sports segments throughout each weekday, as well as news and weather segments on the weekend.

The two stations broadcast a combined total of more than 75 locally produced weathercasts each weekday and 44 weathercasts on the weekend, and are the only radio stations in the market with a full-time meteorologist on staff. Both WIBW(AM) and WIBW-FM provide a live stream of their station signal over the Internet, and the WIBW(AM) station website carries local news and weather reports updated throughout the day. The station websites also feature community events and public service information. WIBW(AM) is in the process of building out a new station website that will include even more in-depth news coverage, as well as a new Agriculture News website.

WIBW(AM) and –FM also produce independent investigative news coverage. Several recent examples include:

- *Trail of Crime at Topeka's St. Gregory Apartments* (January 2011) – A series of interviews by 580 WIBW News revealed numerous incidents of criminal activity at a downtown Topeka Hotel turned into low-income apartments. Since then, crime at the St. Gregory Apartments has decreased.

- *"ScrapGate:" City of Topeka Workers Sell Stolen Scrap Metal/Official Cover-Up* (January - April 2011) – A look at how Topeka city officials tried to minimize the investigation into the theft of scrap metal by several city water department employees. WIBW Radio conducted many interviews with key figures on why the police department and Chief of Police never got involved in the investigation, and the city manager of Topeka was eventually fired by the city council.

[29] *See id*.

- *The Mileage Tax, Is Big Brother Watching?* (April 2011) – 580 WIBW, in conjunction with the Kansas Information Network ("KIN"), aired a first look into efforts by state transportation officials to use GPS to track mileage to determine whether motorists are paying their fair share of taxes.

- *Iraq and Back: Life In and Out of the Military* (April 2011) – 580 WIBW/KIN aired a 5-part series of reports on one soldier's struggles transitioning from military to civilian life.

- *Post Office Closures Effect on Rural Kansans* (August - December 2011) – A series of reports on what the proposed post office closings would mean to rural parts of the state and reaction from those affected.

- *Power of Attorney: License to Steal?* (December 2011) – An examination into how the current laws regarding the power of attorney affect Kansans. WIBW Radio/KIN did a three part series on the dangers and drawbacks of assigning a power of attorney, including interviews with numerous local and state officials and attorneys about how the laws could be changed for the better.

The Morris stations, moreover, provide a *unique* service to their market. Only one other radio station in the market carries news, and that station has a one-person news staff. Morris' Topeka stations provide in-depth reporting and investigative journalism targeted to local residents that is, on the whole, unmatched by any other radio broadcaster in the market. Not surprisingly, the stations' outstanding news broadcasts have gained considerable local respect and recognition. Morris has won the Kansas Association of Broadcasters Station of the Year award nine of the last eleven years for the service that WIBW(AM) and –FM provide. In 2011, the Kansas Association of Broadcasters recognized WIBW(AM) for Public Affairs Program (2nd Place for Iraq and Back and Honorable Mention for Agriculture Issues), Complete Sportscast (1st and 2nd Place), Complete News Feature/Enterprise Coverage (Honorable Mention for Kansas Arts Commission), Sports Play-by-Play (1st and 2nd Place), and Special Program (Honorable Mention for Final Gubernatorial Debate). In addition, the stations have been honored with a number of Associated Press awards in recent years, including first place awards for Best Newscast and Enterprise Feature Reporting.

Further, the stations are involved in many community events throughout the year including an annual fundraising event for St. Jude Children's Research Hospital, March of Dimes, United Way, and Sertoma Club; a Winter Wonderland with TARC, a local organization for people affected by intellectual, developmental, and related disabilities; Breast Cancer Awareness month; an annual self-defense seminar for mothers and daughters; high school after-prom events; and also air thousands of public service announcements each year.

Amarillo, Texas: Morris's Amarillo radio stations likewise continue their dedication to community-oriented news, information, and service.[30] KGNC(AM), which broadcasts a news/talk format, produces 34 hours of local content each week and employs one full-time news reporter, a full-time agribusiness reporter, and a part-time sports reporter.

Each weekday, KGNC(AM) airs locally produced newscasts, including *Golden Spread Agri-Business Update*, a one-hour agriculture news show from 5:00 A.M. to 6:00 A.M.; *NewsDay Amarillo*, a three-hour morning news show from 6:00 A.M. to 9:00 A.M. that provides in-depth coverage of local news; and *NewsDay PM*, a half-hour afternoon news show from 5:00 P.M. to 5:30 P.M. that provides local news, weather, and sports information. In addition, the station provides hourly news reports throughout the day with local and regional news headlines. KGNC(AM) also airs a full complement of locally produced, informational programming throughout the week, including programs

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[30] *See id*. at 11-12.

that address locally important topics including real estate, finance, sports, and gardening, as well as a talk/information show addressing community issues such as local government, crime, agriculture, economic issues, and other topics of public concern. Although KGNC-FM is primarily a country music station, it also provides live local news, weather, and sports daily from 5:30 AM to 8:30 AM, as well as airing local and regional news headlines throughout the week and interviews with community guests discussing issues of local interest or public service events during the morning. Both KGNC(AM) and KGNC-FM provide a live stream of their station signal over the Internet, and the KGNC(AM) station website carries local news, sports, and weather updates.

In sum, as shown above and in Morris' 2010 comments, both of Morris' existing newspaper/broadcast combinations exemplify the benefits to localism, and therefore to consumers, that result from permitting newspaper publishers to own co-located radio outlets. If cross-ownership were more freely permissible, these benefits would be enhanced, because both the newspapers and broadcast stations would be able to save on costly newsgathering resources and more radio stations would have the ability to increase their provision of local news or even adopt news or informational formats. In addition, eliminating or relaxing the restriction on newspaper/broadcast cross-ownership would allow Morris and other newspaper companies to improve the news and information content available to radio consumers by operating stations in markets where they already publish a daily newspaper.

V. <u>THE NEWSPAPER AND BROADCAST INDUSTRIES CONTINUE TO FACE SERIOUS ECONOMIC CHALLENGES.</u>

The newspaper publishing and broadcast industries continue to face severe economic challenges as the broad panoply of media sources available to consumers has only increased in recent years, taking audience and advertising dollars away from traditional media outlets and increasing the competitive pressures that they face.[31] In the *NPRM*, the FCC observes that "[b]roadcast and newspaper consumption in traditional forms is in decline, and advertising revenues have been shrinking in recent years," and that in response "[s]ome broadcast and newspaper outlets have contracted the size of news staffs."[32] Likewise, the *Future of Media Report* confirms that the nationwide economic downturn and competitive challenges faced by the newspaper and broadcasting industries have threatened their ability to sustain news operations, noting that "[a]s technology offered consumers new choices, it upended traditional news industry business models…."[33]

The Commission has recognized the serious financial challenges impacting the newspaper industry in particular, which have led to a serious contraction of print news operations.[34] The *Future of Media Report* reaffirms the troubling economic trends that newspaper publishers have faced as the Internet continues to dramatically undercut print revenues:

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[31] *See supra* Section II.A.

[32] *NPRM* at 3 (¶ 3).

[33] *Future of Media Report* at 5.

[34] *NOI*, 25 FCC Rcd at 6088-91 (¶¶ 5-11).

> Newspapers across the country have experienced severe cutbacks during the past decade, which has undermined their ability to perform their role as the nation's watchdog. Ad revenue dropped nearly 48 percent between 2005 and 2010, and with it the industry's annual spending on reporting and editing capacity dropped by $1.6 billion, from 2006 to 2009, a reduction of more than 25 percent. . . . The number of full-time journalists at daily newspapers fell from a peak of about 56,900 in 1989 to 41,600 in 2010, a level not seen since before the Watergate era.[35]

The *NPRM* and *Future of Media Report* also confirm that the broadcast industry faces similar economic and competitive challenges. As "[t]he broadcast audience continue[s] its drift to cable, satellite, and the Internet," the television broadcast industry has experienced economic difficulties that have compelled local television stations to undertake cost-saving measures, including staffing cuts.[36] Although radio has generally fared better than the newspaper and television industries, the *Future of Media Report* observes that "radio revenues declined in 2008 and 2009 due to the recession" and that the radio broadcast industry faces increasing competition from a variety of sources, including satellite radio and Internet radio.[37]

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[35] *Future of Media Report* at 34 (citations omitted); *see also id*. at 39-42; Mark J. Perry, *Newspaper Ad Revenues Fall To 60-Year Low In 2011*, SEEKING ALPHA (Feb. 27, 2012), *available at* http://seekingalpha.com/article/393431-newspaper-ad-revenues-fall-to-60-year-low-in-2011 (last visited Feb. 28, 2012) (observing, based on recent Newspaper Association of America data, that "[t]he decline in newspaper ad revenues to a 60-year low is amazing by itself, but the sharp decline in recent years is pretty stunning," and that "[l]ast year's ad revenues of about $21 billion were less than half of the $46 billion spent just four years ago in 2007, and less than one-third of the $64 billion spent in 2000").

[36] *Future of Media Report* at 73-74 (observing that "[t]he economic changes from 2005 to 2008 hit local news-producing stations especially hard," and that, even though many local television stations are profitable, according to the National Association of Broadcasters "news pre-tax profits declined 56.3 percent from 1998 to 2008," with an even sharper drop (62.9 percent) in media markets ranked 150 to 210) (citation omitted); *id*. at 79 (noting that the median full-time staff at television stations dropped from 32 in 2006 to 29 in 2009 and that nearly two-thirds of local TV news directors reported staff cuts in 2009) (citations omitted); *see also NOI*, 25 FCC Rcd at 6090 (¶ 9); *NPRM* at 3 (¶ 3).

[37] *Future of Media Report* at 61, 68-70; *see also id*. at 69 (noting that broadcast radio is increasingly competing with online radio for local advertising dollars, which "may be good for local businesses but could harm the business models of local radio").

In media markets of all sizes, newspaper and broadcast properties remain subject to severe economic pressures and increasing costs. In this environment, Morris submits, it is irrational to handicap the parties best situated to continue to provide the resources necessary for local newsgathering and enterprise journalism. Removing limitations on cross-ownership would provide sorely-needed economic breathing room for financially struggling broadcast and newspaper outlets, allowing them to continue to invest in newsroom operations. Thus, it is critical that, after fifteen years of equivocation, the FCC finally provide meaningful regulatory relief that will allow newspaper publishers and broadcasters to take advantage of the efficiencies of cross-ownership and devote more of their resources to providing local news and community-oriented programming.

VI. IF THE FCC DETERMINES TO RETAIN ANY VESTIGE OF THE NEWSPAPER/RADIO CROSS-OWNERSHIP PROHIBITION, THE AGENCY SHOULD RETAIN A CONTOUR-BASED APPROACH BECAUSE THE USE OF ARBITRON MARKETS COULD UNINTENTIONALLY EXPAND THE SCOPE OF THE NBCO RULE.

In the *NPRM*, the FCC proposes to retain the use of radio contours to determine whether the NBCO Rule is triggered for newspaper/radio combinations, but questions whether it should instead rely upon Arbitron market definitions.[38] If the Commission determines not to eliminate restrictions on newspaper/broadcast cross-ownership, Morris agrees that any such restrictions in the radio context should not extend beyond Arbitron Metro lines. However, the restrictions should not include areas beyond local service contours either – that could unintentionally expand the scope of the rule and restrict future radio/newspaper combinations that would not have been reached by the 1975 rule. Given that the Commission is proposing to take steps, however modest, to loosen

[38] *NPRM* at 42 (¶ 113).

restrictions on newspaper/broadcast cross-ownership, and that it is questioning whether restrictions on newspaper/radio combinations are even necessary at all given the lesser importance of radio as a news source, the agency cannot justify a change that would in some cases increase the restrictiveness of the NBCO Rule as applied to radio.

When the Commission implemented the contour-based approach to the NBCO Rule in 1975, the agency recognized that "some limit needs to be placed on the geographic effect of the rule."[39] The decision to limit the geographic reach of the NBCO Rule by using broadcast contours, thereby focusing on the service actually provided to local communities, was consistent with the desired goal of the rule, which was "to preserve viewpoint diversity in *local* markets."[40]

If the FCC decides nevertheless to adopt Arbitron market definitions as the basis for triggering the rule, however, Morris agrees with the agency's proposal to grandfather ownership of existing combinations of radio stations and newspapers that would run afoul of the NBCO Rule by virtue of the change.[41] Further, the FCC should permit their sale in combination.[42] For decades, parties have invested in newspaper and radio properties in reliance on the existing NBCO Rule, including its contour-based approach, and it would be unfair and legally insupportable to take any action that would retroactively expand the reach of the 1975 rule and impair those investments.

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[39] *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1075 (¶ 102) (1975) ("*1975 Second Report and Order*").

[40] *NPRM* at 30-31 (¶ 84 & n.183) (citing *1975 Second Report and Order*, 50 F.C.C.2d at 1075-76, 1079-81) (emphasis added).

[41] *See NPRM* at 42-43 (¶ 114).

[42] *See id*.

VII. CONCLUSION

For all of the reasons set forth above, Morris submits that the Commission should go farther than its proposed changes and provide meaningful real-world regulatory relief to owners of newspaper and broadcast stations. The agency can only do so by eliminating, or relaxing far more significantly than suggested in the *NPRM*, the outdated newspaper/broadcast cross-ownership rule. At a minimum, the FCC should repeal the limitations on newspaper/radio cross-ownership, as there is no public interest justification that supports continued restrictions.

Respectfully submitted,

MORRIS COMMUNICATIONS COMPANY, LLC

By: /s/ Richard E. Wiley
Richard E. Wiley
James R. Bayes
Maria L. Mullarkey
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
202.719.7000

Attorneys for Morris Communications Company, LLC

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