

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
2014 Quadrennial Regulatory Review –	)	
Review of the Commission’s Broadcast	)	MB Docket No.14-50
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
2010 Quadrennial Regulatory Review –	)	
Review of the Commission’s Broadcast	)	MB Docket No. 09-182
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
Promoting Diversification of Ownership	)	
In the Broadcasting Services	)	MB Docket No. 07-294

**JOINT REPLY COMMENTS OF  
BONNEVILLE INTERNATIONAL CORPORATION  
AND THE SCRANTON TIMES, L.P.**

Bonneville International Corporation (“Bonneville”) and The Scranton Times, L.P. (“Scranton”) (collectively “Bonneville/Scranton”) hereby submit their reply comments in the above-referenced proceeding.<sup>1</sup> The record now before the Commission amply justifies the agency’s tentative conclusion that the newspaper/radio cross-ownership restriction<sup>2</sup> serves no policy goal and therefore should be eliminated. The majority of commenters who specifically address the newspaper/radio rule provide updated data to further bolster that conclusion.

The few commenters arguing for retention of the outdated restriction do not show that keeping it would promote the only FCC policy goal at issue here – viewpoint diversity – by

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<sup>1</sup> 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*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, MB Docket No. 14-50, FCC 14-28 (2014) (“*Further Notice*”).

<sup>2</sup> 47 C.F.R. § 73.3555(d).

fostering the only kind of content that could be directly affected by a regulation centered on daily newspapers: local news production. Because they lack sufficient empirical support to address that issue head on, the rule’s defenders take a more indirect tack based primarily on conflating their newspaper/radio arguments with their TV/radio cross-ownership contentions. In doing so, they muddy the Commission’s traditional understanding of diversity in the newspaper rule context. That conflation also allows the newspaper/radio rule’s defenders to ignore the realities of the current media marketplace – including, but not limited to, its effect on the resources available to support professional local news production. The Commission should reject these arguments.

## **I. THE RECORD SUPPORTS THE LONG-OVERDUE ELIMINATION OF THE NEWSPAPER/RADIO CROSS-OWNERSHIP RULE**

The latest data now before the Commission compels adoption of the agency’s tentative decision to eliminate the newspaper/radio rule. Multiple commenters provide new empirical evidence, examples drawn from their own experiences, or both to show that the 39-year-old restriction does not further the FCC’s viewpoint diversity goal because it does not affect the agency’s key concern here: local newsgathering and production.<sup>3</sup> They also are all in accord

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<sup>3</sup> See, e.g., Comments of Delmarva Broadcasting Company *et al.* (“Delmarva”) at 3-4 (citing Pew Research Center and Media Insight Project studies to show Americans’ pervasive use of various electronic platforms, such as laptops, tablets, and mobile phones, to access their daily news; noting that “viewpoint diversity is a keystroke away for virtually every American”); Comments of Morris Communications Company, LLC (“Morris Communications”) at 14 (citing various studies demonstrating that radio does “not weigh heavily in any quantitative analysis of Americans’ consumption of news”); *id.* at 17-23 (demonstrating how its own combined properties have resulted in robust local news production and coverage); *id.* at 37-40 (citing to various studies demonstrating how consumers get their news); Comments of National Association of Broadcasters (“NAB”) at 70-71 (citing studies demonstrating decline of newspaper advertising revenue); *id.* at 19-22, 30 (citing to studies showing the transformative impact of IP-based communications on the way Americans disseminate and receive information; citing studies tracking decline in traditional media agenda-setting and gatekeeping abilities); *id.* at Attachment C (listing studies showing that factors other than separate ownership drive viewpoint diversity on media outlets); Comments of Newspaper Association of America (“NAA”) at 2-10 (highlighting examples of successful combined properties that provide high-quality, in-depth local news coverage); Comments of Stephens Capital Partners at 4 (noting that it has been unable to invest in a market where it has ownership of a daily newspaper, limiting potential growth ownership opportunities and denying the potential combined outlet from exploring synergies that could “substantially enhance” both the radio and newspaper platforms).

with the Commission about the meaning of viewpoint diversity in this context – the focus on news production – which is entirely consistent with the history of the newspaper cross-ownership rules.<sup>4</sup> With respect to competition and localism, the record contains no substantive data to disturb FCC’s understanding that newspapers and radio do not compete for advertising<sup>5</sup> or that the structural ownership restraint is unnecessary to support localism.<sup>6</sup>

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<sup>4</sup> Attachment A contains a chronology of Commission statements in various proceedings that shows that the agency has always connected viewpoint diversity with local news production in the newspaper/broadcast cross-ownership (“NBCO”) context.

<sup>5</sup> The National Association of Black Owned Broadcasters (“NABOB”) argues to the contrary, asserting that elimination of the newspaper/radio rule will negatively affect minority ownership because the co-owned platforms would have a competitive advantage in attracting advertisers. Comments of NABOB at 13-14. But NABOB makes no empirical showing that radio/newspaper combinations – which are unlikely ever to be great in number – could harm a singleton station’s ability to viably compete for advertising. NABOB’s factual submission is not a competitive analysis of the degree to which daily newspapers and radio actually vie for advertisers; it is simply a description of the relative usage of all sorts of advertising platforms, including direct mail, online/interactive services, magazines, and the Yellow Pages. *See* Comments of NABOB, Attachment. Fundamentally, NABOB’s arguments simply reflect the same concerns about station economics that spur Bonneville/Scranton and other commenters to call for concrete measures to promote minority ownership, such as incubators. *See infra* notes 28-29 and accompanying text.

<sup>6</sup> As discussed *infra* note 14, the United Church of Christ *et al.* (“UCC”) expressly asserts that the newspaper/radio rule serves localism, while the National Hispanic Media Coalition (“NHMC”) implies it – but those contentions rest on misguided notions. *See* Comments of UCC at 35; Comments of NHMC at 8-10; *compare* 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, 2034-38 ¶¶ 42-46 (2008) (discussing localism goal for newspaper/broadcast purposes as focused on local news production). The bulk of the record before the Commission supports the agency’s recognition that the newspaper cross-ownership restraints actually disserves localism. *See, e.g.*, Comments of Cox Media Group at 5 (newspaper/radio rule “stands in the way” of combinations that could “significantly improve” local news production); Comments of NAB at 74 (permitting newspaper cross-ownership “promotes the production of local programming, especially news...”); Comments of Fox Entertainment Group at 24 (eliminating the broadcast/newspaper restriction “would actively advance the Commission’s localism goal”); Comments of Morris Communications at 43 (noting that “it is clear that common ownership of newspapers and broadcast entities would advance rather than harm the localism goal”); Comments of Delmarva Broadcasting at 2 (eliminating the “prohibition on newspaper/radio cross-ownership would allow expertise, resources and capital to flow between newspaper and radio broadcasting entities, bolstering their respective abilities to provide quality sources of news and information to the public across multiple delivery platforms.”); NAA at 13 (“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.”); Comments of Stephens Capital Partners at 2 (the “rule is overbroad and unduly restricts investment that could stimulate newspapers and radio stations alike, enhancing their ability to serve their readers and listeners through upgraded news operations and better content.”).

The record also contains substantial data demonstrating that today’s dynamic and fragmented media marketplace<sup>7</sup> – and particularly the impact of the Internet’s decoupling of advertising from professional news production – has serious implications for newspapers that the Commission should not continue to ignore.<sup>8</sup> The daily newspaper industry continues to struggle financially in a digital environment in which its revenues, circulation, and newsroom employee numbers continue to fall, which threatens the continued existence of a main source of professional newsgathering in most communities.<sup>9</sup> No one claims that elimination of the newspaper/radio rule would lead to a great wave of new newspaper/radio combinations, but several commenters point out that lifting the restraint could help support newsgathering and dissemination in some communities.<sup>10</sup> Joint ownership would allow interested entities to deliver local news to consumers through both types of platforms and to create operating efficiencies and economies of scale to support local newsrooms.<sup>11</sup>

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<sup>7</sup> Over the last 45 years, an impressive array of “new” media has emerged in addition to the rise of the Internet: cable and satellite television (with its hundreds of channels); satellite radio (with its hundreds of channels); and, of course, the Internet (with its millions of low-cost or free outlets for speech). The number of full-power broadcast stations has more than doubled – growing from 6,197 radio stations and 851 TV stations in the late 1960s, to 15,406 radio and 1,783 TV stations in 2014. These stations also now have access to multicasting technology, which allows each TV and radio station to broadcast multiple programming channels at the same time. The industry has also seen the addition of 774 LPFM radio stations, 429 Class A stations, and 2,035 LPTV stations. That takes total broadcast facility numbers up to 20,327, nearly a three-fold increase since the newspaper/broadcast rule was first contemplated. *See* Broadcast Station Totals as of March 31, 2014, *available at* <http://www.fcc.gov/document/broadcast-station-totals-march-31-2014>.

<sup>8</sup> *See, e.g.*, Comments of NAB at 18-38 (discussing the Internet’s fragmentation of the media marketplace and consequent impact on advertising revenues needed to support local news operations); Comments of NAA at 15-16 (noting Internet’s impact on news production and consumption); Comments of Morris Communications at 32-41 (noting dramatic changes in the media marketplace and the manner in which Americans access their news).

<sup>9</sup> *See, e.g.*, Comments of NAB at 34-36 (fragmentation of the media advertising marketplace has resulted in ad losses for the newspaper industry which, in turn, has led to downsizing of professional newsrooms across the country); Comments of NAA at 23 (“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.”); Comments of Morris Communications at 27 (the “continued fall in revenues and audience fragmentation have caused traditional media outlets to make cutbacks in their newsrooms.”).

<sup>10</sup> *See, e.g.*, Comments of Delmarva at 2; Comments of Morris Communications at 15, 23.

<sup>11</sup> *See, e.g.*, Comments of NAB at 71-72; Comments of NAA at 2.

## II. THE FEW WHO ADVOCATE RETENTION OF THE RULE RELY ON ANECDOTAL INFORMATION THAT IS NOT ON POINT OR REST ON CLAIMS CONCERNING OUTDATED CONTENT REGULATORY THEORIES

Of the very few opponents of the FCC's tentative plan to eliminate the newspaper/radio rule,<sup>12</sup> even fewer devote significant discussion to it. The two commenters in the latter category, UCC and NHMC, take a curious approach to that discussion: Both intertwine their contentions about the newspaper/radio rule with their defense of the TV/radio cross-ownership rule. Because of this approach, they offer a muddled argument on the meaning of the Commission's "viewpoint diversity" goal in the newspaper cross-ownership context. Their approach also allows them to avoid confronting nearly all of the facts concerning the broader media marketplace in which newspapers and radio stations are only two types of many relevant participants. As a result, they skirt inconvenient truths about the financially-struggling newspaper industry in particular – and the real-world, harmful consequences of retaining a rule that deprives at least a few newspapers of much-needed resources.<sup>13</sup>

As discussed above, when framing viewpoint diversity aspirations for the newspaper-broadcast cross-ownership rules, the focus has always been the production of local news.<sup>14</sup> Yet

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<sup>12</sup> Most commenters who call for retention of the newspaper/broadcast cross-ownership rule either explicitly or implicitly focus on newspaper/TV combinations, not newspaper/radio ones. *See, e.g.*, Comments of Communications Workers of America at 4. Bonneville/Scranton believes that the record before the FCC justifies repeal of the entire NBCO rule, but our focus here remains the newspaper/radio restriction.

<sup>13</sup> NHMC avoids references to newspaper statistics altogether, while UCC points only – and oddly – to a statistic indicating that consumers' reportedly low daily reliance on newspapers for news is even *lower* today than consumers' *declining* daily use of radio for news. *See* UCC Comments at 34 (citing Pew Research finding that 33% of the respondents to a 2012 media survey listened to radio "yesterday," while 29% read a newspaper "yesterday"). UCC fails to note, however, that the study also indicates that the number of Americans who listen to radio for news has dropped consistently and significantly over the years. *See* PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, *Audio: Digital Drives Listener Experience (State of the News Media 2013)*, at <http://stateofthemediamedia.org/2013/audio-digital-drives-listener-experience/>.

<sup>14</sup> *See supra* note 4 and accompanying text; *see also* Attachment A. UCC and NHMC also lose sight of the meaning of localism in the newspaper cross-ownership context. *See, e.g.*, UCC Comments at 32, 35. With respect to the newspaper rules, the FCC's localism focus also has been on the production of local news. That is why the Commission for more than a decade has been correctly concerned that the NBCO rules actually disserve localism – a concern validated by court review. *See, e.g.*, *Prometheus Radio Project v. FCC*, 373 F.3d 372, 399 (3d Cir. 2004).

UCC and NHMC instead focus on matters such as format and selection of music.<sup>15</sup> They seem to suggest that radio stations' offering of a broad array of content – primarily music, but also including syndicated talk shows, nationally focused entertainment/gossip, sports coverage, and commentary on news developments originally reported elsewhere – matters as much or more than local newsgathering and reporting for a rule that applies to *print*. If this is their meaning, it is illogical. Newspapers do news. Newspapers do not select and spin records. Newspapers do not choose radio formats.<sup>16</sup> And the Commission has concluded for years that news and information reporting at the local level is the agency's concern here.<sup>17</sup> Anecdotal descriptions of certain radio programs, no matter how popular or laudable they may be in providing music, entertainment and talk content, do not rebut data in the record demonstrating that radio stations do not contribute significantly to the production and dissemination of local news. This is the longstanding – and the only possibly rational – focus of a cross-ownership rule involving newspapers.<sup>18</sup>

UCC and NHMC devote much of their discussion to the point that radio stations serve targeted audiences that may break along the lines of race, ethnicity, language, age, taste in music,

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<sup>15</sup> UCC Comments at 35-39; NHMC Comments at 8-11.

<sup>16</sup> To the degree that UCC and NHMC may be urging the Commission to resurrect content-based ownership regulation based on radio formats, the FCC should disregard it. The agency long ago – and for good reason – jettisoned rules that once entangled it in scrutinizing radio format choices. *See Deregulation of Radio*, Report and Order, 84 FCC 2d 968, *recon. granted in part*, 87 FCC 2d 797 (1981) (adopting rules substantially deregulating programming requirements). UCC's and NHMC's own examples attest that the marketplace is delivering radio fare that serves the tastes and interests of many different listeners, including minority audiences.

<sup>17</sup> *See, e.g., Further Notice*, 29 FCC Rcd at 4429 ¶ 133 (noting that the newspaper/broadcast restriction “is intended to preserve access to a variety of viewpoints on substantive matters of local concern”).

<sup>18</sup> *See, e.g., Bonneville/Scranton Comments* at 6 (recent survey results showing declines in radio newsgathering and reporting). Recent Commission staff assessments are consistent with these findings. *See* 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 62 (2011) (“*INC Report*”), available at <http://www.fcc.gov/info-needs-communities>. The *INC Report* noted that the trend of declining local news reporting by radio stations has occurred at both minority- and non-minority-owned stations. *INC Report* at 64.

interest in politics, and other characteristics. This specially focused service is not surprising, for as the Commission has recognized, radio has long been more of a niche medium than its regulated mass media counterparts.<sup>19</sup> Serving specific audience segments is what radio does – and should – do. Moreover, Bonneville/Scranton takes no issue with the quality of music, entertainment, and commentary aired on the programs noted by UCC and NHMC. As radio broadcasters who strongly believe in the medium, Bonneville/Scranton is glad that radio continues to attract devoted listeners and showcase personalities who enjoy connecting with their audiences, as it has done for decades.

Quality aside, however, for the purposes of determining whether the newspaper/radio restriction is necessary to foster diversity in local newsgathering and dissemination, UCC's and NHMC's program examples are off point.<sup>20</sup> None appear to involve the kind of significant or continuous local newsgathering or reporting that is central to the FCC's viewpoint diversity concern in the newspaper rule context. For the most part, the cited programs consist of nationally syndicated entertainment and/or talk fare, which are not substitutes for original newsgathering.<sup>21</sup>

UCC and NHMC also cite to a few studies and statistics about radio listenership, which do show that people continue to listen to radio regularly – but not that they turn to it often as a

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<sup>19</sup> See, e.g., *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13650 ¶ 93 (2003) (observing the nature of radio's current "targeted, niche programming" when compared to its historical beginnings).

<sup>20</sup> It is worth noting that no commenter argues that the formats or programs cited by UCC or NHMC will be diminished or otherwise compromised by the elimination of the newspaper/radio restriction.

<sup>21</sup> See, e.g., PEW RESEARCH JOURNALISM PROJECT, *How News Happens*, 7 (Jan. 11, 2010), at <http://www.journalism.org/2010/01/11/how-news-happens/> ("In radio there was little of what would be considered reporting. Roughly half the segments were anchors doing monologues, and 38% of the segments involved the host interviewing a guest or a caller. There was no original reporting found, either in talk radio or in the news inserts and radio headlines that were produced during the periods studied (during the 7 a.m. drive time hour).").

significant source of local news.<sup>22</sup> UCC notes that radio listeners may be exposed to “top of the hour headline newscasts”<sup>23</sup> without reflecting on the likelihood that the headlines involve national or regional news, traffic or weather – information that typically originates elsewhere (e.g., news wires, syndicated local traffic services, National Weather Service).<sup>24</sup> A key source cited by UCC, the Pew Research Center’s *How People Learn About Their Local Community* report, finds that consumers consider radio a key information source just for “time sensitive” traffic and weather; only 2% or fewer consider radio a source for other topics such as community events, schools, taxes, government activities, or jobs.<sup>25</sup>

UCC and NHMC eventually shift their argument to what appears to be their central, albeit theoretical, concern: the fear that rule elimination would somehow foreclose or stymie new entrants, particularly women and minorities, from becoming station owners. This theory is not grounded in fact. The sheer number of radio stations – more than 15,000 at the FCC’s last count, which represents nearly nine times the number of full power TV stations nationwide –

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<sup>22</sup> Compare UCC Comments at 33 (citing Radio Advertising Bureau listenership “reach” statistics in excess of 90%) with *id.* at 34 (citing Pew Research Study finding that news radio consumption has fallen consistently over two decades). See also NHMC Comments at 7-8 (citing data demonstrating radio listening trends in Latino community).

<sup>23</sup> Comments of UCC at 34.

<sup>24</sup> Even these headlines, the study cited by UCC concludes, are generally “produced by an outside network.” PEW RESEARCH CENTER’S PROJECT FOR EXCELLENCE IN JOURNALISM, *Audio: Digital Drives Listener Experience (State of the News Media 2013)*, at <http://stateofthemediamedia.org/2013/audio-digital-drives-listener-experience/>. UCC ignores the study’s conclusion that, even with respect to these top-of-the-hour headlines, listenership is declining. The study shows that, when people were “asked about the amount of time spent listening to radio news yesterday, the greatest erosion over the last two decades has been among those who spent less than 15 minutes listening: Just 6% in 2012, down from 14% in 2000 and 22% in 1990. Other time spans that would speak more to full half hour or hour news programs have remained much more consistent through the years. What this may reflect is fewer people getting top-of-the-hour news from music or other non-news radio stations as they turn to new digital listening options.”

<sup>25</sup> PEW RESEARCH CENTER PROJECT FOR EXCELLENCE IN JOURNALISM AND INTERNET & AMERICAN LIFE PROJECT, *How People Learn About Their Local Community*, 35 (2011), at <http://www.pewinternet.org/2011/09/26/how-people-learn-about-their-local-community/>; see also *id.* at 2 (radio ranked a top source – along with television – only for traffic news). UCC tacitly concedes elsewhere in its comments that radio is not a significant contributor to viewpoint diversity: for purposes of the newspaper/TV cross-ownership rule, UCC believes that only “full power television stations and major newspapers” should count as “major media voices.” UCC Comments at 44. The implication concerning radio’s place in local newsgathering is clear enough. This could hardly be otherwise, given the one-man-band nature of radio station staffing for news. See Bonneville/Scranton Comments at 6 (citing RTDNA studies confirming long-time radio news staffing trends).

means that opportunities for ownership remain plentiful.<sup>26</sup> Nor is there any indication that elimination of the rule will result in a flood of transactions in which newspaper owners buy radio stations. To the contrary, industry trends today are in the opposite direction, with multi-platform media companies shedding their newspaper operations.<sup>27</sup>

What is not plentiful – as the FCC has recognized time and again – is station financing for new entrants.<sup>28</sup> Bonneville/Scranton agrees with NAB and other commenters that the Commission should move beyond mere recognition of this problem to concrete action on it.<sup>29</sup> Revival of a tax certificate policy remains a worthy goal, but enactment depends on Congress. In the meantime, there are other concrete steps the FCC could take on its own, including but not limited to an incubator program focused on new entrants and an effort to test an Overcoming Disadvantages Presumption (“ODP”) proposal.<sup>30</sup> Bonneville/Scranton supports such action.

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<sup>26</sup> As one media broker noted after last year’s NAB show, “There is no shortage of station buyers and sellers; all we are missing are the lenders.” See GEORGE REED’S RADIO/TV STATION TRADING VIEWS, NAB Show 2013 – From a Media Broker’s Perspective (blog posted April 13, 2013), at <http://georgereedradiotv.blogspot.com/2013/04/nab-show-2013-from-media-brokers.html>. See also Comments of the National Association of Media Brokers, MB Docket Nos. 09-182, 07-294, at 2, 3 (filed Dec. 21, 2012) (“[T]here is no shortage of potential sellers of broadcast stations.... For a buyer with access to money, there are practically an unlimited number of transactions that could be had right now”).

<sup>27</sup> Opponents of NBCO relaxation recognize the trend, see Comments of Free Press, *et al.*, at 10, even though they deny obvious facts about declining newspaper revenues and their implications. Compare *id.* with Roger Yu, Gannett to spin off publishing business, USA Today (Aug. 6, 2014), available at <http://www.usatoday.com/story/money/business/2014/08/05/gannett-carscom-deal/13611915/> (noting “decline in print advertising” behind the trend). This trend does not justify inaction with respect to eliminating the newspaper/radio rule; instead, it makes the Commission’s statutory obligation to do away with the unnecessary restriction that much more compelling.

<sup>28</sup> See, e.g., NAB Comments at 91. The Minority Media and Telecom Council (“MMTC”), which has operated a minority-owned media brokerage service for more than 15 years, ranks “weak access to capital” as the lead entry on its list of the “real causes of minority exclusion from media ownership.” See David Honig, *Let’s Focus on the Real Causes of Minority Exclusion from Media Ownership*, Minority Media and Telecom Council Broadband & Social Justice, (blog entry posted Dec. 3, 2012) available at <http://broadbandandsocialjustice.org/2012/12/lets-focus-on-the-real-causes-of-minority-exclusion-from-media-ownership/>.

<sup>29</sup> See generally NAB Comments at 92-95 (offering recommendations to promote women and minority ownership); see also, e.g., MMTC Comments at 5 (discussing ODP proposal).

<sup>30</sup> See, e.g., Reply Comments of Bonneville/Scranton, MB Dockets No. 09-182 and 07-294, at 13-14 (Jan. 4, 2013); Joint Comments of Bonneville/Scranton, MB Dockets No. 09-182 and 07-294, at 2 (July 22, 2013).

### III. CONCLUSION

The Commission now has a refreshed record concerning the newspaper/radio rule, and the weight of the evidence has not changed: The restriction fosters none of the FCC's stated goals for its media ownership restrictions. In particular, because radio does not serve as a significant source of local news generally, the rule does not foster viewpoint diversity. Given that the newspaper radio rule advances no policy purpose – and has not done so for many years – a Commission decision to continue retaining it would violate Section 202(h) of the Telecommunications Act of 1996, be arbitrary and capricious, and raise grave constitutional questions. The FCC should adopt its tentative conclusion to repeal the rule once and for all.

Respectfully submitted,

**BONNEVILLE INTERNATIONAL CORPORATION  
THE SCRANTON TIMES, L.P.**

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**ATTACHMENT A**

**COMMISSION COMMENTS ON VIEWPOINT DIVERSITY  
AND/OR LOCAL NEWS PRODUCTION**

The Commission has made clear at every stage in the history of the newspaper/broadcast cross-ownership (“NBCO”) restrictions that fostering viewpoint diversity by encouraging local news production was a primary goal in adopting the rules. Below is a sampling of language taken from various proceedings that underscores this point:

- 1970** – In the 1970 rulemaking leading to adoption of the newspaper/broadcast restriction, the Commission noted that it had “long been concerned with the particular problem of newspaper-broadcast joint control” – and in particular, television and newspapers – as “the studies presented in this record and otherwise available are in full agreement that the public looks primarily to these two sources *for its news and information on public affairs.*”<sup>31</sup> Thus, it proposed to adopt the restriction in an effort to “maximize[e] diversification of service sources and viewpoints.”<sup>32</sup>
- 1975** – In the order adopting the NBCO restrictions, the Commission summarized at great length the viewpoints of various commenters that discussed how the restriction would impact local news gathering efforts and coverage.<sup>33</sup> The Commission also noted that “[r]ealistically, a radio station cannot be considered the equal of either the paper or the television station in any sense, least of all in terms of *being a source for news or being the medium turned to for discussion of matters of local concern.*”<sup>34</sup>
- 1996** – Responding to debate in a transactional proceeding that predated the 1996 Act, the Commission opened an inquiry to consider easing waiver standards for newspaper/radio combinations. In doing so, it noted that the newspaper/broadcast cross-ownership rule “rests on the twin goals of *promoting diversity of viewpoint and economic competition.*”<sup>35</sup> It noted that permitting cross-ownership, while “not necessary to the viability of one or both outlets, could lead to benefits such as *increased dissemination of news and information in the relevant local market and have only a negligible effect on ownership diversity and competition.*”<sup>36</sup> The

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<sup>31</sup> *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Further Notice of Proposed Rulemaking, 22 FCC 2d 339, 344 ¶ 26 (1970) (emphasis added).

<sup>32</sup> *Id.* at 344 ¶ 33.

<sup>33</sup> *See 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 FCC 2d 1046, 1059-1074 ¶¶ 45-98 (1975) (“1975 Second Report and Order”) (summarizing debate among commenters regarding how the restriction would impact local news gathering efforts and coverage).

<sup>34</sup> *Id.* at 1083 ¶ 115 (emphasis added).

<sup>35</sup> *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13003, 13004 ¶ 3 (1996) (emphasis added).

<sup>36</sup> *Id.* at 13009 ¶ 9 (emphasis added).

agency further noted that “[w]e have previously determined that a television station is, relatively speaking, more a *source of news* than is a radio station.”<sup>37</sup>

**1998** – The Commission folded the record of its 1996 inquiry into its first mandated review of the broadcast ownership rules under the 1996 Act. It noted that Americans relied upon radio as a news and information source “to a lesser extent than television and newspapers.”<sup>38</sup>

**2003** – In reviewing the newspaper/broadcast restriction, the FCC stated that “*viewpoint diversity is a paramount objective* of this Commission because the free flow of ideas under-girds and sustains our system of government. Although all content in visual and aural media have the potential to express viewpoints, we find that *viewpoint diversity is most easily measured through news and public affairs programming*. Not only is news programming more easily measured than other types of content containing viewpoints, but it relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media.”<sup>39</sup> It later noted that the Commission adopted the newspaper/broadcast cross-ownership rule because it believed that it would promote viewpoint diversity.<sup>40</sup> Finally, the Commission noted that its revised cross-ownership rules would “sufficiently protect diversity of viewpoint while permitting efficiencies that can ultimately *improve the quality and quantity of news* and informational programming.”<sup>41</sup>

**2008** – The Commission repeatedly pointed to its concern with “investment in local news programming”<sup>42</sup> and “the availability and sustainability of local news” in voting to modestly relax the NBCO rules.<sup>43</sup> “In light of the important role and current state of the newspaper industry, it is therefore critical that our rules do not unduly stifle efficient combinations that are likely to preserve or increase the amount and

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<sup>37</sup> *Id.* at 13010 ¶ 11 (emphasis added).

<sup>38</sup> *1998 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 13 FCC Rcd 11276, 11289 ¶ 41 (1998) (citing 1997 professional polling data).

<sup>39</sup> *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13631 ¶ 32 (2003) (“*2002 Report and Order*”), *rev’d and remanded*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (emphasis added).

<sup>40</sup> *Id.* at 13760 ¶ 355.

<sup>41</sup> *Id.* (emphasis added).

<sup>42</sup> *See 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, 2013 ¶ 5 (2008), *aff’d in part, vacated in part, remanded by Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) (“*2008 Report and Order*”).

<sup>43</sup> *Id.* at 2019 ¶ 13.

quality of local news available to consumers via newspaper and broadcast outlets.”<sup>44</sup>

**2011** – In discussing the NBCO rule, the Commission observed that “Newspaper/broadcast cross-ownership was first prohibited in 1975 to preserve *viewpoint diversity* in local markets.”<sup>45</sup> It noted that this remained the Commission’s primary concern, further observing that, “Research shows that *newspapers and local television stations, and their affiliated websites, are the primary sources that consumers rely on for local news.*”<sup>46</sup> The Commission tentatively concluded that some restrictions on newspaper/broadcast combinations continue to be necessary to promote viewpoint diversity within local markets, noting “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.”<sup>47</sup> It tentatively concluded that “*radio stations are not the primary outlets that contribute to local viewpoint diversity*” because consumers’ main sources for local news and information are television stations, newspapers, and their affiliated websites.<sup>48</sup> It also tentatively concluded that a “substantial amount of news and talk show programming on radio stations is nationally syndicated.”<sup>49</sup>

**2014** – The Commission noted that the “diverse and antagonistic sources” that the NBCO rule “historically has protected – daily newspapers and local television stations – are still the *primary outlets of local news and information* that consumers use.”<sup>50</sup> It noted that research “shows that most radio stations do not produce significant amounts of local news and that most consumers do not rely on radio stations as their primary source of local news.”<sup>51</sup>

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<sup>44</sup> *Id.* at 2030 ¶ 35. The paragraphs in the *2008 Report and Order* devoted to discussion of the NBCO rules contain more than 110 references to “local news,” including “local newsgathering,” by either the FCC or commenters. *Id.* at 2013-57 ¶¶ 5-79.

<sup>45</sup> See *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, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17518-19 ¶ 84 (2011) (emphasis added).

<sup>46</sup> *Id.* at 17520 ¶ 89 (emphasis added).

<sup>47</sup> *Id.* at 17523-24 ¶ 96 (emphasis added).

<sup>48</sup> *Id.* at 17530 ¶ 112 (emphasis added).

<sup>49</sup> *Id.*

<sup>50</sup> *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*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4418-19 ¶ 115 (2014) (emphasis added).

<sup>51</sup> *Id.* at 4419 ¶ 116.