

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

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

COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

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SUMMARY

The United States government has spent years investigating ways to preserve the future of journalism in the United States. These inquiries express unprecedented levels of concern about the seismic challenges facing the news industry, and they correctly recognize that a thriving journalism ecosystem is essential to American communities and to our democracy. The most incisive and comprehensive treatment has been the Commission's *Information Needs of Communities* report, a research effort that effectively analyzes the effects that the challenges facing the news industry can have on the communities we serve.

The Newspaper Association of America has participated in these proceedings, and has pointed out that there is little the government can, or should, do to secure the benefits of first-class journalism in the United States. The challenges facing our industry are, in the main, marketplace issues that the industry is working steadfastly to address, not government issues.

There is one striking exception. The Commission enforces a 37-year-old rule that bars newspapers from obtaining investment from an entire class of media companies, and from achieving improvements and efficiencies in their news operations. The newspaper-broadcast cross-ownership rule is a relic that undermines the Commission's goal of preserving strong journalism to serve the information needs of American communities. Eliminating this rule, and thus allowing newspapers to obtain investment from in-market broadcasters and other media companies, is the one action that the Commission can take to accomplish this goal.

If this rule ever had a valid purpose, it surely has outlived it. It does not foster journalism. To the contrary, the Commission's own empirical research demonstrates that cross-owned stations broadcast *more* news, not less—an unsurprising result, given that journalism is in newspaper companies' DNA. Similarly, the rule is not needed to foster diversity. We live in an era of unbounded viewpoint diversity, in vibrant online communities, with multiple competing television, cable and satellite outlets and ever-growing new digital media options all contending for the time and attention of the audiences we serve. The record in this proceeding clearly and unambiguously supports repeal of the rule; retaining it would be irrational and unsupported.

After nearly 40 years of adhering to a failed regulatory policy, the time to take action has arrived. In the interest of the future, the newspaper-broadcast cross-ownership rule should be repealed.

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COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

For years, Congress, the Federal Trade Commission, and the Federal Communications Commission have been investigating the future of journalism.¹ These inquiries have expressed an unprecedented level of concern about the systemic changes in the news industry, and they correctly recognize that a thriving journalism ecosystem is essential to American communities and to our system of democracy. The most incisive and comprehensive treatment of these issues to date has been the Commission's own *Information Needs of*

¹ See, e.g., U.S. House of Representatives Judiciary Committee, Subcommittee on Courts and Competition Policy, *A New Age for Newspapers: Diversity of Voices, Competition and the Internet*, 111th Cong., Serial No. 111-38 (April 21, 2009); U.S. Senate Commerce Committee, Subcommittee on Communications, Technology, and the Internet, *The Future of Journalism*, 111th Cong., S. Hrg. 111-428 (May 6, 2009); Letter from Nancy Pelosi, Speaker of the U.S. House of Representatives, to The Hon. Eric Holder, U.S. Attorney General (March 16, 2009) (discussing newspapers' "efforts to survive" in light of "serious economic challenges" and asking Antitrust Division to "take into appropriate account, as relevant," not only newspapers but "also the other sources of news and advertising outlets available in the electronic and digital age, so that the conclusions reached reflect current market realities"); Public Notice, Federal Trade Commission Workshops and Request for Comment, "How Will Journalism Survive the Internet Age?" (Dec. 1-2, 2009); Congressional Research Service, "The U.S. Newspaper Industry in Transition" (Sept. 9, 2010).

Communities Report, an extraordinary research effort that documents the seismic changes in the news industry and analyzes the effects of these changes on American communities.²

The Newspaper Association of America (“NAA”)³ has participated in these proceedings and pointed out that there is little, if anything, the government can and should do in most instances to secure the benefits of first-class journalism for local communities. The challenges facing journalism are market issues that the industry is working steadfastly to address, not government issues.

There is, however, one striking exception to this rule. The Commission enforces, even today, in this fundamentally changed news environment, a 37-year-old regulation that denies newspapers—the medium that produces the most in-depth news reporting about local communities—from obtaining effective investments from an entire class of interested companies and from enjoying improvements and efficiencies in their news operations. The newspaper-broadcasting cross-ownership rule (the “NBCO” Rule) stands in the way of the newspaper industry’s efforts to improve localism and its capacity for journalism and, worse, serves no legitimate public interest purpose. Indeed, the Commission’s own studies demonstrate that the rule undercuts, rather than fosters, localism and diversity. Eliminating the NBCO Rule, and thereby allowing newspapers to obtain investment from in-market broadcasters and other media companies, is the one action the federal government can take to help serve the information needs

² Steven Waldman *et al.*, *The Information Needs of Communities* (July 2011) (“*INC Report*”).

³ NAA is a nonprofit organization representing nearly 2,000 newspapers and their multiplatform businesses in the U.S. and Canada. NAA members include daily and non-daily newspapers, other print publications, and online ventures. More than 60 percent of NAA’s members represent small markets with print circulations of 20,000 or less.

of communities. After nearly 40 years under this regulation, the time to take such action has arrived.

The rule, moreover, serves no valid public-interest purpose. We live in a period of unrivaled media abundance. The Internet has changed the way consumers, journalists, and media companies create, disseminate, and consume news and information. More 18- to 29-year-olds receive their news online than from any other source.⁴ Thanks in large part to the Internet, the range of viewpoints on issues of public concern on both the local and national levels is, as the U.S. Supreme Court stated more than fifteen years ago, “as diverse as human thought.”⁵ Television broadcasters are producing more news, on average, than before.⁶ The number of television channels on multichannel video programming distributors is at an all-time high, and a diverse array of multicast networks are available to communities as well.⁷

Despite these changes, newspapers remain the public’s most trusted provider of original content essential to communities, especially concerning matters of local civic engagement.⁸ Newspapers also have emerged as the most significant providers of local news online, both through their own websites and through independent websites’ reliance on

⁴ *INC Report*, at p. 117.

⁵ *Reno v. ACLU*, 521 U.S. 844, 852 (1997).

⁶ See, e.g., Diana Marszalek, *Post-‘Oprah’ Newscasts: So Far, So Good*, TV NewsCheck (Oct. 19, 2011), available at <http://www.tvnewscheck.com/article/2011/10/19/54811/postoprah-newscasts-so-far-so-good>.

⁷ See, e.g., Kristi Swartz, *Atlanta-based Bounce TV makes nationwide debut*, Atlanta Journal-Constitution (Oct. 2, 2011), available at <http://www.ajc.com/business/atlanta-based-bounce-tv-1189900.html>.

⁸ See craigconnects.org, “Extra, Extra! [read all about it.]” (Feb. 23, 2012) (finding newspapers most trusted news source over cable and network news, talk radio, Internet news sites, and blogs and social media), available at <http://craigconnects.org/newsinfographic>.

newspaper reporting.⁹ And because it contributes to “civic health,” newspaper journalism that focuses on local issues benefits “those who do not buy a newspaper just as much as the people who do.”¹⁰ But this important work is often high-cost, and when newspapers experience marked declines in advertising and circulation revenue, the social value generated by accountability journalism is at risk of loss. As demonstrated below, the systemic changes that have triggered an abundance of outlets for news and information have also threatened newspapers’ ability to provide the locally focused reporting that communities need.

The evidence in this docket, provided in response to the Commission’s Notice of Inquiry,¹¹ in the empirical studies commissioned by the FCC, and in prior ownership proceedings, all compels one conclusion: the NBCO Rule frustrates localism, undermines diversity rather than fosters it, and no longer serves the public interest. It should therefore be repealed pursuant to the FCC’s obligation under Section 202(h) of the Telecommunications Act.¹²

I. THE CHALLENGES FACING THE NEWSPAPER INDUSTRY ARE DIRECTLY AND ADVERSELY AFFECTING LOCALISM.

*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. ... In paper after paper, local accountability journalism is down.*¹³

⁹ *INC Report*, at pp. 21, 123-26.

¹⁰ *Id.*, at p. 126.

¹¹ 2010 Quadrennial Ownership Review, MB Dockets No. 09-182 & 07-294, Notice of Inquiry (May 25, 2010) (“*2010 Quadrennial Review NOF*”).

¹² Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12, as amended.

¹³ *INC Report*, at pp. 34, 41.

A. Technological Changes Have Upended the Traditional Newspaper Industry Business Model.

As the record in this proceeding and the *INC Report* demonstrate persuasively, the dramatic technological changes that have led to intense and growing competition from the Internet have “upended traditional news industry business models.”¹⁴ No segment of the news industry has been more financially challenged by these changes than newspapers. Both of the newspaper industry’s traditional revenue streams—circulation and advertising—have been affected. Paid daily newspaper circulation has diminished to World War II-era levels, even though the number of households in the United States (and therefore, potential subscription base) is three times larger.¹⁵ The hit to newspapers’ advertising revenue arguably has been even more severe. Newspaper advertising revenue overall dropped 47 percent from 2005 to 2009.¹⁶ In the wake of the success of “free classifieds” websites such as Craigslist and eBay, classified advertising—which accounted for 40 percent of print ad revenue in 2000—fell by 71 percent over the last decade, from \$19.6 billion per year industry-wide in 2000 to \$5.6 billion in 2010.¹⁷

¹⁴ *Id.*, at p. 5. See also Comments of the Newspaper Association of America, MB Docket No. 09-182, at 12 (June 12, 2010) (“NAA 2010 Quadrennial Review NOI Comments”); 2010 Quadrennial Review NOI, at ¶ 10 (“Th[e economic] contraction is accompanied by an increase in content from Internet and mobile platforms, resulting in dramatic changes in the marketplace for news, public affairs programming, entertainment programming.”).

¹⁵ *INC Report*, at pp. 35, 38 (citing Newspaper Association of America, Total Paid Circulation, <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx>; U.S. Census, Families and Living Arrangements, Table HH-1. Households, by Type: 1940 to Present, <http://www.census.gov/population/www/socdemo/hh-fam.html#ht> (each last visited Feb. 28, 2011)).

¹⁶ *INC Report*, at p. 10 (citing Newspaper Association of America, Advertising Expenditures, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx>.) (last updated Mar. 2010).

¹⁷ *Id.*, at pp. 39-40; see also *Hands off the Journalist*, Remarks of Commissioner Meredith Attwell Baker Before The Media Institute (Jan. 21, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295867A1.pdf (last visited Feb. 23, (continued...))

Advertising revenue traditionally has accounted for as much as 80 percent of newspaper earnings, so these changes have reverberated both within individual newspapers and throughout the industry.¹⁸

At the same time, online news aggregators, search engines, and online news forums regularly copy or summarize newspaper content and sell their own advertising to accompany the content, thereby diverting revenue away from the entity that has invested its own earnings to generate that content. Not only does the high volume of advertising inventory available on those and other sites lower ad prices overall,¹⁹ but newspapers' inability to maintain exclusivity in their content devalues it, further hindering the ability to attract advertising revenue.

B. The Result: Local Communities Are Losing Important Sources of News and Information.

*[T]he media deficits in many communities are consequential. ... most [newspapers] are operating with smaller reporting staffs, and as a result are often offering less in-depth coverage of critical topics such as health, education, and local government.*²⁰

The effects of diminished advertising revenue and declining circulation on the newspaper industry are clear. More than 200 U.S. newspapers closed or eliminated a newsprint edition from 2007 to 2010, while others only survived by declaring bankruptcy and reorganizing.²¹ The overwhelming majority of these newspapers were serving smaller markets such as Eureka, California, or suburbs of larger communities with their own large dailies, such as

2012) (“the success of Craigslist and eBay has significantly reduced highly profitable classified ads”).

¹⁸ NAA 2010 Quadrennial Review NOI Comments, at p. 13.

¹⁹ See INC Report, at pp. 127-31.

²⁰ *Id.*, at p. 5.

²¹ *Id.*, at pp. 40-41.

Bedford, Ohio.²² Surviving newspapers continue to implement measures to match expenses to diminished revenues. Between 2006 and 2009, daily newspapers cut their annual editorial spending by \$1.6 billion per year.²³ Reductions in paper size and in the number of newspaper pages save money at the cost of shrinking the news hole.²⁴ And these financial pressures have forced newspapers to eliminate reporting jobs. More than 13,000 full-time journalists have left the newspaper industry since 2007.²⁵ The number of full-time journalists at daily newspapers has fallen to a level not seen since before the Watergate era.²⁶

The Commission's *Information Needs of Communities* Report concludes that the diminished number of professional journalists that has been compelled by systemic changes in the media industry threatens the "independent reporting that provides information, investigation, analysis, and community knowledge, particularly in the coverage of local affairs."²⁷ The report finds that there has been a measurable decline in certain types of accountability reporting at the municipal and local levels.²⁸ As the record in this proceeding shows, the overwhelming majority of these reductions have been felt by newspapers serving small-to-midsize markets. For example, the American Journalism Review has found that the number of print reporters at U.S.

²² *Id.*, at p. 41.

²³ *Id.*, at pp. 10, 34 (citing "Newspapers: News Investment" in Pew Research Ctr.'s Project for Excellence in Journalism, *The State of the News Media 2010*, available at <http://stateofthemediamedia.org/2010/newspapers-summary-essay/news-investment/>).

²⁴ *Id.*, at p. 36.

²⁵ *Id.*, at p. 16.

²⁶ *Id.*, at p. 34 (citing American Society of News Editors, *Newsroom employment up slightly, minority numbers plunge for third year*, April 7, 2011, available at <http://asne.org/article/view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx>; *Newspapers: By the Numbers*, <http://stateofthemediamedia.org/2011/newspapers-essay/data-page-6/>).

²⁷ *Id.*, at p. 10.

²⁸ *Id.*, at pp. 21, 24, 44-55.

statehouses dropped by one-third between 2003 and the spring of 2009, and more than 50 newspapers and news companies stopped covering their statehouses entirely during that time period.²⁹ A case study of the Raleigh *News & Observer* found that its newsroom reduction from 250 to 132 employees from 2004 to 2009 caused the newspaper to end its real-time coverage of several beats, such as Durham courts and schools, legal affairs, agriculture, science, environment, and statewide public education.³⁰ Other newspapers throughout the country have been forced to make similar cuts to beats that the Commission’s report finds have “had enormous civic impact.”³¹

C. Online Media Cannot Fill the News or Revenue Gaps.

1. Online media do not fill the news gap caused by reporting losses.

*[A] media market can simultaneously have a diversity of voices and opinion and yet a scarcity of journalism.*³²

The Internet has had a seismic impact on the media and the public’s ability to create, disseminate, and consume news and information. The Notice of Inquiry in this proceeding recognizes that the Commission’s current ownership review must “take account of the Internet’s role and significance” because “it has increased the quantity of news and

²⁹ *Id.*, at pp. 44-45 (citing Jennifer Dorroh, *Statehouse Exodus*, Amer. Journalism Rev. (Apr./May 2009), available at <http://www.ajr.org/article.asp?id=4721>). Again, most of these newspapers were in small- to medium-size markets, such as Covington, Kentucky; Troy, New York; and Wilmington, North Carolina.

³⁰ *Id.*, at pp. 43-44 (citing James T. Hamilton, *Subsidizing the Watchdog: What Would It Cost to Support Investigative Journalism at a Large Metropolitan Daily Newspaper?* (2009), available at <http://sanford.duke.edu/nonprofitmedia/documents/dwchamiltonfinal.pdf>).

³¹ *Id.*, at p. 44.

³² *Id.*, at p. 25.

programming available to consumers.”³³ In past proceedings and in this docket, parties have offered dozens of examples of locally oriented news and informational websites now vying for consumer attention in communities of all sizes.³⁴ Sites dedicated to local news reporting are available for readers in St. Louis, Pittsburgh, New Orleans, Asheville, and Billings, Montana, to take just a few examples already in this record.³⁵ Hyperlocal sites “emphasize, and create space for, the kinds of micro-news that daily newspapers lack the staff or pages to cover.”³⁶ In addition, most Internet users now utilize social media, which has accelerated the development of local citizen journalism;³⁷ many newspapers are embracing these changes by adopting a digital newsgathering strategy where one-third of online content will be from professional journalists with subject matter expertise, one-third will come from citizen journalists, and one-third will be curated from the web.³⁸ There is no question that, thanks to the Internet and multichannel delivery systems like cable and satellite, readers and viewers have access to a nearly limitless range of diverse views on local issues in their communities.

³³ 2010 Quadrennial Review NOI, at ¶ 11.

³⁴ See, e.g., NAA Reply Comments, MB Docket No. 06-121 *et al.*, at pp. 4-6 (Jan. 16, 2007); see also 2010 Quadrennial Review NOI, at ¶ 10; NAA 2010 Quadrennial Review NOI Comments, at p. 11-12; Media General Comments, MB Docket No. 09-182 (Nov. 20, 2009), at pp. 1-3 & App. A (independently owned websites providing local news); Media General 2010 Quadrennial Review NOI Comments, MB Docket No. 09-182 (July 12, 2010), at pp. 13-16 (same).

³⁵ NAA Reply Comments, MB Docket No. 06-121 *et al.*, at p. 6.

³⁶ University of Maryland J-Lab, *Citizen Media: Fad or the Future of News? The Rise and Prospects of Hyperlocal Journalism* (2007), available at http://www.j-lab.org/citizen_media.pdf.

³⁷ See National Ass’n of Broadcasters 2010 Quadrennial Review NOI Comments, at pp. 22-23 (July 12, 2010) citing, *inter alia*, Pew Research Center, Project for Excellence in Journalism, *State of the News Media 2010*, available at www.stateofthemediamedia.org/2010/chapter%20pdfs/2010_execsummary.pdf.

³⁸ See NAA, “Competing in the hyperlocal game,” available at <http://www.naa.org/~media/NAACorp/Protected%20Files/TopicsAndTools/Digital/Social-Media/Competing-in-hyperlocal-game.ashx>. “Traditional” media outlets are aggressively recruiting digital citizen journalists to assist in, supplement, and diversify the local newsgathering process. See, e.g., http://wamu.org/about/public_insight_network.

However, as the Commission’s *Information Needs of Communities* Report found, new media sites cannot provide all of the critical public service and accountability functions currently offered by local newspapers. As several members of the Senate Subcommittee on Communications, Technology, and the Internet noted during a hearing on “The Future of Journalism,” new media sites are generally not producing the kind of local investigative journalism engaged in by newspapers.³⁹ Professional journalists have an unusual capacity to foster relationships with credible and knowledgeable sources from all segments of the community and, thus, to bridge a community’s ethnic, social, economic, and political sub-networks.⁴⁰ As the *INC Report* indicates, a number of studies have similarly demonstrated that “the growing number of web outlets relies on a relatively fixed, or declining, pool of original reporting provided by traditional media.”⁴¹

2. *Newspapers’ online revenue is expanding, but it has not replaced losses in print advertising and circulation revenue.*

*The constant growth of Internet page views—fueled in part by social media—has resulted in online advertising rates that are a fraction of TV and newspaper ad rates.*⁴²

It is a myth that the newspaper industry has failed to adapt its practices to the digital world. “The Internet has clearly *increased* the reach of some newspapers,” and some newspapers have “become quite creative in their use of social media, database journalism, and

³⁹ U.S. Senate Commerce Committee, Subcommittee on Communications, Technology, and the Internet, *The Future of Journalism*, 111th Cong., S. Hrg. 111-428 (May 6, 2009).

⁴⁰ Knight Commission Report: “Informing Communities: Sustaining Democracy in the Digital Age” (2009), at p. 56, *available at* <http://www.knightcomm.org/>.

⁴¹ *INC Report*, at p. 123.

⁴² *Id.*, at p. 17.

community engagement.”⁴³ It is true, however, that neither traditional media nor new media have figured out how best to continue funding responsible, thorough, investigative journalism at significant levels in this new environment. Online advertising rates are a fraction of those with which newspapers have traditionally sustained their newsrooms, because online advertising is increasingly disconnected from content creation and development.⁴⁴ “While billions of ad dollars have shifted from TV and newspapers to the Internet, many of those dollars do not go to websites that produce their own content.”⁴⁵ Through placement of advertising in search engine results (which received roughly half of online advertising revenue in 2009), on social media, and through direct-to-consumer services like Groupon, advertisers can increasingly target consumers based on geographical or demographic information without having to search for appropriate editorial context for their ads.⁴⁶

Between 2005 and 2010, newspapers’ online advertising revenue increased by \$1 billion, but newspapers’ print advertising decreased by \$24.6 billion.⁴⁷ Just as few new media websites have been able to create sustainable business models that support significant hiring of reporters on a local level,⁴⁸ newspapers are still experimenting with various business models to find new content monetization strategies that will enable them to sustain substantial

⁴³ *Id.*, at pp. 55-56 (emphasis added).

⁴⁴ *Id.*, at p. 17.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*, at p. 39 (citing Newspaper Association of America, Newspaper Websites (Nielsen), available at <http://www.naa.org/TrendsandNumbers/Newspaper-Websites-Nielsen.aspx> (last visited Feb. 8, 2011)).

⁴⁸ *Id.*, at p. 132.

newsrooms.⁴⁹ For example, the *New York Times* and the *Wall Street Journal* have introduced new local editions in various markets, “raising the possibility that some of the local reporting gap will be filled by national newspapers attempting to increase their circulations in certain cities.”⁵⁰ As demonstrated earlier, many newspapers have begun using web tools and reader contributions to create hyperlocal coverage of neighborhoods.⁵¹ And according to Pew’s *State of the News Media 2011*, “[t]here is a new formula [for online news sites] typically relying on some professional news staff, editing and coordinating, but with most of the content coming from volunteer or semi-professional writers based in the communities they cover.”⁵² Despite newspapers’ many innovations in the Internet space, print dollars have become digital dimes.

II. NEWSPAPER-BROADCAST STATION COMBINATIONS STRENGTHEN LOCAL NEWSPAPERS AND BENEFIT COMMUNITIES.

*It is easy to see how newspapers and TV stations merging could lead to efficiencies and improved business models that might result in more reporting resources and therefore help reach the policy goal of enhanced ‘localism’ [if a merger] increas[ed] the resources devoted to local newsgathering in a community.*⁵³

A. Existing Newspaper-Broadcast Combinations Provide Benefits to the Public.

Though Internet-related revenue challenges have hurt newspapers’ ability to sustain local accountability journalism at past levels, the record in this proceeding and in prior

⁴⁹ *Id.*, at p. 56.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* (citing Pew Research Ctr.’s Project for Excellence in Journalism, “Newspapers: Missed the 2010 Media Rally,” in *The State of the News Media 2010*, available at <http://stateofthemediamedia.org/2011/newspapers-essay/>).

⁵³ *Id.*, at p. 349.

media ownership proceedings conclusively demonstrates that newspaper-broadcast combinations result in more local news and increased community engagement.

1. ***As the Commission previously has found, “broadcast stations owned by newspapers generally produce more and better overall local news programming.”***⁵⁴

In every ownership review since 2002, the Commission has concluded that “the weight of the evidence indicates that cross-ownership can promote localism by increasing the amount of news information transmitted by the co-owned outlets.”⁵⁵ The sharing of newsgathering and production resources made permissible by newspaper-broadcast combinations has resulted in better breaking news coverage,⁵⁶ increased resources for investigative reporting,⁵⁷ and Pulitzer Prizes,⁵⁸ including in mid-sized media markets that would otherwise likely be unable to dedicate such significant levels of investment to those efforts.

⁵⁴ NPRM, at ¶ 84, n. 185 (quoting *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*, MB Docket No. 02-277 *et al.*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) (“*2002 Biennial Review Order*”).

⁵⁵ *Id.* (quoting *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*, MB Docket No. 06-121, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008) (“*2006 Quadrennial Review Order*”). This conclusion, of course, has been upheld in court as sufficiently reasoned. See *Prometheus Radio Proj. v. FCC*, 378 F.3d 372, 398 (3d Cir. 2004) (“*Prometheus I*”) (“[n]ewspaper/broadcast combinations can promote localism”). In addition, the FCC’s conclusions that a blanket ban no longer served the public interest were made “in light of the data available to it,” *Fox v. FCC*, 129 S. Ct. 1800, 1823 (2009) (Kennedy, J., concurring); it thus cannot abandon those findings without evidence to the contrary. As the controlling opinion in *Fox v. FCC* states, “an agency’s decision to change course may be arbitrary and capricious if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so.” *Id.*, 129 S. Ct. at 1824.

⁵⁶ See Media General *ex parte* letter (April 26, 2010) (Tampa, Florida combination).

⁵⁷ See *id.*

⁵⁸ See Media General *ex parte* letter (May 20, 2010) (Bristol, Virginia combination).

This remains the case today. A February 2012 survey of several NAA members in cross-owned markets conducted for this filing revealed that nearly all of the cross-owned broadcast stations provide *more* news, public affairs, or other informational programming than their competing broadcast stations in the local market, with one station providing about the same as competing stations. NAA's member survey also revealed that both broadcast stations and newspapers that are part of cross-owned combinations have received numerous national and regional journalism awards.

For example, the television station KCRG, cross-owned with *The Gazette* newspaper in Cedar Rapids, Iowa, won the Edward R. Murrow Award for flood coverage and numerous Emmy and Associated Press awards for other severe weather coverage. WTIC-TV, cross-owned with *The Hartford Courant* in Connecticut, won a National Academy of Television Arts and Sciences award in 2010 for coverage of New England tornadoes. The radio and television stations cross-owned with *The South Bend Tribune* in Indiana have won numerous Associated Press awards for best newscast, best breaking news coverage, best community impact, best investigative report, and best photojournalism. And the *Janesville Gazette* in Madison, Wisconsin is cross-owned with WCLO-AM, an all-local news, weather, and sports talk radio station in Madison; the station hosts a weekday public affairs talk show, and both the newspaper and the radio station have won several state and national awards.

Cross-ownership efficiencies benefit larger-market entities as well. For example, WGN-TV, cross-owned with the *Chicago Tribune*, won 2011 Emmy Awards for investigative reporting, public affairs, and political coverage. The television stations cross-owned with *The New York Post* have won Emmy Awards for investigative reporting, including reports focusing on the rights of local consumers.

NAA members with newspaper-broadcast combinations also often go beyond basic news reporting to contribute to their local communities. For example, KHQ-TV, cross-owned with *The Spokesman-Review* in Spokane, Washington, won a statewide award from The Washington Association of Family and Consumer Sciences for “contributing to the betterment of families” through news coverage and special promotion. The station has also helped raise thousands of dollars for community organizations that work with families and children through news coverage, telethons, and on-air PSA campaigns. Radio stations in Fredericksburg, Virginia, cross-owned with *The Free Lance-Star*, have won numerous awards, including from the Virginia Associated Press Broadcasters for best documentary/in-depth report and the Douglas Southall Freeman Award for Public Service Through Journalism. Cross-ownership supports these community service efforts as well.

B. Empirical Evidence Uniformly Supports the Conclusion That Cross-Ownership Results in More Local News.

The benefits cross-owned combinations provide to their viewing and reading communities are demonstrated by empirical evidence as well as practice.

1. The FCC-commissioned, peer-reviewed studies in this proceeding show that cross-ownership combinations provide more and higher-quality local news and information.

This proceeding’s Media Ownership Study 4, “Local Information Programming and the Structure of Television Markets,” provides direct support for the proposition that cross-ownership of a daily newspaper and radio or television station in the same market results in more local news. As the 2010 NPRM notes, Study 4 finds that, “other things being equal, a station that is cross-owned with a daily newspaper produces more local news than a stand-alone

station.”⁵⁹ In particular, the Study concludes that “newspaper-television cross-owned stations provide almost 50 percent more news than the average station (or 47 more minutes per day).”⁶⁰ The Study also finds that the localism benefits of cross-owned combinations increase over time, since “stations that were grandfathered or that received permanent waivers [of the NBCO Rule] prior to 2007 air significantly and substantially more local news than non-cross-owned stations in the same market,” with grandfathered stations airing “almost a full hour more local news than comparable stations in the same market.”⁶¹ In sum, Study 4 provides unambiguous support for the conclusion that cross-ownership combinations help increase localism.⁶²

Similarly, Media Ownership Study 1, “Local Media Ownership and Media Quality,” found that “newspaper-broadcast cross-ownership is positively associated with radio news availability and local TV news provision.”⁶³ After reviewing their findings and noting

⁵⁹ NPRM, at ¶ 98.

⁶⁰ Media Ownership Study 4, *Local Information Programming and the Structure of Television Markets*, by Jack Erb (“Study 4”), at pp. 27-28.

⁶¹ *Id.*, at pp. 40-41.

⁶² At the same time, Study 4 hints at a market-wide conclusion that is based upon a presumption the Commission should not endorse. The Study deems that “the television markets that contain” cross-owned entities “do not air more (or *perhaps* even less) local news programming than comparable markets (*presumably* due to a reduction in news from the non-cross-owned stations).” *Id.*, at p. 4 (emphases added); *see also id.* at p. 28 (same). But this conclusion is less salient than it appears at first glance. As a practical matter, it is impossible for cross-owned stations to “crowd out” other non-cross-owned stations from collecting and reporting news within a market because news is not a rival good. A 5 p.m. exclusive for one television or radio station is its competitor’s lead 10 p.m. evening news story, should the latter station choose to run it. (Indeed, no practice demonstrates this point more vividly than the digital aggregation of newspaper-initiated newsgathering and reporting discussed at Part I *supra*.) Moreover, even on its own terms, Study 4’s market-wide tentative conclusion should not be relied upon; as the Study notes, any difference in market-wide local news is “imprecisely measured” and “is not statistically significantly different from zero.”⁶² Study 4’s Peer Review makes the same point. Study 4, at 24.

⁶³ Media Ownership Study 1, *Local Media Ownership and Media Quality*, by Rennhoff & Wilbur (April 5, 2011) (“Study 1”), at p. 15.

“[t]he lack of television-newspaper integration since the [NBCO] rule waiver criteria were loosened in 2007,” the authors of Study 1:

question the economic basis for keeping the [NBCO] rule in place, given the influence of newspapers on voter information and turnout, the recent declines in newspaper revenues and news production expenditures, and the potential economies of scope available to joint owners of news outlets in multiple media.⁶⁴

2. *Prior empirical studies show that newspaper-broadcast combinations provide more and better news.*

Study 4 and Study 1’s conclusions on the localism-related benefits of in-market newspaper and broadcast combinations are supported by FCC-commissioned studies in prior ownership reviews, as well as other independent research. For example:

- A study reviewing every market with a same-market TV station-newspaper combination found that the cross-owned stations aired approximately 30 percent more news coverage of state and local political candidates; 40 percent more time dedicated to candidates’ speeches and comments; 4-7 percent more news coverage; and 6-8 percent more local news coverage than the non-cross-owned stations in those markets.⁶⁵
- A detailed examination of programming aired over approximately 6,700 television stations between 2002 and 2005 demonstrated that newspaper/TV cross-ownership increases news production by 18 minutes, or 11 percent, per day.⁶⁶

⁶⁴ *Id.*

⁶⁵ Jeffrey Milyo, *Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, FCC Media Study 6 (Sept. 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf.

⁶⁶ Daniel Shiman, *The Impact of Ownership Structure on Television Stations’ News and Public Affairs Programming*, FCC Media Study 4, Sec. I (August 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf.

- A radio station format study found that stations that are cross-owned with a newspaper are four to five times more likely to have a news format.⁶⁷
- A five-year study of 50 markets by the Project for Excellence in Journalism concluded that TV stations co-owned with a same-market daily newspaper were twice as likely to receive an “A” grade, and that cross-owned stations were more likely to do stories focusing on important community issues and providing a wide mix of opinions.⁶⁸
- A study commissioned by the FCC in 2002 concluded that television “[a]ffiliates co-owned with newspapers experience noticeably greater success under [its] measures of quality and quantity of local news programming than other network affiliates.” In particular, newspaper-owned affiliates provided an average of 50 percent more weekly hours of local news and public affairs programming than their stand-alone counterparts and substantially outperformed other stations in news ratings and industry awards.⁶⁹ Challenges to this study’s methodology were rejected on appeal by the Third Circuit.⁷⁰

C. Empirical Evidence Also Shows That Cross-Ownership Does Not Harm Local Viewpoint Diversity.

Similarly, research analyzing whether cross-ownership affects viewpoint diversity has concluded that diversity is not negatively affected in any way by in-market ownership combinations. Researchers for one FCC-commissioned study in this proceeding were “struck by how little evidence [they were] able to find for a robust influence ... of market structure on

⁶⁷ Craig Stroup, *Factors that Affect a Radio Station’s Propensity to Adopt a News Format*, FCC Media Study 4, Sec. III (August 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf.

⁶⁸ Project for Excellence in Journalism, *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality* (April 2003), available at www.journalism.org/node/243.

⁶⁹ 2002 Media Ownership Working Group Study: Spavins *et al.*, *The Measurement of Local Television News and Public Affairs Programs*, available at <http://www.fcc.gov/working-papers/measurement-local-television-news-and-public-affairs-programs>.

⁷⁰ *Prometheus I*, 373 F.3d at 398-99.

diversity.”⁷¹ This absence of evidence is a consistent theme running throughout the empirical literature on the relationship between ownership and diversity:

- The aforementioned FCC-commissioned study systematically reviewed keyword counts from local TV news transcripts and found no evidence that ownership concentration adversely influenced diversity. It also found that as to some issues, “ownership concentration often *encourages* diversity.”⁷²
- 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 ownership structure.⁷³
- A third FCC-commissioned study used econometrics to look at the interrelationship between ownership and programming. It found that “little robust evidence is found to indicate that local media ownership affects local media usage or programming.”⁷⁴
- A 2009 study by Stanford Law Professor Daniel Ho and Harvard political scientist Kevin Quinn compared several newspapers pre- and post-merger and concluded that the mergers did not lead to converged viewpoints of the merging outlets or other concomitant reductions in viewpoint diversity.⁷⁵
- A study from the last ownership review coded more than 300 late evening local newscasts during the week preceding the November 2006 election for “political slant” and found no difference between cross-owned TV

⁷¹ Media Ownership Study 8B, *Diversity in Local Television News*, by George and Oberholzer-Gee, at p. 18. This empirical conclusion is supported by actual practice. A February 2012 survey of several NAA members in cross-owned markets revealed that in every case, ultimate responsibility for exercising editorial and news judgment is held by a different individual at the newspaper and broadcast station respectively.

⁷² *Id.*

⁷³ Media Ownership Study 8A, *Local Media Ownership and Viewpoint Diversity in Local Television News*, by Rennhoff and Wilbur.

⁷⁴ Media Ownership Study 1, at n. 63 *supra*.

⁷⁵ Daniel Ho & Kevin Quinn, *Viewpoint Diversity and Media Consolidation: An Empirical Study*, 61 Stan. L. Rev. 781 (2009), available at <http://www.law.berkeley.edu/files/Ho-Quinn-ViewpointDiversity.pdf>.

stations and the other major network-affiliated stations in the same market.⁷⁶

- In 2006, a University of Chicago/NEBR study found that political orientation of a media entity is driven by market and consumer preferences, not by the entity's ownership. The study concludes that its "findings suggest that ownership diversity may not be a critical precondition for ideological diversity in the media."⁷⁷
- A 2002 Media Ownership Working Group study reviewed election coverage during the 2000 presidential race and found that "common ownership of a newspaper and a television station in a community does not result in a predictable pattern of news coverage and commentary about important events," and that the owners of those combinations generally do not control the presentation of news.⁷⁸

* * *

Both market experience and empirical analysis prove that, consistent with Section 202(h), repealing the NBCO Rule is in the public interest. If in-market newspaper-broadcast combinations result in more localism without harming diversity, it is certainly true that barring such combinations, as the current Rule effectively does, results in *less* localism.⁷⁹

III. NO PRINCIPLED BASIS SUPPORTS THE FCC'S DECADES-LONG DENIAL OF MEDIA-RELATED INVESTMENT IN THE NEWSPAPER INDUSTRY.

It would be public policy malpractice for the FCC to simply assume that the current (voluminous) set of public policies about

⁷⁶ FCC Media Study 6 (Sept. 2007), at n. 65 *supra*.

⁷⁷ Matthew Gentzkow & Jesse Shapiro, *What Drives Media Slant?: Evidence from U.S. Daily Newspapers*, available at <http://faculty.chicagobooth.edu/jesse.shapiro/research/biasmeas.pdf>. This study was later published in the peer-reviewed journal *Econometrica*. Vol. 78, No. 1 (Jan. 2010), 35-71.

⁷⁸ David Pritchard, *Viewpoint Diversity in Cross-owned Newspapers and Television Stations* (Sept. 2002), available at <http://transition.fcc.gov/ownership/materials/alreadyreleased/viewpoint090002.pdf>.

⁷⁹ As NAA stated in its NOI comments, prior proceedings have conclusively established that newspapers and broadcasters do not compete for advertising revenue, and the NBCO Rule is thus not needed to protect or promote competition. NAA 2010 *Quadrennial Review NOI* Comments, at p. 4.

*communications—some crafted before there was an Internet—are well suited for the 21st century.*⁸⁰

It would be a mistake for the FCC to view its NBCO Rule-related Section 202(h) obligations only in terms of newspaper-broadcast combinations that would vest control of both outlets in a single entity. Because of the rigor of the Commission’s attribution rules, the NBCO Rule essentially forecloses *any* meaningful investment in newspapers by broadcast entities.⁸¹

A. The NBCO Rule, Combined With The FCC’s Attribution Rules, Bars Investment in Newspapers by Interested Companies.

Under the FCC’s ownership rules, one does not need to have or exercise control over a media entity to be an “owner.” Far from it. Rather, an individual or entity has an attributable interest in a “corporate broadcast licensee, cable television system or daily newspaper,” and is thereby an “owner” of that entity, if it holds “5% or more of the outstanding voting stock.” 47 C.F.R. § 73.3555, Note 2(a) (emphasis added). The NBCO Rule therefore bars not only combinations between in-market broadcast stations and daily newspapers. It also defeats newspaper companies’ ability to attract investment from other entities in the media ecosystem—including companies owning successful broadcast stations.

It is clearly irrational for federal law to essentially prohibit investments in newspapers by companies that also have broadcast interests, particularly when newspapers compete on a daily basis with unregulated entities that do not charge for classified ads, or that

⁸⁰ *INC Report*, at p. 9.

⁸¹ NAA, along with other media parties, has asked the U.S. Supreme Court to decide whether the FCC’s differential treatment of newspapers via the NBCO Rule violates the First and Fifth Amendments. Pet. for Cert., *Tribune et al. v. FCC*, No. 11-696 (S. Ct.), at pp. 30-32. Those constitutional arguments are incorporated here by reference to preserve them for future appeal.

republish or summarize newspaper-produced content and sell their own advertising around that content. And barring a garden-variety merger between a television station and a newspaper in a given market in the name of the public interest, while at the same time permitting a merger between the largest content distributor and one of the largest content creators in the United States—which also happens to be one of only four major television networks—is capricious.⁸² The NBCO Rule creates a government-mandated competitive disadvantage in the media investment market.

B. The Attribution Rules Also Bar Media Entities’ Principals From Serving on Newspapers’ Boards.

The attribution rules cover more than ownership interests. All officers and directors of licensee companies are “considered to have a cognizable interest in the entity with which they are so associated.” 47 C.F.R. § 73.3555, Note 2(g). This results in an effective ban on any officer or director of a broadcaster from serving on the board of an in-market newspaper, and vice-versa. The ramifications of this overly restrictive rule are obvious: a director of an entity with ten newspapers essentially cannot, in the absence of recusal or other corporate remedies, effectively serve on the board of an entity with twenty television or radio stations if the ten newspapers and twenty stations share *a single market*. Likewise, a startup newspaper entity is barred from having any director of any broadcast outlet in its market serve on the newspaper’s board. This robs the new entity of experienced leadership in the media sector and prevents it from developing an effective network of executive contacts. And any experienced media executive from outside an entity’s market will decline to serve on the board of a broadcaster or

⁸² See *In re Comcast and NBC Universal*, Opinion and Order, MB Docket No. 10-56, FCC 11-4 (Jan. 20, 2011).

newspaper in a given market if the executive's company might have any interest, now or in the future, in another media property in that station or newspaper's market. Board service would trigger attribution and thereby bar the executive's company from investing in the possible target. Needless to say, digital media companies suffer no such arbitrary limits on their business development.

IV. THE RECORD IN THIS PROCEEDING CALLS FOR REPEAL OF THE NBCO RULE.

Given the record in this proceeding, the Commission's prior findings regarding the localism benefits of newspaper-broadcast cross-ownership, and the Third Circuit's affirmation of those findings, it is clear that cross-ownership relief is needed, supportable, and appropriate. The NPRM's tentative conclusion to relax the current NBCO Rule is a start. But the Commission's proposed prescription offers an ineffective cure in light of those public interest-enhancing interests the Commission's ownership rules are intended to serve. Among other flaws, the proposed relaxation would foreclose relief in those markets in which newspapers and their communities would most benefit. Record evidence compels repeal of the Rule.

A. NAA Agrees With the NPRM's Arguments Favoring Repealing the Newspaper-Radio Component of the NBCO Rule.

NAA supports the NPRM's proposal to "eliminate the newspaper/radio restriction" on common ownership.⁸³ The NPRM correctly concludes that "radio stations are not the primary outlets that contribute to local viewpoint diversity," and that "consumers' main sources for local news and information are television stations, newspapers, and their affiliated

⁸³ NPRM, at ¶¶ 8, 111.

websites.”⁸⁴ Thus, to the extent any limitation on radio station ownership is necessary, “viewpoint diversity would be adequately protected” by the Commission’s local radio limits. And as discussed above at Part II.B. *supra*, research indicates that combinations between radio stations and newspapers “increase the quality and quantity of local news programming available on radio stations due to shared newsgathering expertise and resources.”⁸⁵

B. The Relaxation the NPRM Proposes Is Far Too Modest to Meaningfully Assist the Newspaper Industry’s Ability to Provide Local Reporting and Benefits to the Public.

As demonstrated in Part I *supra*, the newspaper industry is facing systemic challenges. As also shown in Part I, in the NPRM, and in the *Information Needs of Communities* Report, these challenges have disproportionately affected newspapers in small and medium-sized markets. But despite this clear record evidence, the NPRM proposes a relaxation of the NBCO Rule that leaves small- and medium-sized newspapers out altogether. Adopting such a rule would not only be contrary to the public interest pursuant to the Commission’s 202(h) obligations. It would also run counter to substantial evidence in the record, thereby violating the Administrative Procedure Act.

1. The Commission must permit combinations outside of the top 20 markets.

⁸⁴ *Id.*, at ¶ 112.

⁸⁵ *Id.*; see also NAA 2010 *Quadrennial Review NOI* Comments, at p. 10 (citing “concrete record evidence demonstrating that cross-ownership positively correlates with the quality of radio programming and that newspaper-owned radio stations are more likely to have a news-based format”); Stroup, *Factors that Affect a Radio Station’s Propensity to Adopt a News Format*, FCC Media Study 4, Sec. III (2007), *supra* n. 67; Tasneem Chipty, *Station Ownership and Programming in Radio*, FCC Media Study 5, at 43 (June 24, 2007), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A6.pdf. Many, if not most, of the newspaper-radio combinations grandfathered upon adoption of the NBCO Rule in 1975 are in smaller markets.

The proposed relaxation of the NBCO Rule set out in the NPRM—whether implemented as a “bright line rule” or by a case-by-case, presumption-based approach such as that adopted in 2006—would limit any relief to only those proposed mergers: (i) in the top 20 markets; (ii) involving television stations outside of the “top four”-ranked stations in a market; and (iii) where “eight major media voices would remain” after the merger. NPRM, at ¶ 8. Adopting this rule would be a mistake of significant legal consequence given the evidence the Commission has compiled in this record.

Pursuant to the Administrative Procedure Act, the FCC, like any agency, must “examine[] the relevant data and articulate[] a satisfactory explanation for its action.” *Prometheus I*, 373 F.3d at 389-90. The Commission fails in this obligation and acts arbitrarily and capriciously when it, *inter alia*, “offer[s] an explanation for its decision that runs counter to the evidence” before it. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).⁸⁶ The NPRM’s proposed rule fails to meet these well-established standards. The limitations in the proposed rule would provide relief in only the 20 largest of the country’s 210 media markets.⁸⁷ Adopting such a rule flies in the face of the Commission’s own evidence demonstrating that newspapers in markets outside the top 20 have been harmed in their journalistic capacity due to systemic changes in the industry. *See* Part I, *supra* (discussing loss of journalism capacity in markets such as, *inter alia*, Raleigh, Eureka, and Bedford). It would be a reversible legal error, not to mention incongruous, for the Commission to point to voluminous

⁸⁶ Part of this obligation includes responding to “all significant comments.” *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987).

⁸⁷ *See* NPRM, at ¶ 105.

record evidence concerning the struggles of newspapers outside of the top 20 markets to support a rule that expressly bars those markets from possible regulatory relief.

The NPRM claims that limiting relief to those markets in which it is arguably least needed is justified to protect viewpoint diversity in markets outside the top 20 DMAs.⁸⁸ But as the empirical record evidence reviewed in Part II *supra* demonstrates, there is *no* support for the proposition that newspaper-broadcast combinations cause *any* reductions in diversity, *regardless* of market size. In addition, the NPRM notes that “the Commission has found evidence previously that some newspaper/broadcast cross-ownership may produce increased local news”;⁸⁹ this conclusion has never been qualified by market size, and much, if not most, of the evidence supporting it is from smaller-market combinations.⁹⁰ If newspaper-broadcast combinations have been shown to not harm diversity and to increase localism, it would be both arbitrary and against the public interest to limit the markets in which those combinations can occur based on market size. And the evidence in the record shows that in 2012, new media outlets, as well as hundreds of channels on cable and satellite systems and satellite radio, all

⁸⁸ *Id.*

⁸⁹ *Id.*, at ¶ 98 (citing *2002 Biennial Review Order*, 18 FCC Rcd at 13753-60, 13760-61, ¶¶ 342-54, 356-58 (FCC-commissioned studies “suggest a direct correlation between the association of a broadcast outlet with a published daily newspaper and the quality of the local broadcast news”); *2006 Quadrennial Review Order*, 23 FCC Rcd at 2038, ¶ 46 (“the weight of the evidence indicates that cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets”)).

⁹⁰ *See, e.g.*, Reply Comments of Media General, MB Docket No. 06-121 (Jan. 16, 2007), at p. 48, n. 172 (noting that Media General’s broadcast stations in the 157th-ranked Panama City, Florida DMA and the then-127th-ranked Columbus, Georgia DMA that are co-owned with newspapers provide 20.75 and 21.75 hours of local news per week respectively).

demonstrably contribute to diversity in local markets.⁹¹ The Commission cannot, consistent with its APA and Section 202(h) obligations, continue to compile evidence demonstrating that in-market mergers between newspapers and broadcast stations do not *in fact* harm diversity, but nonetheless continue to limit such mergers because *in theory* they might do so.

2. *The Commission must permit newspapers to merge with news-airing network-affiliated television stations.*

Limiting the NBCO Rule to mergers with in-market television stations outside the “top 4” is similarly flawed. By the FCC’s own admission, a top 4 bar would effectively prevent nearly all mergers between daily newspapers and television stations that air news. *See* NPRM, ¶ 109 & n. 249. As newspapers’ editorial budgets struggle in response to market change, it is difficult to see what might be gained, but immediately apparent what would be lost, by limiting in-market mergers to television stations that do not air news. It would be capricious for the FCC to point to potential newsgathering efficiencies in journalism as support for relaxing the NBCO rule, but then relax the rule in such a way that newspapers would be unable to enjoy those same efficiencies. One outcome supporting relaxation of the NBCO Rule is to spur the addition of news on stations that currently do not air it, yet it is undisputed that stations in smaller markets are operating under greater financial duress and are eliminating news.⁹²

⁹¹ The NPRM recognizes this point not only in the context of newspaper-broadcast combinations, but also in its tentative conclusion that the radio-television cross-ownership rule is no longer needed to promote viewpoint diversity. *See* NPRM, at ¶ 133.

⁹² *See, e.g.*, Comments of the Coalition for Smaller Market Television Stations, MB Docket No. 06-121 *et al.* (Jan. 16, 2007), at pp. 1-2.

V. CONCLUSION

The record in this proceeding demonstrates conclusively that the NBCO Rule undermines the very values it was intended to foster. Eliminating the NBCO Rule, and thereby allowing newspapers to obtain investment from in-market broadcasters and other media companies, is the one action the federal government effectively can take to help serve the information needs of communities. After nearly 40 years of adhering to a failed regulatory policy, the time to take action has arrived.

The rule should be repealed.

Respectfully submitted,



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