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MEDIA OWNERSHIP IN THE 21ST CENTURY

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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MEDIA OWNERSHIP IN THE 21ST CENTURY

WEDNESDAY, JUNE 11, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:35 a.m., in room 2123 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Shimkus, Terry, Blackburn, Lance, Guthrie, Kinzinger, Long, Barton, Eshoo, Braley, Lujan, Rush, Butterfield, and Waxman (ex officio).

Staff present: Ray Baum, Senior Policy Advisor/Director of Coalitions; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, FCC; Kelsey Guyselman, Counsel, Communications and Technology; Grace Koh, Counsel, Communications and Technology; David Redl, Counsel, Communications and Technology; Charlotte Savercool, Legislative Coordinator; Tom Wilbur, Digital Media Advisor; Shawn Chang, Democratic Chief Counsel, Communications and Technology; Margaret McCarthy, Democratic Professional Staff Member; and Ryan Skukowski, Democratic Policy Analyst.

Mr. WALDEN. I want to call to order the Subcommittee on Communications and Technology, and welcome you all for our Media Ownership in the 21st Century hearing, and thank our witnesses for taking time to be here. We really appreciate your counsel and your testimony.

I will open with my opening statement, and then we will move to Ms. Eshoo for hers.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

What do the founding of Microsoft, the first episode of "Saturday Night Live," and the establishment of the broadcast/newspaper cross-ownership ban have in common? Well, they are all about ready to turn 40, because they all took place in 1975. But where Microsoft has innovated and moved past a world where MS–DOS was the state of the art, and "Saturday Night Live" continues to reinvent itself as an essential piece of Americana, the media ownership rules persist as though the Internet simply did not exist. Our laws need to reflect the reality of the world we live in today, not the world of the Ford administration. It is my sincere hope that today's discussion can spur us to rationalize the rules and regula-

tions for a media industry that serves consumers in this century and not in the last. The Ford administration, as noted there, with one chairman of the subcommittee posed with Mr. Ford, just to put in context how things have changed, beyond just my hairline.

In today's media environment, traditional media like Bend, Oregon's, KTVZ–TV and the town's Bulletin newspaper compete with Twitter, The Drudge Report, The Huffington Post, Fox News, MSNBC, CNN, the Wall Street Journal, and the New York Times. You can get it all right there. We live in an era of a 24-hour news cycle and on-demand national media, but our laws assume a world where local newspapers and broadcast stations are so influential that economies of scale are dangerous to the public interest. While proponents of the status quo express their love of localism and the laws intended to guarantee it, I fear that laws intended to ensconce our love of local media are, in fact, loving it to death.

Promoting localism is a goal that we all share; but localism is not cheap. Producing the kind of high-quality content that has been the hallmark of American broadcasting is an expensive labor of love for local broadcasters and newspapers, and as Americans' habits have changed, so too should the way we look at local media. We live in a competitive landscape where increasingly we cherry pick articles; we scroll through feeds and aggregators; and we have multiple national news programming options, and we DVR almost everything to time-shift the programming that we love. It is a different world, so why don't our media laws reflect these changes?

The fact is, the FCC has tried to change these rules as early as its 2002 review of media ownership rules, when it recognized the competitive force of the Internet. The Commission would have done away with the ban on cross-ownership of a daily newspaper and a broadcast station, and expanded the caps on local ownership of television and radio stations, but the courts overturned the FCC's proposed rule, not because it believed that repeal was unreasonable. In fact, the court determined that, and I quote, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." The Third Circuit threw out the proposed new rules because it thought the Commission relied too heavily on the Internet as a significant competitive factor. I wonder what the court would say today if the same proposal were before it, now that newspapers' annual revenues are down more than half since 2003. Would the same bench consider the Internet a significant competitive factor now that the average online video ad often outprices national TV day-parts?

Sadly, following two court losses, it seems that for a while the FCC simply gave up on trying to save this industry from antiquated regulation. The Commission failed to complete the 2010 quadrennial review, its statutorily mandated review of media ownership rules, and instead has doubled down by making changes that make it more difficult for local media to compete. The Commission's recent decisions to unwind many joint sales agreements and to look askance at shared service arrangements ignore the realities of the broadcast business and are affirmatively harmful to the localism they purport to protect.

I am happy to see that the Commission intends to return to reasoned rulemaking consistent with its statutory mandate. Chairman Wheeler has announced his intention to comply with the law and complete the 2014 quadrennial review in a timely manner. And while the law is very specific in the Commission's mandate to deregulate media ownership where warranted, given the recent set of FCC decisions, I am, to quote the man for whom this room is named, "comforted very little." Without relief, I fear that local broadcast and newspaper companies will continue to struggle against unregulated competitors whose businesses are not hamstrung by decades-old regulatory assumptions. Newspaper classified advertising peaked in 2000 at $19.6 billion. In 2012, classified advertising brings in $4.6 billion. That is a 77 percent drop in revenues just from classified advertising, primarily due to shifts in classifieds to such Internet entities as Craigslist. Unsurprisingly, hundreds of newspapers have shuttered operations or migrated to digital-only since '07, and the U.S. has lost 62 daily newspapers since 2004.

We are all committed to promoting a local media industry that is healthy; to fostering competition, localism, and diversity of voices, and to ensuring that local media continues to serve the needs of their communities, but pretending that laws designed for an era before smartphones and the Internet will get the job done is an effective death sentence for many local media outlets.

I would like to thank our witnesses again for joining us today to offer their opinions on these matters. We appreciate your taking the time, and we look forward to your testimony.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

What do the founding of Microsoft, the first episode of "Saturday Night Live," and the establishment of the broadcast/newspaper cross-ownership ban have in common? They are all about to turn 40, because they all took place in 1975. But where Microsoft has innovated and moved past a world where MS–DOS was the state of the art, and "Saturday Night Live" continues to reinvent itself as an essential piece of Americana, the media ownership rules persist as though the Internet simply doesn't exist. Our laws need to reflect the reality of the world we live in today, not the world of the Ford administration. It is my sincere hope that today's discussion can spur us to rationalize the rules and regulations for a media industry that serves consumers in this century—not the last.

In today's media environment, traditional media like Bend, Oregon's KTVZ–TV and the town's Bulletin newspaper compete with Twitter, The Drudge Report, The Huffington Post, Fox News, MSNBC, CNN, the Wall Street Journal, and the New York Times. We live in an era of a 24-hour news cycle and on-demand national media, but our laws assume a world where local newspapers and broadcast stations are so influential that economies of scale are dangerous to the public interest. While proponents of the status quo express their love of localism and the laws intended to guarantee it, I fear that laws intended to ensconce our love of local media are loving them to death.

Promoting localism is a goal we all share; but localism isn't cheap. Producing the kind of high-quality content that has been the hallmark of American broadcasting is an expensive labor of love for local broadcasters and newspapers. And as Americans' habits have changed, so too should the way we look at local media. We live in a competitive landscape where increasingly we cherry pick articles; we scroll through feeds and aggregators; we have multiple national news programming options, and we DVR almost everything to time-shift the programming we love. It's a different world, why don't our media laws reflect these changes?

The fact is, the FCC tried to change these rules as early as its 2002 review of the media ownership rules, when it recognized the competitive force that is the

Internet. The Commission would have done away with the ban on cross-ownership of a daily newspaper and a broadcast station and expanded the caps on local ownership of television and radio stations. But the courts overturned the FCC's proposed rule notbecause it believed that repeal was unreasonable. In fact, the court determined that "reasoned analysissupports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownershipwas no longer in the public interest." The Third Circuit threw out the proposed new rules because it thought the Commission relied too heavily on the Internet as a significant competitive factor. I wonderwhat the court would say if the same proposal before it today—now that newspapers' annual revenuesare down more than half since 2003. Would the same bench consider the Internet a significantcompetitive factor now that the average online video ad often outprices traditional TV day-parts?

Sadly, following two court losses it seems that for a while the FCC simply gave up on trying to save thisindustry from antiquated regulation. The Commission failed to complete the 2010 quadrennial review—its statutorily mandated review of media ownership rules—and instead has doubled down by makingchanges that make it more difficult to for local media to compete. The Commission's recent decisions to unwind many joint sales agreements and to look askance at shared service arrangements ignore the realities of the broadcast business and are affirmatively harmful to the localism they purport to protect.

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We are all committed to promoting a local media industry that is healthy; to fostering competition, localism, and diversity of voices; and to ensuring that local media continues to serve the needs of their communities. But pretending that laws designed for an era before smartphones and the Internet will get the job done is an effective death sentence for many local media outlets.

I'd like to thank our witnesses for joining us today to offer their opinions on how we might improve our media ownership rules. We appreciate your taking the time to join us today, and we're looking forward to hearing what you have to say.

Mr. WALDEN. And with that, I would recognize the ranking member of the subcommittee, the gentlelady from California, Ms. Eshoo, for her opening statement.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman. And welcome to the witnesses, and thank you for being willing to testify today at this important hearing that the chairman has called.

I believe that one of the most important manifestations of a vibrant democracy is that there are many voices speaking to the many, and so whatever I say in my opening statement really fits in with that principle because I think it is such an essential one, and I think it is one that should guide us in everything that we do relative to these undertakings in the examination of media ownership in this, the 21st century.

In an era when corporate media outlets have become increasingly concentrated in the hands of a few conglomerates, our goal, and the chairman mentioned this, should be to promote localism, advance

competition, and encourage diversity, not to roll back what few protections we have in these key areas. I would like to put forward some facts that I find troubling. Despite a national broadcast television ownership cap, 10 station groups now own over 650 stations, or nearly ½ of all commercial full-powered broadcast stations in the United States. The source of that is free press. Ten companies control 55 percent of all local TV advertising revenues. Twenty-five percent of the Nation's 952 local news stations do not produce their newscast themselves. You combine these statistics with the fact that 20 out of the top 25 news Web sites rely heavily or even exclusively on news gathered from traditional media sources, such as a daily newspaper, broadcast network or a cable news network, and you have a picture of what I think is an unhealthy media landscape.

So as the FCC takes steps to close existing loopholes in its rules, I am pleased that the Agency is moving forward with its review of our Nation's broadcast ownership rules. The completion of the long overdue 2010 quadrennial review and the 2014 review will ensure the FCC can fully assess the impact of further consolidation on ownership, diversity and localism in our Nation's media system. And while some have criticized the FCC for cracking down on sidecar deals before concluding its 2010 review, I think that the Agency has an obligation to enforce the existing rules on the books, regardless of the outcome of its review.

Congress has long entrusted the FCC with upholding the core values of competition, localism and diversity of media, and while the media landscape may change, and we welcome those changes, the role that the these values play in advancing public disclosure and strengthening our democracy, I think, should remain intact.

So again, thank you to our witnesses, and I would like to not only submit for the record a letter written by Common Cause, Mr. Chairman, supporting FCC action on JSAs, and I would like to yield the remainder of my time to Mr. Butterfield.

Mr. WALDEN. Without objection.

[The information follows:]

June 10, 2014

Hon. Greg Walden, Chairman
2182 Rayburn House Office Building
Washington, DC 20515

Hon. Anna Eshoo, Ranking Member
241 Cannon Building
Washington, DC 20515

Re: *Media Ownership in the 21st Century*

Dear Chairman Walden and Ranking Member Eshoo,

The low level of diverse and female broadcast ownership in the United States poses policy makers with several troubling problems. According to the Federal Communication Commission's (FCC) 2012 *Report on Ownership of Commercial Broadcast Stations*, although women account up more than half of the US population they account for less than 8% of total broadcast ownership, mostly in low-power TV and AM radio, which have more limited audiences than FM and full-power stations.[1] Similarly, Hispanic/Latino ownership accounted for slightly more than 4%,[2] and Black/African American ownership for less than 2%,[3] in spite of the fact that these segments account for 16 and 13 percent of the total population, respectively.[4]

On their own, these statistics are dire, but they are all the more disturbing given their implications for the future of democracy. Indeed, providing for an informed electorate is a core public interest goal.

The consolidation of ownership away from local and diverse viewpoints reduces the number of voices that are heard and contributes to homogenization of content. However, local and diversely owned media, as well as competition among media outlets, increase both the number of voices heard and the quality of information available to the public.

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[1] FCC *Report on Ownership of Commercial Broadcast Systems*, 3 (2012).
[2] *Id.* at 3-4
[3] *Id.* at 4.
[4] U.S. Census Bureau, Press Release, 2010 Census Shows America's Diversity, *available at* http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn125.html.

Local media's community ties not only ground them in their local markets, but also make them more likely to report on stories of local, as opposed to regional or national interest.[5] Thus, they are more responsive to local issues, and more likely to devote the resources to investigate stories of local corruption, cover local events, and pursue local angles that regional and national media might miss.[6] They also fill other critical information needs, such as polling locations or calls to action, fostering citizen engagement, and, of course emergency communications.[7] The National Bureau of Economic Research found that Hispanic voter turnout was 5-10% higher in locations with access to local news in Spanish compared to those that do not.[8]

Similarly, diverse ownership of media encourages public access to a variety of perspectives.[9] It encourages reporters to tell stories that might not otherwise be told, and provides citizens of diverse backgrounds with sources that reflect their interests and views.[10] For example, in the wake of Hurricane Katrina, Asian media sources covered the impact on displaced Korean and Vietnamese families, and Black/African American media outlets raised awareness of class disparities in the storm's impact and questioned how race impacted planning and response.[11] This increase in the number and diversity of stories provides citizens with a broader, richer information base on which to make decisions, and can help diverse citizens feel that their perspectives matter. Furthermore, in a 2001 study, the National Bureau of Economic Research found that minorities were more likely to vote when they had access to media outlets reflecting their perspectives.[12] This is precisely the type of increased engagement and involvement that §257 seeks to promote by increasing the diversity of voices in the media.

In addition, increased competition for stories leads to coverage of otherwise unreported stories, as journalists and media outlets vie for the next big story to catch the eyes of readers and viewers. This drives investment in newsgathering and reporting, which

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[5] *How People Learn About Their Local Community: The Role of Newspapers, Journalism.org* (Sept. 26, 2011), http://commcns.org/VrxiGm.

[6] Marion Just, Ann Crigler & Tami Buhr, Voice, *Substance, and Cynicism in Presidential Campaign Media*, 16 POL. COMM. 25 (1999).

[7] Patricia Moy et. al, *Political Correlates of Local News Media Use*, 54 J. OF COMM. 532, 536 (2005); Philip M. Napoli, *Access and Fundamental Principles in Communication Policy*, 2002 L. REV. MICH. ST. U. DET. C.L. 797, 801.

[8] Felix Oberholzer-Gee and Joel Waldfogel, Media Markets and Localism: does Local News en Espa http://www.researchgate.net/publication/227354257_Media_Markets_and_Localism_Does_Local_News_en_Espanol_Boost_Hispanic_Voter_Turnout/file/3deec524ea5a5f0a3c.pdf.

[9] For examples of the increased number of perspectives from diverse or minority media, *see* LaVonda N. Reed-Huff, *Radio Regulation: The Effect of A Pro-Localism Agenda on Black Radio*, 12 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 97 (2006).

[10] *Id.*

[11] Id. at 102.

[12] Felix Oberholzer-Gee and Joel Waldfogel, *Electoral Acceleration: The Effect of Minority Population on Minority Voter Turnout*, NBER Working Paper no. 8252, 3-4, *available at* http://www.nber.org/papers/w8252.pdf.

improves the amount and quality of information flowing through to readers and viewers.[13] As noted by Gentzkow and Shapiro, media outlets that compete for stories must establish a reputation for accurate and interesting news stories.[14] They risk damaging their reputation if they let a story go uncovered and their competitors cover it, but they can gain reputation by breaking stories of their own.[15] Conversely, excessive consolidation and cross-ownership limit this information flow and limit the avenues citizens can use to inform themselves about current issues.[16] Furthermore, the value of this competition also exists across media. As the Newspaper Association of America itself has noted, removing the cross-ownership rules would lead to "efficiencies in their news operations."[17] The Association, as such, implicitly concedes newsroom layoffs, which undoubtedly harm quality and quantity of newsgathering.

For the coming Quadrennial Review, the FCC should focus on understanding the impact of its current rules, and evaluating the impact of any changes it is considering in light of *Prometheus II* and its obligations under §257 of the Communications Act. The court in *Prometheus II* clearly understood the importance of diverse viewpoints in the media when it required the FCC to take into consideration the impact that its rule changes would have on ownership opportunities for women and minorities. The FCC's existing data-collection efforts need to be bolstered to provide the data necessary to make meaningful *Prometheus II* and §257 entry-barrier determinations, and must be supplemented in the 2014 review. The long-delayed Adarand studies cry out for updating.

The FCC acted correctly in moving to attribute some Joint Sales Agreements (JSAs). The Commission's March decision serves to promote an informed public because it helps open up more avenues for diverse and local ownership. By attributing the JSAs, the FCC takes into account the fact that such sharing agreements reduce competition and serve to elide important and hard won public interest rules. The unwinding of noncompliant JSAs presents an important opportunity for new, diverse, female, and local ownership. However, the FCC should take the next step by moving to reform Shared Services Agreements (SSAs) and other "sidecar" deals that serve to skirt agency rules. The FCC should evaluate SSAs and determine their exact impact and whether they should be attributed similarly to JSAs. Opponents may contend that reforming these sharing rules harms diversity. That is not the case. Moreover, financially-distressed broadcasters that can demonstrate a sharing agreement would benefit the public interest may seek a waiver.

Given the abysmal statistics on ownership, now is not the time for the FCC to water down its ownership guidelines. Rather, in compliance with the *Prometheus II* ruling and its

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[13] *See, e.g.*, Maurice E. Stucke & Allen P. Grunes (FNdd1), *Toward A Better Competition Policy for the Media: The Challenge of Developing Antitrust Policies That Support the Media Sector's Unique Role in Our Democracy*, 42 CONN. L. REV. 101, 116 (2009).

[14] Matthew Gentzkow and Jesse Shapiro, *Competition and Truth in the Market for News*, 22, J. of Econ. Perspectives, 133, 141 (2008).

[15] *Id.*

[16] *See, c.f., Daniel* C. Moore, *Double Crossed: Why the Newspaper/broadcast Cross-Ownership Ban Remains Necessary in the Public Interest*, 88 MINN. L. REV. 1697, 1718-19 (2004).

[17] Newspaper Association of America, *Comments of the Newspaper Association of America, In re* 2010 Quadrennial Regulatory Review, (2012) (Docket No. 09-182.

obligations under §257, the Commission should increase its data gathering and explore avenues to encourage new ownership that preserves localism, diversity, and competition. Without more diverse media ownership, we will not have – we cannot have – the kind of informed civic dialog upon which successful self-government depends.

Founded in 1970 as the "citizen's lobby," Common Cause has advocated good government reforms and fought corruption for over 40 years. Common Cause is a nonpartisan grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. Common Cause has more than 400,000 members around the country and 35 state chapters.

Thank you,

Michael Copps
Former Commissioner, Federal Communications Commission
Special Adviser, Media and Democracy Reform Initiative at Common Cause

Ms. ESHOO. Thank you.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. I thank the ranking member for yielding this morning, and certainly thank you for your passion on diversity. It is very much appreciated.

Mr. Chairman, I offer the following statement. African-Americans, Hispanic-Americans and Asian-Americans own a combined 3 percent of all full-powered, commercially owned and operated TV stations here in the United States, and the number for radio are not much better. Access to capital, consolidation and outdated ownership rules further stifle minority ownership. Increasing diversity ownership is important. It ensures the content—that content will be delivered in formats that mirror the cultural experiences of our citizens, and generates economic opportunities for the Nation, particularly as these companies create and maintain jobs. The future of our media will also be dependent upon our ability to factor-in the impact of emerging and evolving digital technologies on traditional media models. The FCC regularly says that diversity is one of its objectives, but the 2014 quadrennial NPRM doesn't reflect that commitment. Some proposals, including legislative ones pending for 20 years, were reduced to footnotes. Many of those proposals were supported by the FCC's own Diversity Advisory Committee.

I am hopeful, Mr. Chairman, the FCC's long-awaited further notice of proposed rulemaking for 2014, if not done correctly, will seek to gather data that will help us to address the disparities that exist in minority media ownership. We must increase meaningful media ownership opportunities for people of color. That is the point I am trying to make.

Thank you very much. I yield back to you—to the ranking member.

Ms. ESHOO. And I yield back, Mr. Chairman. Thank you.

Mr. BUTTERFIELD. Mr. Chairman, I failed to do one thing. If I momentarily could ask——

Mr. WALDEN. Of course.

Mr. BUTTERFIELD [continuing]. Unanimous consent to include in the hearing into the record a letter dated June 10, 2014, addressed to you and to the ranking member.

Mr. WALDEN. I believe so, yes. Without objection.

[The information follows:]

ASIAN AMERICANS
ADVANCING
JUSTICE
AAJC

June 10, 2014

Chairman Greg Walden
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2182 Rayburn HOB
Washington, DC 20515

Ranking Member Anna Eshoo
Subcommittee on Communications and Technology
Committee on Energy and Commerce
215 Cannon HOB
Washington, DC 20515

Re.: Media Ownership in the 21th Century Hearing

Dear Chairman Walden and Ranking Member Eshoo:

On behalf Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) we write to express the importance of a regulatory framework to preserve and promote a diverse media landscape.

Advancing Justice | AAJC is dedicated to promoting a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and other underserved communities. We provide the Asian American community education on important issues that affect our communities and public policy and civil rights advocacy. In the communications field, Advancing Justice | AAJC works to promote universal access and adoption and reduce barriers to critical technology, services, and the media.

Broadcast media remains a special and important source of information for communities of color, which make up 41% of broadcast-only homes.[1] Broadcast is only available because of the government grant of licenses to use increasingly scarce public airwaves. Thus despite arguments that the Internet and other technologies have changed the way communities consume information, it is incumbent on the government to ensure that the use of public resources is in the public interest, including promoting a diversity of voices, competition, and localism.

Ensuring a diverse media landscape is especially important for Asian Americans to access information that is culturally and linguistically relevant—including lifesaving emergency information—because approximately one-third of Asian Americans are limited-English proficient (LEP).[2] For example, Vietnamese, Bangladeshi, Cambodian, Hmong, Taiwanese, Chinese, Korean, and Laotian communities all have LEP rates over 40%.[3] One of five Asian American households also live in linguistically isolated households, meaning all household

[1] Press Release, Nat'l Ass'n of Broadcasters, Over-the-Air Renaissance Continues as Pay TV Cord-Cutting Rises (June 21, 2013).
[2] Asian Pacific American Legal Ctr. & Asian American Justice Ctr., *A Community of Contrasts: Asian Americans in the United States 2011* 27 (2011). In 2007-2009 approximately 13% of Hmong, 7% of Cambodian, and 6% of Laotian American households accessed cash public assistance, compared to 5% of African American and 4% of Latino households.
[3] *Id.* at 28.

members 14 years old and up speak English less than "very well."[4] In addition, Asian Americans are too often treated as the invisible minority whose stories are overlooked by mainstream media.

Despite the fact that one in four Asian Americans relies solely on over the air broadcasting[5], racial minorities owned only 30 full power television stations (2.2%) and Asians owned only six stations (0.5%).[6] This is despite Asian Americans making up approximately six percent of the U.S. population, being the fastest growing racial group, and having a higher average household income than other racial groups. Moreover, we have observed that Asian-owned stations or stations carrying Asian-oriented content have been sold to speculators in anticipation of upcoming spectrum incentive auctions. The loss of these outlets will have a direct negative impact on Asian American communities who rely on these stations.

One of the most notable losses will be KSCI, an Asian language station which was acquired by NRJ TV.[7] According to Nielsen, KSCI is the most watched station among Los Angeles Chinese and Koreans regardless of their language preference.[8] In addition to local news broadcasts in Asian languages, the value of KSCI was displayed in October 2008 when it broadcasted the presidential debate with simultaneous Mandarin translation.[9]

We also support the Federal Communications Commission's efforts to enforce its media ownership rules. We and other civil rights organizations have expressed our concern with agreements between stations that mimic joint ownership and circumvent rules meant to promote a market with a diversity of voices and economic opportunities for communities of color and women.[10] While we acknowledge some of these arrangements may promote diversity, the Commission must have the flexibility to determine which agreements serve the public interest. We also note that our own examination of the six Asian-owned full power TV stations identified by the Commission revealed that none are entered into any such agreements.

Thank you for your consideration on this very important topic. Please do not hesitate to contact Jason T. Lagria, Advancing Justice | AAJC Senior Staff Attorney, at [redacted] if you have any questions or comments.

Sincerely,

/s Jason T. Lagria
Senior Staff Attorney
Asian Americans Advancing Justice | AAJC

cc: Federal Communications Commission, 2014 Quadrennial Review FNPRM MB Docket No. 14-50

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[4] *Id.* at 29.
[5] Nat'l Ass'n of Broadcasters, Broadcast Television and Radio in Asian-American Communities 1 (2013).
[6] FCC, Report on Ownership of Commercial Broadcast Stations, MB Docket Nos. 09-182, 07-294 (2012).
[7] TVNewsCheck.com, NRJ TV to Acquire Asian-Language KSCI, http://www.tvnewscheck.com/article/58343/nrj-tv-to-acquire-asianlanguage-ksci (Mar. 27, 2013).
[8] Nielsen, Significant, Sophisticated and Savvy: The Asian American Consumer 2013 Report (2013).
[9] Highbeam.com, Los Angeles TV Station to Broadcast October 7 Presidential Debate Live in Chinese, http://www.highbeam.com/doc/1G1-187118059.html (Oct. 16, 2008).
[10] Letter to FCC, MB Docket No. 09-182, MB Docket No. 07-294, BO docket No. 12-30 (March 24, 2014).

The Leadership Conference on Civil and Human Rights

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Karen McGill Lawson

June 10, 2014

The Leadership Conference

PROTECT MEDIA DIVERSITY

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
Washington, DC 20515

Dear Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee on Communications and Technology:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we thank you for the opportunity to submit our views regarding diversity in media ownership and ask that this statement to be entered into the record of the Subcommittee hearing entitled "Media Ownership in the 21st Century" scheduled for Wednesday, June 11, 2014. Media diversity has long been a top priority of The Leadership Conference and our members because we understand that meaningful protection of civil rights and advancement of key policy objectives rely in great measure on an accurate, independent, and diverse media that serves our constituencies. We support the promotion of racial, gender, and ethnic diversity in media and urge you to make it a centerpiece of your media policy agenda.

We believe the Federal Communications Commission was correct to postpone rule changes that would have permitted further media consolidation in the 2010 Quadrennial Review. We have urged the Commission to commit to a timeline in the 2014 Quadrennial Review that will acquire meaningful, expansive data to consider how to promote media diversity as part of that review, in accordance with the decisions of the U.S. Court of Appeals for the Third Circuit and Section 257 of the Communications Act, among other directives. In the sixteen years since the FCC expanded its collection of ownership data on Form 323 to include race and gender, the public has never seen its timely release or its use in any meaningful Commission analysis. The most recent data was collected in January 2014 but has yet to be released, while previous iterations took more than two years between collection and release.

Media concentration, by definition, leads to fewer owners, fewer entrepreneurial opportunities, and fewer jobs, while actions to tighten the media ownership rules will lead to more owners and more such opportunities for people of color and women. Agreements that mimic joint ownership but do not offer true operational independence circumvent those rules and lead to the same negative outcomes as media consolidation. At best, a handful of these sharing arrangements promote diversity or employment for journalists or management or help to create wealth for people who face challenges in obtaining access to capital. With full disclosure of contract terms and financial interests, meritorious combinations should be able

The Leadership Conference

to easily demonstrate their need for appropriate waivers of Commission rules for the short time they will need to achieve operational independence. Thus, we support the Commission's recent decision to make these agreements attributable under the ownership rules.

A commitment to promote diverse media ownership is a fundamental component of our nation's communications policy. We look forward to working with the Subcommittee and the Commission to encourage and promote media ownership opportunities for women and people of color. Please contact Leadership Conference Media/Telecommunications Co-Chairs Cheryl Leanza, UCC Office of Communication, Inc., at [redacted] or Gabe Rottman, ACLU, at [redacted] or Corrine Yu, Leadership Conference Managing Policy Director at [redacted] if you would like to discuss the above issues or any other issues of importance to The Leadership Conference.

Sincerely,

[redacted]

Wade Henderson
President & CEO

[redacted]

Nancy Zirkin
Executive Vice President

Mr. BUTTERFIELD. All right. Thank you.

Mr. WALDEN. Are there any members on our side seeking an opening statement? OK. Mr. Waxman, I would turn to you.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Americans have more choices today than ever before about where to get news, information, entertainment. Broadband and mobile platforms are altering how content is produced and consumed, but these incredible new innovations do not alter key policy goals, promoting localism, diversity and competition in the media. These core values represent a commitment that stretches all the way back to the founding of our country. They have animated the FCC's policies for nearly a century. A commitment to localism means timely delivery of news and information relevant to our daily lives, such as emergency alerts in a time of crisis. Competition means original, in-depth reporting that not only informs and educates the public, but helps distinguish the quality of journalism. Striving for diversity helps the delivery of a wealth of perspectives that more closely reflect the diverse makeup and experiences of our community.

The FCC's longstanding media cross-ownership rules are tools for preserving these values. Despite the wonder and power of the Internet, broadcasters and newspapers continue to be the dominant sources for local news and information across old and new medium. That makes these rules relevant even today.

Under both Democrats and Republicans, the FCC has tried to revise the media ownership rules, but the Agency has little success in navigating the legal, political and resources challenges in meeting the congressional directive to review these rules every 4 years. Chairman Wheeler has appropriately set a deadline to complete the long-overdue 2010 quadrennial review, and the currently pending 2014 quadrennial review. As the Agency works to complete these reviews, I believe it is time for Congress to examine whether this statutory mandate is still helpful or necessary.

One constructive step the FCC has recently taken is closing a loophole created by the proliferation of joint sales agreements between broadcasters. The FCC struck the right balance in adopting rule changes to end JSAs manufactured solely to evade the media ownership rules, while allowing truly beneficial ones to continue through waivers. The committee worked on a bipartisan basis in the recently reported Satellite Reauthorization Bill to provide incentives for broadcasters to file timely requests for waivers, and the FCC to expeditiously act on them.

A key consideration for the FCC should be helping ensure the health of the newspaper sector, which has been challenged by the growth of online news. A broadcast company that wants to invest in a newspaper could be a boon to a struggling newspaper, but one that wants to raid its assets could hasten its demise.

These are not just theoretical questions. Late last year, the Tribune Corporation, the owner of the Los Angeles Times, other newspapers and broadcast stations across the country, announced that they would be spinning off its newspaper holdings, including the

LA Times. The original terms would have forced the LA Times to rent its own building from the Tribune Company, and to borrow over $300 million to pay a cash dividend to the Tribune Corporation. I raised questions and consulted with independent media experts who advised that the terms could cripple the LA Times. To its credit, the Tribune Corporation has recently reduced the size of the cash payment it will demand from the newspaper, LA and other newspapers. I hope it will take further steps to ensure the viability of the Times before the deal is complete.

Finally, our discussion today would be incomplete without an examination of the abysmal state of media ownership diversity. Women and minorities represent a tiny fraction of the owners and decision-makers in the media companies that shape our national discourse. The FCC has had great difficulty crafting policies that could improve ownership diversity and survive legal challenge. I hope today's witnesses can bring some fresh thinking and new ideas to help advance this issue, which is so critical for a healthy democracy.

I thank all the witnesses for being here today. I must apologize in advance that I have to be present at another subcommittee, and won't be here for all of your testimony. I will try to get back for questions, but I appreciate your participation and I look forward to reviewing what you have to say, both orally and your written submissions.

Thank you, Mr. Chairman. Yield back my time.

Mr. WALDEN. Thank you, Mr. Waxman. And I will turn now to the vice chair of the subcommittee, Mr. Latta, for opening comments.

OPENING STATEMENT OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LATTA. Well, thank you, Mr. Chairman, and thank you very much for holding today's hearing, and I appreciate all the witnesses being with us today.

The media landscape, much like many other sectors in the communications and technology industry, has evolved considerably over the last 20 years. With the introduction of the Internet and digital technology, we have seen convergence, increased competition, innovative content delivery services, and rapidly shifting preferences in consumer demand come to define the media market. However, many of the laws that govern this space are outdated. As a result, long-time industry participants that are subject to these rules and regulations are placed at a competitive disadvantage to newer market entrants. This has thwarted their ability to flexibly and quickly respond and compete in this dynamic marketplace. Of particular concern is the FCC has been negligent in completing its mandatory review of the media market that could help address today's competitive realities.

As we continue our efforts to examine the Communications Act and consider updates to the law that would better reflect the 21st century communications landscape, I look forward to hearing from our witnesses today about the current regulatory framework governing media ownership and the impact that it is having on businesses, consumers, and the economy.

And, Mr. Chairman, if I could, I would yield to the gentleman from Illinois.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. I want to thank my colleague. I want to welcome you all here.

There is no reason why the 2010 and 2014 quadrennial review has not been filed. It is just not complying with the law, and it is a failure of the bureaucracy and the Federal Government to do its job. Having said that, one reason why, because this sector is moving so fast, I mean how do you get a handle on it? Late-breaking story last night. How did I find out about it? Someone did a Twitter feed that one of my staff members picked up and emailed to me. I didn't get it over broadcast, I didn't get it over cable, I didn't get it over radio, I definitely didn't get it out of print media, I got out of this new world age of information flow.

There is more access to information now than ever before. These media ownership rules stifle the ability for localism in rural America.

I look forward to this hearing, and I thank you all for coming.

Mr. WALDEN. Gentleman yields back the balance of his time. All the opening statements are concluded, and we will now go to testimony from our witnesses.

And again, we thank you all very much for the work you have put into your testimony.

We will start off with Mr. William T. Lake, who is the Chief of the Media Bureau of the Federal Communications Commission. Mr. Lake, we are delighted to have you here before the subcommittee. Pull that microphone pretty close to your mouth or we won't be able to hear your fine words, sir. So thank you, and we look forward to your testimony.

STATEMENTS OF WILLIAM T. LAKE, CHIEF, MEDIA BUREAU, FEDERAL COMMUNICATIONS COMMISSION; JESSICA J. GONZALEZ, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL HISPANIC MEDIA COALITION; BERNARD LUNZER, PRESIDENT, THE NEWSPAPER GUILD–CWA; PAUL J. BOYLE, SENIOR VICE PRESIDENT OF PUBLIC POLICY, NEWSPAPER ASSOCIATION OF AMERICA; DAVID BANK, MANAGING DIRECTOR, GLOBAL MEDIA EQUITY RESEARCH, RBC CAPITAL MARKETS; AND JANE MAGO, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, LEGAL AND REGULATORY AFFAIRS, NATIONAL ASSOCIATION OF BROADCASTERS

STATEMENT OF WILLIAM T. LAKE

Mr. LAKE. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. My name is Bill Lake. I am the Chief of the Media Bureau at the FCC, and I am very happy to be with you today.

I would like to highlight a few points from my written statement about the actions that the Commission and the Media Bureau took in March relating to media ownership.

First, the Quadrennial Review. The FCC is very aware of its responsibility to review its media ownership rules every 4 years. As you know, in March the Commission began its most recent review, adopting a Further Notice that builds on the record of the ongoing 2010 proceeding. The Further Notice analyzes the evidence to date on each of the rules, and discusses the diversity issues remanded to the Commission by the Third Circuit.

I recognize that some observers, including members of the subcommittee, are concerned that the Commission has yet to complete its 2010 Quadrennial Review. As Chairman Wheeler noted in March, the Commission's inability to complete that review was not for lack of effort. We began the proceeding early in November 2009, compiled an extensive record, and circulated a proposed Order in 2012, which remained before the Commission for over a year but failed to receive a majority. The Further Notice will enable all interested parties to supplement the record with information about the 2014 marketplace. The Chairman has committed to present recommendations to the Commissioners by June 30, 2016.

Second, shared services agreements, or SSAs. As part of the Further Notice, the Commission sought to improve its understanding of the sharing of services between separately owned TV stations. The Commission does not now require SSAs to be disclosed, and that makes it hard for us or the public to know what impact these agreements may have on our policies. The Further Notice invites comment on whether and how best to disclose SSAs.

Third, TV joint sales agreements or JSAs. The Commission also adopted a report and order on TV JSAs. JSAs are agreements between stations in which one station sells advertising time on behalf of the other—typically, all of it. Unlike SSAs, they are well known to the Commission. We have long recognized our duty to identify any interests that give holders a realistic potential to influence a station's programming or operations. We treat such interests as attributable—that is, we count the stations as being commonly owned for purposes of our ownership rules. The Commission tentatively concluded in 2004 that it should attribute TV JSAs just as it had done for radio JSAs in 2003. The rationale is that someone who controls a station's main source of revenue has a significant potential to influence the station's operations.

Based on the record, and in light of the growing prevalence of TV JSAs, the Commission decided that it should attribute these agreements with a 2-year transition period for existing JSAs, as we had done for radio.

Finally, I can provide a bit of context for the Media Bureau's Public Notice in March, which gave guidance to the industry on how the Bureau will process pending and future TV license transfer applications. In releasing the Public Notice, the Bureau sought to provide greater transparency to the industry about concerns that had come to light in our review of proposed license transfers. Transactions we have seen in recent years have involved increasingly complex relationships between stations that our rules do not allow to be jointly owned. In particular, more and more transactions involve combinations of sharing arrangements and financial ties, such as options and loan guarantees. We have found that determining the economic effects of a transaction requires much more

extensive analysis when stations have such complex entanglements, and, though we must decide each case on its particular facts, case-by-case decisions by themselves may not give broadcasters the predictability they want as they structure deals.

The Public Notice is intended to increase transparency by making sure that broadcasters appreciate that deals involving complex interrelationships require more extensive review, and by highlighting the combinations of relationships that we have found most troubling as we evaluate whether one station may have undue influence over another. By arming the parties with this knowledge, we sought to guide them as they structure future deals or consider amendments to pending transactions.

From what we have seen so far, this increased transparency has been helpful. Far from coming to a halt, deal-making in the industry continues. Since mid-March, we have approved the sale of 36 full power stations, representing 12 different deals.

Again, thank you for the opportunity to be here today, and I am happy to take any questions.

[The prepared statement of Mr. Lake follows:]

Written Statement of William T. Lake
Chief, Media Bureau
Federal Communications Commission

Before the Committee on Energy and Commerce
Subcommittee on Communications and Technology
U.S. House of Representatives

Hearing on Media Ownership in the 21st Century

June 11, 2014

INTRODUCTION

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. My name is Bill Lake, and I am Chief of the Media Bureau at the Federal Communications Commission. I am pleased to appear before you today to discuss the Commission's recent actions regarding our broadcast ownership rules.

My testimony today will briefly discuss the actions the Commission took at its March Open Meeting. I will also provide additional context for the guidance that the Media Bureau recently provided to the broadcasting industry regarding how the Bureau will review license transfer applications that involve complex sharing and financial agreements between competing stations.

2014 Quadrennial Review Further Notice of Proposed Rulemaking

As you know, the Commission regularly examines its media ownership rules as required by Section 202(h) of the Telecommunications Act of 1996 to determine if they remain necessary in the public interest as the result of competition. On March 31, 2014, the Commission adopted a *Further Notice of Proposed Rulemaking* initiating the 2014 proceeding, building on the record of the ongoing 2010 proceeding.[1]

I recognize that some observers – including some members of the Subcommittee – are concerned that the Commission has yet to complete the 2010 Quadrennial Review. As noted by Chairman Wheeler in March, the inability of the Commission to complete the 2010 review was not due to a lack of effort – the Commission began the proceeding early, in November 2009, an extensive record was compiled, and a proposed order was circulated in 2012, which remained before the Commission for over a year but failed to receive a majority.[2] The *Further Notice* will enable all stakeholders and the public to supplement the record with information about the marketplace realities in 2014, and how these rules serve the public interest. The Chairman has committed to completing both reviews by June 30, 2016.[3]

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[1] *Further Notice of Proposed Rule Making and Report and Order*, MB Docket No. 14-50, FCC 14-28 (adopted Mar. 31, 2014; rel. Apr. 15, 2014).

[2] *See* Statement of Chairman Tom Wheeler, *Broadcast Media Ownership, Diversity and Joint Sales Agreements*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256 (March 31, 2014) at 2.

[3] *Id.*

The *Further Notice* tentatively affirms that media ownership limits remain necessary in the current marketplace despite the prevalence of new electronic media. It acknowledges that the media marketplace is in transition, particularly as a result of broadband Internet. However, it recognizes the vital role that traditional outlets play in the media industry and notes that tens of millions of Americans still do not have broadband access to news and other programming on the Internet.

The *Further Notice* analyzes each media ownership rule individually. Below I briefly describe the specific proposals, as well as other issues raised concerning Shared Services Agreements (SSAs) and the Commission's Diversity proceeding.

Local TV Ownership Rule

The local TV ownership rule limits the number of TV stations an entity can own in a local market – to one in many markets, or two if certain conditions are met. The Commission proposes to retain the existing rule, tentatively concluding that the rule promotes competition and also comports with the Commission's goals of promoting viewpoint diversity, localism, and minority and female ownership.

The proposed rule would allow an entity to own up to two TV stations in the same market if: (1) the digital noise limited service contours of the stations do not overlap; or (2) where there is overlap, at least one of the stations is not ranked among the top-four TV stations in the market and at least eight independently owned TV stations would remain in the market following the combination.

The *Further Notice* proposes to substitute the digital noise limited service contour in place of the analog Grade B contour that was used to delimit a station's service area before the transition to digital TV. It also proposes to retain the provision allowing a waiver for a failed or failing station and asks whether additional waiver criteria should be added.

Local Radio Ownership Rule

The local radio ownership rule specifies the maximum number of commercial radio stations that one entity may own in a market, depending on the size of the market. It also contains separate limits on the total numbers of AM stations and of FM stations that an entity may own in a market.

The Commission proposes to retain the rule without change. It tentatively concludes that the rule promotes competition and also comports with the Commission's goals of promoting viewpoint diversity, localism, and minority and female ownership.

Newspaper/Broadcast Cross-Ownership Rule

The newspaper/broadcast cross-ownership rule prohibits the common ownership of a newspaper and either a television station or a radio station when the coverage area of the station encompasses the newspaper's city of publication.

Consistent with Commission findings in prior proceedings, the *Further Notice* tentatively concludes that a restriction on cross-ownership should be retained to promote viewpoint diversity in local markets. However, consistent with previous Commission holdings upheld by the Third Circuit Court of Appeals, it tentatively finds that the total ban on all newspaper/broadcast cross-ownership is overly broad.

The *Further Notice* seeks comment on whether the part of the rule prohibiting cross-ownership of a newspaper with a radio station should be eliminated. Because viewpoint diversity has been the sole justification for restricting newspaper/radio combinations, and because the record indicates that radio is

not a major source of local news and information, the *Further Notice* seeks comment on whether there is a sufficient basis to support retention of the prohibition.

The *Further Notice* tentatively concludes that the Commission should continue to ban combinations of newspapers and TV stations. It proposes to update the restriction to account for the digital TV transition. Instead of using a TV station's analog Grade A contour to determine the geographic scope of the ban, the *Further Notice* proposes to prohibit common ownership when the newspaper and the TV station are in the same market and the digital principal community contour of the TV station encompasses the community in which the newspaper is published.

The Commission seeks comment on whether to incorporate waiver standards into the rule. The Commission could consider waiver requests on a purely case-by-case basis or create a presumptive waiver standard that could, for example, favor newspaper/television combinations in the top 20 DMAs if the TV station is not ranked among the top four TV stations in the DMA and at least eight independently owned and operated major media voices would remain.

Radio/Television Cross-Ownership Rule

The radio/television cross-ownership rule limits the total combined number of TV and radio stations that can be commonly owned in a market. The *Further Notice* asks whether the rule continues to be necessary to promote viewpoint diversity, again because radio does not appear to be a major source of local news and information. The *Further Notice* also asks whether the rule provides meaningful additional restrictions on consolidation given the restrictions contained in the local television and radio rules separately.

Dual Network Rule

The dual network rule prohibits common ownership of two of the top-four broadcast networks, namely ABC, CBS, NBC, and Fox. The Commission proposes to retain the rule without change.

Shared Services Agreements

In addition to the proposals on existing media ownership rules, as part of the *Further Notice*, the Commission sought to improve its understanding of – and increase transparency surrounding – the sharing of services between independently owned TV stations. While the Commission understands that SSAs can encompass the sharing of a wide range of resources – such as studio facilities, news helicopters, or back office functions – the agreements are not currently required to be disclosed to the Commission or the public.

The lack of information regarding SSAs makes it difficult for the Commission to know what impact these agreements may have on the Commission's policies. We address this need by proposing adoption of (1) a broad definition of SSAs to identify all types of resource sharing and service agreements; and (2) a requirement that SSAs be disclosed, in order to better inform the Commission and the public. The *Further Notice* invites comment on the proposed definition and whether and how best to disclose SSAs.

Diversity

The final piece of the *Further Notice* addresses diversity issues. The Commission has a longstanding goal of promoting diversity in broadcast ownership, including by minorities and women. In 2008, the Commission adopted rules to promote diversity. The Third Circuit Court of Appeals vacated

those rules, holding that the Commission had not shown a nexus between the revenue-based eligible entity definition that it adopted and increasing minority and female ownership. After the decision, the Commission suspended the rules and sought comment on whether to reinstate the eligible entity definition or adopt a different definition. The *Further Notice* tentatively recommends reinstating the revenue-based eligible entity definition, on the basis that the rules that afford favorable regulatory treatment based on that definition would support new entry into the broadcast industry by small businesses.

Additionally, pursuant to the Third Circuit's direction, the *Further Notice* seeks additional comment on whether the Commission can or should adopt race- or gender-conscious eligibility classifications. The *Further Notice* discusses the high constitutional threshold for such classifications, and it tentatively concludes that promoting viewpoint diversity is a compelling government interest. But it also tentatively concludes that the current record does not satisfy the prevailing legal standard for adopting a racial or gender classification.

Report and Order on Television Joint Sales Agreements

Along with the *Further Notice* discussed above, the Commission also adopted at the March meeting a *Report and Order* regarding TV Joint Sales Agreements (JSAs). JSAs are another type of agreement between stations, but – unlike SSAs – they are well-known to the Commission (JSAs are required to be placed in a station's public file.) A JSA is an agreement under which one station sells advertising time on behalf of another station. The Commission has long recognized its duty to identify those interests that give holders a realistic potential to unduly influence or control programming decisions or other core operations of the licensee. Where the Commission finds such potential influence or control, it "attributes" the interest, which means that the interest is treated as ownership for purposes of the Commission's media ownership rules.

The Commission reached a tentative conclusion in 2004 that it should attribute same-market TV JSAs that encompass more than 15 percent of a station's advertising sales, just as it had done in 2003 with respect to radio JSAs. It sought additional comment on possible attribution of TV JSAs, among other issues, in the 2010 Quadrennial Review. Based on the record developed, and in light of the growing prevalence of TV JSAs – virtually always for 100 percent of advertising sales – in transactions submitted to the Commission for review and approval, the Commission concluded that it should act on the proposal it had made in 2004 to attribute TV JSAs on the same basis as radio JSAs.

Accordingly, the Commission adopted new rules to treat a TV JSA involving competing stations in the same market as an ownership interest where 15 percent or more of the weekly advertising time of one station is sold by the competing station. It adopted the same 15 percent threshold that is included in the existing radio JSA attribution rules, which provides stations with the ability to achieve cost savings while limiting the brokering station's potential to exert undue influence over the other station. As it did when adopting the radio JSA rule, the Commission provided a two-year transition period starting from the effective date of the rule for parties to amend or terminate any JSAs that would result in a violation of the local TV ownership rule.

Recognizing that there may be some circumstances in which an attributable JSA may be in the public interest, the Commission adopted an expedited process to review requests for waivers. The Media Bureau is tasked with acting on any waiver request within 90 days of the close of the record, provided there are no circumstances requiring additional time for review. I understand that the full Energy and Commerce Committee has favorably reported a STELA Reauthorization bill (H.R. 4572) that would establish a special filing window for the filing of JSA waivers that would provide additional unwinding time, if a waiver was denied by the Commission.

The *Report and Order* was published in the Federal Register on May 20, 2014, making the new TV JSA rules effective on June 19, 2014. The comment periods for the issues raised in the *Further Notice* are currently open, with comments due July 7, 2014, and reply comments due August 4, 2014. I note that several parties filed Petitions for Review and one filed a Petition for a Writ of Mandamus challenging the *Further Notice* and the *Report and Order* in May 2014.[4]

Processing Guidance Public Notice

On March 12, 2014, the Media Bureau released a *Public Notice* to provide guidance to the broadcast TV industry on how the Bureau will process pending and future proposed license transfer applications. The Bureau's objective in releasing the *Public Notice* was to provide greater transparency to the industry about concerns that had come to the fore in the Bureau's review of transactions involving combinations of complex sharing and financial arrangements between competing stations.

The Communications Act charges the Commission with the responsibility to determine whether transactions involving assignment or transfer of TV licenses are in the public interest. To carry out that responsibility requires consideration of the full economic effects of a proposed transaction, as the Bureau explicitly reminded the industry in its decision approving the Gannett/Belo transaction in late 2013. The Order stressed that

> Congress' express statutory command is that license transfers must satisfy the 'public interest, convenience, and necessity,' a standard that is always informed by regulatory standards, but which necessarily involves, as our licensing decisions have long noted, the use of a "case-by-case" approach .... [A]pplicants and interested parties should not forget that our public interest mandate encompasses giving careful attention to the economic effects of, and incentives created by, a proposed transaction taken as a whole and its consistency with the Commission's policies under the Act, including our policies in favor of competition, diversity, and localism.[5]

Transactions presented to the Commission for review in recent years have increasingly featured complex combinations of sharing arrangements – including JSAs and SSAs – together with financial ties such as options and loan guarantees linking stations that are asserted to be separately owned. Determining the full economic effects of these complex arrangements requires careful analysis, including review of the agreements and financial documents, to determine whether the arrangements together give one station an undue degree of operational and financial influence over another. The Bureau released the *Public Notice* to apprise industry participants of the fact that review of transactions involving such complex arrangements between competing stations would necessarily be more intensive and potentially more time consuming. As I stated in March when the *Public Notice* was released, parties to future transactions may find that knowledge useful in considering the structure of future deals or the possibility of amendments to pending transactions.[6]

The Bureau continues to review and process all transaction applications before it. Since mid-March, we have granted the sale of 36 full-power stations, representing 12 different deals. Additionally, I

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[4] *Prometheus Radio Project v. FCC*, No. 14-2814 (3rd Cir., filed May 22, 2014); *Howard Stirk Holdings, LLC v. FCC*, No. 14-1090 (D.C. Cir., filed May 30, 2014); *Nexstar Broadcasting, Inc., v. FCC*, No. 14-1091 (D.C. Cir., filed May 30, 2014); *National Association of Broadcasters v. FCC*, No. 14-1092 (D.C. Cir., filed May 30, 2014).

[5] *Shareholders of Belo Corp.*, Memorandum Opinion and Order, DA 13-2423 (MB rel. Dec. 20, 2013), at ¶¶ 29, 30.

[6] *See Statement of William Lake, Chief, Media Bureau on Processing Guidance for Future Proposed Broadcast TV Transactions*, March 12, 2014.

note that the National Association of Broadcasters filed a Petition for Review in the Court of Appeals for the D.C. Circuit on May 12, 2014,[7] and the Commission recently filed its Motion to Dismiss the NAB petition.[8]

CONCLUSION

I hope that this statement provides some helpful context for the recent actions by the Commission and the Media Bureau regarding the media ownership rules and the processing of applications for assignment or transfer of TV licenses. Again, thank you for the opportunity to be here today. I will be happy to take any questions you may have.

[7] *National Association of Broadcasters v. FCC*, No. 14-1072 (D.C. Cir., filed May 12, 2014).

[8] Respondent's Motion to Dismiss, *National Association of Broadcasters v. FCC*, No. 14-1072 (D.C. Cir., filed May 30, 2014).

Mr. WALDEN. Mr. Lake, thank you for your service and for your testimony. We look forward to continuing the discussion.

We will now go to Jessica J. Gonzalez, Executive Vice President and General Counsel, the National Hispanic Media Coalition. Ms. Gonzalez, thank you for being here. Please go ahead.

STATEMENT OF JESSICA J. GONZALEZ

Ms. GONZALEZ. Thank you, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

I represent the National Hispanic Media Coalition, a media advocacy and civil rights organization working towards a media that is fair, inclusive and accessible to all people.

What happens in an overly consolidated media system that fails to reflect American multiculturalism? Here is an example from the radio industry, which is already plagued by major consolidation. On Clear Channel radio stations across the country, listeners are fed a steady diet of racism and stereotyping. According to some Clear Channel pundits, Latinos and African-Americans are dangerous, Asians are cheaters, women are sluts, immigrants are animals. At a time when this country should be developing its proud, multicultural identity, instead, this dehumanization of women and people of color is normalized over the public airwaves.

We as parents of young children of color and young girls have to figure out how to explain these slurs to our children, who don't see color, but yet are told at a young age that they are different or they are feared, or they are less than. The harms of this rhetoric are deep and well documented. Clear Channel has 850-plus stations in over 150 cities across the country. It exploits the lack of strong radio ownership limits to insulate its stations from free market accountability mechanisms, such as losing audience share or revenue. It is totally out of touch with the communities it serves.

Media ownership limits are vital to the health of our democracy. These content and race-neutral rules promote ownership diversity, viewpoint diversity, localism and completion. Broadcasters and newspapers play a critically important role in informing Americans, and influencing attitudes towards people of color and women. Broadcast TV and radio reach over 98 percent of us, and reliance on over-the-air TV is prevalent in poor, rural and non-English-speaking communities.

Internet sources are far from achieving parody with broadcasters when it comes to disseminating information, particularly local news. First of all, 1 in 3 Americans does not have home broadband access. Rural communities, Latinos, African-Americans, seniors, the poor, people with disabilities, and non-English speakers are far less likely to be connected to the Internet. And traditional media sources like broadcasting and newspapers are still responsible for the vast majority of online local news and information. The courts, Congress and the FCC have long recognized a nexus between minority ownership and broadcasting diversity, yet people of color, who make up more than 36 percent of the U.S. population, own less than 3 percent of TV stations. Women own less than 7 percent. Media consolidation and joint sales agreements that allow big media companies to circumvent the ownership rules are bad for diversity.

Immediately after the 1996 Act, relaxed ownership limits and the minority tax certificate was abandoned, women and people of color were pushed from the market as conglomerates grew. According to a 1997 NTIA report, relaxed ownership limits created a significant competitive advantage for group owners who are more likely to be nondiverse and have greater financial resources. That media concentration drove up station prices.

The FCC's recent JSA ruling, on the other hand, creates opportunities for diverse owners and small businesses to enter the market.

An agency envisions a country in which broadcasters reflect American multiculturalism and serve the information needs of all communities. Promoting diversity and localism with strong media ownership rules within the FCC's existing regulatory framework, and using your law-making power to reinstate the minority tax certificate, are important steps towards achieving that vision.

Thank you and I look forward to questions.

[The prepared statement of Ms. Gonzalez follows:]

Testimony of
Jessica J. González
Executive Vice President & General Counsel
National Hispanic Media Coalition

Before the

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

Regarding

Media Ownership in the 21st Century
June 11, 2014

Summary

For centuries, we have recognized that vibrant and diverse media and communications systems promote democracy and ensure that the American populace is an informed electorate capable of carrying out the duties of citizenship. Our communications infrastructure, particularly broadcasting, makes use of a precious and finite public resource – electromagnetic spectrum. The FCC has an obligation to make sure that this valuable resource is used to serve the public interest by ensuring that it promotes diversity, localism, and competition in the distribution of licenses.

Under the FCC's watch, excessive consolidation has caused a significant decline in ownership of broadcast stations by women and people of color. Many diverse owners have attributed this decline to a relaxation of media ownership rules following the signing of the Telecommunications Act of 1996, and the loss of the "minority tax certificate" program.

In spite of this consolidation, broadcasting remains the dominant way for our communities to access news and information. It continues to outpace the Internet in terms of both reach and impact, particularly in communities of color that often lag others in home broadband adoption. Unfortunately, due to waning diversity and a rise of non-local, conglomerate-owned media outlets, people of color often face negative stereotypes and vicious attacks at the hands of the broadcasters that serve their communities.

The FCC should be encouraged to ramp up efforts to pursue its goals of localism, diversity, and competition. Working within its existing regulatory framework, and tightening its structural rules, is a race- and gender-neutral way to prevent undue concentration of licenses. The FCC has recently taken a positive step by tightening restrictions on the use of Joint Sales Agreements to circumvent the Commission's ownership rules while providing a workable waiver process for stations that can demonstrate that their arrangements serve the public interest.

Introduction

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for inviting me to testify today about the media ownership landscape and the Federal Communications Commission's ("FCC") media ownership regulatory framework. My name is Jessica J. González and I am the Executive Vice President & General Counsel of the National Hispanic Media Coalition ("NHMC"), a non-partisan, non-profit, media advocacy and civil rights organization that, for nearly three decades, has sought to ensure Latino participation at all levels of the media industry, combat racism and stereotyping, promote accurate portrayals, and advocate for policies to advance Latinos and other people of color. I am especially pleased to testify here today concerning media ownership because NHMC realized long ago that without an equitable distribution of the nation's airwaves and media properties, our communities are put at a severe disadvantage and are often actively harmed.[1]

NHMC commends Congress' efforts over time to ensure a diversity of viewpoints and prevent discrimination in media ownership. For instance, Section 151 of the Communications Act directs the FCC make broadcast spectrum available to all people "without discrimination on the basis of race."[2] Section 309 of the Act mandates the FCC to ensure competition and innovation by disseminating licenses to "businesses owned by members of minority groups and women."[3] And from 1978 to 1995, Congress' "minority tax certificate" program opened doors for people of color to access broadcast ownership at record rates.[4] Unfortunately, these measures

[1] I would like to thank my colleague, NHMC's policy director, Michael Scurato, and NHMC's summer policy fellow, Jonathan Diaz, for assisting me with researching and drafting this testimony.
[2] 47 U.S.C. §151 (1996).
[3] 47 U.S.C. § 309(j)(3)(B) (2012).
[4] *See, e.g.,* Erwin G. Krasnow & Lisa M. Fowlkes, *The FCC's Minority Tax Certificate Program: A Proposal for Life After Death,* 51 FED. COMM. L.J. 666 (1999).

and the FCC's related efforts have been met with many challenges, including judicial decisions narrowing the government's ability to enact race-conscious policies.

Deregulation Has Led To Significant Declines In Broadcast Ownership Diversity

Over the past twenty years, since passage of the Telecommunications Act of 1996, media consolidation has been rampant under the FCC's watch, making it more difficult for women and people of color to overcome barriers to entry into this industry. There has been a "long history of recognition by [the FCC], as well as by courts, Congress, and the public, that minorities and women have experienced serious obstacles in attempting to participate in the telecommunications industry [and] that their greater participation would enhance the public interest."[5] The FCC's ability to create strong, structural rules to limit how many media properties a single entity can own is a race- and gender-neutral way to prevent excessive concentration of licenses among incumbents and create opportunities for new entrants.

The Commission itself has recognized that broadcast ownership levels by women and people of color are "dismal."[6] Ownership of television and radio stations by people of color and women has dropped substantially in recent years. According to a recent letter sent to the FCC from the Chairs of the Congressional Hispanic Caucus, the Congressional Black Caucus, and the Congressional Asian Pacific American Caucus:

> Despite Latinos, African Americans, Asian Americans, Native Americans, and other communities of color making up more than thirty-six percent of the population, these groups only owned about three percent of full power television stations in 2011. In fact, according to the Commission's 2011 data, which is the most recent data available, out of 1,348 full power commercial television stations, only thirty-nine were owned by Latinos (with almost half located in Puerto Rico), ten by African Americans, and six by Asian Americans. Women make up fifty-

[5] *Section 257 Proceeding to Identify and Eliminate Mkt. Entry Barriers for Small Businesses*, Report, 12 FCC Rcd 16802, 16931 (1997).
[6] *Promoting Diversification of Ownership,* Report and Order and 4th FNPRM, 24 FCC Rcd 5896, 5897 (2009).

> one percent of the population but only own about seven percent of full-power commercial radio and television stations. These numbers are woeful.[7]

Current numbers are likely to be much lower. For instance, there are currently only four full power commercial television stations owned by African Americans, representing a sixty percent decrease in the past three years alone and nearly an eighty percent decrease since 2006.[8] Perhaps even more troubling, these downward trends have occurred at a time when the share of the population made up of people of color has increased, accounting for over a third of all Americans.

Ownership Diversity Leads To Better Informed And Healthier Communities

Courts, Congress and the FCC itself have noted "a nexus between minority ownership and broadcasting diversity."[9] Extensive evidence from the field corroborates that conclusion.[10] This is particularly important because all communities – especially rural communities and communities of color – hold distinguishing knowledge that makes each unique. This knowledge reflects a community's interests, and is often derived from centuries of living within certain geographies.

Geographically, racially, and ethnically, American culture is more diverse than ever before, but that diversity is not reflected in our media. In today's media landscape, television

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[7] Letter from Tri-Caucus Chairs to Tom Wheeler, Chairman, Federal Communications Commission (Mar. 18, 2014).

[8] Notice of Ex Parte of Free Press, MB Dkt. No. 09-182, Filed Mar. 24, 2014; *See also* S. Derek Turner & Mark Cooper, *Out of the Picture: Minority and Female TV Station Ownership in the United States,* FREE PRESS (October 2006), *available at* http://www.freepress.net/sites/default/files/fp-legacy/out_of_the_picture.pdf.

[9] *Prometheus Radio Project v. Federal Communications Commission*, 652 F.3d 431, 471 (3d Cir. 2011) ("*Prometheus II*") (stating that "the conclusion that there is a nexus between minority ownership and broadcasting diversity…is corroborated by a host of empirical evidence." (quoting *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547, 567 (1990) (overruled on other grounds, use of intermediate scrutiny, in *Adarand v. Peña*, 515 U.S. 200 (1995))).

[10] *See, e.g.,* Comments of Free Press, MB Dkt. Nos. 09-182, 07-294 (filed Mar. 5, 2012).

news, radio programs and newspaper stories do not represent the concerns, culture, and knowledge of people of color and rural people. The way the public looks at issues – and whether or not the public is even aware of certain issues like fair housing, quality education and full employment – is directly related to the way these issues are covered by media. And the way that media covers these issues is directly related to who is employed in the media – the reporters, anchors, editors, producers and executives who tell and green light the stories. Employment within the media is directly related to who *owns* the media[11], and who owns the media is directly related to policies that determine who operates a broadcast stations. In each of these instances, our communities continue to lack equitable media rules that keep media platforms accessible, affordable, and accountable. With increased consolidation and a lack of strong media ownership rules, our communities are subject to a distribution of media rights, access, and influence that continues to create significant inequities in public debate and public policy.

The FCC's Media Ownership Regulatory Framework Remains Important Today

For almost a century, Americans have recognized a number of important principles about our communications networks:

- Spectrum used to transmit communications is a finite resource that is owned by the public and operated under a public trust;
- Spectrum should be used to serve the public interest, convenience, and necessity;
- The public interest is served through the promotion of competition, diversity, and localism;
- Access to diverse voices and viewpoints benefits our democracy and serves the public interest; and

[11] Catherine J. K. Sandoval, *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest* 4 (2009), *available at* http://law.scu.edu/wp-content/uploads/faculty/Minority%20Commercial%20Radio%20Broadcasters%20Sandoval%20MMTC%202009%20final%20.pdf.

- The unique wireless, one-to-many transmission profile of broadcasting makes it an efficient, pervasive and powerful means of communication.

These principles are no less true today than they were seventy years ago. For that reason, the FCC's ability to regulate spectrum licenses, promote diversity, and prevent concentration remains vital to the health of our democracy, especially as broadcasting remains critically important to staying informed and continues to be the primary source for the vast majority of American news content.

Broadcasting Remains The Dominant Way To Acquire News And Information

Due to decades of infrastructure build out and deployment, broadcasting reaches all corners of our nation. Broadcast television has maintained a penetration rate near ninety-eight percent nationwide for decades.[12] In fact, nearly one in four Latinos rely exclusively on over-the-air ("OTA") signals to receive television programming. In some markets this number approaches forty percent.[13] Not only do many in the Latino community rely on broadcast content to access local news, weather, and emergency information, but also a significant percentage still relies on traditional OTA television service. The disproportionate reliance on OTA television is partially due to the high cost of pay television services.[14]

Radio broadcasting is similarly pervasive, reaching over ninety percent of Americans each week. For instance, in Los Angeles over ninety-five percent of the population listens to the radio during the week in the morning to midday hours;[15] ninety-eight percent of Latinos and

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[12] *TV Basics: a report on the growth and scope of television*, TVB, (July 2012), *available at* http://www.tvb.org/media/file/TV_Basics.pdf.
[13] Knowledge Networks, *2011 Home Technology Monitor Survey,* (Jan. 2011).
[14] *See, e.g.* Jaime Rivera, Total cost of ownership for an iPhone 5 is $1,800, *Pocket Now* (Oct. 3, 2012), *available at* http://pocketnow.com/2012/10/03/the-total-for-an-iphone-5-is-1800.
[15] Southern California Broadcasters Association, *Los Angeles Metro Report* (2010), http://rope.zscb.fimc.net/pdfs/LA%20Metro%20Profile.pdf.

almost ninety-nine percent of Spanish-speaking Latinos in Los Angeles listen to the radio during that same time.[16]

Other Content Sources Are Far From Overtaking Broadcasting As A Primary Source Of News And Information

Broadcasting remains the primary way that Americans access news, and local and network television broadcast news are the prime sources. According to a recent Pew Research Center report, "[a]lmost three out of four U.S. adults [seventy-one percent] watch local television news and [sixty-five percent] view network newscasts over the course of a month" while only thirty-eight percent of adults watch some cable news.[17] In fact, another recent analysis found that, over the course of a month, local broadcast TV news in the New York designated market area ("DMA") alone reached more people than the top five cable news networks combined.[18]

Despite a great deal of promise, Internet sources have not achieved parity with broadcasting for creation and distribution of news and information across the country. The persistent digital divide is one reason why Internet sources are not yet a viable substitute to broadcasting for distributing news and information to diverse communities. Although home broadband adoption rates have improved since broadband service was introduced, the adoption rate still lags among certain segments of the population – including Latinos, African-Americans, seniors, struggling families, people with disabilities, and the less educated. Indeed, as Aaron

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[16] *Id.*

[17] Kenneth Olmstead, Mark Jurkowitz, Amy Mitchell & Jodi Enda, *How Americans Get TV News At Home,* PEW RESEARCH JOURNALISM PROJECT (Oct. 11, 2013), *available at* http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/.

[18] *See* TVB Analysis: Top TV Market Bests Cable News National Audience; Top 10 Markets Dwarf Cable's National and In-Market News, *available at* http://www.tvb.org/research/2053636/local_news_audience_dwarfs_national_cable.

Smith of the Pew Research Center's Internet Project observed during recent testimony in the Senate, the pace of broadband adoption overall has "slowed substantially" in recent years.[19]

The Latino community, in particular, has struggled to adopt broadband at home. According to a recent Pew report, only fifty-three percent of Latinos have adopted broadband at home, meaning that almost half of Latinos remain disconnected.[20] And those who prefer to speak Spanish at home have proven to be one of the most difficult groups to reach, with only thirty-eight percent having access to broadband within the home.[21]

Further, even when folks have access to a broadband Internet connection, the content available online is still, by and large, being created and distributed by traditional media sources. According to a recent study by the Project for Excellence in Journalism that examined news in Baltimore, ninety-five percent of digital stories with original information came directly from traditional media sources.[22]

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[19] *Broadband Adoption: The Next Mile: Hearing Before the Subcomm. On Commc'ns., Tech., and the Internet of the S. Comm. On Commerce, Sci., and Transp.*, 113th Cong. 1 (2013) (statement of Aaron Smith, Senior Researcher, Pew Research Center's Internet Project), *available at* http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=8919d402-a852-4246-916e-de623778e7e5 (pointing out that "[a]fter increasing by an average of nearly seven percentage points per year from 2000 through 2009, the national broadband adoption level increased by a total of just seven percentage points from 2009 through 2013.").

[20] Kathryn Zickuhr & Aaron Smith, *Home Broadband 2013* at 3, PEW INTERNET AND AMERICAN LIFE PROJECT (Aug. 26, 2013), *available at* http://www.pewinternet.org/~/media//Files/Reports/2013/PIP_Broadband%202013_082613.pdf.

[21] Lee Rainie, *The State of Digital Divides*, Presentation at Washington Post Live: Bridging the Digital Divide forum (Nov. 5, 2013), *available at* http://www.pewinternet.org/2013/11/05/the-state-of-digital-divides-video-slides.

[22] Ben Fritz, *Most original news reporting comes from traditional sources, study finds*, L.A. TIMES (Jan. 11, 2010), *available at* http://articles.latimes.com/2010/jan/11/business/la-fi-ct-newspapers11-2010jan11.

The FCC Must Be Allowed To Pursue Its Goals Of Competition, Localism, And Diversity Through Its Existing Regulatory Framework

The long-standing FCC goal to promote localism, competition, and diversity and ensure that broadcasters serve the public interest has gone largely unmet after intense deregulation and the loss of race-conscious programs in the mid-1990s.[23] The FCC must be allowed and encouraged to use its existing statutory authority and regulatory framework to make positive progress. There is much work to be done.

Ownership Diversity Matters

Media consolidation leads to a less diverse, less responsive, less responsible media. Research has demonstrated that diverse media owners are highly likely to air programming aimed at communities of color.[24] Professor Leonard Baynes has also analyzed evidence of the relationship between racially diverse ownership and content, concluding, "[I]t is clear that minority-owned broadcasters continue to broadcast distinct and different programming than their non-minority counterparts."[25] Georgetown Law's Institute for Public Representation has cogently explained the need for diversity in media:[26]

> A report prepared for the National Association of Hispanic Journalists (NAHJ) found that Latinos are under-represented on network news and even when they are seen, the coverage is often negative and one-sided.[27] This report examined

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[23] The Minority Tax Certificate, which was abandoned in 1995, remains one of the few programs that made positive contributions to ownership diversity.

[24] Sandoval, *supra* note 12 at 21-22; *accord* Peter Siegelman & Joel Waldfogel, *Race and Radio: Preference Externalities and the Provision of Programming to Minorities* at 4 (2001), *available at* http://www.fcc.gov/ownership/roundtable_docs/Waldfogel-c.pdf.

[25] Leonard Baynes, *Making the Case for a Compelling Governmental Interest and Re-Establishing FCC Affirmative Action Programs for Broadcast Licensing*, 57 RUTGERS L. REV 235, 252-53 (2004).

[26] Comments of Office of Communication, United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause and Benton Foundation at 10-12, 13-14, *2006 Quadrennial Regulatory Review et al.*, MB Dkt. No. 06-121 *et al.* (Oct. 23, 2006).

[27] Daniela Montalvo & Joseph Torres, *Network Brownout Report 2006: The Portrayal of Latinos & Latino Issues on Network Television News*, 19 (2006) ("Brownout 2006").

news stories that were aired on the ABC, CBS and NBC network evening newscasts. Among other things, it found that of the estimated 12,600 stories that aired on these channels in 2005, only 105 (0.83%) were exclusively about Latinos.[28] Only five of these stories featured Latino reporters.[29] Moreover, Latinos appeared as sources in only about 1.7% of non-Latino-related stories.[30]

A study of network news by Entman and Rojecki found that the range of topics attributed to Black interviewees was quite limited. The study examined videotapes of four randomly chosen weeks of evening news from the ABC, CBS, and NBC networks in 1997.[31] The study found that White people were given 1,289 total "sound bites" in the sample, while Black people had a mere [ninety-five].[32] In the sample, only one Black person said anything in an economics story, compared with [eighty-six] sound bites for Whites.[33] Only one said anything in story on foreign affairs, compared with [ninety-nine] White sound bites.[34] White voices were heard [seventy-nine] times on electoral politics, whereas not one Black person said anything on the subject.[35] The disparities were almost as great in any other area that either "invoked the common experiences or interests of Americans as a whole (disasters, foreign affairs, politics, death/rituals)," or that "involved technical expertise (science, economics)."[36] Black voices were much more common in stories dealing with entertainment, sports, or discrimination – topics already stereotypically associated with African Americans.[37]

When minorities do appear in news programs, they are often portrayed in ways that reinforce negative stereotypes.[38] Professors Bachen, et al. have conducted an exhaustive review of studies of television news coverage of race from the time of the Kerner Commission Report in 1968 to the present.[39] They find consistent

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[28] *Id.* at 4.
[29] *Id.* at 4; 9-10.
[30] *Id.* at 4.
[31] Robert M. Entman & Andrew Rojecki, *The Black Image in the White Mind: Media and Race in America* 62, University of Chicago Press (2000). These samples were collected for a report commissioned by the President's Initiative on Race. *Id.* at 246 n.9.
[32] *Id.* at 64.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *See* Leonard M. Baynes, *WHITE OUT: The Absence and Stereotyping of People of Color by the Broadcast Networks in Prime Time Entertainment Programming*, 227-67 *in* Philip M. Napoli, *Media Diversity and Localism: Meaning and Metrics* (Lawrence Erlbaum Associates 2007). ("WHITE OUT").
[39] The Kerner Commission investigation into the causes of the 1967 civil unrest found that one of the contributing factors was the media's ongoing failure to depict the conditions and difficulties faced by African Americans living in ghettos. *See* Christine M. Bachen, Allen S. Hammond, IV,

evidence that "minorities are under-represented in the media or, when present, are portrayed in limited or stereotypical roles."[40] For example, many studies have found that local television newscasts more often feature Blacks and Latinos as perpetrators of crime compared to Whites. Moreover, Whites are overrepresented as victims of homicide and other violent crime, while Blacks and Latinos were under-represented when compared to crime statistics for the area.[41]

...

While the studies cited above examine the portrayal and participation of minorities and women in broadcast news programming, other studies have found that minorities and women are also under-represented or stereotyped in entertainment programming. Professor Baynes has examined the portrayal of minorities in primetime television.[42] He finds that networks have aired few dramatic series with Black casts.[43] Moreover, less than one-fifth of situation comedies have racially mixed casts.[44] Some popular shows such as "Friends" and "Seinfeld", which are set in New York City, with all of its diversity, have all White casts. Likewise, very few Latino/a actors star in nighttime dramas or situation comedies, although a few have succeeded as non-Latino characters.[45] When Latinos do appear, they are frequently depicted as violent foreigners "with no ties to the United States."[46] Asian Pacific Americans and Native Americans rarely star in television shows, and when portrayed at all, are often presented in an offensive, stereotypic manner.[47] Additionally, a study by Children Now found

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and Catherine J.K. Sandoval, *Serving the Public Interest: Broadcast News, Public Affairs Programming, and the Case for Minority Ownership*, 432 in Philip M. Napoli, *Media Diversity and Localism: Meaning and Metrics* (Lawrence Erlbaum Associates 2007) ("Serving the Public Interest").

[40] *Id.* at 274.

[41] *Id.* at 275-76; *see also* Leonard Baynes, *Making the Case for a Compelling Governmental Interest and Re-Establishing FCC Affirmative Action Programs for Broadcast Licensing*, 57 RUTGERS L. REV 235, 258 (2004), ("Making the Case") (citing Daniel Romer, et al., *The Treatment of Persons of Color in Local Television News: Ethnic Blame Discourse or Realistic Group Conflict?*, 25 COMM. RES. 286 (1998) (study of television news found that African Americans and Latinos were twice as likely to be shown in local crime stories and than in other stories and were more often shown as perpetrators than victims)).

[42] Baynes, *WHITE OUT* at 239-48.

[43] *Id.* at 240.

[44] *Id.*

[45] *Id.* at 242. For example, Martin Sheen starred in *The West Wing*, but not as a Hispanic character.

[46] *Id.* at 243.

[47] *Id.* at 386-90. For example, many Asians (especially older Asians) are depicted as speaking English poorly, whereas, Native Americans are presented as one-dimensional, antiquated stereotypes -- either as savage warriors or hyper-spiritualistic shamans.

> that nearly half of all middle-eastern characters appearing in primetime television are cast as criminals.[48]

Despite the fact that this analysis was written several years ago, all of its observations and conclusions hold true today.

Further, the few stations owned by people of color often face significant competitive challenges. A recent analysis of Commission data reveals that people of color frequently own smaller outlets in large markets with forty-six percent of stations owned by people of color located outside of the top four ranked stations in the largest twenty DMAs.[49] According to the same analysis, people of color are often single owners in markets with widespread consolidation, making financial distress much more likely and creating pressure to exit the market, perhaps through the upcoming incentive auction.[50]

Unfortunately, none of these numbers are particularly surprising. Immediately after the 1996 Act eliminated and significantly relaxed a number of key broadcast ownership limits, women and people of color were pushed from the market as mega-media conglomerates grew. According to data collected by the National Telecommunications and Information Administration in 1997:

> Most of the minority owners interviewed reported that they believe the decline seen in this year's numbers is a direct result of increased ownership limits, which has given a significant competitive advantage to groups owners, who are more likely to be non-minority and have greater financial resources. The ability to own multiple stations in the same market has proven to be an effective tool for obtaining market share while increasing economies of scale for those who are well-financed. These owners also are more likely to be non-minority. The minority owners interviewed contend that the 1996 Act and the FCC's new ownership limits have the potential to translate into even greater economic possibilities for a handful of companies that already were generating high streams

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[48] Children Now, *Fall Colors: Primetime Diversity Report 2003-2004*, 6 ("Fall Colors 2003-2004").
[49] Comments of Free Press, MB Docket Nos. 09-182, 07-294, filed Dec. 21, 2012, *available at* http://apps.fcc.gov/ecfs/document/view?id=7022089263 ("Comments of Free Press").
[50] *Id.* at 17-23.

> of advertising revenues, and to squeeze out smaller stations in weaker markets. Lending some credibility to this claim is the phenomenal growth occurring for companies such as Gulfstar, Clear Channel and Chancellor, and the declining minority ownership numbers, particularly for FM stations.[51]

According to a footnote in the 1997 report:

> In the industry today media concentration has driven up the prices of stations in many markets. In the Washington, D.C. market, the price of radio stations has increased by at least 20 percent over the past two years. Prior to 1997, stations were traded at about 10 times their projected annual revenues. Now, that multiple goes as high as 15.[52]

The dearth of outlets owned by people of color has directly impacted employment at local stations and news coverage in local communities. The National Association of Black Journalists 2012 Diversity Census paints a bleak picture. The census counts newsroom management positions at almost 300 television stations owned by the top conglomerates. It found that at more than half of the stations, not one single person of color was employed in a newsroom management position – despite stations being located in diverse population centers such as New York, San Antonio, Los Angeles, Chicago, and Atlanta.[53] This phenomenon could help explain some of the unbalanced news coverage in major metropolitan areas. For instance, a 2011 study of news in Pittsburgh, PA, found that ninety-seven percent of the news coverage of African American young men and boys consisted of stories about crime or sports.[54]

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[51] National Telecommunications and Information Administration, 1997 Commercial Broadcast Ownership Findings, *available at* http://www.ntia.doc.gov/legacy/reports/97minority/findings.htm.
[52] *Id.* at n.30.
[53] NABJ Diversity Census 2012, *available at* http://c.ymcdn.com/sites/www.nabj.org/resource/resmgr/onrmore.2012_nabj_diversity_.pdf.
[54] *Portrayal and Perception: Two Audits of News Media Reporting on African American Young Men and Boys*, HEINZ ENDOWMENTS' AFRICAN AMERICAN MEN AND BOYS TASK FORCE, Nov. 1, 2011, *available at* http://www.heinz.org/UserFiles/Library/AAMB-MediaReport.pdf.

Excessive Concentration Of Broadcast Licenses Has Frustrated The FCC's Policy Goals And Harmed Local Communities And People Of Color

Excessive consolidation and lack of diversity have directly resulted in harm of diverse communities and led to the inability of these communities to fully benefit from the public resource that broadcasters use to serve them.

Clear Channel's radio station cluster in the Los Angeles DMA is a perfect example of how media consolidation can negatively impact local communities. Los Angeles is renowned for its rich cultural diversity – two-thirds of its residents are people of color. Of the nearly eighteen million people residing within the DMA,[55] forty-five percent are Latino, twelve percent are Asian American, and seven percent are African American.[56] Los Angeles is not only the top Latino DMA in the country, but also the top Asian-American DMA.[57]

Clear Channel, with headquarters in San Antonio, Texas, and nearly 850 radio stations in over 150 cities across the U.S., is out of step with the needs of the local communities that it is supposed to be serving, and some of its outlets pollute the airwaves with vicious hate speech targeting many of the groups that make up the Los Angeles community. Because of its vast consolidation and offsite executive team, it is questionable whether Clear Channel can manage local programming and truly serve the public interest in diversity and localism as expected and

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[55] The Los Angeles DMA includes Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties. *See* Hispanic Market Weekly, *Market Snapshot: Los Angeles*, LATINO BUSINESS TODAY (Feb. 2012), *available at* http://latinbusinesstoday.com/2012/02/market-snapshot-los-angeles.

[56] U.S. Census 2010, http://factfinder2.census.gov/; *see also* U.S. Census 2010, http://www.census.gov/2010census/popmap/ (reporting that 17,877,006 people reside in the Los Angeles DMA. Of those, 8,028,831 are Latino; 2,199,186 are Asian; and 1,245,186 are African American).

[57] *See* TVB Market Profiles, *DMA: Los Angeles, CA*, Local Media Marketing Solutions, http://www.tvb.org/market_profiles#!id=116&type=market.

mandated per FCC regulations. In Los Angeles, Clear Channel has ties to ten stations, owning eight and representing two others for the purpose of selling advertising.[58]

Not only do Clear Channel outlets in Los Angeles fail to serve the local community, but some endlessly bait and antagonize the community while exploiting the lack of strong multiple ownership rules to insulate their stations from any negative repercussions that would come from free market accountability mechanisms, such as losing audience share or advertising revenue. Nowhere is this more apparent than in the case of Clear Channel's KFI-AM 640 AM. In just the past few years, more than 240 consumers have filed FCC complaints about KFI's programming; almost every single complaint was filed in reference to hate speech uttered by KFI's on-air personalities.[59] In the past, John Kobylt and Ken Chiampou, of KFI-AM's "The John and Ken Show," have mercilessly targeted Latinos, Korean Americans, Native Americans, gay men, and the poor. KFI-AM's Los Angeles studio has been the site of countless community protests, most recently by the African American community, which was outraged when John and Ken called the late Whitney Houston a "crack ho" shortly after her death.[60] In the past, Rush Limbaugh, who aired on KFI until just recently when he transitioned to another Los Angeles Clear Channel station, commented, "[S]ome people are just born to be slaves."[61] Limbaugh also referred to a

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[58] Clear Channel Radio Sales Station List, KATZ MEDIA, http://www.katz-media.com/uploadedfiles/OUR_*COMPANIES*/CCRS/Stations/CCRS%20stationlist.pdf.
[59] *American Hate Radio: How A Powerful Outlet For Democratic Discourse Has Deteriorated Into Hate, Racism and Extremism*, NATIONAL HISPANIC MEDIA COALITION, at 5 (Jan. 2012), *available at* http://www.nhmc.org/nhmcnew/wp-content/uploads/2013/03/american_hate_radio_nhmc.pdf ("NHMC Hate Radio").
[60] *See* Steve Carney & Greg Braxton, *John and Ken meet with black leaders over Whitney Houston comments*, L.A. TIMES (Feb. 28, 2012), *available at* http://latimesblogs.latimes.com/lanow/2012/02/kfi-john-ken-whitney-houston-crack-ho-black-leaders.html. (This rant earned John and Ken only a brief suspension).
[61] NHMC Hate Radio, *supra* note 59, at 6.

Georgetown Law student a "slut" and a "prostitute" over the course of a number of broadcasts in 2012.[62] The examples of this hate speech on KFI are, unfortunately, bountiful.

Much of the community outrage directed at Clear Channel and KFI results from their hosts' use of calls to action against certain racial or ethnic groups or vulnerable populations following systematic and sustained dehumanization of those populations on the air. John and Ken are infamous for such stunts. The UCLA Chicano Studies Research Center has documented the regular use of unsubstantiated claims, divisive language, and dehumanizing metaphors on "The John and Ken Show," which target vulnerable groups.[63] Listeners have complained that John and Ken often direct this language towards Los Angeles' Latino community. For instance, John and Ken have discussed wanting to beat a "stupid, illegal alien leafblower guy" and decried "[Mexicans] bring[ing] their stupid third world habits [to] foul our life."

As they stoke anger among their listeners with this type of language, John and Ken have, in the past, offered their audience an outlet for their anger with calls to action, giving out the personal cell phone numbers of various private individuals with whom they disagree. One instance involved UCLA student Nancy Meza and resulted in her receiving more than 300 angry phone calls and death threats.[64] The disc jockeys also began selling t-shirts online as part of their campaign, with 'Deport Nancy Meza' printed on the front and a phone number to Immigration

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[62] *See* Limbaugh's Misogynistic Attack On Georgetown Law Student Continues With Increased Vitriol, MEDIA MATTERS FOR AMERICA (Mar. 1, 2012), http://mediamatters.org/blog/201203010012.

[63] Chon A. Noriega & Francisco Javier Iribarren, *Quantifying Hate Speech on Commercial Talk Radio*, UCLA CHICANO STUDIES RESEARCH CENTER, (Nov. 2011), *available at* http://www.chicano.ucla.edu/files/WP1QuantifyingHateSpeech_0.pdf.

[64] Nancy Meza, *Suspension For John And Ken Is Not Enough; Their Hate Speech Needs To Be Taken Off The Air*, THE HUFFINGTON POST (Feb. 29, 2012), *available at* http://www.huffingtonpost.com/nancy-meza/suspension-for-john-and-ken_b_1307373.html.

and Customs Enforcement on the back.[65] Another call to action involved immigrant rights activist Jorge-Mario Cabrera, who received more than 450 threatening calls from John and Ken's listeners.[66]

NHMC and more than forty other multicultural civil rights organizations led a campaign to educate advertisers about the divisive nature of "The John and Ken Show," resulting in nearly thirty major companies removing their advertisements from the program. But because Clear Channel owns so many stations in the market it is able to buy large blocks of advertising across its station cluster, minimizing competition, and eliminating the ability of market forces to remove the hate programming that clearly disserves the public interest, especially in a locale as diverse as Los Angeles. Throughout the education campaign, a number of advertisers who had called Clear Channel to explicitly request that their ads not air on "The John and Ken Show" were seemingly shifted to a different time period or station. Some were simply removed from the radio but kept on the live online streaming broadcast. Because it owns so many media outlets in the market, Clear Channel was able to ignore the community outcry over its programming, while still continuing to profit. Not only are diverse voices rarely heard *on* the airwaves, but – as this case illustrates – they are not heard *by* those that use the airwaves for financial gain. Clear Channel has gone beyond a simple failure to serve the local community and, in many cases, is actively harming it.

Recent polling completed by NHMC and the polling firm, Latino Decisions, has revealed the incredible power of even brief media representations of Latinos – both positive and

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[65] *Id.*
[66] NHMC Hate Radio, *supra* note 59, at 4.

negative.[67] After viewing just one minute of media content, poll respondents changed the way they viewed Latinos. For example, when asked if Latinos were intelligent, those who consumed negative news and entertainment pieces were much more likely to rate Latinos as unintelligent, while those who consumed positive pieces were much more likely to rate Latinos as intelligent. The poll also found that:

- People exposed to negative entertainment or news narratives about Latinos and/or immigrants hold the most unfavorable and hostile views about both groups;
- Negative portrayals of Latinos and immigrants are pervasive in news and entertainment media. Consequently, non-Latinos commonly believe that many media-promoted negative stereotypes about these groups are true;
- For those without direct experience with Latinos, media takes on a larger role in establishing their opinions and attitudes;
- Even those most disposed to positive opinions about Latinos have less favorable opinions when exposed to negative entertainment or news narratives;
- In discussing those in this country without documentation, the term commonly employed by some media outlets, "illegal aliens," elicits much more negatives feelings than the term "undocumented immigrants"; and
- Non-Latinos report seeing Latinos in stereotypically negative or subordinate roles (gardeners, maids, dropouts, and criminals) in television and film.

The FCC's Recent Move To Modestly Tighten Its Rules Is A Step In The Right Direction

Part of the reason for today's hearing is to better understand the FCC's recent move to modestly tighten its media ownership rules by requiring ownership attribution for stations that participate in certain types of sharing arrangements with other stations. While some have contended that the FCC's recent action regarding television joint sales agreements ("JSAs") will harm ownership diversity, NHMC does not share that opinion. To say that restricting some of

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[67] *The Impact of Media Stereotypes on Opinions and Attitudes Towards Latinos,* NATIONAL HISPANIC MEDIA COALITION (September 2012), *available at* http://www.nhmc.org/reports/impact-media-stereotypes-opinions-attitudes-towards-latinos/.

these sharing agreements would harm ownership diversity implies that, to date, these arrangements have been a tool to increase diverse ownership of broadcast licenses. Unfortunately, the facts do not support this contention.

Data compiled by Free Press shows that the rise of sharing and coordination agreements between broadcasters has taken place at a time when ownership diversity has continued to plummet.[68] For instance, in 2006, the top broadcasters using outsourcing agreements had thirty-seven agreements in place. They now have 116. In 2006, 3.5 percent of full-power commercial stations were owned by people of color. That now stands at three percent. African American broadcasters have been hit particularly hard in recent years. In 2006, there were nineteen African American owned stations. That number now stands at four. In 2006, the level of African American ownership was 1.4 percent. It is now 0.29 percent. According to recent data compiled by Commissioner Pai, three out of four African American owned stations are currently in an operational agreement.[69] None of the African American owned stations in 2006 were party to such an agreement. While there are surely reasons for these types of agreements to exist, it is clear that promoting diversity is not one of them.

While it seems as though the majority of JSAs are entered into for reasons other than promoting diversity, a small number of anecdotes have emerged where an argument can be made that a JSA or other type of sharing agreement may be providing a unique service to a community. Chairman Wheeler has made it very clear on a number of occasions that, in such situations, the

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[68] *See Cease To Resist: How the FCC's Failure to Enforce Its Rules Created a New Wave of Media Consolidation*, FREE PRESS at 25 (Oct. 17, 2013), *available at* http://www.freepress.net/resource/105083/cease-resist-how-fccs-failure-enforce-its-rules-created-new-wave-media-consolidation.

[69] News Release, *Office Of FCC Commissioner Ajit Pai Releases Results Of Broadcast Ownership Diversity Research* (Mar. 20, 2014), *available at* http://www.fcc.gov/document/comm-pai-releases-results-broadcast-ownership-diversity-research.

broadcasters involved can make their case to the FCC and apply for a waiver of its rules.[70] NHMC believes that this process is appropriate.

Conclusion

To conclude, the FCC's media ownership regulatory framework remains important. Broadcast stations, which use the public airwaves, remain the primary sources of news and information for most of the country. These stations continue to possess extraordinary power to both serve and harm their local communities. It is crucial that the FCC continue to distribute broadcast licenses in a way that promotes diversity, competition, and localism. While recent numbers indicate that there is much work to be done to ensure that women and people of color own their fair share of licenses, the FCC must remain at the forefront of that work and use the authority that it has to work within the existing framework and create positive change by reversing decades of consolidation in the media industry. Only then will we have the diverse media that we all need and deserve. Thank you, again, for the invitation to testify this morning. I look forward to your questions.

[70] *See e.g.* Tom Wheeler, *Protecting Television Consumers By Protecting Competition* (Mar. 6, 2014), *available at* http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition.

Mr. WALDEN. Ms. Gonzalez, thank you for your powerful testimony. We appreciate your comments.

We will now turn to Mr. Bernard Lunzer, President of The Newspaper Guild-CWA. Mr. Lunzer, thank you for being here. We look forward to your testimony as well, sir.

STATEMENT OF BERNARD LUNZER

Mr. LUNZER. Thank you, Mr. Chairman, ranking member and the committee for allowing me to testify.

News Guild-CWA represents workers in broadcast, print and digital. Our sister sector, NABET–CWA, represents workers throughout broadcast. Along with our employer rep, some of them that are here, we seek solutions to the current challenges in media.

The Internet will continue its disruption of media, while also offering room for innovation and new revenue. Right now, there are no simple solutions or clear ways forward.

We support Chairman Wheeler's stated intent to rein in JSAs, study shared service agreements, and maintain the status quo on cross-ownership between print and broadcast. Further consolidation will not help. It is not about saving call letters, NASTADs or Web sites, if they only duplicate information from elsewhere. JSAs, SSAs, and more cross-ownership will result in fewer employees, less news coverage, and less diversity in both areas. It also will not stimulate diversity in ownership.

Already, JSAs and SSAs have substantially reduced coverage in towns like Youngstown, Ohio, and Honolulu, Hawaii. In Youngstown, for example, four TV stations are operated by Lynn Media, with duplicated material being presented on those stations. Lynn Media is in competition with two other stations that are owned and operated in conjunction with the Youngstown Vindicator newspaper. When Lynn consolidated stations, it eliminated most newsroom jobs in the accreted newsrooms. The Vindicator and its broadcast stations have small staffs in their newsrooms and share material. Overall, employment has shrunk and diversity of coverage as well. Cable, by the way, adds almost nothing locally.

We are often told that combinations allow for more coverage. That is just not the case, as the efficiencies are used purely to increase profitability through less staff.

Honolulu is a similar case to Youngstown, and well documented. Three of five stations operate as if they were a single news operation, with almost identical news, significantly diminishing local coverage.

In Syracuse, New York, and Peoria, Illinois, Granite and Barrington Broadcasting swapped and combined news operations in each city. Our union commissioned a national study done by the University of Delaware. The study reported that 70 workers were laid off and 16 were reassigned. Barrington Broadcasting now runs 3 stations in Syracuse with the same news staff. The Syracuse and Peoria markets both lost competing and different points of view in news coverage through duplication.

We get to a situation where some broadcast stations are essentially zombies. Broadcasting continues but there are few, if any, employees involved. The JSAs allow for consolidation on the advertising side.

We believe the goal of restricting JSAs where more than 15 percent of sales are attributed to another station is a good one. We also agree with the FCC about studying SSAs to see if similar restrictions would be in order. There needs to be a procedure and a test to revive such stations, allowing for more hiring, diversity of coverage, and the potential for diversity of ownership. The FCC is on the right track, if that really is the goal.

Again, further concentration will make this worse. The status quo continues the current dilemma. Only new guidelines will provide for a better competition, and a robust landscape that may allow for diversity of ownership, which is at scandalous levels, as has already been discussed here.

Let me also strike at the heart of the myth of diverse content, because the Internet is adding so many voices. This is a very important point. Much of what the Internet has added is opinion, not well-sourced and not particularly helpful. A Pew Study of Baltimore Tribune Paper in 2012 demonstrated that although there were 53 news outlets for local content, 83 percent of stories were repetitive, with no new information. Legacy print content providers accounted for 48 percent of content, with local broadcast providing about ⅓. Almost no breaking information came from the nonlegacy platforms. Since the study, the Baltimore Sun, the principle provider of news, has shrunk substantially.

As a labor union that cares deeply about democracy, we believe further concentration will mean less credible news and information to citizens as major debates take place over the future of America. Citizens should expect their rights to be paramount over broadcasters, as has been established in law. We need real innovation and investment as we continue forward in the 21st century. Consolidating existing organizations with fewer employees does not get us there.

I would also note that the breaking news last night on the Virginia election, I got that through a print source that actually came in through a tweet. The original news actually came from a print organization.

I look forward to any questions. Thank you.

[The prepared statement of Mr. Lunzer follows:]

Testimony of Bernard Lunzer, President, NewsGuild-CWA to House Committee on Energy and Commerce, Wednesday June 11, 2014

I want to thank the Chairman and Ranking Member of this House Committee on Energy and Commerce, and the full committee for this opportunity to testify regarding the current media situation and its implications on the Federal Communications Commission. The NewsGuild-CWA represents workers in broadcast, print and on the web. Our sister sector NABET-CWA represents workers primarily in broadcast.

Along with our employer representatives, some of them here, we seek solutions to the current challenges facing the media industry. The internet and the web will continue its substantial disruption of media while offering new opportunities for innovation and revenue. Right now there are no simple solutions, or clear ways forward.

We support Chairman Wheeler's stated intent to rein in Joint Sales Agreements, Shared Services Agreements and to maintain the status quo on Cross Ownership between Print and Broadcast. We do not believe further consolidation will help. The goal right now should not be to save call letters, mastheads or websites – if they only duplicate information distributed elsewhere. Joint Sales Agreements, Shared Services Agreements and more Cross-ownership would likely result in fewer employees, less news coverage and less diversity in both areas. It also will not stimulate diversity ownership.

Already JSA's and SSA's have substantially reduced coverage in towns like Youngstown, Ohio and Honolulu, Hawaii. In Youngstown for example, four TV stations are operated by LIN Media with duplicated material being presented on those stations. LIN Media is in competition with two other stations that are owned and operated in conjunction with the Youngstown Vindicator Newspaper. When LIN consolidated stations it eliminated most newsroom jobs in the accreted newsrooms. The Vindicator has substantially reduced jobs in both broadcast and print in the last five years, operating with a combined newsroom. Not only has overall employment been reduced, but local coverage has shrunk substantially and diversity of stories and coverage as well. Cable adds almost nothing locally.

We're often told that combinations allow more coverage. But that's just not the case as the efficiencies are used to increase profitability into double digits. Honolulu is a similar case to Youngstown and well-documented. Three of the five stations operate as if they were a single news operation with almost identical news, significantly diminishing local coverage. Great efforts were made to stop this consolidation but it happened anyway.

In Syracuse NY and Peoria IL, Granite and Barrington Broadcasting swapped and combined news operations in each city. Our Union commissioned a national study

done by the University of Delaware in 2011. The study reported that 70 workers were laid off and 16 reassigned. Barrington Broadcasting now runs 3 stations in Syracuse with the same news staff. The Syracuse and Peoria markets lost competing and different points of view in news coverage.

We get to a situation where some broadcast stations are essentially zombies – places where broadcasting continues but there are few if any employees involved. The Joint Sales Agreements allow for consolidation on the advertising side. We believe the goal of restricting JSA's where more than 15 percent of sales are attributed to another entity is a good one, as outlined by Chairman Wheeler. We also agree with the FCC about studying SSA's to see if similar restrictions would be in order.

There needs to be a procedure and a test to revive such stations, allowing for more hiring, diversity of coverage and the potential for diversity of ownership. The FCC is on the right track if that is the goal.

Again, further concentration will make this worse. The status quo continues the current dilemma. Only new guidelines will provide for better competition and a robust landscape, that could allow for diversity ownership – which is at a scandalous level right now.

Let me also strike at the heart of the myth of diverse content based on the internet adding so many voices. Much of what the internet has added is opinion based information – not well sourced and not particularly helpful. A Pew Study of Baltimore demonstrated that although there were 53 news outlets for local content, 83 percent of stories were repetitive with no new information. Legacy print content providers accounted for 48 percent of content with local broadcast providing about one-third. Almost no breaking information came from the non-legacy platforms. Since the study, the Baltimore Sun, the primary provider has been shrunk substantially.

As a labor union that cares deeply about democracy we also believe that the societal implications of further concentration will mean less credible news and information to citizens as major debates take place over the future of America. Citizens should expect their rights to be paramount over broadcasters, as has been established in law. We need real innovation and investment as we continue forward in the 21st century. Consolidating existing organizations with fewer employees does not get us there.

Mr. WALDEN. Mr. Boyle, you are now recognized for your 5 minutes.

STATEMENT OF PAUL J. BOYLE

Mr. BOYLE. Congressman Terry, Ranking Member Eshoo, and members of the subcommittee, on behalf of our 2,000-plus member newspapers, thank you for providing this opportunity to testify.

The subcommittee's focus on Media Ownership in the 21st Century is appropriate. Many of our ownership regulations are creatures of the 20th century, and are no longer suitable for today's multimedia world. My testimony will focus on one such outdated regulation; the newspaper/broadcast cross-ownership ban. The FCC adopted this ban in 1975. The rule prohibits investors from owning both a daily newspaper and a television or radio station in the same market. At the time, the Commission feared that one owner could control all of the news and editorial viewpoints in a community.

Many ideas that sounded perfectly reasonable in 1975 now appear behind the times. Those were the days of a single nationwide telephone company, gasoline rationing and bellbottoms. Today's media ownership regulations must reflect today's media. You recognized this need when, in 1996, you required the FCC to conduct a comprehensive review of its media ownership regulations every 4 years, and to repeal or modify any regulation that it determines to be no longer in the public interest. Well, NAA is getting ready to file comments in the Commission's eighth proceeding in nearly 20 years, examining the validity of the 1975 cross-ownership ban. Remarkably, none of these proceedings has resulted in any changes in the rule, creating an endless cycle of regulatory uncertainty for newspapers and broadcasters. We all know that American consumers have access to more information and viewpoints today than ever before. According to a recent report on the personal news cycle, the average American recalled getting her news from between 4 and 5 different sources in a week, and new digital news players have exploded on the scene. This same report found that nearly ½ of those surveyed received their news from online-only reporting sources. Quite simply, there are no longer any barriers to entry in the distribution of news and information. However, in-depth investigative original reporting that is professionally edited takes a substantial commitment of resources. Newspapers have always made this commitment.

Some have argued that the repeal of the cross-ownership ban will lead to a massive wave of mergers. Nothing could be further from the truth, but in light of rapid changes in media consumption, some newspapers likely will come on the market. The ban reduces the number of potential buyers who might want to invest in a newspaper, including an owner of a broadcast station with deep resources and a commitment to journalism. And when local television or radio stations become available for sale, the only media companies that are barred from bidding on them are newspaper companies; companies that have had a long history of producing local news in that community.

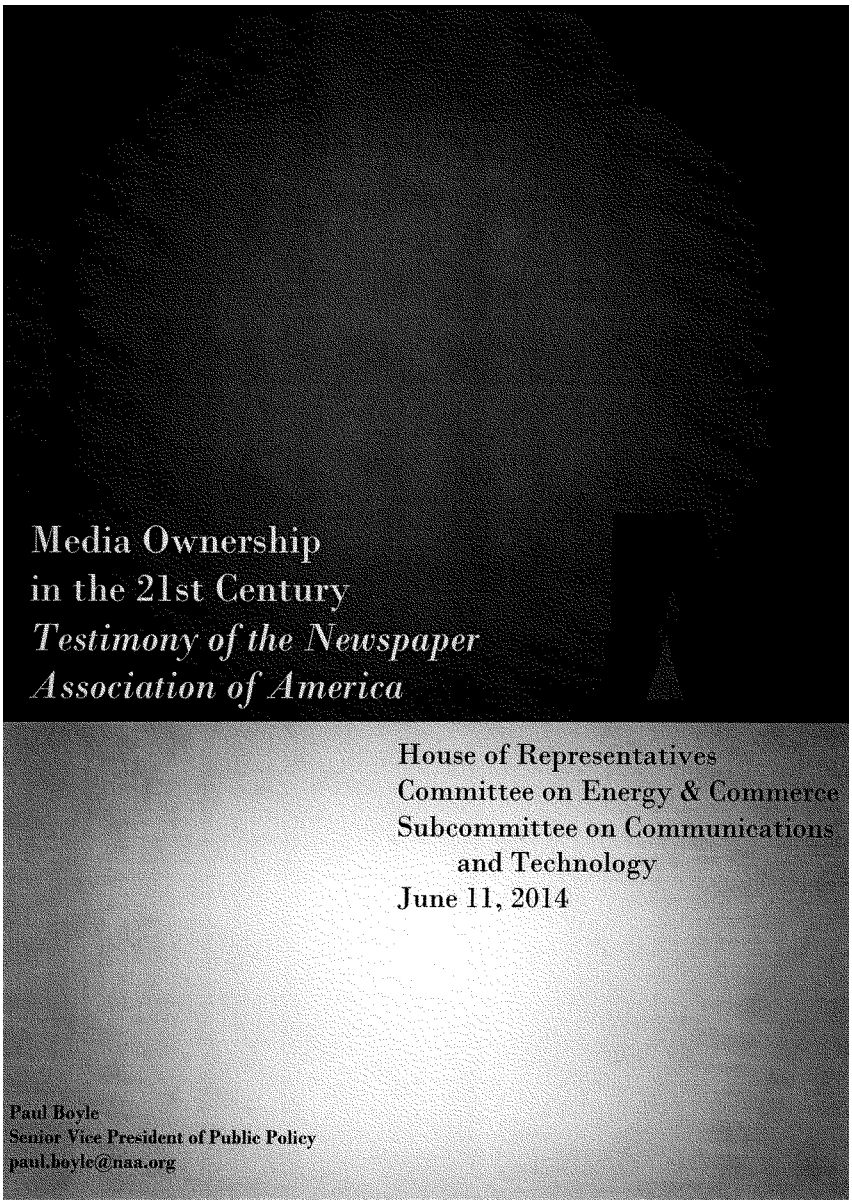
Some of the Nation's top journalism has occurred in communities that have cross-owned newspapers and broadcast stations. For ex-

ample, two of the primary news sources that broke and dug deep into the story about mismanagement at the Department of Veterans Affairs were newspaper-television combinations in Arizona and Ohio. This was not a surprise. Public service journalism is a part of their DNA.

According to FCC Commission research, a cross-owned television station produces 50 percent more local news, devotes 40 percent more time to candidate speeches, and airs 30 percent more coverage of State and local political candidates. Removing the cross-ownership restriction would serve, not harm communities. It is time to eliminate this barrier that has stifled much-needed investment in local journalism.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Boyle follows:]


Media Ownership
in the 21st Century
Testimony of the Newspaper Association of America
House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications
and Technology
June 11, 2014
Paul Boyle
Senior Vice President of Public Policy
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Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
113th Congress, 2nd Session

Media Ownership in the 21st Century

Testimony of Paul Boyle
Senior Vice President of Public Policy, Newspaper Association of America

June 11, 2014

EXECUTIVE SUMMARY

The Federal Communications Commission's ban on newspaper-broadcast cross-ownership in the same market is outdated, and ultimately results in a reduction in investment in local journalism. The FCC enacted the ban in 1975, out of concern that a single owner could control the primary sources of local news in a city. Today's media landscape looks nothing like it did 39 years ago. Consumers have more sources of news than ever, as online news sites continue to emerge and compete with newspapers and television stations. These changes completely undercut the FCC's original rationale for the newspaper-broadcast cross-ownership ban, and discriminate against newspapers solely because they publish their news in print, rather than only online.

This regulation is not only outdated and discriminatory–it ultimately harms the public interest by depriving local journalism of a much-needed source of new capital. Newspapers have experienced a massive shift in their business models, as print advertising revenues have fallen by more than 50 percent in the past six years. Newspapers are constantly innovating to develop new ways to fund newsgathering. The cross-ownership ban prevents the owner of a local broadcaster, who has an investment in the community and shares a similar value in journalism, from owning a newspaper.

The cross-ownership ban also categorically prohibits a business model that has proven to result in exceptional local journalism. In the handful of markets where newspapers and broadcasters are exempt from the cross-ownership ban due to grandfathered arrangements, the cross-owned properties have collaborated on breaking news and investigative projects. For instance, cross-owned newspaper-television station combinations in Phoenix and Dayton were the first to report many of the key revelations in the recent Veterans Affairs scandal.

The newspaper-broadcast cross-ownership ban has outlived its initial purpose, and full repeal of this harmful regulation is long past due.

Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives
113th Congress, 2nd Session

Media Ownership in the 21st Century

Testimony of Paul Boyle
Senior Vice President of Public Policy, Newspaper Association of America

June 11, 2014

Good morning and thank you for the opportunity to appear before you to discuss media ownership in the 21st Century. I am Paul Boyle, senior vice president of public policy at the Newspaper Association of America, which represents the publishers of nearly 2,000 newspapers in the United States and Canada.

I commend the subcommittee for examining media ownership, an issue that affects how every American accesses news about local communities, the nation, and the world. Your focus on media ownership in the 21st Century is particularly appropriate. Many of our ownership regulations are creatures of the 20th Century, and are no longer appropriate for today's multi-media world. My testimony today will focus on one such outdated regulation: the newspaper-broadcast cross-ownership ban.

The Federal Communications Commission adopted the newspaper-broadcast cross-ownership ban in 1975. The rule prohibits investors from owning both a daily newspaper and a television or radio station in the same market. At the time, the Commission justified the regulation because it concluded that consumers had few other choices for local news than newspapers and broadcast stations. The Commission feared that one owner could control all of the news and editorial viewpoints in a community.

Many ideas that sounded perfectly reasonable in 1975 now appear behind-the-times. A single nationwide telephone company. Gasoline rationing. Bell-

bottoms. Today's media ownership regulations must reflect *today's* media. You recognized this need when – in 1996 – you required the FCC to conduct a comprehensive review of its media ownership regulations every four years, and to "repeal or modify any regulation that it determines to be no longer in the public interest."

In 2003, the U.S. Court of Appeals for the Third Circuit concluded that a "reasoned analysis" supported the Commission's determination that the blanket ban on cross-ownership was no longer in the public interest. The Third Circuit came to this conclusion *three years* before the launch of the iPhone and *seven years* before the iPad. As the FCC wraps two quadrennial reviews into one (2010 / 2014), the NAA is getting ready to file comments in the Commission's *eighth* proceeding in the past 20 years examining the validity of the 1975 cross-ownership ban. Remarkably, none of these proceedings has resulted in any changes in the rule, creating a seemingly endless cycle of regulatory uncertainty for newspapers and broadcasters.

We all know that American consumers have access to more information and viewpoints today than ever before. According to a report published earlier this year by the American Press Institute, the Associated Press and the NORC Center for Public Affairs Research, nearly seven out of 10 Americans regularly receive news on their computers, more than five out of 10 get their news on a cell phone, and three out of 10 get their news on a tablet.

The growth of media across all platforms has also created a much broader range of news sources for consumers. According to the API/AP/NORC study, the average American recalled getting her news from four or five different sources in a week, and nearly half of those surveyed had received their news from online-only sources. The endless capacity of the Internet has allowed well-funded online news sites such as Vox, First Look Media and BuzzFeed to come on to the national scene, while a rich breeding ground exists for regional and local news sites such as Voice of San Diego and ArlNow.com, across the Potomac in Arlington, Virginia. As the Pew Project for Excellence in Journalism summarized in its State of News Media 2014

report, digital players "have exploded onto the news scene, bringing technological knowhow and new money and luring top talent." Quite simply, there are no longer any barriers to entry in local journalism, and newspapers face more competition than ever.

The competition and diversity of news sources is remarkable, and it demonstrates why the newspaper-broadcast cross ownership ban makes no sense today. Just think about it: a popular news website with significant market penetration can purchase a television station in the same city in which it is located. But if that news website also prints news on paper at least four times a week, it cannot own the same station. In an era when the nation's largest cable company can purchase one of the Big Four television networks, and is attempting to acquire the nation's second-largest cable company, it makes little sense to prohibit a 10,000-circulation newspaper in the Midwest from being owned by the same company that owns a television station in that town.

In-depth and investigative reporting requires a substantial commitment of resources. The economic recession and increased competition in the media marketplace have upended the economic system that has funded journalism for decades. Indeed, when Congress last held a hearing on the newspaper-broadcast cross-ownership ban in 2007, newspaper print and digital advertising revenues totaled $45.3 billion. These advertising revenues in support of journalism have fallen by 54 percent to $17.3 billion in 2013.

Newspapers are quickly adapting to this new reality by innovating and diversifying their revenue streams. Circulation revenue recorded a second consecutive year of growth, as consumers have embraced digital subscriptions. And newspapers are driving new revenue by offering digital marketing services to small and media sized businesses, and developing award-winning news apps for mobile platforms. Every day, newspapers develop new ways to innovate so that communities nationwide continue to get the robust journalism that has been a cornerstone of our democracy since our nation's inception.

The government should encourage this innovation, but at the very least, not stand in the way. The nearly 40-year-old newspaper-broadcast cross-ownership ban stifles innovation by categorically prohibiting an ownership structure that would bring new capital to local journalism.

Repeal of this ban will not lead to a massive wave of mergers. But in light of the rapid changes in media consumption, some newspapers likely will come on the market. The cross-ownership ban effectively reduces the number of potential buyers from investing in a newspaper and the community it serves, including a local broadcaster with deep resources and a shared value in journalism. And when local television broadcast stations become available for sale, the only media companies that are categorically barred by federal law from bidding for them are newspaper companies – companies that have had a long history of producing local news in that community.

Some of the nation's top journalism has occurred in the handful of communities that have cross-owned newspapers and broadcast stations due to grandfathered arrangements. Cross-ownership enables journalists at newspapers and stations to collaborate on investigative projects and share breaking news tips. These collaborations regularly lead to exceptional public service journalism and are recognized by Pulitzers and Peabodys. For example, two of the primary news sources that broke the story about the mismanagement of the Department of Veterans Affairs were newspaper/television combinations. The initial revelations of deaths resulting from delays in medical treatment arose from a long-term investigation by the *Arizona Republic* and KPNX-TV in Phoenix. And in Dayton, Ohio, journalists at the *Dayton Daily News* and WHIO-TV worked together to analyze the quality of care that veterans were receiving, and discovered that the VA had paid a total of $36.4 million to settle claims arising from treatment delays.

The VA revelations are not anomalies. According to FCC-commissioned research, a cross-owned television station produces 50 percent more local news,

devotes 40 percent more time to candidates' speeches and comments, and airs 30 percent more coverage of state and local political candidates.

The newspaper-broadcast cross-ownership ban has long outlived its purpose, and stifles much-needed investment in local journalism.

We look forward to working with this Subcommittee and the full Energy & Commerce Committee as you move forward.

Thank you for the opportunity to testify. I look forward to your questions.

Mr. WALDEN. Mr. Boyle, thank you for your testimony. We will now go to Mr. David Bank who is the Managing Director of RBC Capital Markets.

Mr. Bank, we especially appreciate your testimony today, and look forward to hearing it. So thanks for being here.

STATEMENT OF DAVID BANK

Mr. BANK. Thank you. OK, good morning.

Mr. WALDEN. You have to push that little button right there in front. There we go.

Mr. BANK. Shows my lack of Governmental experience. Thank you.

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. My name is David Bank and I am a managing director and the equity research analyst responsible for covering the media sector at RBC Capital Markets.

RBC Capital Markets is the corporate and investment banking arm of the Royal Bank of Canada; Canada's largest bank and the twelfth largest bank in the world, based upon market capitalization.

I primarily advise institutional clients such as pension funds and mutual fund managers with respect to broader themes and specific company fundamentals in the media industry. I help advise investors with respect to how they should be positioned in the media space, given current and future industry dynamics. I have covered the media space for approximately the last 15 years, during which a tremendous amount of change has occurred in the broad media landscape, especially with respect to three things: the first, how consumers apportion their time consuming different media; the second, the new media outlets that have become available to those consumers; and third, the business models available to those operators, and the competitive forces within the media space.

Much has already been made of the fact that the current regulatory framework for media ownership dates back to 1975 for newspaper cross-ownership, and basically, to the late 20th century for much of the framework for TV and radio broadcast with respect to both cross-ownership and single media ownership concentration across single markets, as well as in the U.S. in totality.

The financial markets, the capital markets, are keenly aware that this regulatory framework was created before the dynamically changing nature of the media ecosystem, that has overtaken us at light speed over the past few years, had been developed. The financial and capital markets are even more keenly aware that consumer behavior itself has changed massively as a result of the evolving ecosystem. Specifically, the current regulatory framework was constructed in a media ecosystem that basically didn't include the Internet. While it may have contemplated a broad PC-based Internet consumption environment, it certainly didn't contemplate a mobile application-based ecosystem. For an illustration of this point, I would ask you to look at Exhibit 1. As you can see, hopefully, from this exhibit, about 45 percent of consumers' media time is now spent on either the Internet, on PC or some sort of mobile application. That is 45 percent. We think this is a reasonable start-

ing point to view the framework through which we might want to evaluate the relevance of current rules to the existing ecosystem.

In terms of traditional media, there is probably no surprise that consumers still spend more of their time with television than any other medium, as they have for decades, including the time period in which the current regulatory framework was constructed. However, the consumption within the TV paradigm has shifted greatly in a way not necessarily reflected in a regulatory paradigm shift. The primary shift has been the consumption of TV moving meaningfully from a world dominated by broadcast content, to an increasingly fragmented one where the American viewer now consumes the majority of TV content from dual-stream advertiser and subscription fee-supported cable channels.

Exhibit 2 illustrates, even 10 years ago, the majority of adult 18 to 49 primetime audiences was not on the big 4 networks, but rather skewed slightly more toward nonbroadcast. Today, that shift is even more pronounced with broadcast controlling only about ⅓ of the primetime audience. As a result, it is clear to us that broadcast TV regulation should probably consider a framework in which paid TV in total, as an ecosystem, is a competitor. This is the case in small and big markets alike.

Further, TV isn't the only medium that has seen an increased fragmentation audience over the past 15 years. The radio ecosystem has clearly undergone an evolution beyond simply a broadcast transmitter since the time when the regulatory framework was constructed. Broadcast radio has probably been less impacted by the advent of traditional subscription services, such as Sirius satellite radio, than the television ecosystem, despite the fact that Sirius has 26 million paying subs today with millions more of trials and inactive radios currently on the road just waiting to be activated. This has eaten into traditional radio's share of the audience on some level, but radio has been more directly impacted by the advent of the Internet, with services such as Pandora, Spotify or download and podcast services on iTunes, especially on a nonsubscription basis. Simply considering, digital radio services offers a framework for which the world has dramatically changed.

Digital's audience skews younger, but the trend of total population penetration is irrefutable, as illustrated in Exhibit 3. Digital radio listeners are now at mass market proportions, representing just more than ½ the population and ⅔ of Internet users. Clearly, the game has changed in radio with respect to consumer behavior. This has also put some pressure on the typical radio business model.

The newspaper business model is not a major focus in our coverage universe, but it is quite clear that the industry has undergone a great deal of tumult, in no small part due to changes in consumer behavior and alternatives as well. Most specifically, consumers simply have more choices with respect to how to consume news.

In 1975 when the newspaper/TV cross-ownership rules were essentially constructed, consumers had no digital or cable news choices. By 2003, over 10 years ago, consumers were getting 20 percent of their news from online sources. Today, that figure is around 40 percent, as illustrated in Exhibit 4. That is an astounding

change in consumer behavior, having a material impact on the ecosystem.

The bottom line regarding these shifts in the ecosystem is that they seem to call into relief what some of the existing regulatory framework might not. Digital media has now created, at least on the macro level, a powerful competitor to the media ecosystem that existed in isolation in the prior century. The markets are keenly aware of it. It plays a significant role in the way they fund growth and choices that consumers have.

That said, there have been some movements more recently on the part of the FCC to re-regulate some elements of media ownership, and ownership concentration issues in the TV landscape in particular. The merits of these rule changes specifically aren't what we would focus on in this venue, but rather, we put the focus on the isolated nature of the rule changes, without consideration to adjacent issues. For instance, the UHF discount itself is probably something increasingly obsolete in an evolved ecosystem where most people under the age of 40 couldn't tell you the difference between a UHF or a VHF station; there is no separate dial on the cable box, but rather the choice to address such changes on a piecemeal basis adds limited visibility to the financial marketplace. The financial markets would probably have found it more constructive to view the UHF discount rule considered in a broader framework related to overall ownership cap regulation. The financial markets sometimes struggle with how to interpret broader ramifications.

That concludes my prepared remarks. I would like to thank Chairman Walden, Ranking Member Eshoo, and the subcommittee members for giving me the opportunity to speak today.

[The prepared statement of Mr. Bank follows:]

Good morning Chairman Walden, Ranking Member Eshoo and members of the Sub-Committee.

My name is David Bank and I am a Managing Director and the Equity Research Analyst responsible for covering the Media sector for RBC Capital Markets, where I primarily advise institutional clients, such as pension fund and mutual fund managers, with respect to broader themes and specific company fundamentals in the Media Industry. RBC Capital Markets is the corporate and investment banking arm of Royal Bank of Canada, Canada's largest bank and the 12th largest bank in the world, based on market capitalization. With over 7,100 employees, RBC Capital Markets operates in 75 offices in 15 countries worldwide and is consistently ranked among the top global investment banks.

I help advise investors with respect to how they should be positioned in the media space given current and future Industry dynamics. I have covered the Media space for approximately the last 15 years during which a tremendous amount of change has occurred in the broad media landscape, especially with respect to:

a) how consumers apportion their time consuming different media,

b) the new media outlets that have become available to them, and

c) the business models available to those operators within those media spaces.

Much is made of the fact that the current regulatory framework for media ownership dates back to 1975 for the newspaper cross ownership and basically to the late 20th Century for much of the framework for TV and Radio Broadcast with respect to both cross ownership and single media ownership concentration across single markets as

well as the US in totality. The financial markets are keenly aware that this regulatory framework was created before the dynamically changing nature of the media ecosystem that has over taken us at light speed over the past few years had developed. The financial markets are even more keenly aware *consumer behaviour* itself has changed massively as a result of the evolving ecosystem. Specifically, the current regulatory framework was constructed in a media ecosystem that basically didn't include the Internet. While it may have contemplated a broad PC based Internet consumption environment, it certainly didn't contemplate a Mobile application based ecosystem. For an illustration of this point, please see Exhibit 1:

As you can see, ~45% of consumers "media time" is now spent on either the Internet on PC or some sort of Mobile application. We think this a reasonable starting point to view the framework through which we might want to evaluate the relevance of current rules to the existing ecosystem.

In terms of *traditional* Media, there is probably no surprise that consumers *still* spend more of their time with Television than any other medium, as they have for decades, including the time period in which the current regulatory framework was constructed. However, consumption within the TV paradigm has shifted greatly in a way not necessarily reflected in a *regulatory* paradigm shift. The primary shift has been the consumption of TV moving meaningfully from a world dominated by broadcast content to an increasingly fragmented one where the American viewer now consumes the majority of TV content from dual stream advertiser and subscription fee supported cable channels. Exhibit 2 illustrates that even 10 years ago, the majority of Adult 18-49 Primetime Audience was not on the Big 4 Broadcast Networks, but rather, skewed

slightly toward non-broadcast cable. Today, that shift is even more pronounced, with Broadcast controlling only about 1/3rd of the Primetime Audience. As a result, it's clear to us that Broadcast TV regulation should probably consider a framework in which pay-TV in total as an ecosystem is a competitor to Broadcasting. This is the case in small and big markets alike.

Further, TV isn't the only the only medium that has seen an increased fragmentation in audience over the past 15 years. The radio ecosystem has clearly undergone an evolution beyond simply a broadcast transmitter since the time when the regulatory framework was constructed. Broadcast radio has probably been less impacted by the advent of "traditional" subscription services, such as Sirius Satellite Radio, than the television ecosystem has despite the fact that Sirius does have ~26mm paying subscribers today with millions more of trials and inactive radios currently on the road, the latter just waiting to be activated. This has eaten into traditional radio's share of the audience on some level.

Radio has been more directly impacted by the advent of the Internet with services such as Pandora, Spotify or download and podcast services such as ITunes especially on a non subscription basis.

Simply considering digital radio services offers a framework for which the world has dramatically changed. Digital's audience skews younger, but the trend of total population penetration is irrefutable, as illustrated in Exhibit 3.

Digital radio listeners are now at mass-market proportions, representing just more than half of the population and over two-thirds of internet users. Clearly, the game has

changed in radio with respect to consumer behaviour. This has also put some pressure on the typical radio business model.

The Newspaper business model is not a major a focus in our coverage universe, but it's quite clear that the Industry has undergone a great deal of tumult in no small part due to changes in consumer behaviour and alternatives as well. Most specifically, consumers simply have more choices with respect to how to consume news, particularly in a world where real time information is available 24 hours per day from numerous outlets, including the cable TV ecosystem as well as the online ecosystem.

In 1975, when Newspaper/TV cross ownership rules were essentially constructed, consumers had no digital or cable news choices. By 2003, over 10 years ago, consumers were getting 20% of their news from online sources. Today that figure is ~40%, as illustrated in Exhibit 4. That is an astounding change in consumer behaviour that has had a material impact on the broader media ecosystem.

The bottom line regarding these shifts in the ecosystem is that they seem to call into relief what some of the existing regulatory framework doesn't – that digital media has now created, at least on the macro level, a powerful competitor to the media ecosystem that existed in isolation in the prior century. The markets are keenly aware of this and it plays a significant role in the way they fund growth in the choices consumers have for media consumption.

That said, there have been some movements, more recently, on the part of the FCC to re-regulate some elements of media ownership and ownership concentration issues in the TV landscape in particular.

The merits of these rule changes specifically aren't what we would focus on in this venue today. Rather, we would put the focus on the isolated nature of the rule changes without consideration to adjacent issues. For instance, the UHF discount itself is probably something increasingly obsolete in an evolved ecosystem where most people under the age of 40 couldn't tell you what the difference between a UHF or VHF station was – there is no "separate dial" on a cable box. But rather, the choice to address such changes on a piecemeal basis adds limited visibility to the financial market place. The financial markets would probably have found it more constructive to view the UHF discount rule considered in a broader framework related to overall ownership cap re-regulation. The financial markets do sometimes struggle with how to interpret broader ramifications for such changes.

That concludes my prepared remarks. I would like to thank Chairman Walden, ranking member Eshoo and the sub committee members for giving me the opportunity to speak to today.

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Mr. WALDEN. Thank you, Mr. Bank. We appreciate your testimony. Thanks for coming down.

We will now turn to Jane Mago, who is the Executive Vice President and General Counsel, Legal and Regulatory Affairs, The National Association of Broadcasters, for our final testimony from our witnesses today. Ms. Mago, thanks for being back before the subcommittee. We look forward to your comments.

STATEMENT OF JANE MAGO

Ms. MAGO. Thank you. Thank you, Chairman Walden, Ranking Member Eshoo, members of the subcommittee. I appreciate the invitation to speak to you this morning.

Let me put my spin on 1975, that year that we have been talking about all morning here. In 1975, I was starting law school, watching a black-and-white television with no remote control, and like everyone else, I had only three broadcast networks to choose from. Cable wasn't available to me, and satellite television was only delivered to huge earth stations that were owned by cable companies. That was the world when some of these broadcast ownership regulations were created.

Since then, we have cable and satellite and telecommunications companies that are all offering video services. The Internet and the massive proliferation of news outlets that you have heard about this morning have absolutely revolutionized the way we consume media, yet time has seemingly stood still at the FCC.

The current broadcast ownership rules are simply out of touch with the reality of today's media marketplace. They distort competition. Cable, satellite and Internet-based media outlets who operate without these cumbersome regulations continue to proliferate and take both audience share and advertising revenues.

The local television rule, for example, which generally prohibits the ownership of 2 television stations in the same market, assumes the television broadcasters operate in a bubble, only competing against other television broadcasters. That is almost laughable in today's marketplace. One need only look at the growing cable practice of selling local advertising across hundreds of cable programs to understand that there is a direct and real competition between broadcast and cable.

The FCC has recently decided to effectively prohibit 2 broadcast stations from engaging in the joint sale of advertising, but the large cable operators, along with satellite companies and AT&T and Verizon, have been unimpeded as they join forces to create a single source that jointly sells to local television advertising. It is increasingly difficult for broadcasters to compete in a marketplace that is so skewed by disparate regulation. The 1975 newspaper cross-ownership rule that we have heard about this morning also relies on assumptions of a media landscape from a bygone era. The FCC itself has said that the prohibition against newspaper/broadcast cross-ownership is not necessary to advance its goals of localism and competition, and it has recognized that the rule is overly broad as related to the alleged goal of promoting viewpoint diversity, particularly with regard to radio; yet, this outdated rule is still on the books.

To maintain the ability to provide quality local service, and compete with newer technologies, broadcasters need a more level playing field with our competitors.

That leads to my second point. Broadcast ownership rules must keep pace with market changes. Congress wisely required the FCC to take a fresh look at the ownership rules on a regular basis, in light of competition, and repeal or modify those that no longer serve the public interest, but the FCC has failed to follow your direction. The last review was done in 2007, and rather than complete the most recent Quadrennial Review, as required by statute, the Commission rolled its 2010 review into 2014, and then announced that it would not likely complete that review until at least mid-2016.

NAB is challenging this most recent FCC decision in court, not just because the FCC failed to live up to its statutory obligation, but also because the Commission is imposing new restrictions on joint sales agreements amongst television stations, despite the fact that these agreements have produced tangible public interest benefits. NAB has shown that these agreements produce more news, more foreign language television, and other community-focused programming. Amazingly, the new rules will force broadcasters to unwind agreements that the Commission had previously approved.

Finally, consideration of the broadcast ownership rules must be based on real evidence, not speculation. To address this, NAB asks Congress to undertake an examination of how the FCC's administration of the broadcast ownership rules has stifled investment and opportunity in broadcasting. In this time of intense consolidation in other parts of the communications industry, these ownership rules are increasingly outdated and have significant harmful consequences on local media. Regulatory practices that starve media of capital investment are a proven failure. They serve no one. Not current broadcasters, not interested new entrants, and most importantly, not the American people.

In sum, NAB is asking for you to ensure timely and fair revision of the broadcast ownership rules. Maintaining the status quo, creating new restrictions, or even just kicking the can down the road is a disservice to the American people.

Thank you and I am happy to answer any questions.

[The prepared statement of Ms. Mago follows:]

Hearing on "Media Ownership in the 21st Century"

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

June 11, 2014

Statement of Jane Mago
National Association of Broadcasters

Summary

1. The broadcast ownership rules should be designed to permit broadcasters to compete effectively in the current media marketplace. A healthy, vibrant broadcast industry serves the public interest in localism and diversity.

2. The FCC has failed to fulfill its obligation to determine whether the current broadcast ownership rules are "necessary in the public interest as a result of competition" and repeal or modify regulations that are no longer in the public interest. Congress should require that the FCC complete its review in a timely manner.

3. Consideration of the broadcast ownership rules should be based on real evidence, not unsupported opinion. Congress should examine how the FCC's administration of the broadcast ownership rules has affected investment and opportunity in broadcasting.

Good morning and thank you very much for this opportunity to speak to you today. My name is Jane Mago. I am Executive Vice President and General Counsel of the National Association of Broadcasters. NAB represents free and local radio and television broadcasters who serve communities large and small across this country.

In my remarks today, I will focus on three main points. First, the broadcast ownership rules do not best serve the public interest. It takes a competitive, healthy broadcast industry to promote localism and diversity. Second, the Federal Communications Commission has failed to fulfill its obligation to review and update the broadcast ownership rules in light of current competitive conditions. Congress should require that the FCC complete its quadrennial review of the ownership restrictions in a timely manner. Third, consideration of the broadcast ownership rules should be based on real evidence, not unsupported opinion. To that end, Congress should examine how the FCC's administration of the ownership rules has affected investment and opportunity in broadcasting.

The current broadcast ownership rules are out of touch with the reality of the media marketplace. They distort competition. They limit broadcasters' ability to respond to market forces, while cable, satellite and Internet-based media outlets – without comparable restrictions – proliferate

and take away both audience share and advertising revenues. The rules have also created a market imbalance that is causing many broadcast stations to struggle to maintain their economic vibrancy and strong presence in local communities.

The television duopoly rule, for example, which prohibits common ownership of two television stations in many markets, assumes that television broadcasters only compete against other television broadcasters. That is demonstrably false. One only need look at the ever growing cable "interconnects," which sell local advertising for placement across hundreds of cable programs, to understand that there is direct and real competition between broadcast and cable channels. Similarly, the shift of local advertising to Internet-based services is real competition for television broadcasting – and this competition only grows as broadband expands.

Cable operators alone earned over $1.7 billion in local ad revenues in the Top 10 markets in 2012 – that's the equivalent of having more than three additional broadcast TV stations in each of those markets. And while the FCC has effectively prohibited even two broadcast TV stations from engaging in the joint sale of advertising, large cable operators, along with satellite TV companies and the telcos, have joined forces to create a single interconnected platform for local and national TV advertisers.

A broadcaster in a small California market (Chico, DMA #132) estimates that the cable interconnect there takes "some $3 to $4 million in local advertising" that formerly would have been likely to go to local TV stations. Understandably, local broadcasters find it increasingly difficult to compete in a marketplace so skewed by disparate regulation.

As to growing competition from online and mobile sources, BIA projects that online ad revenues will rise from $26.5 billion to $44.5 billion from 2013-2017, while location targeted mobile ad revenues will increase from $2.9 billion to $10.8 billion over the same period. Looking at local ad revenue specifically, SNL Kagan found that Internet advertising grew at a compound annual growth rate (CAGR) of 24.7% from 2003 to 2012, while broadcast TV ad revenue had a negative CAGR (0.1%) over that same period. This massive increase in competition is directly relevant to consideration of broadcast ownership restrictions, yet the FCC continues to insist that cable and online video do not provide "meaningful" competition for ad dollars.

The newspaper broadcast cross ownership rule is another rule based on assumptions of a media landscape that no longer exists. That rule, which prevents combinations of local newspapers and either radio or television stations, was adopted in 1975 – a time before Craigslist wiped

out classified ad revenues for newspapers; a time before 24-hour news channels and Twitter feeds redefined the concept of breaking news; and a time before hundreds of daily newspapers ceased operation because they could not afford to continue.

The FCC itself has previously determined that the prohibition against newspaper/broadcast cross-ownership "is not necessary to advance its localism and competition goals." And, it has recognized that the rule is "overly broad" as related to its alleged goal of promoting viewpoint diversity, particularly with regard to radio. Yet, this outdated rule is still on the books.

I will not speak about each of the broadcast ownership rules here, but want to stress my larger point that the public interest is best served by broadcast ownership rules that permit radio and television stations to compete effectively. Broadcasters are a critical source of information and entertainment in every community across this country. One need look no further than the life-saving role that broadcasters play in times of emergency to understand the importance of a strong, vibrant broadcasting system.

To maintain the ability to provide quality local service, the broadcast ownership rules must permit reasonable combinations of station ownership.

It takes significant resources to provide up-to-the minute news, local and national emergency information and highly-valued entertainment programming. Stations therefore must be supported and sustained by economics that make sense in today's world. To compete and serve our communities successfully, broadcasters must have a somewhat level playing field with the new and varied competitors that are not subject to restrictions on local ownership.

In light of current competitive realities, the Commission must do what is required by law, and take a serious look at its rules and update them.

That leads to my second point. Congress understood the need for the broadcast ownership rules to keep pace with market changes. You wisely directed the FCC in Section 202(h) of the Telecommunications Act of 1996 ("1996 Act") to take a fresh look at these ownership rules on a regular basis – now every four years – and repeal or modify the rules to serve the public interest. But, the FCC has not followed your direction. Rather than complete the comprehensive review contemplated by Section 202(h), the Commission's most recent ownership order simply rolled its 2010 quadrennial review into a 2014 review that it does not expect to complete until at least mid-2016. Parties on both sides of the debate have challenged this failure to obey the law.

NAB appealed this most recent FCC decision not only because the agency failed to fulfill its obligation to review the rules, but also because it acted to impose a new restriction that effectively prevents any joint sales agreements (JSAs) among local television stations – whether or not those arrangements have produced tangible public interest benefits. This decision also requires broadcasters to "unwind" long-standing JSAs, many of which the FCC had approved as being in the public interest during its review of station sales. In our view, imposing new restrictions while refusing to update the underlying ownership rule is unlawful.

It is time for Congress to step in and reaffirm that the quadrennial obligation to repeal or modify rules no longer in the public interest must be completed in a timely manner. In this context, specific direction that the agency must make decisions and issue a final order every four years is needed. Rolling the 2010 review into a new 2014 cycle to be completed perhaps in 2016, creates uncertainty for broadcasters, chills investment, dries up access to capital and thus diminishes opportunity in broadcasting.

Now I come to my third point, that consideration of the broadcast ownership rules must not only be timely, but it must also be based on real evidence, not unsupported opinion and speculation of harm. I noted above evidence that NAB previously provided to the FCC showing the tangible

competition that broadcasters face for advertising dollars – the dollars that enable them to provide quality local service. Broadcasters, particularly television broadcasters, have responded to competition by seeking out efficiencies where they can share operations and services that allow them to invest in better service. NAB documented many benefits to the public of such operations. In our submissions to the FCC, for example, we documented many JSAs and shared service agreements (SSAs) that resulted in the creation of local news on stations that could not previously offer local news due to lack of resources; the expansion of existing local news programming and operations; increases in foreign language programming; growth in other local programming including sports and community affairs; and extensive technical and equipment upgrades, such as high definition capabilities and enhanced weather radar facilities.

Unfortunately, the response to these efforts have been complaints that sharing agreements are "shams" to get around the ownership rules – the same rules that the Commission has failed to update or even timely review. For its part, the FCC recently concluded it did not have enough information to decide what to do about station sharing arrangements, yet nonetheless announced that it would closely scrutinize any proposed television station sales that included sharing and/or financial connections.

NAB has challenged in court these FCC "processing guidelines" because in actuality they result in the Commission refusing to act on any transaction that proposes shared resources or financial connections with another television station in the same market – despite the fact that such arrangements are allowed under the current rules. In fact, in two deals within the past weeks, the FCC's refusal to act forced the parties to completely restructure their deals – with an end result that there will be less service and fewer outlets in the affected markets. The FCC should not hold up commerce in the broadcast industry.

I am not here to get into the specifics of pending deals. Rather my point is that Congress should insist that there be greater transparency in the review of broadcast transactions and decision-making based on real market conditions. To this end, NAB proposes that Congress should examine how the FCC's administration of the broadcast ownership rules has affected investment and opportunity in broadcasting. In particular, the inquiry should focus on the difficulties that broadcast outlets have today in obtaining investment capital, and whether those difficulties are related to asymmetric regulation of broadcast outlets in comparison to their competitors. Anecdotal evidence suggests that investment capital flows more freely to the lesser regulated media space. For example, the FCC's

recent decision effectively prohibiting JSAs and requiring the unwinding of existing JSAs caused notable drops in the stock prices of a number of publicly traded TV broadcast companies.

During this time of intense consolidation in other sectors of the communications industry, insisting upon a wall around the broadcast ownership rules is having very real, negative consequences on local media. The evidence is clear. The decline of daily newspapers is undeniable. Regulatory policies that starve local media of capital investment are a proven failure. They serve no one – not current broadcasters, not possible new entrants, and most importantly, not the American people.

In sum, NAB is asking for your help to ensure timely and fair revision of the broadcast ownership rules. Maintaining the status quo, creating new restrictions or even just kicking the can down the road is a clear disservice to the American people.

Mr. WALDEN. Ms. Mago, thank you for your testimony. We appreciate it. And we thank all of you for sharing your thoughts with us today.

We will go now into the Q and A portion of our hearing.

So, Mr. Lake, in the Sirius-XM merger in 2008, the Justice Department acknowledged that satellite radio services do not just compete with each other, but with a broad array of possible consumer substitutes, including AM and FM radio, CDs, iPods and other MP3 players. And as you know, many new cars now have docking stations or Bluetooth capability to connect all that up with other audio services, including Internet radio Web casting over Wi-Fi, cell phones and other handheld wireless devices, and the new digital HD radio receivers, which allow old-fashioned broadcasters to send up to three digital channels of programming over AM and FM bands, bundled together with the XM analog channel. Terrestrial broadcasters now contend with Spotify and Pandora and other services, so it is a much-changed audio market in terms of competition for ears.

What is the delay? How do you justify not changing the radio rules on ownership?

Mr. LAKE. We have looked very carefully at that in our 2010 review——

Mr. WALDEN. Yes.

Mr. LAKE. We have compiled a great record, and we are looking at those trends in the use of radio and other audio sources. They haven't indicated to us yet that we should change the local radio rules.

Mr. WALDEN. Really?

Mr. LAKE. Again, we have just called for further input. We are very interested in knowing how——

Mr. WALDEN. Have you changed anything relative——

Mr. LAKE [continuing]. The market will change in 2014.

Mr. WALDEN [continuing]. To the radio rules since 1996?

Mr. LAKE. No, those rules have not been changed——

Mr. WALDEN. Right.

Mr. LAKE [continuing]. Since Congress put the current——

Mr. WALDEN. Do you think the market has changed since 1996 in terms of audio offerings and competition in the audio marketplace?

Mr. LAKE. The entire marketplace has changed, both audio and——

Mr. WALDEN. But the rules have not.

Mr. LAKE. Our task is to try to determine in this—at the current state of evolution, what are the appropriate rules. And, again, we are very open to all input on that subject.

Mr. WALDEN. Because I sense from your testimony you are not. I mean it kind of indicates you are going to go with the existing rules. Right?

Mr. LAKE. What we have done, I think, is to analyze the record as it now stands. We have a very extensive record, but we are very open to further input, and——

Mr. WALDEN. Yes.

Mr. LAKE [continuing]. I think if you read——

Mr. WALDEN. So——

Mr. LAKE [continuing]. The Further Notice carefully, it says what it says, which is that we are open to all further input. Those—all of the issues are open.

Mr. WALDEN. OK. I am glad to hear that because, as you know, I was a radio broadcaster, we had to do the Olympic ring theory to justify having two AMs and three FMs in a market that was, I don't know, several hundred square miles probably. And ours had competition with XM and Sirius. That was really before Pandora took off. I have got five audio platforms out there, and you all allow, and justice allowed XM and Sirius to merge, and said here is the marketplace as we see it. And then for broadcasters, you say, no, no, no, you can't have another platform in a market. We, frankly, rescued some stations that were in pretty bad shape, and restored local programming, split them apart. I just think you guys don't get it, that the marketplace has changed dramatically. And the statute requires you to get it. And here we have been a Quadrennial Review, and for a whole set of reasons, not yours, you don't have a vote at the Commission so I am picking on you, but not really, OK, but the message will get through because I imagine the Commissioners listen in occasionally. And I just wonder, television has changed, newspapers are going broke, Craigslist has done amazing things to classified advertising. Mr. Lunzer, you probably don't have a lot of people working in the classified ad bureau anymore, do you? And a lot of it was propped up by legal notice requirements through the housing crash with foreclosures. That made up a lot of revenue, but that is going away, and I worry about the future of newspapers. I don't even like what they write about me sometimes and I still worry about them. Some of the time. Yes, well, but the point is it is a vibrant marketplace, and I think our rules are outdated. And so, again, I worry about what you are doing with the JSAs, because I sense from your testimony, Mr. Lake, it is almost like you think that the sales department controls the news department.

Mr. LAKE. The conclusion we reached with respect to both radio and TV JSAs is that, if one station controls the principal source of revenue for another, it is likely to have an influence, or the ability to influence, the conduct of the second station. And that is the test under our attribution rules.

Mr. WALDEN. OK. I would like to go to Ms. Mago. You said that because of some consolidation, the market is actually better served. What is your evidence for that?

Ms. MAGO. We showed a number of different markets where there was the specific advantages that came from the shared services arrangements. For example, in Wichita, Kansas, they were—stations were able to do a JSA combination to provide the first Spanish language news in the entire State of Kansas. Similarly, in a situation in Eureka, California, you had two stations that didn't have any local news at all. By combining their resources to be able to get the efficiencies that came through those shared operations, both were able to start news operations in the Eureka market where there had only been one before that, and that is something that was a great advantage to the communities.

Mr. WALDEN. All right, my time has expired. Thank you all for your testimony and the work you do in this area.

Ms. Eshoo for 5 minutes.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to each one of our guests today.

Varying views and I have listened hard to what each one of you said, and I can't help but think that some of my thinking relative to what—some of the testimony is the opposite of what you said. And so I want to go the other way and test out some of the things that have been put out about how great media consolidation is and how well it serves our country.

I started out today by stating I think one of the most important principles relative to a democracy. Now, our democracy is old, India's I think is large and vibrant as well, but would anyone suggest that because that is an old idea, it is a bad one, that we should take up something that would change the whole idea of democracy? I don't think so. So I—while I celebrate the new platforms, the new services, so many of them, I will—I would be willing to wager the majority of them, being established in my congressional district, that we need to examine this in terms of what consolidation is actually going to do for the American people.

I understand business models, capital markets, how they want to invest, what is going to serve them well. That—in many ways, many of those business approaches were blown apart in 2008 when we had a near total economic collapse in our country. That was one hell of a business model that was brought to the American people. So I think that, you know, it has been said that, you know, nothing has changed since 1975, we are out of touch with ourselves and markets, and what we need to do, I would suggest that some of the business models are out of touch with what the American people should be receiving. I don't know who is going to stand next to the model that Ms. Gonzalez described. I mean that is really, as the chairman said, powerful testimony.

So if we consolidate more, are minorities in our country going to progress? No one addressed that. I never heard anyone address that. So if you have some points to make on that, I think it would be terrific, but honestly, I just don't—I think that people care. They care enormously if, in their market, there is one outfit that owns the newspaper, runs the TV stations and the radio stations, what kind of line of information, what is the value and the texture and the fabric and the content of just that one line being fed to people? I think that there are some countries in the world where we shun and make fun of that model because this one line to people. I want to hear diversity of thinking, and I would suggest that there is a lot of junk out there too, even though we have many more things at our fingertips, and for, you know, for the broadcasters, God bless you, you do a lot of things for—in terms of localism, we have had testimony on that, but you also have the airwaves that belong to the American people, and you don't pay for that. So that is a pretty darn good deal. So why would I want to consolidate something even more? For what? What is the reason? I mean what is the prime reason? Anyone have an answer to that? What is the prime reason? Is it for a better business model for someone, or is this in the name of democracy, localism, diversity, competition?

Ms. MAGO. If I can——

Ms. ESHOO. I mean, I think that is the central question here.

Ms. MAGO. If I can, Ranking Member Eshoo. I think I would like to put the right perspective on this of what we want, and what I—what broadcasters are calling for is a healthy, vibrant broadcast industry, and I think it can achieve all of those goals that you were just talking about.

Ms. ESHOO. Yes, well, I don't know how though. I—that is——

Ms. MAGO. By being able to compete in the current ecosystem. You cannot simply look at the broadcast industry as if it is only in its own little bubble. You have to recognize all of the changes that we talked about here this morning, and recognize that for broadcasters to create—be able to provide the kind of local information, the kind of truly competitive services that we have to have the kind of——

Ms. ESHOO. Well, I——

Ms. MAGO [continuing]. Autonomy to do that.

Ms. ESHOO [continuing]. Appreciate you jumping in, and I am—I think it is very interesting today that there is not a camera here. We have print media that is here, but I don't know——

Mr. WALDEN. The camera is right there.

Ms. ESHOO [continuing]. Are we Webcast or——

Mr. WALDEN. Sure. Of course.

Ms. ESHOO. Is C–SPAN carrying this?

Mr. WALDEN. It is up to them to carry it or not. We don't——

Ms. ESHOO. I see.

Mr. WALDEN [continuing]. Dictate it.

Ms. ESHOO. Well, I am——

Mr. WALDEN. Yes.

Ms. ESHOO. I am proud that the print media is here, so——

Mr. WALDEN. We have print over here. We have print. Raise your hand if you are with the newspeople.

Ms. ESHOO. I will submit my questions to you, but I really think, Mr. Chairman, that, when you look across America, we really have to understand what more consolidation is going to do, and myself, I don't think it really feeds democracy simply to consolidate because that is someone's business plan. I just don't buy that. I have seen a lot of peoples' lives wrecked and bad information being put out in the region as a result of it. I don't want more than that.

So thank you very much, and I will submit my questions to the witnesses for their response. Thank you.

Mr. WALDEN. Thank the gentlelady.

And now we will go to Mr. Latta, the vice chair of the subcommittee, for questions.

Mr. LATTA. Thank you, Mr. Chairman. And, again, thanks for our panel for being with us today. Appreciate your testimony.

Ms. Mago, if I could start with you at this time. What would be the effect of the FCC's proposal to attribute stations under a JSA in calculating a broadcaster's media ownership cap?

Ms. MAGO. For many of the stations that have been operating under the JSAs that were, in fact, proved by the Commission, it is going to mean that they are going to have to unwind those operations within the 2 years, as Mr. Lake described, and that means that they are going to have to either go out of business, they are going to have to find other sources of revenues, because those efficiencies that they have been operated under have been what have

allowed them to provide greater service to their communities. So there is going to be a reduction of the amount of the service that is available in the communities.

Mr. LATTA. OK, and the next part of the question then, what effect would that have when you are talking—looking at a reduction for services in that community, or communities? What would you see that as?

Ms. MAGO. I seem that as harmful to the American public, and that reduction could be that, for example, where you have the station that I referred to before in Wichita, Kansas, where the Spanish news operation is being facilitated by the fact that there is a joint sales agreement that is in that market. That might well have to go away or find some other way of being financed that would not give it the kind of resources that they need. Other markets have similar stories that go with it, where the Tuvalu College that is also operating under a JSA, and they have presented evidence to the Commission that they would not be able to provide the services that they could to their community.

Mr. LATTA. All right, thank you.

Mr. Lake, you note in your testimony, "The Further Notice tentatively affirms that media ownership limits remain necessary in the current marketplace, despite the prevalence of new electronic media." So how is the FCC making that determination without first having conducted a thorough review of the marketplace to justify those limits?

Mr. LAKE. We looked at the record as it now exists, and while my friend Jane is right that the market has evolved quite a bit since she began law school, it continues to evolve. I am sure it will be very different 5 years or 10 years from now. And our task is to try to determine what rules are appropriate for the current state of evolution. And one of the things that we find in the current record is that, while distribution of news—local news and information, in particular—has become much more diverse, people find it on the Internet and elsewhere, the sources of that news and information remain principally the traditional media: newspapers and broadcast television. We also note that, while broadband is changing everything in the country, there remains about 20—30 percent of the population that doesn't have broadband at home.

In 5 years or 10 years, if that figure is much closer to 100 percent, and if the electronic media are generating more original news than they do today, that might have tremendous implications for our media ownership rules. What we are trying to do is to look at the state of the market today and decide what rules are appropriate to the market today. And, as I say, we are basing our tentative conclusions on the 2010 quadrennial record. We have invited comments on our Further Notice and will look very carefully at the updated information that people submit.

Mr. LATTA. OK. Well, thank you.

Mr. Bank, if no changes are made in the current regulatory system, and the ownership caps remain where they are today, what is your prediction for the world of traditional media in the next 5 years?

Mr. BANK. Well, what I would say is that the perspective of the capital markets on a daily basis, on an hourly basis, is the intense

increasing competition that is being ratcheted up by a competing ecosystem from the online media world.

I think that over that period of time, over a 5-year period of time, we would expect to see continued wallet-in-mind share loss by the traditional medial players to online media. I don't think they are going out of business in the traditional media world, but I think it risks being a less healthy environment. And because of that, you know, the capital markets will have to evaluate how they are willing to fund growth in that area.

Mr. LATTA. Let me follow up with—your testimony is very helpful in showing us the trends in today's media consumption. What does that mean to the investment community overall when you look at that?

Mr. BANK. I am sorry, what——

Mr. LATTA. When you look at the trends that you are talking about, what does it mean to the investment community when you are looking at today's——

Mr. BANK. Well, I——

Mr. LATTA [continuing]. Today's world out there, and into the next few, you know, 4 to 5 years?

Mr. BANK. I think, again, the focus of the capital markets is to invest for the greatest potential return, and that is often connected with the long-term growth perspective. And I think if you look at a lot of those exhibits, what you see is, on some level, a decline of share potentially, going from traditional media to online, and typically dollars will follow that share, whether it is advertising revenue, viewership, whatever it is you can measure, I think those are the kinds of things that capital tends to chase.

Mr. LATTA. Thank you very much.

And, Mr. Chairman, my time has expired and I yield back.

Mr. WALDEN. Thank the gentleman and for his questions, and you for your answers.

We will now go to Mr. Lujan from New Mexico. Thank you for——

Mr. LUJAN. Mr. Chairman——

Mr. WALDEN [continuing]. Your questions.

Mr. LUJAN. Mr. Chairman, thank you very much.

Mr. Boyle, with your recommendation to eliminate the ban, are there any restrictions that you would replace the ban with?

Mr. BOYLE. No, we think that the ban should be fully eliminated for radio-newspaper combinations, but also TV-newspaper combinations. It makes no sense that a top-rated television station in a market that has resources and a deep commitment to journalism can't invest in a local newspaper in that market if that newspaper becomes available. Investigative, original reporting that is professionally edited is very expensive to do. And we don't think there is going to be a massive wave of mergers. There may be some markets that a newspaper comes on the scene, and we think, for too long, investors have been on the sidelines.

Mr. LUJAN. Mr. Boyle, while I have concerns with the response, with this reason. If there are no restrictions, I don't see anything that keeps one entity from controlling everything, and we only get news from one source. And that is where my concern is, and that is why I was hoping that I would hear some restrictions, but maybe

we could have a conversation about that later. I only have a few minutes, I am going to move on.

Ms. Mago, I appreciate very much the remarks bringing attention to an outdated rule, a bygone era, a marketplace that has changed dramatically with rules that were put in place in the '70s. Should we get rid of DMAs?

Ms. MAGO. I am sorry?

Mr. LUJAN. Should we get rid of DMAs?

Ms. MAGO. DMAs are actually fairly current. They reflect the market patterns in——

Mr. LUJAN. DMAs were put in place in the '40s and '50s.

Ms. MAGO. The designated market areas are something that has been created for the Nielsen services, and, in fact, they get——

Mr. LUJAN. So——

Ms. MAGO [continuing]. They are adapted as you go along——

Mr. LUJAN. So——

Ms. MAGO [continuing]. That indicate——

Mr. LUJAN. If I may. So we should get rid of an antiquated rule that was written in the '70s, but not antiquated rules that were written before then?

Ms. MAGO. No, sir. I am contesting the notion that it is simply that the DMAs have not changed. In fact, they do change, and they are reflective of the market patterns and the commerce that is within any given area.

Mr. LUJAN. So DMAs create a bubble.

Ms. MAGO. I am sorry?

Mr. LUJAN. DMAs create a bubble for broadcasters to upgrade them, correct?

Ms. MAGO. No, they reflect the markets where the broadcasters are, in fact, operating. They are the commerce area around where the broadcasters and the others in that market are. They reflect the businesses that advertise on whatever broadcasting service is there, and they, in fact, are updated.

Mr. LUJAN. Very good. That is another conversation I hope that we can have——

Ms. MAGO. I would be happy to talk with you more about that.

Mr. LUJAN [continuing]. In the future as well. Yes, I—although we have learned about that where there are local communities all around the United States and orphan counties that don't get local broadcast news.

Ms. MAGO. It——

Mr. LUJAN. So, clearly, something is broken when local, rural Americans are left out in the dark and don't know what is happening in their backyard, and when local newspapers are providing coverage up there because it is too far to commute to take a local newspaper. I come from a State where my legislative district takes 8 ½ hours to drive across. Out here, I drive through six or seven States.

Ms. MAGO. Um-hum.

Mr. LUJAN. But people seem to forget about rural America, and that is where my concern is in that particular area, but we will talk——

Ms. MAGO. I would be happy to talk with you more about that, and really address your concerns.

Mr. LUJAN. I appreciate that.

Ms. Gonzalez, you noted in your testimony that since 2006, there has been nearly an 80 percent decrease in full-powered TV station ownership by African-Americans. Some have used that number to argue that existing media cross-ownership rules have done little to preserve diversity in broadcast ownership. I find it interesting, however, that over roughly the same period, the use of GSAs by broadcasters has grown substantially. For example, data indicates that while JSAs were only found in 4 percent of the ownership transfer applications pending before the FCC between 2001 and 2004, by earlier this year had ballooned to 25 percent.

Based on these figures, do you think there is a correlation between the tremendous uptake in the use of JSAs that, in many instances, help broadcasters go around the media cross-ownership restrictions, and the decline in minority ownership of broadcast TV stations?

Ms. GONZALEZ. Yes. There seems to be a correlation. I will note, in Ms. Mago's testimony, she mentioned one example in Kansas where there is a JSA that is providing Spanish language news that didn't otherwise exist in that DMA. I think that example is a prime candidate for the waiver process that the FCC articulated in its JSA order several months ago, and—but for the most part, these JSAs seem, and the consolidation generally, seem to have been diminishing owners of color, making it more difficult for us to enter the market, and all around just not a good situation for diversity. In fact, there are also examples of JSAs where there is an owner of color involved, but that person doesn't have control of the programming and a path toward sole ownership of the station.

We want genuine involvement and ownership by people of color. That doesn't seem to be happening in this current marketplace.

Mr. LUJAN. I appreciate that.

Now, Mr. Chairman, I know that I have not heard any of my colleagues say anything to the contrary that we don't want to see more ownership with minorities as well. And I think this an important question that I hope that we can flush out and just get more information on as we have the conversation pertaining to JSAs as well, and I really appreciate the panel that you have put together and the responses today. I still have many questions as well that I will submit into the record, but again, thank you for bringing this panel together, Mr. Chairman, and, Ranking Member Eshoo. Thank you.

Mr. WALDEN. Yes, thank you, and thanks for your participation.

We will now go to Mr. Kinzinger from Illinois.

Mr. KINZINGER. Well, thank you, Mr. Chairman, and thank you all for being here on these very important issues.

I am going to start with you, Mr. Lake. I have just a couple of kind of quick questions.

The last time that the media ownership rules were substantively updated was 1999. That was quite literally the last century, and in the ensuing 15 years, the media landscape and specifically the options people have to obtain and consume information have expanded exponentially. It is largely thanks to the Internet and the availability of online mediums.

It has become apparent that the FCC is either unable or unwilling to complete the congressionally mandated media ownership review. Is Congress going to have to rewrite and deregulate the current media ownership rules to finally match the intent of the 1996 Telecommunications Act, and to finally provide regulations that match the realities of the current media landscape?

Mr. LAKE. I can say the Commission takes very seriously its responsibility to review the ownership rules, and the current Chairman has committed to take a very serious look and to have recommendations for the Commissioners by mid-2016.

Mr. KINZINGER. Good. And I hope you can take back the concerns of the committee on that, very loudly. And, Mr. Lake, the Commission adopted an expedited process to review requests for waivers of the recently adopted JSA rules. As you noted, the Bureau is tasked with acting on any waiver request within 90 days of the close of the record, provided there are no circumstances requiring additional time for review.

Could you describe what those circumstances are, and how will applicants know that such circumstances exist?

Mr. LAKE. We haven't confronted circumstances such as that, and I don't know what they might be. There might be a need for further information that hasn't been available, but we don't anticipate that that circumstance will happen very often. We are very much aware of the commitment we have to act, if at all possible, within 90 days after the record closes, and that is what we will try to do.

Mr. KINZINGER. And so if there is a circumstance, will you guys be communicating this well to the applicants?

Mr. LAKE. Absolutely. If we identify such a circumstance, we will make clear what that is.

Mr. KINZINGER. And will they know immediately?

Mr. LAKE. We might not know, except during that 90-day period, but again, I think this is very hypothetical because we don't anticipate that that will occur very frequently.

Mr. KINZINGER. And how will this new speed of disposal metric be incorporated into the management of the Bureau? What happens if it is not met, and will you commit to seeing this deadline met?

Mr. LAKE. Excuse me, will we commit to?

Mr. KINZINGER. To seeing this deadline—to seeing any deadlines met?

Mr. LAKE. Yes, we are committed to meeting that deadline if at all possible. And, again, I don't anticipate there will be many circumstances in which it is not.

Mr. KINZINGER. OK. Ms. Mago, the FCC has an open proceeding to do away with the UHF discount in terms of how UHF stations are countered against the national broadcast ownership cap. This discount was put into law at a time when UHF signals were seen as inferior to VHF signals, which, after the digital television transition, is no longer the case.

Does NAB have a position on that proceeding?

Ms. MAGO. Yes. NABs position is that you really shouldn't be looking at just the UHF discount aspect of this without looking at the larger rule regarding the national ownership cap. It makes no

sense in a world where you have grown up with the various discounts, with the ownership sizes, to look at that without considering the larger rule. It is not a standalone rule.

Mr. KINZINGER. OK.

Mr. Chairman, I still have a minute and 30, but I will yield back.

Mr. WALDEN. Gentleman yields back.

Chair now recognizes the gentleman from Illinois, Mr. Rush. Turn on your mic, please.

Mr. RUSH. Mr. Chairman——

Mr. WALDEN. We are glad to have you back, Mr. Rush.

Mr. RUSH. Well, and I am very glad to be back, Mr. Chairman, and thank you for all your concern, both for me and my wife. I really appreciate it.

I want to welcome all the witnesses, and I want to let you know I appreciate your testimony, and I appreciate you spending this time with us to discuss the FCC media ownership rules. And this is an issue, an area of concern that I have had over the last 21 years that I have been in Congress, and certainly in terms of my years on this committee and on this subcommittee, it has been one of my primary concerns. And I have taken the position over these past couple of decades that one of the reasons why I sit on this committee is to increase the number of minority owners of media across the country. And I must say, I am dismally disappointed. I have been disappointed over a number of years because I don't see the vigorous commitment from the FCC. I am disappointed in the excuse-making and the continual excuse-making, and it is worse now than it has ever been in the last 20 years that I have been in this Congress—21 years that I have been in Congress. This is the worst time for media ownership by minorities. As a matter of fact, if I am not mistaken, in the last 3 or 4 years, the percentage of media ownership by minorities has dropped almost 60 percent. That is not a good report. That is a horrible report. And as we sit, there are only four African-Americans who own television stations in the Nation, in this great Nation of ours. And we have an agency that is responsible for ensuring that the airwaves of the American people—that there is some equality, equal access not only to content and viewership, but also from a point of view of ownership.

And so my question to you, Mr. Lake, is, Does the FCC know how many minorities and women are employed by minorities, and women broadcasters, compared to how many are hired by nonminority and nonwomen broadcasters? Do you all keep that kind of information?

Mr. LAKE. We do not have that employment breakdown. We have EEO rules that require all stations, regardless of their ownership, to do outreach in their employment.

Mr. RUSH. Well, how do you justify in the FCC, how do you justify a decrease of 60 percent of minority owners?

Mr. LAKE. The Commission does have a longstanding goal, as you know, of promoting minority and women ownership of broadcast stations——

Mr. RUSH. No, I don't——

Mr. LAKE. We hear your dissatisfaction.

Mr. RUSH. I don't know it because I hear about it, but I have never witnessed it. I have never seen that posture and that atti-

tude. I have never seen that program and that commitment by, I would say, most of the Commissioners over there. I hear of good intentions, I hear a lot of platitudes, I hear a lot of tear-jerking, but it is all saying, and it is all—I don't see the work being done. I don't see them rolling up their sleeves and solving this problem that should be solved. It should have been solved a long time ago, but I still just hear a lot of—from the FCC, I hear a lot of, "Yes, you are right, yes, we are—it is longstanding," but how long is longstanding?

Mr. LAKE. We share your dissatisfaction with the results so far, but we are taking concrete action. One of the results of our recent action on JSAs, we think, will be to open more opportunities for truly independent owners of TV stations, including minority and women owners. As you probably know, there was a list of about 30 civil rights and other public interest groups that supported our taking that action, and we hope that they are right and that we are right; that it will open opportunities for minority owners.

We also recently relaxed our approach to foreign investment in broadcast stations. Again, civil rights groups urged us to do that as a way of trying to solve some of the access-to-capital problems that minority owners face. So we are taking concrete action. We are constantly looking for additional things we can do. We are always subject to the very strict Supreme Court rules that have been put down as to taking any action that is actually race- or gender-based, but, again, one of the things that we did in our Further Notice that was recently announced was to review that constitutional law very carefully, and the state of the evidence that we have, and to call for further evidence that might someday allow us to actually be able to justify to the Supreme Court taking race- or gender-based action.

Mr. RUSH. Mr. Chairman, I have one more question, if you don't mind.

Mr. WALDEN. Go ahead, Mr. Rush.

Mr. RUSH. If I could. Have you ever heard of the critical information need study?

Mr. LAKE. Yes, I certainly have.

Mr. RUSH. Why was it terminated?

Mr. LAKE. The study was intended to gather data anonymously to help determine what the information needs of communities are and whether they are being met. When the current Chairman took a fresh look at that study, he decided that some of the questions appeared inappropriate, and he terminated the study.

Mr. RUSH. OK. Again, here we go again, all right. So the study wasn't done according to maybe the standards of the new Chairman, but instead of revising it, you end it. All right? Instead of adapting or coming up with some new questions that might have fit the standards of the Chairman, you ended it. And it was a study that should take place, and FCC was headed in the right direction, but again, you have ended that study, which would have given us information, all right, that would be able to—Mr. Chairman, I thank you for your indulgence. I am so upset and angry about this, I think I should end this right now, my line of questioning. Thank you so very much, and I thank the witnesses, but please I want to

go on the record that I am absolutely, totally disappointed in the FCC and their position on minority ownership of marketplace.

Mr. LAKE. And I would be happy to respond on that if you want to take the time.

Mr. WALDEN. We need to actually move on, but, Mr. Rush, thank you. I know you are passionate about this, and we all know that, and I appreciate your participation in the hearing.

We will turn now to, I believe, the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. And I do have great respect for my friend from the Chicago area, and it was important for him to get his time that he needed to finish up.

I too am disappointed with the FCC, but not for the totally same—and I said in the opening statement, when Federal agencies, regardless of who they are, don't comply with the law and delay, it makes it difficult for those of us and conservatives that are in the country to say there is a legitimate reason to have that agency. If our Government and our agencies would comply with law and be expeditious in the processing, it would make it easier, and I would just hope you would take that back to the FCC and the Commissioners. That is the importance of getting these Quadrennial Reviews. I mean it has to be embarrassing to come up here and say, really, we haven't done 2010 and 2014, and we are going to get around to it. So I am just beating a dead horse, but again, you don't make it easier for us.

Let me go to Mr. Bank, please. Unless you addressed this in a question and answer while I was gone, because I am up at the Health Subcommittee meeting too, I am not sure you addressed the impact of the FCC's changes to the attribution of joint sales agreement in your statement. You may have gotten it in a question, and if you did, I apologize. Can you tell us about the investment community's reaction to the FCC's recent announcement that they will force broadcasters to unwind joint sales agreements if the broadcaster finds itself over the local ownership cap?

Mr. BANK. Well, the sun setting of the JSA provisions for some of those stations without a grandfathering provision has been certainly concerning to the capital markets. You know, I think the capital markets were initially just kind of confused, but the reality is those are events that took value away from those companies. I think it was reflected in the reaction of the capital markets.

Mr. SHIMKUS. Yes, and people know who follow this committee and follow my service here, you know, I represent ⅓ of the State of Illinois, I only have 6 media markets, most of them are small or medium-to-small markets. Without this ability, they are not broadcasting, or they are broadcasting inadequately. So the argument—so I am very concerned, as other communities are concerned about, as Bobby is concerned about minorities, as the Hispanic community is concerned, I am concerned about everyday news to rural America, and that is the opportunity that we are losing by what the FCC is proposing. And I think Mr. Bank identified one of them.

Ms. Mago, it is expensive, and this kind of ties into the whole debate, it is expensive to run a TV station or a newspaper in this day and age. I think it would be difficult to make it work, that is

why I am here and not out there trying. Mr. Walden tried in a different era, pretty much, but there are successful companies out there——

Ms. MAGO. Um-hum.

Mr. SHIMKUS [continuing]. With proven track records, and have continued to do so, and do it well. Doesn't it make sense to a lot of good companies with good resources to put their expertise to work in failing stations or newspapers?

Ms. MAGO. Absolutely. We believe that good stations can invest in their communities, create greater localism, also create more opportunities. They can invest in quality journalism, provide better service to the communities, and that is all good for the American people.

Mr. SHIMKUS. And just the stories that I know from local, small to medium-sized markets, you have helicopter access where you didn't have it before, you have real news broadcasting versus satellite in news, you might have a new state-of-the-art weather station that may be more predictive than the old one on the old station. So that point needs to be made as we do, as members of Congress, bring our differing voices here to try to collectively raise those concerns. Rural America cannot be left out in the ability to receive real-time, accurate information, and these agreements help them maintain that in a very competitive world. So I appreciate you all being here, and again, I apologize for not spending more time with you, Mr. Chairman. A great hearing. And I yield back my time.

Mr. WALDEN. Thank you, Mr. Shimkus. We appreciate your participation, as always.

We will now turn to Mr. Long as our final Member with questions. Mr. Long.

Mr. LONG. Thank you, Mr. Chairman.

Ms. Mago, you may not be able to answer this question, as executive vice president and general counsel, legal and regulatory affairs, the National Association of Broadcasters, but I hope you can. Are you familiar with a program that the NAB has to encourage minority ownership of stations?

Ms. MAGO. Absolutely. In fact, my other capacity at the NAB is that I am the general counsel advisor to the National Association of Broadcast Education Foundation, which runs the program that you are talking about.

Mr. LONG. OK, good. And this was not a setup because I had not talked to you before, and I didn't know that you were that familiar with it, but I am familiar with that and I am given to understand that it is a very intense program, very successful. I have talked to people that have gone through and become owners of stations. So for my friend from Illinois, I hope you realize that the NAB is reaching out and doing a lot in that direction.

My next question is for Mr. Lake. If you have a successful broadcaster, what advantages have that successful broadcaster to fold into a JSA with another company, what would be his advantage? If I have a successful, rock 'em, sock 'em station, on the air, making a lot of money, what is my advantage to fold that in with a JSA with another station?

Mr. LAKE. What a number of stations seem to have concluded is that they would very much like to have a duopoly in a market in which our rules don't allow a duopoly, and that going into a JSA, which is often combined with a number of other entanglements between the stations, is a way, essentially, to go around our local TV rule and establish a de facto duopoly where a true duopoly or a legal duopoly wouldn't be allowed.

Mr. LONG. So it would be good to give up a large percentage of my profits and things so I could fold into this arrangement if I am a successful station?

Mr. LAKE. Typically, these arrangements are not between two established, successful stations.

Mr. LONG. Exactly. In my area, we have a station that came on the air as a UHF, and, yes, I am old enough to remember that, and it was, for all these years forward, it was kind of like "Ted Mack's Amateur Hour," and there are a few of you in here old enough to remember Ted Mack, but it was going to fold, it was going to be out of business. I don't care if you would have brought in a minority owner, a nonminority owner, whoever it is, at the end of the day, these stations have to make money, they have to be successful. And I think that the message I would like for you to take back to the FCC, other than trying to do a Quadrennial Review in less than 10 years or something like that, would be that they need to be cognizant of these operations, the stations I am talking about in my market, in my hometown that I am talking about in particular, that news station that used to look like "Ted Mack's Amateur Hour" now is winning national awards. Yes, they folded and they closed the building they were in, and tried to lease it or tried to sell it. They moved across town into a successful station, but that—I don't understand, I mean, I came from a 30-year business background, I don't come from politics. I, you know, I wasn't a politician before I ran for this, so at the end of the day, I did talk radio for 6 years and I know, when you do talk radio, you want to put people in those stores. You have to be motivated to do a good show, get in there, and sell product and have people support your sponsors. So it is all about capitalism, making a profit, and I just think that if you all blow up this thing, that station that is getting all these news awards now that used to do terrible, is going to be gone. Whether you bring in a minority owner, or whatever kind of owner you bring in, if it is not a successful station, it is not going to work very well.

So I guess another question for you would be, would you rather that these failing broadcasters, such as the one I described, go out of business, than to be influenced, as you said earlier, by having a JSA with a successful broadcaster? Are you really that worried about the influence they may have if—would you rather they be out of business?

Mr. LAKE. A few things in response to that. The facts of these——

Mr. LONG. Answer that question first, if you will.

Mr. LAKE. Yes.

Mr. LONG. Yes or no, would you rather they be out of business?

Mr. LAKE. We have expressly in our rules an opportunity for a station that is failing to obtain a waiver of our local TV rule, and

we have granted failing station waivers. So if a station is failing, it doesn't have to take a backdoor of trying to become dependent on another station through a JSA, it can come in and seek a waiver. We also have indicated that we are wide open to consider waivers of the JSA attribution rule itself in appropriate circumstances. There are very different circumstances. There are circumstances in which these de facto duopolies have been established between two major network stations. Clearly not a failing station situation.

Mr. LONG. But if this failing station did a JSA with a successful station like I have described, and you blow this up or unwind it, then that station would either have to cease to exist, or they would have to go find another space across town and go back to being a failing station. I mean it is going to be too late to come in for this waiver you are talking, correct, or not?

Mr. LAKE. It may not be too late. Again, we have entertained and granted a number of failing station waivers.

Mr. LONG. OK. Thank you all for being here today.

And I have gone over my time, so if I had any time, I would sure yield her back.

Mr. WALDEN. I appreciate that. Thank the gentleman for his participation, and all of our witnesses for your testimony and answer to your questions. I am sure we may have a few more for the record that, if we do, we will send to you and look forward to getting your response to it. Obviously, this is an issue that spans the spectrum of philosophy and the committee in a marketplace that is changing pretty dramatically and rapidly, and it is an issue we will continue to pursue one way or another. So thank you all for your participation.

We stand adjourned.

[Whereupon, at 12:16 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

August 1, 2014

Mr. William Lake
Chief
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Mr. Lake:

Thank you for appearing before the Subcommittee on Communications and Technology on June 11, 2014, to testify at the hearing entitled "Media Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, August 15, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Federal Communications Commission
Office of Legislative Affairs
Washington, D.C.20554

Office of the Director

August 29, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to the Questions for the Record submitted for William T. Lake regarding his appearance before the Subcommittee on June 11, 2014, at the hearing entitled "Media Ownership in the 21st Century."

If you have further questions, please feel free to contact me at [redacted].

Sincerely,

[redacted]

Sara W. Morris

Enclosure

cc (with enclosure): The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce

Responses of William T. Lake to
Additional Questions for the Record
June 11, 2014, Hearing on "Media Ownership in the 21st Century"

The Honorable Greg Walden

1. **The GAO issued a study concluding that the FCC did not have sufficient information on broadcaster sharing agreements to assess how they impact its policy goals and media ownership rules. (GAO 14-558) Would you agree that the FCC's actions on JSAs were premature? If not, how do you explain how the FCC's actions on JSAs benefit the public interest, when the FCC has little to no information on the impact of JSAs and other sharing agreements?**

   RESPONSE: The FCC's action on JSAs was not premature. Joint Sales Agreements have been defined by the Commission and held attributable in the radio context for over a decade. These agreements, and the potential they hold to give a broker the ability and incentive to unduly influence the programming decisions and core operation of the brokered station, are well known to the Commission. Further, as the GAO notes itself on page 23 of its report, the Commission has reviewed, and continues to review, JSAs on a case-by-case basis in the context of assignments and transfers of licenses. Over the years, we have observed that station owners were using JSAs to circumvent the Commission's long-standing local ownership rules. Failure to attribute TV JSAs between in-market competitors would undermine the Commission's cornerstone goals—outlined in the statute and in our rules—to promote competition, diversity, and localism. Our conclusion to attribute TV JSAs was actually bolstered by the findings of the GAO, where its report noted that station owners "write agreements to avoid the attribution rules." *See* GAO Report at 24.

   With respect to sharing agreements, the GAO report correctly notes that similar information about the scope and prevalence of such agreements is not available currently, as it is for JSAs. The *Further Notice of Proposed Rule Making* in the 2014 Quadrennial Media Ownership Review proceeding proposes to define sharing agreements for the first time and to require the disclosure of such agreements. The Commission's recent proposals are designed to enable collection and analysis of the data that the GAO report suggests is lacking. In any case, sharing agreements continue to be reviewed if they are part of a license transfer or assignment application, and the Commission takes into consideration the overall impact of the proposed agreements when determining whether the license transfer would be in the public interest.

The Honorable Anna Eshoo

1. **Ms. Mago stated in her testimony that the FCC's refusal to act on pending transactions involving sharing or financial arrangements has forced the parties to completely restructure their deals, which in turn will lead to reduced news coverage and fewer stations. How do you respond?**

   RESPONSE: The Commission has an obligation to ensure that any proposed transaction is in the public interest. The staff must carefully scrutinize all of the proposed arrangements – whether it is a Joint Sales Agreement (JSA), Shared Services Agreement (SSA), and/or other financial agreements (or all three) – to ensure there is no undue influence or control by one licensee over another.

At the end of March, there were forty-one transactions pending before the Commission, seventeen of which have been processed. Parties in eight of those transactions were notified of their need to amend the applications to show financial independence. Two deals were restructured (Sinclair-Allbritton and Gray-Hoak), two deals have waiver requests pending (Nexstar-Comcorp and Nexstar-Milton Grant), and one (Quincy-Granite) is evaluating its options.

The Commission is aware of one situation where an applicant chose to surrender TV station licenses in order to facilitate a larger merger. The impact on consumers, however, is expected to be minimal as the programming previously carried by those stations will be multicast on other stations owned by the licensee in the market.

Although it has been commonly mischaracterized, the Commission's action regarding JSAs did not prohibit those agreements entirely – it set a limit on the total amount of advertising time that one station can sell on behalf of a competing station in the same market, if the stations are not allowed to be co-owned under our local TV ownership rule. Further, stations are not prohibited from entering into other types of sharing agreements where stations may take advantage of efficiencies that may promote news coverage.

The Honorable Henry Waxman

1. **The FCC's Quadrennial Review assesses rules one-by-one in considering whether a given rule needs to be altered given changes in media ecosystem. What efforts will the FCC make, however, in ensuring that changing or undoing one rule does not alter the effects of another?**

   RESPONSE: The Quadrennial Ownership Review requires the Commission to determine whether the broadcast ownership rules remain "necessary in the public interest as the result of competition" and to repeal or modify any regulation it determines is no longer in the public interest. To determine whether a particular rule is in the public interest, the Commission considers whether the rule furthers its established goals of localism, competition, and diversity. Multiple rules may serve these goals, which would be taken into consideration. For example, in the current *Further Notice of Proposed Rulemaking*, the Commission has sought comment on whether it should repeal the current radio-television cross-ownership rule and rely solely on the limitations set forth in the local Radio rule and the local TV ownership rule, respectively, to promote viewpoint diversity in those markets. The Commission has explicitly sought comment on whether the media-specific local rules themselves would be sufficient to preserve the Commission's goals, or if retention of the cross-ownership rule is necessary.

2. **When the FCC last reported its broadcast ownership data, much of it was incomplete. For example, nearly 1 in 6 Class A television stations, 2 out of 5 LPTV stations, and 1 in 6 AM and FM commercial radio stations did not report ownership data. The large quantity of missing data makes it very difficult to assess the state of minority and female ownership in the broadcast industry. Is the FCC making efforts to improve its ownership data collection so we can make better judgments about whether revisions should be made to existing media ownership rules?**

   RESPONSE: It is an on-going process to revise and update the Commission's collection of data related to broadcast ownership. We recognize that it is important to gather accurate and usable data. We substantially revised Form 323 in 2009 in order to facilitate long-term study and to address other concerns. The Commission just released its 2014 Report on Ownership of Broadcast Stations, which summarizes the data from the most recent Form 323 filings made in 2013. As you note, a key component of the process is the accurate and timely filing of the data by licensees. We work closely with the industry to remind them of filing deadlines, provide assistance with the Form, and grant extensions of time when necessary. Before we release our report summarizing the data, we follow up with stations, both those that failed to file a Form 323 and those that may have filed incorrectly, to ensure that the data are as complete and accurate as possible. We continue to refine and consider further revisions to this process to improve the accuracy and reliability of the data that we collect.

3. **The FCC's Form 395-B, which once required broadcast stations to report on employment diversity, has remained dormant for a number of years as the FCC has attempted to respond to a number of legal and statutory challenges. In the past, Form 395 data has allowed the public to hold broadcasters accountable when their employment practices failed to reflect the diversity of their communities of license. Where is the FCC in the process of reinstating that form and using the data that it provides to identify employment trends within the industry?**

   RESPONSE: On April 15, 2014, the Commission published a notice in the Federal Register soliciting comment on Form 395-B. Specifically, the notice is part of the Paperwork Reduction Act routine renewal process. It asks whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. Comments on this Paperwork Reduction Act notice were due in June. This comment process is a necessary component to reinstating the form, but we note that it does not resolve the legal and statutory challenges that you reference in your question. We are still evaluating the best course of action to overcome those obstacles.

4. **When the Commission evaluates the local radio ownership rule in the context of its media ownership review, how, if at all, does the market definition used by the Commission differ from that used by the Department of Justice in its antitrust review of broadcast radio station mergers?**

   RESPONSE: Historically, when evaluating the local radio ownership rule in the context of the media ownership reviews, the Commission has focused on broadcast radio stations in their local markets. As noted in the 2014 Quadrennial Review Further Notice of Proposed Rulemaking—which proposes to retain this market definition—this approach is consistent with current Department of Justice antitrust review of broadcast radio station mergers, which also focuses on broadcast radio stations in their local markets.

5. **We hear a lot about how stations with JSAs are concerned that the new attribution rules will adversely impact their ability to continue to provide news or receive the efficiencies from sharing agreements- or even require the station to go dark. Commissioners Ajit Pai and Michael O'Rielly raised just such allegation in a joint press release on June 24, 2014. Are these fears accurate?**

   RESPONSE: The JSA attribution rule applies only to agreements for the sale of 15 percent or more of the weekly advertising time on behalf of a competing station in the same market. Other shared service agreements—including local news service agreements—are not impacted by the rule. The Commission is seeking comment on a proposed definition for other types of sharing agreements, as well as whether disclosure of such agreements should be required. If a party believes a particular JSA should not result in an attributable interest, or believes that the public interest is better served by allowing the party to hold a duopoly in a particular market, it may apply for a waiver of the applicable rule.

   The Commission is aware of one situation where an applicant chose to surrender TV station licenses in order to facilitate a larger merger that was pending at the time the TV JSA attribution rule was adopted. The impact on consumers, however, is expected to be minimal as the programming previously carried by those stations will be multicast on other stations owned by the licensee in the market. Additionally, the situation referred to in the June 24 statement failed to note that Minority Media and Telecommunications Counsel (MMTC) has been engaged as a broker by the current licensee to seek new buyers for the stations that have gone temporarily dark. On August 27, 2014, the current licensee referenced by that statement announced that they were able to find buyers for all six of the previous stations that would otherwise have gone dark. We view this as a positive outcome that increases competition and diversity of ownership and programming while keeping stations on the air.

6. **What types of stations do you normally find are part of JSAs?**

   RESPONSE: Increasingly, we have seen one station—the broker—sell 100 percent of the advertising time of the brokered station, as well as provide almost all of the services to the supposedly independently owned station. Often the station receiving the services has only two employees, the absolute minimum permitted under existing Commission precedent. This produces stations that are independent in name only; accordingly, we adopted the television JSA attribution rule to appropriately consider the stations commonly owned for purposes of our media ownership rules.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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August 1, 2014

Ms. Jessica Gonzalez
Executive Vice President and General Counsel
National Hispanic Media Coalition
55 South Grand Avenue
Pasadena, CA 91105

Dear Ms. Gonzalez:

Thank you for appearing before the Subcommittee on Communications and Technology on June 11, 2014, to testify at the hearing entitled "Media Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, August 15, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Response to Additional Questions

Jessica J. González
Executive Vice President & General Counsel
National Hispanic Media Coalition

Before the

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

Regarding

Media Ownership in the 21st Century
June 11, 2014

The Honorable Anna Eshoo

1. **The FCC's most recent statistics show that less than 6.8 percent of full power commercial TV stations are majority owned by women. The numbers for racial minorities are even lower. What impact does a lack of ownership diversity have on our national discourse? What specific data or information does the FCC need to do its job and promote diversity that reflects the richness of the American people?**

The lack of ownership diversity in our media system has a severe impact on our national discourse. NHMC has long recognized that television news, radio programs and newspaper stories inadequately represent the concerns, culture, and knowledge of women and people of color. The way the public looks at issues – and whether or not the public is even aware of certain issues like fair housing, quality education and full employment – is directly related to the way these issues are covered by media. The way that media covers these issues is directly related to who is employed by the media – the reporters, anchors, editors, producers and executives who tell and green light the stories. Who is employed by the media is directly related to who *owns* the media.[1] And who owns the media is directly related to policies that determine who gets a license to operate. In each of these instances, our communities need equitable media rules that keep media platforms accessible, affordable, and accountable. With increased consolidation and a lack of strong media ownership rules, and a lack of diverse ownership, women and communities of color are unable to tell their own stories and represent themselves in important debates about the future of this country. Beyond that, outlets that lack diversity often target these communities with hate speech, calls to action and violence, and negative stereotypes.

Lack of ownership diversity also leads to a dearth of viewpoint diversity - viewpoints of people of color and women are particularly underrepresented in media. In 2012 the UCLA Chicano Studies Research Center released a study that examined how some commercial talk radio hosts are "able to spread information and opinion and exert influence vis à vis ideological messages that target vulnerable groups."[2] The study focused on the social network generated by the hosts of five commercial talk radio shows: *The Rush Limbaugh Show*, *The Sean Hannity Show*, *The Glenn Beck Program*, *The Savage Nation*, and *The John & Ken Show*. Four of the five programs were nationally syndicated at the time of analysis and three were distributed by Premiere Radio Networks, a wholly owned subsidiary of Clear Channel Communications. The fourth program, *The Savage Nation*, was syndicated by Talk Radio Network.

The study revealed some startling insights into some of the most prominent programs in the highly-consolidated radio business:

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[1] Catherine J. K. Sandoval, *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest* 4 (2009), http://centerformediajustice.org/wp-content/files/Minority_Commercial_Radio_Broadcasters_Sandoval_MMTC_2009_final.pdf.

[2] Chon A. Noriega & Francisco Javier Iribarren, *Social Networks For Hate Speech; Commercial Talk Radio And New Media* 2 (2012), http://www.nhmc.org/nhmcnew/wp-content/uploads/2013/03/SocialNetworksforHateSpeech_UCLACSRC.pdf [hereinafter, *Social Networks*].

- The hosts promoted an insular discourse that focused, for example, on anti-immigrant and anti-Islam positions, and this discourse found repetition and amplification through social media.[3] "What is surprising about this insularity is the extent to which it is dominated by political figures and media personalities, and less so by issue-driven organizations, advocacy groups, and experts."[4]
- Of the 102 guests that appeared on these programs during the study, 91 were white, and only 4 were Latino, 3 were black, and 2 were Asian (the race/ethnicity of two guests could not be determined). While eighty-three (81 percent of) guests were male, only 19 (19 percent) were female.[5]
- Of the 28 political figures that were guests during the study period, 26 were members of the GOP, 1 had no political affiliation and 1 was a Democrat.[6]

In comments recently filed with the Commission in the 2010/2014 Quadrennial Review proceedings, NHMC argued that the Commission has failed to meet its statutory obligations and stated policy goals with respect to diversity. NHMC commented at length about what data and information the FCC needs to do its job. The relevant section of NHMC's comments will be informative in this context and is reproduced below:

The Third Circuit *Prometheus* opinions require the Commission to collect, release, and publicly analyze data, and direct the completion of studies that would use that data to determine the effects of its rules on ownership diversity.[7] Although a tremendous amount of time has passed since the Commission was made aware of the expectations of the Court, and an immense amount of effort and resources have been expended at the Commission to design research, we are, unfortunately, left in largely the same position that the *Prometheus II* Court found us – with no completed *Adarand* studies, none on the horizon, and no clear indication that the Commission is interested in moving forward in a way that would respond to the Third Circuit.

In a particularly disappointing episode, the Commission recently abandoned plans to undertake a study into the Critical Information Needs of Communities – a study that had been contemplated and worked on for many months under previous Chairs Genachowski and Clyburn. This study had the potential to fulfill the FCC "obligation to Congress to identify barriers to entry into the communications marketplace faced by entrepreneurs and other small businesses," yet the Commission determined not to go forward with the study, and has yet to come up with a suitable replacement.[8]

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[3] *See Social Networks*, *supra* note 2 at 1.
[4] *Id.* at 24.
[5] *Id.* at 10.
[6] *Id.* at 15.
[7] *Prometheus Radio Project v. FCC* (*Prometheus I*), 373 F.3d 372, 421, n.58 (3rd Cir. 2004); *Prometheus Radio Project v. FCC* (*Prometheus II*), 652 F.3d 431, 471 (3rd Cir. 2011).
[8] Press Release, Federal Communications Commission, Statement on Critical Information Needs Study (Feb. 28, 2014), *available at* http://www.fcc.gov/document/statement-critical-information-needs-study.

On a more positive note, the FCC's ongoing Hispanic television market study, initiated under the leadership of Acting Chairwoman Clyburn, is the first step in a long process towards understanding how the Commission can achieve its statutory goal of a more diverse media ecosystem in the face of an exceptionally low number of women and people of color owning and controlling media outlets. This study should only be the beginning. For meaningful improvements to occur, the Commission must engage in an ongoing dialogue with the community to ensure that it is compiling a complete picture of the broadcast ownership landscape for analysis.

The Commission's work to collect, clean, and release to the public its Form 323 ownership data is laudable, and the Commission's goal of "provid[ing] a reliable basis for analyzing ownership trends in the industry, including ownership by racial and ethnic minorities and women" is important.[9] However, it is past time that the Commission begins performing its own analysis of the data that it has collected, particularly analysis relating to causal factors or market structures that are keeping the numbers of diverse owners inexcusably low.[10] Statements made in the 2014 FNPRM suggest that the Commission believes that the data can and should be analyzed further, although it seems to imply that the burden of completing such analysis should fall on third parties.[11] While third parties have certainly gone to great lengths in the past to analyze data where the Commission has not,[12] it is unrealistic and contradictory to the Third Circuit's mandate to expect third parties to be the only source of data analysis in the Commission's record. The time is long overdue for the Commission to reap the fruits of its efforts to clean up the Form 323 data collection and begin analyzing the data to inform its rulemaking process.

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[9] *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, Report on Ownership of Commercial Broadcast Stations* Report at ¶ 2, MB Dkt. 14-50, rel. June 27, 2014, *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0627/DA-14-924A1.pdf ("2014 Ownership Report").

[10] *See 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, Report on Ownership of Commercial Broadcast Stations* FNPRM at n.745 ("2014 FNPRM"); Comments of Free Press at 16, MB Dkt. 09-182, filed Mar. 5, 2012 ("Free Press 2011 Comments").

[11] *See* 2014 FNPRM n.746 (listing studies that were completed using 2009 Form 323 data); 2014 FNPRM n.749 (noting "that no party to this proceeding submitted studies utilizing the minority or female ownership data collected via the revised Form 323 2009 biennial filings, even though the data from these filings were made available to the public when the forms were filed with the Commission in 2010").

[12] *See* S. DEREK TURNER, OFF THE DIAL: FEMALE AND MINORITY RADIO OWNERSHIP IN THE UNITED STATES (Free Press, 2007), *available at* http://www.freepress.net/sites/default/files/resources/off_the_dial.pdf; S. DEREK TURNER, OUT OF THE PICTURE: MINORITY AND FEMALE TV STATION OWNERSHIP IN THE UNITED STATES (Free Press, 2006), *available at* http://www.freepress.net/sites/default/files/fp-legacy/out_of_the_picture.pdf.

Additionally, the FCC should reinstate Form 395, which required that each station report EEO data on the number of employees in each of nine job categories by race and gender.[13] Reinstating the collection and public release of broadcast stations' employment demographics would allow the public to hold broadcast stations accountable for their minority hiring practices and give the Commission a strong record upon which to build new policies to promote diverse ownership. Previously, this information was made publicly available by station, and was used by the FCC to compile annual "trend reports" tracking the aggregate percentage of people of color and women employed in each job category.[14] However, following the D.C. Circuit's determination that portions of the FCC's EEO rules were unconstitutional in *Lutheran Church-Missouri Synod v. FCC*[15] and *MD/DC/DE Broadcasters Association v. FCC*,[16] the FCC stopped gathering Form 395 data.[17] In response to those two decisions, the FCC revised its Form 395 information gathering rules in 2002, emphasizing that the data would be used only to provide trend reports, and not to determine compliance with EEO regulations; however, the FCC deferred its decision to reinstate the broadcast and multi-channel video providers ("MCVP") employment data filing requirements until 2004.[18] However, the FCC did not make Form 395-B available – instead seeking comment as to whether the information should be kept private under the Confidential Information Protection and Statistical Efficiency Act of 2002 ("CIPSEA")[19]. As of 2010, the FCC had not made a decision as to keeping the information confidential, and had still not collected or disseminated employment data.

2. **The FCC has previously concluded that allowing more combinations between newspapers and radio stations should be permitted. Do you agree with the FCC's view that local radio is not a major source of local news and information and, therefore, that eliminating newspaper/radio restrictions would not impact viewpoint diversity?**

NHMC strongly disagrees with the FCC's view that local radio is not a major source of news and information and, therefore, does not contribute to viewpoint diversity. NHMC has told the Commission that this premise is severely flawed and that any relaxation of media ownership rules, including the elimination of the newspaper/radio cross-ownership rule, would be a mistake that would harm diversity. Indeed, NHMC has repeatedly urged the FCC to tighten its radio ownership limits as a race-neutral way to diversify the radio waves and create opportunities for more speech to counter the hate and dehumanization that pervades many conglomerate-owned radio stations. NHMC commented extensively on the value of local radio in comments recently

[13] Reply Comment of National Hispanic Media Coalition, et al. at 2, MB Docket 10-103 (filed Sept. 13, 2010) ("NHMC Reply Comment").
[14] *Id* at 2.
[15] *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998).
[16] *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13 (D.C. Cir. 2001).
[17] NHMC Reply Comment *supra* note 13 at 1.
[18] *Review of the Commission's Broadcast and Cable Equal Opportunity Rules and Policies*, 2d R&O and 3d NPRM, 17 FCC Rcd. 24018, 24025 (2002).
[19] NHMC Reply Comment *supra* note 13 at 3-4.

filed with the Commission in the 2010/2014 Quadrennial Review proceedings. The relevant section of our comments is directly responsive to this question and is reproduced below:

In the 2014 FNPRM, the Commission "seek[s] comment on whether the newspaper/radio cross-ownership restriction advances our interest in promoting viewpoint diversity or whether we should eliminate the restriction" and "seek[s] comment on the Commission's tentative conclusions that radio stations are not the primary outlets that contribute to viewpoint diversity in local markets and that consumers rely predominantly on other outlets for local news and information."[20] Further, the Commission "seek[s] comment on whether the radio/television cross-ownership rule, which limits the combined number of commercial radio and television stations a single entity may own in the same market, is still necessary in the public interest or whether it should be repealed."[21] The Commission goes on to note that "promoting viewpoint diversity has been the Commission's lone justification" for retaining its radio cross-ownership restrictions,[22] and implies that it is unlikely that radio contributes to viewpoint diversity because consumers reportedly rely less on radio for news and because there are few all-news radio stations.

However, this logic is flawed because it rests on the faulty premise that music format stations do not contribute to viewpoint diversity nor disseminate news and information to the public. The available evidence suggests that this premise and the logic that flows from it is particularly off-base when it comes to describing the consumption habits of the Latino community, which continues to rely on radio stations, including both music format and news/talk stations, for news and information, making radio an important source of viewpoint diversity. Additionally, apart from viewpoint diversity, retention of the Commission's current media ownership rules promotes ownership diversity by preventing consolidation and preserving opportunities for new entrants.

The Latino Community Continues To Rely On Radio For News And Information

Radio remains an influential medium and an important outlet for Latino communities across the country. According to a recent report by Arbitron (now Nielsen Audio):

> About 95% of Hispanic consumers tune to the radio in an average week, underscoring a strong relationship with an important and growing listener segment. Radio listenership among Hispanic consumers is bigger than other ethnic groups measured by Arbitron. Radio remains a reliable entertainment and information source for Hispanic listeners, regardless of their language preference, country of origin, age, gender, income, or listening location.
>
> Radio's reach among 25-54 Hispanic listeners is even better, reaching nearly 97% of women 35-44 weekly. In an era where all consumers are presented with many

[20] 2014 FNPRM at 4371 at ¶¶ 144-145.
[21] *Id.* at ¶ 200.
[22] *Id.* at ¶ 145.

media choices, time spent listening to radio among Hispanic persons is holding steady (and in some cases, increasing) in key demographics.[23]

Available data suggests that Latinos don't just "tune in," but they spend a great deal of time listening to the radio. According to AdAge, "Hispanic listeners age 12+ averaged 12 hours, 54 minutes per week."[24] Latino men between the ages of 55 and 64 listen to the radio for an average of 16 hours and 26 minutes per week.[25] On a typical weekday, 56 percent of Latinos say they get their news from radio.[26]

Radio Stations, Including Both Music Format Stations And News/Talk Stations, Contribute To Viewpoint Diversity

Radio stations, particularly those that are owned, operated by or serving Latinos (collectively, "Latino stations"), unquestionably contribute to viewpoint diversity in their communities of license. This is true of both traditional news/talk format stations and music format stations, which often provide local news and information to listeners. Although NHMC contends that even stations that exclusively program music contribute to viewpoint diversity, it will focus on instances where news and information is offered for the purposes of these comments.[27]

Latino stations across the country very often blur the lines between different formats and programming choices and are often responsive to their communities' interests to the point of altering programming decisions with very little notice to serve their communities' needs. This is often out of necessity as the extremely limited number of Latino stations across the country are required to be a "one-stop shop" for an audience with a diverse set of interests and needs and a small number of outlets to choose from. One example of this phenomenon is KQSE – La Nueva Mix in Colorado. According to a recent article about the success of the station, and its non-traditional format:

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[23] ARBITRON, HISPANIC RADIO TODAY 2013: HOW HISPANIC AMERICA LISTENS TO RADIO 2 (2013), *available at* http://www.arbitron.com/downloads/Hispanic_Radio_Today_2013_execsum.pdf.

[24] *11th Annual Hispanic Fact Pack,* ADVERTISING AGE, July 28, 2014, at 24, *available at* http://gaia.adage.com/images/bin/pdf/Hispanic_Fact_Pack_2014_web.pdf.

[25] *Id.*

[26] MARK HUGO LOPEZ & ANA GONZALEZ BARRERA, A GROWING SHARE OF LATINOS GET THEIR NEWS IN ENGLISH 1 (Pew Research Hispanic Trends Project, 2013), *available at* http://www.pewhispanic.org/2013/07/23/a-growing-share-of-latinos-get-their-news-in-english/.

[27] There is a large body of research concerning the usage of music to share knowledge, create political power, and advance social movements. *See* Ugo Corte, *Music matters to social movements and in a number of ways, but can we use it to advance our understanding of emotions and the body?*, MOBILIZING IDEAS, Jun. 3, 2013, *available at* http://mobilizingideas.wordpress.com/2013/06/03/music-matters-to-social-movements-and-in-a-number-of-ways-but-can-we-use-it-to-advance-our-understanding-of-emotions-and-the-body/.

> La Nueva Mix is primarily a music station, playing Norteño ballads and other Latin American tunes. But since its debut six years ago, program director Axel Contreras has also introduced talk shows on health, real estate and dealing with police encounters. By far the most popular, though, is *Punto Legal*, a weekly immigration law call-in.
>
> ...
>
> Conteras, a Guatemalan who came to the U.S. illegally 20 years ago and is now a legal resident, hopes that the news and information he airs help immigrants integrate into American society. "Our station is just a bridge for the Latino community," he says. Its approach has attracted a broad listenership[.]
>
> ...
>
> In times of crisis, Contreras converts La Nueva Mix into a sort of emergency warning system. In 2011, for instance, during the "Strawberry Days" carnival down the street from the station, federal immigration agents conducted a raid, disrupting the festivities and arresting several suspected undocumented immigrants. Immediately, Contreras took to the airwaves and urged people to avoid the carnival.[28]

Perhaps the most profound example of Latino stations coming together to share diverse views and information with their communities, regardless of their format, was the role that radio played in facilitating the 2006 immigration rallies across the country. The rallies represented an important political moment for Latinos in the United States:

> During four short months in the spring of 2006, an estimated 3.5 to 5.1 million Latinos protested in the streets of over 160 cities in the United States. Several cities held multiple marches, each drawing tens of thousands of participants. The unprecedented Latino activism was a public response to the threat of House Bill 4437 (HR 4437) that would have increased penalties on undocumented immigrants as well as those who employ and assist them.[29]

Subsequent research into the organization of these rallies reveals that Latino stations and disc jockeys, and their unique viewpoints, played a pivotal role in educating and mobilizing Latinos in communities across the country. According to one Latina leader from Chicago, "It was very helpful to talk to them about this, they understood the problems of the community, they were very collaborative ... every radio deejay was talking about this big thing that was going to happen."[30] A similar sentiment was echoed in Central Florida by another community leader who said, "The commitments that our radio stations have to the community are different ... When you have disc jockeys talking about their own stories ... how they have friends and families and co-

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[28] Nelson Harvey, *Latino radio stations connect immigrant communities,* HIGH COUNTRY NEWS, Jun. 10, 2013, *available at* http://www.hcn.org/issues/45.10/latino-radio-stations-connect-immigrant-communities.

[29] Matt A. Baretto et al., *Mobilization, Participation, and Solidaridad: Latino Participation in the 2006 Immigration Protest Rallies,* 44 Urban Affairs Review 736, 736-737 (2009), *available at* http://www.mattbarreto.com/papers/uar_immig.pdf (internal citations omitted).

[30] *Id.* at 744-745.

workers that will be affected, I think they directly connect with the community."[31] In Los Angeles, a coalition of radio personalities from rival stations (almost exclusively music format stations), devoted airtime to the cause and helped spark one of the largest demonstrations in the history of Los Angeles:

> Rally supporters, including immigrant-rights activists, churches, and labor and community groups, agreed that the active advocacy of the region's top Spanish-language radio personalities was critical in drawing the enormous crowds, who marched more than 20 blocks along Spring and Main streets and Broadway to City Hall, wearing white "peace" shirts and waving American and Mexican flags.
>
> The promoters included such on-air celebrities as KHJ's Humberto Luna, KBUE's Ricardo "El Mandril" (The Baboon) Sanchez, Renan "El Cucuy" (The Boogeyman) Almendarez Coello — whose often risque show has cast him as a sort of Latino version of Howard Stern — and [Eddie] Sotelo, better known to listeners as "El Piolin," or Tweety Bird.
>
> ...
>
> "The Latino media played it more as how will this affect you, how will it affect your job, how will it affect your kids," [Felix] Gutierrez[, a journalism professor at USC's Annenberg School for Communication] said. "They were much closer to their audience, in terms of the direct effect."[32]

As the examples above show, the Commission's characterization of radio and justification for considering elimination of radio cross-ownership rules is not supported by the facts. Latino media and Latino communities yield countless examples of the importance of radio in contributing to the overall viewpoint diversity of our media system. Without diverse owners and employees of radio outlets, certain views might never be shared and the needs of communities would not be met.

Further, radio outlets have also been well known to espouse very strong viewpoints that have been harmful to the Latino communities that they serve. For instance, over the years, NHMC has documented many instances of Clear Channel radio outlets targeting Latinos and other diverse communities over their airwaves, with hate speech, calls to action and violence, and negative stereotypes.[33] And because Clear Channel often owns numerous radio stations in the markets that it serves, it is able to insulate offending programs from community outcry and market-based consequences by shifting advertising among its other outlets. While these

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[31] Jose Cardenas & Eric Deggans, *Immigrant Rallies Born on Air,* ST. PETERSBURG TIMES, Apr. 12, 2006, *available at* http://www.sptimes.com/2006/04/12/news_pf/State/Immigrant_rallies_bor.shtml.

[32] Teresa Watanabe & Hector Becerra, *How DJs Put 50,000 Marchers in Motion,* LATIMES.COM, Mar. 28, 2006, *available at* http://colombiareport.ss.uci.edu/webdocs/TheImmigrationDebate.pdf.

[33] *See e.g. Media Ownership in the 21st Century: Hearing Before the Subcomm. on Communications and Technology of the H. Comm. on Energy and Commerce,* 113th Cong. (2014) (testimony of Jessica J. González, Executive Vice President and General Counsel, National Hispanic Media Coalition).

viewpoints are not always welcome, and a strong case can be made that airing them contravenes public interest obligations of broadcast license holders, it is wrong for the Commission to imply that radio outlets do not contribute to viewpoint diversity.

Even If The Commission Finds That Radio Does Not Contribute To Viewpoint Diversity, It Should Still Justify Retention Of Rules To Promote New Entrants And Ownership Diversity

Even if the Commission is correct in saying that radio stations do not contribute to viewpoint diversity, it should still justify retention of the radio/newspaper and radio/television cross-ownership rules using the rationale that such rules promote ownership diversity by limiting consolidation in the media industry and preserving opportunities for new entrants. The Commission recognizes that repeal of rules "would potentially allow for the acquisition of a limited number of additional radio stations in some markets by incumbent[s and] we seek comment on the impact that elimination of the rule would have on media consolidation and thus on small broadcast owners, including minority and women owners."[34]

Any rule change, such as the ones contemplated here, which would allow incumbent owners of media properties to own additional media properties or allow well-capitalized new entrants to simultaneously purchase multiple outlets, would largely limit ownership opportunities for diverse individuals such as women and people of color. Given the discouragingly low numbers of women or people of color who are incumbent media outlet owners, it is unlikely that the considered rule changes would do anything to facilitate more stations being acquired by diverse individuals. And given the well-documented challenges that diverse new entrants have with obtaining access to capital required to purchase one outlet, it is unlikely that a rule blessing the simultaneous purchase of multiple outlets would serve the interests of diverse parties. Therefore, by retaining the rules and limiting the number and types of outlets that one party can simultaneously own, the Commission would be preserving opportunities for the diverse new entrants that would be required to create any demonstrable change to the current levels of ownership by women and people of color.

[34] 2014 FNPRM at ¶ 223.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

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August 1, 2014

Mr. Bernard Lunzer
President
Newspaper Guild-CWA
501 Third Street, N.W.
Washington, D.C. 20001

Dear Mr. Lunzer:

Thank you for appearing before the Subcommittee on Communications and Technology on June 11, 2014, to testify at the hearing entitled "Media Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, August 15, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

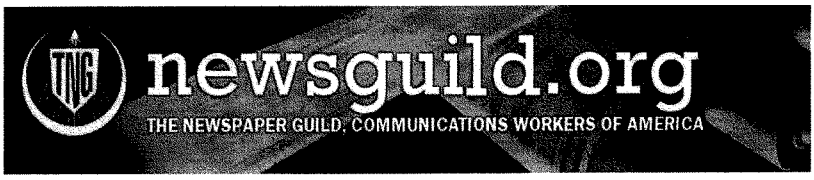
Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment



August 7, 2014

Ms. Charlotte Savercool, Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear: Honorable Greg Walden, Chairman
Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology,

In response to questions of my testimony before the Subcommittee on Communications and Technology on June 11, 2014 at the hearing entitled "Media Ownership in the 21st Century".

Question 1 – **The Honorable Greg Walden – Your testimony indicated that common ownership of the Youngstown Vindicator newspaper and two television stations has resulted in fewer newsroom jobs and less news in the market. Ms. Eshoo and I have received a letter from the general managers of the newspaper and television station that indicates the contrary. Would you like to add to and clarify your testimony on this point?**

Concerning joint ownership of two television stations and the Youngstown Vindicator – the management also reached out to me to say that there is no coordination at all between the properties. It's clear that stories are sometimes used in the newspaper from the television properties, but I have no reason to question management's assertion that they don't coordinate. The number of newsroom jobs at the paper has declined but I can't make a causal connection. I did tell the management that I would clarify this for anyone who inquired. What is clear is that their competitor, LIN Media, does use duplicated material across their stations in Youngstown.

Question 2 – **The Honorable Anna Eshoo – In your testimony, you stated that JSA's and SSA's have substantially reduced original news coverage in cities across the country including Youngstown, Ohio and Honolulu, Hawaii. These anecdotal examples coupled with the fact that 25 percent of the nation's 952 local news stations do not produce their newscasts themselves point to a real problem. What more can the FCC do to incent broadcasters to invest in local news and investigative journalism?**

Concerning the question of what incentives could be created to get more television statements to create original news – this is a difficult question because the current market creates great incentives not to. I too, prefer constructive approaches. I suppose there could be tax credits for journalists hired to help offset the cost of creating newsrooms. But unfortunately I also believe the FCC must literally act to stop this practice. Stations that don't serve the public interest should be put up for sale. This would be the best approach because it could help to improve diversity of ownership, which is at an all time low.

Sincerely,

[redacted]

Bernard J. Lunzer
President
The Newspaper Guild-CWA

Chairperson: Martha Waggoner
President: Bernie Lunzer
Acting Sec'y-Treas: Sara Steffens

Vice Presidents

John Hill, Region 1
Michael Cabanatuan, Region 4
Sheila Lindsay, Region 2
Kevin Flowers, Region 3
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FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

August 1, 2014

Mr. Paul Boyle
Senior Vice President of Public Policy
Newspaper Association of America
4401 Wilson Boulevard, Suite 900
Arlington, VA 22203

Dear Mr. Boyle:

Thank you for appearing before the Subcommittee on Communications and Technology on June 11, 2014, to testify at the hearing entitled "Media Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, August 15, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Paul J. Boyle
Senior Vice President, Public Policy

August 13, 2014

Ms. Charlotte Savercool
Committee Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Ms. Savercool:

Attached is my answer to Representative Anna Eshoo's question from the "Media Ownership in the 21st Century" hearing on June 11, 2014. If you need additional information or have other questions, please contact me at [redacted]

Sincerely,

[redacted]

Attachment

cc: The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology

Newspaper Association of America®
4401 Wilson Boulevard, Suite 900, Arlington, VA 22203-1867
[redacted]

Response of Paul Boyle to Question Posed by Rep. Anna Eshoo

Question: You both pointed to "growing competition" from online news sources. But most evidence suggests that the majority of local news online comes from newspapers and broadcasters. If most online local news content comes from traditional sources, how is this enhancing competition and diversity for local information?

Answer: Thank you for your continued focus on ensuring that communities receive robust and diverse local news coverage. The Pew research, done in Baltimore a few years ago, does reinforce the importance of the original newsgathering undertaken by newspapers and local television stations. In our view, the Pew study demonstrates that the media that undertake the most essential role in newsgathering -- which also are enduring unprecedented economic challenges -- should be freed of 1970s-era regulatory burdens so that they can execute this important role more flexibly and with the full range of options available to them. Selectively burdening the most important newsgatherers with federal regulation strikes us as the opposite conclusion that should be drawn from the Pew study.

At the same time, we believe that the premise of the Pew study is steadily being undermined by an expanding universe of new, original online news sources. Although we do believe that our members continue to have the laboring oar in providing citizens with the essential shoe-leather journalism essential to maintaining an informed democracy, our role is continuing to be supplemented by coverage by new, online journalism organizations.

In the past few years, the landscape for local news has changed dramatically. Even compared to five years ago, the amount of local news that *originates* from websites, mobile apps, and other newer technology has grown dramatically. The Investigative News Network, an association of independent, nonprofit online news sites, has grown to 100 organizations since its founding in 2009. Similarly, the Local Independent Online News Publishers, an organization of hyperlocal news sites, has more than 100 members, including Berkeleyside, in Berkeley, California, which provides police reports, community coverage, and other content that even 10 years ago could only be found in small community newspapers.

Indeed, you need look no further than your district and the greater Bay Area for examples of robust local journalism that originates online:

- **SFBay.ca:** This locally owned online-only news site relies on a staff of approximately 25 journalists to provide robust coverage of the Bay Area. The site's reporters cover breaking local news, local politics, education, and other issues that matter to the Bay Area. Its sports reporters and photographers are credentialed to cover the professional and collegiate sports teams in the area. The site received ten awards from the San Francisco Peninsula Press Club in 2013, including the award for overall excellence.

- **California Watch:** Created by San Francisco-based Center for Investigative Reporting, this website provides some of the leading investigative reporting about California and the Bay Area. Last year, the site's coverage of abuse at state centers for the developmentally disabled was a finalist for the Pulitzer Prize and recipient of the George Polk award. The site also provides in-depth coverage of California campaign finance, the environment, and public safety. All of this robust reporting is produced by the web site's staff; it does not originate from newspapers or broadcasters.

- **SanJose.com:** This online-only publication provides popular local coverage for San Jose. The site focuses on entertainment, lifestyle, and events, but also devotes resources to coverage of local news issues such as the area's real estate market.

- **SFist:** This local news and culture website has a dedicated editorial staff that covers local politics, crime, offbeat news, technology, arts, restaurants, and other topics of interest to the community. Like its sister sites in Los Angeles, the District of Columbia, New York, and elsewhere, it is very popular, with more than 80,000 followers on Twitter.

- **BeyondChron:** This site, published by the Tenderloin Housing Clinic, has provided progressive news to the San Francisco area since 2004. The site focuses on local politics, and the impact of national issues on the San Francisco area.

- **The San Francisco Appeal:** This online-only news site has a local editorial staff that focuses primarily on city news and cultural developments.

Newspapers and broadcasters always will play an important role in local news and community affairs. But it simply is no longer true that they are the dominant sources of local news. Accordingly, it makes little sense to discriminate against newspapers -- and only newspapers -- by cutting off potential investments in support of journalism, including investments from an owner of a local broadcast station who wants to continue and build upon the journalistic tradition established by the newspaper in his or her local market. Ultimately, the community will be better served if resources can be brought forward that would help sustain newspaper journalism for decades to come.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives
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August 1, 2014

Mr. David Bank
Managing Director
Global Media Equity Research
RBC Capital Markets
3 World Financial Center
200 Vesey Street
New York, NY 10281

Dear Mr. Bank:

Thank you for appearing before the Subcommittee on Communications and Technology on June 11, 2014, to testify at the hearing entitled "Media Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

RBC Capital Markets®

RBC Capital Markets Corporation
David Bank
Managing Director
Global Internet & Media
Equity Research
[redacted]

August 15, 2014

Congress of the United States
House of Representatives
The Honorable Anna Eshoo
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Eshoo:

Thank you for your question for the record submitted in connection with my June 11, 2014 testimony before the Subcommittee on Communications and Technology at the hearing entitled "Media Ownership in the 21st Century".

You have asked whether our analysis indicated that broadcast consolidation in any way leads to more local news and coverage as well as higher quality of programming. In response to this question, our analysis did not indicate that broadcast consolidation lead to more (or less) news and coverage, or to higher-quality (or lower-quality) programming. However, these were not issues that we attempted to address in our research.

Thank you for the opportunity to answer this question. Please do not hesitate to contact me if I can be of any additional assistance to you or your staff.

Sincerely,

David Bank

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
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August 1, 2014

Ms. Jane Mago
Executive Vice President and General Counsel
Legal and Regulatory Affairs
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Dear Ms. Mago:

Thank you for appearing before the Subcommittee on Communications and Technology on June 11, 2014, to testify at the hearing entitled "Media Ownership in the 21st Century."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

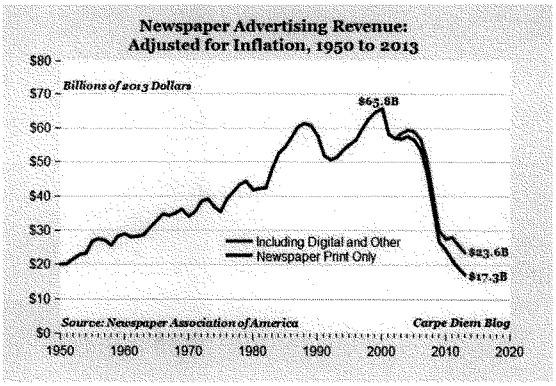
The Honorable Greg Walden

1. You mention in your testimony that current broadcast ownership rules are out of touch with the reality of the media marketplace and limit broadcasters' ability to respond to market forces. Could you explain more specifically how the local market for advertising has changed since 1975, when the cross-ownership rules were adopted? Could you provide a more in-depth picture of now versus then?

Thank you for the opportunity to elaborate on this important point. The local market for advertising has changed dramatically since 1975 primarily because the number of available options for advertisers has grown exponentially. Consider the difference from the perspective of the advertiser. In 1975, an advertiser had limited options - basically local TV, local radio, a few newspapers and the Yellow Pages. There was no Internet, no serious cable competitor, the phone company only connected calls and "twitter" mattered only to birdwatchers. Today, of course, advertisers have a multitude of new options to reach consumers in addition to everything they had in the 1970s. More importantly, as consumers have migrated to new mediums like the Internet and pay TV, so have advertisers. In 2011, the local advertising market share of the Internet passed local TV's market share for the first time ever. SNL Kagan projects that trend will continue, and that by next year, *the Internet will be the dominate medium in local advertising*, passing the market share of the daily newspaper as well. Meanwhile, SNL Kagan projects that local advertising on mobile will continue its growth for the next decade – surpassing both local TV and radio by 2019.

Several of the FCC ownership rules that limit broadcaster flexibility appear to be based on the notion that combinations of local stations could lead to higher advertising prices. In response to the FCC's 2014 quadrennial ownership review, NAB recently submitted a detailed empirical study from economists Hal J. Singer and Kevin W. Caves that proves the opposite – local broadcasters do not charge higher advertising prices in markets with common ownership or joint arrangements and there is some evidence that common ownership can lead to lower advertising prices. According to Drs. Singer and Caves, broadcasters compete for local advertising against a variety of non-broadcast alternatives, including cable television.

Among all the ownership limitations, the so-called cross-ownership rules that prevent combinations of radio and TV properties and newspapers and broadcast stations are probably the most wildly out of touch with current reality. The



cross-ownership restrictions should have been eliminated years ago, when it was obvious to everyone that the radical growth of the information economy would put aggressive pressure on newspaper and broadcast revenues. Newspapers have clearly suffered the most severe declines, as this chart dramatically illustrates. Broadcasters have seen, at best, stagnant growth while competitors like cable, the Internet and mobile have seen, and will continue to see, rapid growth. And while large cable companies grow even larger through mergers, and Internet companies like Facebook and Google move even more aggressively into the local advertising space, the cross-ownership limitations remain only a burden for broadcasters, shackled by 1970s rules trying to compete in a 21st century environment. Anyone who believes in the free market, as I know you do Chairman Walden, has to agree that this is simply unfair. No rational, empirically-based argument can be made in defense of maintaining the cross-ownership rules.

The Honorable Anna Eshoo

1. You both pointed to "growing competition" from online news sources. But most evidence suggests that the majority of local news online comes from newspapers and broadcasters. If most online local news content comes from traditional sources, how is this enhancing competition and diversity for local information?

Thank you for the opportunity to clarify this issue. While it is true, as shown in the most recent Pew Local Community Report, that local TV news operations continue to provide the highest percentage of local content relative to local political news, breaking news, weather and traffic, and that newspapers are a top source for information about civic affairs, such as the conduct of local government, taxes and crime, it is also true that there are a growing number of other sources of news and information. Those new sources are contributing to competition and diversity in local information.

Digital platforms of broadcasters and daily newspapers certainly are part of today's information mix, but they are far from the only players and they are not the only sources of local news, information and entertainment. Government sources and political candidates and campaigns, for example are directly accessible to citizens thanks to the Internet. And, it is commonplace for local churches, businesses, and social clubs to maintain websites or communicate through social media, as do a wide variety of neighborhood-based news and information blogs, listservs, and social media sites. By one recent estimate, the number of websites stands at more than 750 million, with more than 14.3 trillion webpages. It is simply unrealistic to pretend that these sites do not compete with traditional media.

It is particularly noteworthy that younger consumers are tending to bypass traditional media outlets. A good number show a disinclination to look directly to professional media outlets for information and instead often prefer social media sources that allows for peer evaluation, recommendations, and prompts. PEW RESEARCH CENTER, NEWS VIDEO ON THE WEB: A GROWING, IF

UNCERTAIN, PART OF NEWS 13 (2014). There now are now a wide variety of platforms – many of which are ad-supported – that allow consumers to gain and share information through friends, family, neighbors and/or complete "non-professional" strangers in the same age or interest cohort. For example, consumer-review services such as Yelp are highly popular for delivering "news you can use" on an individually tailored basis.

Data shows that consumers increasingly turn to sources other than TV, radio, or daily newspapers for news and information on several key topics for daily life, including local information about housing, schools, jobs, businesses, health care and social services, and entertainment and culture. The Pew Research Center's detailed 2011 analysis, "*How People Learn About Their Local Community*," reported survey results demonstrating that

> different platforms serve different audience needs.... The [survey] result is a more complex portrait of how people learn and exchange information about community. The new data explodes the notion, for instance, that people have a primary or single source for most of their local news and information.

The data are consistent with common sense: People go to many different sources of information to fulfill many different information and entertainment needs. Moreover, consumers are savvy enough not to expect any one source to serve all their needs and interests, and have proven quite capable of finding their way to the information they want. There is, in fact, growing competition for delivery of local news and information.

The Honorable Henry Waxman

1. In your testimony, you claim that today's media environment is so different that it requires a different regulatory approach. However, the FCC adopted its new rule on Joint Sales Agreements in light of its increasing use and impact on media markets and you challenged the rules. How can you ask the FCC to better tailor its rules on one hand, and oppose such efforts by the FCC on the other hand?

The FCC's decision to limit joint sales agreements (JSAs) among local broadcasters was not better tailoring of its rules, it was, in our view, simply wrong. It limits local broadcasters' ability to adjust to a highly dynamic and increasingly competitive marketplace. The FCC's decision presumes that TV broadcasters compete in a vacuum, only against themselves. A recent study NAB submitted with the FCC by economists Hal Singer and Kevin Caves of Economists Incorporated shows how this presumption is incorrect. Their study, based on a large data set, proves that joint operating agreements between broadcasters did not lead to higher advertising prices, and, in some cases, actually lead to lower ad prices. Broadcasters compete against an ever-growing cast of well-financed rivals like Google, Facebook and Time Warner, all of which are moving more aggressively into the local advertising space. That is the reality of today's marketplace. And yet the FCC's broadcast ownership restrictions remain, handcuffing only

broadcasters while their competitors grow and combine and take away more of their financial lifeblood. The better tailoring that NAB seeks is to have the FCC to alter its rules as it is required to do under Section 202(h) – in response to changing competition in the media marketplace.

2. When the FCC last reported its broadcast ownership data, much of it was incomplete. For example, nearly 1 in 6 Class A television stations, 2 out of 5 LPTV stations, and 1 in 6 AM and FM commercial radio stations did not report ownership data. The large quantity of missing data makes it very difficult to assess the state of minority and female ownership in the broadcast industry. Will your members commit to working with the FCC in providing the ownership data necessary for the Commission to properly conduct its Quadrennial Review?

NAB has encouraged and will continue to encourage its members to report ownership data. It should be noted that some of the stations you mention in your question, including many Class A and LPTV stations, are not NAB members.

○