Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2014 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. 14-50
	)	
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 THE NEWSPAPER ASSOCIATION OF AMERICA

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SUMMARY

Nearly four decades ago, the Commission enacted the newspaper-broadcast cross-ownership rule to prevent a single company from owning a daily newspaper and television or radio station in the same market. This rule was designed for an era when newspapers and broadcasters were consumers' only choice of local news. That era is long gone.

Today, more Americans receive their news from the Internet than print, and newspapers compete with an exponentially growing number of platforms for advertising revenues. Yet newspapers -- and *only* newspapers -- are prohibited from being jointly owned with broadcasters in the same market. In contrast, Internet companies, which compete with newspapers for advertising revenues, have the flexibility to make business investments based on changes in the marketplace.

As demonstrated below, cross-ownership leads to more robust local news coverage, public affairs programming, and community service activities. In the handful of communities in which cross-owned properties exist by grandfathering or waiver, commonly owned newspapers and broadcasters focus on their respective strengths and produce local journalism that is more in-depth than it would have been if they were separately owned. This is demonstrated, for example, in Phoenix, Dayton, South Bend, Milwaukee, Cedar Rapids, Atlanta, and Spokane, which we discuss here.

There is no rational explanation for continuing the rule. The Newspaper Association of America (NAA) agrees with the Commission that the rule does not advance localism, competition, or diversity of ownership. The Commission's sole justification for the rule -- viewpoint diversity -- is unsupported by the extensive record in this proceeding. Continuing this regulation without a rational basis violates the First Amendment, the Telecommunications Act of 1996, and the Administrative Procedure Act.

Further, the Commission's proposals to revise the regulation are entirely insufficient. We agree completely with the Commission's longstanding proposal to repeal the newspaper-radio cross-ownership ban. But the Commission's proposed case-by-case waiver standard for certain newspaper-television combinations in the top 20 markets would provide little relief, particularly in the smaller markets that are often most in need of investments in local journalism. Nothing short of complete repeal of the cross-ownership rule will satisfy the Commission's statutory and constitutional obligations.

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COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

The Newspaper Association of America ("NAA") represents the only industry in the United States that is barred by federal law from investment by local television companies. The NAA urges the Commission to immediately adopt its proposal to repeal the newspaper-radio element of the cross-ownership rule,[1] but urges it not to stop there -- the only rational conclusion the Commission can make in this proceeding is to repeal the newspaper-broadcast cross-ownership prohibition entirely. This rule has not only long outlived its original purpose, but it today *affirmatively harms* local communities and local journalism by preventing newspapers and broadcast stations from achieving efficiencies at a time when they face unprecedented competition and economic challenges.

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[1] Further Notice of Proposed Rulemaking and Report and Order (FNPRM), MB Docket Nos. 14-50, 09-182, 07-294, 04-256 (April 15, 2014).

When Congress required that the Commission review its media ownership regulations every four years to determine whether they continue to serve the public interest,[2] it had precisely this sort of rule in mind: a harmful regulation that unfairly burdens certain types of media and ultimately leads to a reduction in public service and local journalism. As demonstrated in Part I, cross-ownership results in stronger, more in-depth local news coverage. In Part II, we explain why the cross-ownership regulation no longer serves the Commission's goals of competition, localism, and diversity.

Continuing this ban with absolutely no rational justification is arbitrary and capricious under the Administrative Procedure Act, as explained in Part III. And in Part IV, we demonstrate that the regulation violates the First Amendment by restricting the ability of newspapers to gather and report the news.

Rather than eliminate this unnecessary and harmful rule entirely, the Commission proposes the creation of a "case-by-case waiver" that effectively would deny relief to all but the 20 largest markets. As explained in Part V, this modest change would do little to mitigate the harms caused by the cross-ownership rule. Nothing short of full repeal would be sufficient to meet the congressional mandate to repeal media ownership rules that no longer serve the public interest.

I. Cross-Ownership Leads to Stronger Local Journalism

The Commission should immediately repeal the cross-ownership ban because it prevents an ownership arrangement that has proven time and again to serve the public interest. Cross-owned newspaper/television station combinations benefit from economies of scale, and are able to pass those savings along to viewers in the form of more robust local news coverage.

[2] Section 202(h) of the Telecommunications Act of 1996, 110 Stat. 111-112.

FCC-commissioned research demonstrates that cross-owned television stations devote more resources to local news coverage than other commercial stations. On average, a cross-owned television station produces nearly 50 percent more local news,[3] airs 30 percent more coverage of state and local political candidates, [4] and devotes 40 percent more time to candidates' speeches and comments.[5] One study questioned "the economic basis for keeping the [cross-ownership rule] in place, given the recent declines in newspaper revenues and news production expenditures, the influence of newspapers on voter information and turnout, and the potential economies of scope available to joint owners of news outlets in multiple media."[6]

To understand the benefits of cross-ownership, the Commission need only look to the handful of media properties that are cross-owned due to grandfathering or waivers from the cross-ownership rule. Their stories -- several of which are detailed below -- demonstrate that cross-ownership leads to more comprehensive local news coverage via all platforms.

A. Phoenix

Gannett Co., Inc.'s ownership of the *Arizona Republic* and Station KPNX-TV in Phoenix demonstrates why the Commission must remove barriers to cross-ownership.

In January 2011, KPNX and the *Republic* moved into a shared newsroom. Within days of the merger, a gunman shot Congresswoman Gabrielle Giffords and eighteen others in Tucson. Amid the chaos of the breaking news story, many national media incorrectly reported

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[3] Jack Erb, FCC Media Ownership Study 4, *Local Information Programming and the Structure of Television Markets* 27-28 (May 20, 2011).

[4] Jeffrey Milyo, FCC Media Study 6, *Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News,* (Sept. 17, 2007).

[5] *Id.*

[6] Adam D. Rennhoff & Kenneth C. Wilbur, Media Ownership Study 1, *Local Media Ownership and Media Quality* 15 (April 5, 2011).

that Congresswoman Giffords had died. The *Republic* and KPNX, which were among the only media outlets to have reporters on the ground in Tucson within an hour of the shooting, warned viewers and readers that the reports of Congresswoman Giffords' death were not confirmed. Rather than rely on rumors, dozens of journalists at KPNX and the *Republic* gathered the facts and reported them via television, the Web, and social media. The television and newspaper reporters, who had different sources, areas of expertise, and methods of reaching viewers and readers, were able to combine resources to cover this extraordinary event, and the result was coverage that was more in-depth than if they had each reported the story alone. The *Republic* was nominated as a finalist for the Pulitzer Prize in breaking news for this coverage, and the Pulitzer Board cited "an exemplary use of journalistic tools, from Twitter to video to written reports and features, to tell an unfolding story."

Two years later, the *Republic* again was a finalist for the breaking news Pulitzer for its coverage of the Yarnell Hill fire, which claimed the lives of 19 firefighters and destroyed homes of more than 100 families. Journalists from the station and newspaper again collaborated on stories and shared breaking news with a single goal: informing consumers quickly and accurately. The Pulitzer Board's nomination of the *Republic* noted that the staff used "an array of journalistic tools to tell the story."

KPNX's breaking news coverage also has been lauded since the merger of the newsrooms. In July 2011, the *Republic* and KPNX collaborated on the coverage of a massive dust storm. For its work on the story, KPNX won an Edward R. Murrow Award, one of television journalism's highest honors.

Cross-ownership has improved not only the coverage of breaking news, but also long-term investigative and enterprise stories. The merged newsroom has enabled KPNX and the *Republic* to increase their consumer protection coverage. The *Republic*'s business editor supervises the consumer protection work of two KPNX reporters and one *Republic* reporter. The arrangement has led to aggressive reporting that has given consumers an opportunity to publicize businesses that have lied, provided faulty products, or otherwise failed to meet their promises. For the past two years, the station's reporting has led to more than $1 million in recovery annually for consumers.

The *Republic* and KPNX also collaborate to provide in-depth public affairs coverage. Last year, the newspaper and television station collaborated to produce a town hall forum on immigration with Arizona's two U.S. senators. The *Republic's* staff developed the topics and questions, the forum was moderated by KPNX on-air talent, and the forum was available over the air, online, and in newspaper coverage. The station and newspaper continue to collaborate on the important issue of immigration. The *Republic* has produced an in-depth series on children who come to Arizona from Central America, and KPNX is following up on that series with a half-hour, locally produced report on the issue.

In short, Arizonans have benefitted from cross-ownership. The arrangement has strengthened two of the state's largest news organizations and enabled them to share resources to ensure that Arizonans receive quick, accurate, and comprehensive information about the issues that matter to the most.

B. Dayton

Cox Media Group's cross-ownership of the *Dayton Daily News* and CBS affiliate WHIO-TV helped to uncover one of the most prominent stories of the past year: the mismanagement of the Department of Veterans Affairs. Working together, journalists at the newspaper and television station analyzed the quality of care that veterans were receiving, and discovered that the Department had paid more than $36 million to settle claims from treatment delays. Months of congressional inquiries, national and global media stories, and, ultimately, the resignation of the Secretary of Veterans Affairs followed. These treatment delays would not have come to light had it not been for the dogged efforts of *both* the newspaper and television reporters, working together.

Cross-ownership also has helped the newspaper and television station cover breaking news. Three years ago, Cox's Dayton properties created a 24-7 breaking news team for the web, television, and newspaper. The team sends instant news alerts about local, national, and international stories to its customers. The breaking news team won the 2012 National Innovator of the Year Award from the Associated Press Media Editors, who said that the entry reflected "forward-thinking to meet the increasing demands of instant coverage."

C. South Bend

South Bend, Indiana residents receive similar benefits from Schurz Communications' shared ownership of the local newspaper, the CBS television affiliate, and two radio stations. Collaboration among the *South Bend Tribune*, WSBT-TV, WSBT-AM and WNSN-FM greatly improves the quantity and quality of local news that the community receives.

Schurz Communications has far more reporters on the ground in South Bend than any other media outlet. Every day, employees of the *South Bend Tribune*, the television station, and the radio stations share valuable information as they investigate and gather news throughout the community. The newspaper and stations exchange daily story budgets early in the day. Print and broadcast reporters regularly share leads and news tips. The end result of these collaborative efforts is that the community has access to considerably more news, weather, and other important information than it otherwise would.

The Schurz South Bend media properties often join forces on special news projects that affect the community. Examples include:

- **Investigative Reporting**: Reporters spent a year working with local health department to investigate drinking water in several growing neighborhoods. WSBT-TV and the *South Bend Tribune* exposed harmful substances such as Deet and nicotine. The reporting challenged local agencies as to what can be done to prevent this in the future, and equipped homeowners with information on how they can better protect themselves.
- **South Bend Mayoral Forum**: During the last election cycle, South Bend elected a new mayor for the first time in more than a decade. WSBT-TV and the *South Bend Tribune* teamed with the Chamber of Commerce of St Joseph Valley to hold a town-hall meeting with the candidates.
- **Education Roundtable/Indiana State Superintendent Tony Bennett**: WSBT-TV/Radio and *South Bend Tribune* teamed up in September 2010 to host a town hall meeting with the Indiana State School Superintendent, Tony Bennett.
- **War in Iraq**: In 2003, WSBT-TV and the *South Bend Tribune* teamed up to send *Tribune* reporter Fred Dodd to Iraq, where he was embedded with a group of local Marine reservists. He wrote articles for the *Tribune* and shot video for WSBT-TV.
- **The 150th anniversary of the Studebaker factory in South Bend**: The newspaper and stations teamed up last year to commemorate 150th anniversary of the local Studebaker factory. By working together, they were able to tell this important historic story across the many news platforms.

- **Weather reports:** WSBT-TV's team of five meteorologists provides the weather information that is printed daily in the *South Bend Tribune* and aired on the radio stations. In times of severe weather, all WSBT-TV weather broadcasts are simulcast on WSBT's radio stations. *South Bend Tribune's* website links weather-related digital traffic to the WSBT-TV website.
- **Sports coverage:** *South Bend Tribune's* Notre Dame beat writer and assistant sports editor, Eric Hansen, has become a regular on WSBT-AM's Weekday Sportsbeat program. And when Notre Dame went to the National Championship in 2013, the WSBT stations and the *South Bend Tribune* collaborated to produce coverage before, during, and after the game, deploying a small army of reporters, photographers, videographers and anchors to cover all major angles.

D. Milwaukee

Journal Communications' ownership of the *Milwaukee Journal Sentinel*, NBC affiliate WTMJ-TV, and AM news station WTMJ-AM has resulted in more robust public affairs coverage across all platforms. For instance, during the 2004 Democratic presidential primary campaign, the newspaper and television station partnered to sponsor a Democratic candidate debate. This partnership brought a nationally televised debate to Wisconsin, and showcased both WTMJ's local anchors and the Journal Sentinel's Washington Bureau Chief.

More recently, the newspaper's columnists and commentators regularly appear on WTMJ-TV's afternoon news program and special event coverage. This cross-platform partnership provides viewers with a greater depth of insight into local issues. During election season, the *Journal Sentinel's* Washington Bureau Chief Craig Gilbert is a regular presence on the station's nightly news casts. Gilbert's depth of knowledge and sources significantly strengthens the station's coverage. Likewise, *Journal Sentinel* reporter Meg Jones has reported for both the newspaper and the station while embedded with local troops in Afghanistan and Iraq war zones.

The cross-ownership also has strengthened the coverage that the radio station provides to listeners. *Journal Sentinel* reporters and editors regularly appear on WTMJ-AM's morning-drive shows to provide insight and analysis of the day's news.

E. Cedar Rapids

SourceMedia's cross-ownership of the *Cedar Rapids Gazette* and KCRG-TV in Cedar Rapid, Iowa has enabled the outlets to provide essential coverage of the area's severe weather. Cedar Rapids is prone to severe storms and flash floods, and the joint resources means that more reporters are out in the field, gathering information to help the readers and viewers remain safe.

The cross-ownership also has led to robust political and public affairs coverage. On election night, television and newspaper journalists collaborate to provide real-time election results online, on the air, and in print. The newspaper and television station routinely partner to produce televised debates for local political races and ballot initiatives. These debates are broadcast on television, streamed online, and covered in print.

F. Atlanta

Cox Media Group's cross-ownership of the *Atlanta Journal-Constitution*, WSB-TV, and WSB Radio has allowed robust, cross-platform coverage of news and public affairs. For instance, on election nights, WSB-TV and the *Journal-Constitution* work together to quickly analyze incoming results for readers and viewers. Because each county compiles and releases its own election results, a journalist must be present at each county election results location. Cross-ownership makes it possible to provide this increased level of staffing and update the community about the results as they are tallied. Cox's media properties also ensure that Georgia voters are well-informed in the weeks leading up to the election. WSB-TV hosts political debates during the election season with the support of the *Journal-Constitution*. WSB Radio also broadcasts the debates live or on delay, thereby allowing candidates' views to be widely disseminated to the voting public.

The newspaper and stations also work together on in-depth investigative projects. For instance, the newspaper and television station have collaborated on investigations into the quality of care provided at the Veteran's Affairs medical center in Atlanta. WSB Radio hosted an hour-long public affairs program examining the medical center's problems, featuring journalists from the television station and newspaper.

G. Spokane

Cowles Publishing Co.'s ownership of the *Spokesman-Review* and NBC affiliate KHQ-TV in Spokane, Wash. has created significant benefits for the area's passionate local sports fans. The newspaper and television station launched a website for high school sports, nwprepsnow.com, which combines the *Spokesman-Review's* deep database of statistics, dates, and photos with the television station's large collection of game footage. The website is a perfect example of the benefits of cross-ownership; each platform leverages its strengths to provide a product that a single entity would not otherwise have been able to create alone. The ultimate winner is the local community.

II. The Commission Has Failed to Identify a Single Rational Basis for Retaining the Cross-Ownership Ban.

Despite these overwhelming benefits in the communities where newspaper-television combinations are permitted, the Commission continues to propose a presumptive ban on newspaper-television cross ownership. Section 202(h) of the Telecommunications Act of 1996 exists to rid the books of such outdated and harmful regulations. The statute requires the Commission to review its media ownership regulations every four years to determine whether the rules "are necessary in the public interest as the result of competition," and to "repeal or modify any regulation it determines to be no longer in the public interest."[7] Any objective review of the evidence and the *current* media landscape would overwhelmingly conclude that the cross-ownership ban does not serve the public interest.

The Commission has correctly reached the tentative conclusion that the newspaper-broadcast cross ownership ban does not foster localism or competition.[8] The Commission also correctly reached the tentative conclusion that the evidence in the record does not demonstrate that the regulation promotes minority or female ownership of broadcast stations. The Commission is incorrect, however, to tentatively conclude that the rule helps to promote viewpoint diversity.[9]

A. The Cross-Ownership Ban Does Not Promote Competition

The Commission correctly concluded that the newspaper-broadcast cross-ownership ban is not necessary to promote the Commission's goal of competition.[10] In fact, the

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[7] Section 202(h) of the Telecommunications Act of 1996, 110 Stat. 111-112.

[8] FNPRM at ¶ 123.

[9] *Id.*

[10] FNPRM ¶ 143.

ban on cross-ownership hinders competition by imposing an unnecessary restraint on newspapers and broadcasters, while their competitors are free to merge and defray expenses. In an era when nearly seven out of 10 consumers regularly receive news on their computers,[11] it makes little sense to impose a burdensome regulation on newspapers and broadcasters.

We disagree with the Commission's conclusion that "it would be inappropriate to relax the NBCO rule on the ground that newspapers are struggling to reinvent a successful business model."[12] In previous comments, the NAA has demonstrated the tremendous decline in advertising revenue -- and staffing levels -- that has been caused largely by a disaggregation of advertising from news with online advertising competitors such as Craigslist and others who do not provide any news to the local community. The Commission should strive to ensure that its regulations result in an overall *increase* in local news and information.

B. The Cross-Ownership Ban Does Not Promote Localism

The NAA agrees with the Commission's conclusion that the evidence in the 2010 review record "does not appear to negate the basic proposition that newspaper/broadcast cross-ownership may enable commonly owned properties to produce and disseminate more and sometimes better local news."[13] The Third Circuit agreed with this conclusion a decade ago,[14] and nothing has changed since that would warrant a reconsideration of this conclusion. In fact, it is more compelling today than ever.

Originally reported local news is expensive. Although there are a growing number of aggregators, blogs, and other websites that summarize content, newspapers and

[11] Associated Press-NORC-American Press Institute, *The Personal News Cycle* (March 2014).
[12] FNPRM at ¶ 141.
[13] FNPRM at ¶ 135.
[14] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 399 (3d Cir. 2004).

broadcasters remain the primary *original* sources of local news. Congressman Greg Walden aptly noted at a recent media ownership hearing that "localism isn't cheap."[15]

As explained in Part I of these comments, cross-ownership helps newspapers and broadcasters make the most efficient use of their resources to distribute high-quality news and information to the community. Cross-ownership enables newspapers and broadcasters to each focus on their newsgathering strengths, and their combined efforts often serve the local community far more than if they operated independently.

C. The Cross-Ownership Ban Does Not Promote Diversity of Ownership

The Commission is correct to tentatively conclude, based on evidence from the 2010 review, that "we do not believe the record evidence shows that the cross-ownership ban has protected or promoted minority or female ownership of broadcast stations in the past 35 years, or that it could be expected to do so in the future."[16]

The study commissioned by the Minority Media and Telecommunications Council (MMTC) last year[17] should put to rest any concerns that cross-ownership harms ownership diversity. The study unambiguously found that minority and female owners of broadcast stations do not believe that cross ownership has any impact on their business. The study's authors interviewed minority and female broadcast owners in markets that had cross-

[15] *Media Ownership in the 21st Century: Hearing Before the Subcomm. on Communications & Technology of the H. Comm. on Energy & Commerce*, 113th Cong. (June 11, 2014) (Opening Statement of Chairman Walden).

[16] FNPRM at ¶ 190.

[17] BIA/Kelsey, *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations* (May 30, 2013).

owned combinations, and were "struck by the lack of any large concern by almost all of the respondents to these cross-media operations."[18]

The NAA agrees with the Commission's rejection of the argument that the *Prometheus II* decision "requires us to take no action unless we can show definitively that a rule change would have no negative impact on minority ownership levels."[19] Indeed, it is unclear how the Commission would be able to make such a definitive finding. The MMTC study surveyed the handful of markets in which there is any cross-ownership. The opponents of changes to the cross-ownership rule call for more studies, but they fail to articulate what data is lacking in existing studies, available for analysis, or how the Commission should conduct this study. These demands for "studies" are simply attempts to delay the long-overdue reform to the newspaper-broadcast cross-ownership rule.

Moreover, cross-ownership benefits minority communities. For decades, newspapers have dedicated significant resources to ensuring a workforce that reflects their communities.[20] Even during challenging economic times, newspapers strive to ensure diverse newsrooms. In 2013, the number of minority journalists at daily newspapers increased by 1 percent, even as total newsroom employment declined by more than 3 percent.[21] Moreover, newspapers provide a voice for minority communities. Consider, for example, the *Dallas Morning News's* Pulitzer-winning editorials about the economic disparities between north and

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[18] *Id.*

[19] FNPRM at ¶ 190.

[20] Supplemental Comments of the Newspaper Association of America, MB Docket Nos. 09-182 and 07-294 at 8 (Dec. 26, 2012).

[21] ASNE Press Release, *Minorities in Newsrooms Increase, 63 Percent of Newspapers Have at Least One Woman Among Top-Three Editors* (July 29, 2014).

south Dallas. The editorials shined a light on the inequities that minorities face. Newspapers routinely devote significant time and money to such coverage of minority communities.

As the NAA has urged in previous filings, the Commission could improve diversity of ownership by considering one of the dozens of diversity proposals that have been pending before the Commission for years, such as incubator programming for broadcasters to finance disadvantaged businesses, reinstitution and expansion of the Tax Certificate Policy, and relaxation of the main studio rule.[22]

D. The Cross Ownership Ban Does Not Advance Viewpoint Diversity

The Commission's only reason for retaining the cross-ownership rule is "viewpoint diversity."[23] This reasoning, while well-intentioned, is misplaced because it assumes that cross-ownership results in a single viewpoint. Nothing could be further from the truth. Although commonly-owned newspapers and broadcast stations share administrative and newsgathering resources, they each have independent editors and news directors who control the tone and direction of the news content.[24]

The Internet has created more sources of international, national, regional, and local news than ever before. As David Bank of RBC Capital Markets recently testified in a House subcommittee hearing, consumers receive approximately 40 percent of their news from

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[22] Supplemental Comments of the Newspaper Association of America, MB Docket Nos. 09-182 and 07-294 (Dec. 26, 2012).

[23] FNPRM ¶ 133.

[24] *See* Reply Comments of Journal Communications, MB Docket No. 09-182 (April 12, 2012) at 4 ("It is also noteworthy that Journal's Milwaukee newspaper and broadcast outlets always compete with each other and frequently take different positions that span the political spectrum on a wide variety of issues. Thus, despite the common ownership, Journal's Milwaukee media properties provide viewpoint diversity. This real world example directly rebuts the concerns raised by certain parties in this proceeding.")

online sources, up from 20 percent in 2003.[25] The NAA disagrees with the Commission's tentative conclusion that "the record does not support the conclusion that the impact of the Internet has obviated the need for cross-ownership restrictions."[26] In fact, this finding squarely contradicts the Third Circuit's conclusion in 2004 that "record evidence suggests that cable and the Internet supplement the viewpoint diversity provided by broadcast and newspaper outlets in local markets."[27] The Commission's conclusion in the FNPRM directly contradicts this holding and is therefore incorrect as a matter of law. We are unaware of any changes in the past decade that would lead to the conclusion that the Internet *no longer* provides diverse viewpoints. It is well-accepted that since the Third Circuit issued its ruling a decade ago, the number of Internet-based news and opinion sources -- and their overall readership -- has dramatically *increased*.[28]

Indeed, the Commission acknowledges that "the extent to which Americans turn to news websites unaffiliated with traditional media may be increasing" and "more consumers now turn to the Internet than to print newspapers for news and information[.]"[29] Indeed, the advent of the Internet has lowered the barriers to entry and created more opportunities for individuals to express their opinions and gather news and information through social networking sites, blogs, and other nontraditional news sites. Recent Pew research indicates that nearly 75 percent of U.S. adults regularly visit a social media network, often for news and information and

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[25] Testimony of David Bank, RBC Capital Markets, House Subcommittee on Communications and Technology Hearing on "Media Ownership in the 21st Century" (June 11, 2014).

[26] FNPRM ¶ 133.

[27] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 400 (3d Cir. 2004).

[28] In 2004, 24 percent of Americans said that they received news online in the past day. That percentage increased to 39 percent in 2012. *See* Pew Research Center for People & the Press, *In Changing News Landscape*, *Even Television is Vulnerable* (Sept. 27, 2012).

[29] FNPRM at ¶ 130.

to share their opinions.[30] And these same low barriers to entry have created *new* news portals such as Buzzfeed, Gawker, Slate, TMZ, Huffington Post, Vox, TechCrunch, Mashable, and others, each with millions of unique visitors every month.

Yet the Commission continues to regulate the cross-ownership of newspapers and broadcasters (and *only* newspapers and broadcasters) because these emerging independent websites "often contain local news content that originates from" newspapers and television stations.[31] In other words, because competitors routinely pilfer the content of newspapers and broadcasters, the Commission will continue to impose the cross-ownership restrictions exclusively on newspapers and broadcasters. Such reasoning is entirely antithetical to the goal of *encouraging* original reporting. Original reporting starts the conversation that is continued online. The Commission must recognize that this public conversation -- that starts with original reporting -- is at risk if newspapers are not able to attract investment and resources in an ever-challenging climate.

The Commission's conclusion that cross-ownership is related to viewpoint diversity relies entirely on unsupported speculation. The evidence in the record from the 2010 quadrennial review clearly demonstrates that there is no correlation.[32] An FCC-commissioned study reviewed keyword counts from local television news transcripts and found no evidence that ownership concentration adversely influenced diversity. In fact, the study concluded that for

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[30] Ingrid Lunden, *73% of U.S. Adults Use Social Networks, Pinterest Passes Twitter in Popularity, Facebook Stays on Top*, TechCrunch (Dec. 30, 2013), http://techcrunch.com/2013/12/30/pew-social-networking/.

[31] *Id.*

[32] *See* Comments of the NAA, MB Docket Nos. 09-182 and 07-294 (March 5, 2012) at 18-20.

some issues, "ownership concentration often *encourages* diversity."[33] Another FCC-commissioned study modeled viewpoint diversity and controlled for local viewer preferences. It found that viewpoint diversity is not correlated with changes in local market structure.[34] And a third FCC-commissioned study used econometrics to examine the interrelationship between ownership and programming, and concluded that "little robust evidence is found to indicate that local media ownership affects local media usage or programming."[35]

In short, the record simply does not support the Commission's tentative conclusion that continued regulation of newspaper-broadcast cross-ownership would promote viewpoint diversity.

III. Continuing the Cross-Ownership Ban Would be Arbitrary and Capricious

Continuing the cross-ownership ban would be arbitrary and capricious under the Administrative Procedure Act. An agency's regulations are arbitrary and capricious if the agency "offered an explanation for its decision that runs counter to the evidence before the agency[.]"[36]

The evidence undisputedly demonstrates that cross-owned media properties are more likely to provide robust local news. The Commission acknowledges that the ban does not help meet the goals of ownership diversity and localism. The Commission's only remaining justification for the rule -- viewpoint diversity -- has absolutely no evidentiary basis, as described

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[33] Lisa M. George & Felix Oberholzer-Gee, Media Ownership Study 8B, *Diversity in Local Television News* 18 (May 27, 2011).

[34] Adam D. Rennhoff & Kenneth C. Wilbur, Media Ownership Study 8A, *Local Media Ownership and Viewpoint Diversity in Local Television News* (June 2011)

[35] Adam D. Rennhoff & Kenneth C. Wilbur, Media Ownership Study 1, *Local Media Ownership and Media Quality* 15 (April 5, 2011).

[36] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

above. In more than four years since the Commission launched its 2010 proceeding, not a single party has provided a scintilla of evidence that cross-ownership results in a reduction in viewpoint diversity.

The arguments in favor of retaining the cross-ownership rule are based entirely on speculation, and that surely is not enough to support the continuation of a ban, particularly when Congress has instructed the Commission to conduct a quadrennial review to "determine whether any of such rules are necessary in the public interest as the result of competition."[37] Indeed, continuing the cross-ownership ban would contradict the clear congressional intent to pare back on media ownership regulations that no longer serve the public interest.

IV. The Cross-Ownership Ban Violates the First Amendment

Because the Commission has failed to articulate a rational explanation for the cross-ownership ban, continuing the regulation would violate the First Amendment under any level of scrutiny.

The cross-ownership ban is a restriction on speech because, as demonstrated above, it prevents certain companies from disseminating news via print or broadcast, based solely on the media properties that they already own. Notably, the constitutional invalidity of the cross-ownership ban does not require the "scarcity doctrine" to be invalidated; even assuming that doctrine retains its full validity, the Commission would have to demonstrate that the cross-ownership regulation is "rationally related to a substantial government interest" to retain it.[38] That it cannot do. Each "governmental interest" that has been identified in connection with the rule -- whether localism, competition, diversity of ownership or viewpoint diversity -- is better

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[37] Section 202(h) of the Telecommunications Act of 1996, 110 Stat. 111-112.

[38] *See Prometheus I*, 373 F.3d at 402.

served by elimination of the rule than retention of it, as we have described above. Maintaining a flat ban on ownership cannot be rationally related to achieving any of these objectives.

In light of the vast changes in media consumption over the past three years, the Commission can no longer demonstrate a substantial government interest. The FNPRM fails to articulate a rational reason for applying the cross-ownership ban to newspapers and broadcasters, but not to other media that may have even more consumers and advertising revenue. Under the current rules, a single entity can invest unlimited amounts in cable television systems and cable networks, as well as Internet services, and also own broadcast stations serving the same markets as its other properties. By contrast, a daily newspaper publisher cannot acquire even a single broadcast station in a market where it publishes. Such blatant discrimination -- without any rational justification -- cannot survive even the most lenient forms of First Amendment scrutiny.

V. The Commission's Proposed Newspaper/Television Waiver Is Too Modest to Cure the Harms Caused by the Cross-Ownership Rule

Rather than eliminating the newspaper-television cross-ownership ban, the Commission proposes a case-by-case waiver that would allow newspapers and television stations in the top 20 markets to merge if: "(1) the proposed merger does not involve a television station ranked among the top-four television stations in the DMA and (2) at least eight major media voices remain in the DMA following the transaction."[39] The NAA appreciates the Commission's attempts to mitigate the harm caused by this outdated ban, but for three primary reasons, the proposed waiver is far too modest to have a meaningful impact.

First, by limiting the waiver presumption to the top 20 markets, the Commission would be excluding small- and mid-sized markets, which often are most in need of new

[39] FNPRM at ¶ 156.

investments in local newsrooms. According to the Commission's *Information Needs of Communities* report, more than 200 newspapers closed or eliminated a newsprint edition between 2007 and 2010, and the vast majority of these changes were in small and mid-sized markets.[40] Small-town television news also struggles to survive. Of the 92 communities that receive 500 minutes or less of local television news per day, 91 are small or medium-sized markets.[41] It makes little sense to deprive the residents of these communities from regulatory relief.

Second, preventing television stations in the top-4 from receiving the presumption would effectively deny relief to the stations that are most likely to produce local news and realize economies of scale from mergers with newspapers. This effectively prevents newspapers from combining with affiliates of the four major broadcast networks, which produce the vast majority of local television news, and with the major Spanish-language networks in certain markets where their presence is particularly significant. If a station does not produce local news, there is little reason for it to be commonly owned with a newspaper.

Third, a waiver approach, rather than complete elimination of the rule, would create uncertainty and bureaucratic burdens that would discourage investors from creating cross-owned media properties. The Commission acknowledges that bright-line rules "are more likely to produce predictable and consistent outcomes in an expeditious and less costly manner" than waivers.[42] In this increasingly competitive investment landscape, such a contingency would make a transaction highly unlikely. An investor is far less likely to commit resources to a

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[40] Steven Waldman *et al.*, *The Information Needs of Communities: The changing media landscape in a broadband age* 41 (July 2011).

[41] *Id.* at 101.

[42] FNPRM at ¶ 151.

transaction that requires a lengthy agency proceeding, particularly when there is no guarantee that the Commission would ultimately approve the deal.

VI. The NAA Supports Repeal of the Newspaper-Radio Cross Ownership Ban

The NAA agrees with the Commission's tentative conclusion that the newspaper-radio cross-ownership ban no longer serves the public interest and should be repealed.[43] The Commission correctly concludes that "radio stations are not the primary outlets that contribute to viewpoint diversity in local markets and that consumers rely predominantly on other outlets for local news and information."[44] Cross-ownership improves the quality of radio stations' local news offerings by providing the stations with access to the news and information gathered by newspapers.

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[43] FNPRM at ¶ 145.

[44] *Id.*

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U.S. newspapers have faced more economic challenges in the past decade than ever before, as an increasing number of platforms compete for the same readers and advertising revenue. Newspapers have adjusted to these new realities by innovating and delivering local news to communities via a variety of platforms. The NAA asks the Commission to also adjust to this new reality, and to repeal a regulation that was created for an entirely different media landscape.

Respectfully submitted,

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