Oversight of the Federal Communications Commission: Media Ownership
Subcommittee on Telecommunications and the Internet
House Committee on Energy and Commerce

Testimony of Jerald N. Fritz
Senior Vice President for Legal and Strategic Affairs
Allbritton Communications Company
December 5, 2007

SUMMARY

- There is substantial anecdotal evidence in the Washington DC market of the positive effects of jointly owned cross-platform media including broadcast television, cable channels, Internet websites, digital subchannels and specialty newspapers.

- There is also sad evidence in the Washington market of the unintended consequences of cross-media ownership restrictions.

- Creating an uncompetitive and undercapitalized broadcast industry through maintenance of out-of-date restrictions on media ownership will not serve the public interest.

- The existing local ownership restrictions are not needed to prevent broadcasters from exercising market power in today's multichannel marketplace.

- Consumers' interests in diversity are unquestionably being fulfilled nationally and in local markets.

- Localism is best preserved by permitting broadcasters to compete effectively in the digital multichannel marketplace.

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Good morning Chairman Markey, Ranking Member Upton, and Members of the Subcommittee, my name is Jerald Fritz. I am the Senior Vice President for Legal and Strategic Affairs for Allbritton Communications Company, the parent company of eight broadcast television stations including WJLA, Channel 7 here in Washington, DC, along with NewsChannel 8, the 24-hour cable news channel in Washington, Maryland and Virginia. Allbritton is also the parent of the new Capitol Hill publication, *Politico*, along with its Internet website, Politico.com. I respectfully submit this statement for the record of the Subcommittee on Telecommunications and the Internet's hearing on "Oversight of the Federal Communications Commission: Media Ownership." I appear today on behalf of myself and Allbritton Communications, but I express views that I believe are important for free, local radio and television broadcast stations throughout the country and for their listeners and viewers who receive free broadcast service in virtually every community in the nation. The topic before the Subcommittee today, media ownership and the FCC's regulatory role in this regard, is critical to broadcasters' continued superior service to their communities. I am thus grateful for the opportunity to present my views on this subject and welcome the subcommittee's consideration of my testimony.

If the Congress or the FCC were to design a media company today, I suspect it might want to model it after the Allbritton organization in Washington. **WJLA-TV**, the ABC affiliate here, is the local news leader. Based upon recent Nielsen reports, it is the number 1 rated station for both the 5:00 and 11:00 local news programs. Its commitment to local service is award-winning with Seven On Your Side and I-Team reports and in-depth political reporting on programs like the nationally syndicated *Inside Washington* and *Capital Sunday*. Combined with **NewsChannel 8**, the first local all-news cable channel in the country, the two television channels program a remarkable ***18 hours of live news per day***. This includes a daily political program, *NewsTalk*. These two channels are available to you twenty-four hours a day on the House cable system. WJLA also recently launched two digital subchannels focused exclusively on local interests of the Washington, Maryland and Virginia communities. **Local POINT** is a fast-paced, short-form channel that features local film makers, local bands, local comedians, local news, and local entertainment. WJLA's other digital subchannel is its unique 24-hour local **weather channel** with local news inserts.

As many of you know, the addition of ***Politico*** and Politico.com to the information mix was driven by Robert Allbritton's vision of a specialty website and print publication that would take coverage of public policy and politics to a new level never seen before. The depth of its articles and range of all things political from Capitol Hill to elections to Hollywood to Wall Street to the nation's college campuses is reflected in the recent survey from *Editor & Publisher Magazine* which ranked Politico.com as one of the top 25 rated newspaper websites in the entire nation -- after only 10 months of existence.

Politico shares the infrastructure of WJLA, NewsChannel 8 and Local POINT. In fact, that is the key point to this media platform model in Washington. More information is generated by these co-owned platforms together than could be accomplished separately. More to the point, many could not exist as viable entities without the others. The ability of the broadcast and cable channels to rely on information from each other is critical to the journalistic and economic success of both channels. The digital subchannels could not exist as viable entities without the support available from the broadcast and cable channels. Similarly, the Politico reporters and Politico.com's reliance on the television station's infrastructure enhances both organizations. The Allbrittons have created these platforms from scratch with their own capital and the vision to enhance locally-owned media which serves the needs of the local community.

As you may know, this permitted multiple media platform organization was born out of the tragic loss of one of the great newspapers in Washington, the *Washington Star*. In fact, the Washington community and Joe Allbritton in particular are among the very few victims of the unintended consequences of the newspaper-broadcast cross-ownership rule. In 1975, the *Star* was losing a million dollars a month. Joe Allbritton had recently purchased the newspaper/broadcast combination in hopes of saving it. He came to the FCC requesting a waiver of the newly adopted rule so that he could redirect money from the television station into the paper to keep it alive. The FCC said no. FCC Commissioner Robert E. Lee wrote a dissent to that decision prophetically entitled, "Au Revoir Etoile," Goodbye to the Star. The Commission gave Allbritton three years to sell either the paper or TV station. Allbritton wanted to keep the newspaper, so he worked out a deal to swap WJLA for a station in Oklahoma City. Allbritton would also get some non-voting stock in the company that would own WJLA, but he would have no control or say-so over the station. The FCC looked at that arrangement and told Allbritton that it would approve the deal but would think about changing the rule -- and, oh by the way, if they changed it, they might make it retroactive to him! Now who does that kind of multimillion dollar deal on the threat it may be unscrambled? So he sold this locally-owned paper to *Time Magazine* which kept it for a year then shut it down, ironically leaving a monopoly newspaper in Congress's back yard and in the shadow of the FCC.

Much has changed in the ensuing 30 years. We have so many channels of information available to us that it takes well over five minutes to scroll through most television program guides. Adding the information from the Internet explodes the premise of the ownership rules. Witness the integration of television and Internet in the recent CNN/YouTube debates among both the Democratic and Republican Presidential candidates. The threat that any organization can dominate the information flow to the public is a long-retired notion, if it ever had viability.

What has not changed in the past three decades is that local broadcasters continue to serve their listeners and viewers with a wide variety of entertainment, news, public affairs programming and vital emergency information. They have a demonstrated record of significant service to their local audiences. They continue to do this amidst the sea changes to the competitive business model from multiple and growing sources in the new digital, multi-channel world. Broadcasters continued role as providers of up-to-the minute news, local and national emergency information and highly-valued entertainment programming must be supported and sustained by economics that make sense in today's world. We cannot compete successfully, and serve our communities successfully, unless we have a somewhat level playing field with our new and varied competitors that are not subject to restrictions on local ownership as we are.

Thus, broadcasters are frustrated that the FCC has not been able to move ahead with broad reform of outdated media ownership rules, which we believe would result in stronger and more sustainable service by broadcasters to our communities. Currently, the FCC appears poised to "conclude its review of the broadcast ownership rules" by addressing only the newspaper/broadcast cross ownership ban and, then, proposing only partial and limited relief from constraints designed for a far different media landscape.[1] In this regard, I join in the oft-repeated views of our broadcast trade organization, the National Association of Broadcasters (NAB), that the FCC should repeal in toto the complete ban on newspaper cross-ownership. My views on media ownership in general, as expressed in this statement submitted for the hearing record, similarly reflect those that have been presented on behalf of the broadcast industry by NAB. Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded ownership restrictions will enhance the ability of local stations to serve their diverse audiences and local communities.

Creating an Uncompetitive and Undercapitalized Broadcast Industry Through Maintenance of Out-of-Date Restrictions on Media Ownership Will Not Serve the Public Interest

Some parties in the media ownership debate continue to argue that the broadcast ownership rules should not be modernized in any respect. Indeed, a few contend that restrictions on local broadcasters should be increased. However, to support such views, one must believe that the media marketplace has not changed over the past several decades or that the media marketplace is less competitive and diverse than before the development of digital technology, numerous multichannel video and audio services, and the Internet. Such a position is clearly untenable.

The Federal Communications Commission (FCC or Commission) originally adopted its local broadcast ownership restrictions decades ago in a very different media environment. In fact, the FCC first implemented local ownership restrictions starting with radio in 1938. The

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[1] *Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule,* FCC News Release, Nov. 13, 2007.

"newest" local ownership rule – the newspaper/broadcast cross-ownership ban – was adopted in 1975 and has never been updated. Moreover, these restrictions on local broadcasters do not apply to any other industry, even those as highly concentrated as cable and satellite. Broadcasters believe that these decades-old rules should be brought up-to-date to reflect the dramatic technological and marketplace developments that have occurred over the past 30 years, and to level the playing field so that local stations can compete against other outlets, including large cable and satellite companies.

Beyond ignoring all the changes that have occurred in the media marketplace in recent decades, those calling for no change to, or for increases in, media ownership restrictions also ignore the state of the broadcast industry in the early 1990s before some of the ownership restrictions were reformed to permit more economically viable ownership structures. In 1992, for example, the Commission found that, due to "market fragmentation," many in the radio industry were "experiencing serious economic stress."[2] Specifically, stations were experiencing "sharp decrease[s]" in operating profits and margins. *FCC Radio Order*, 7 FCC Rcd at 2759. By the early 1990s, "more than half of all stations" were losing money (especially smaller stations), and "almost 300 radio stations" had gone silent. *Id*. at 2760. Given that the radio industry's ability "to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability," the Commission concluded that "radio's ability to serve the public interest" had become "substantially threatened." *Id*. Accordingly, the Commission believed that it was "time to allow the radio industry to adapt" to the modern information marketplace, "free of artificial constraints that prevent valuable efficiencies from being realized." *Id.*

[2] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756 (1992) (*FCC Radio Order*).

Motivated by such concerns, Congress in the 1996 Telecommunications Act acted to "preserve and to promote the competitiveness of over-the-air broadcast stations."[3] Congress found that "significant changes" in the "audio and video marketplace" called for a "substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes." *House Report* at 54-55. Congress specifically noted the "explosion of video distribution technologies and subscription-based programming sources," and stated its intent to ensure "the industry's ability to compete effectively" and to "remain a vital element in the video market." *Id*. at 55.

We respectfully submit that the Committee should not forget these important lessons of the past. Arguments that the broadcast-only local ownership restrictions should not be reformed are based on a refusal to recognize all the factors that have transformed today's media marketplace, including the development and spread of new technologies; growth in competition for viewers and listeners among greater numbers and different types of outlets and providers; changing consumer tastes, especially among younger viewers and listeners; and dramatic changes in the advertising marketplace, which affect free, over-the-air broadcast stations more than subscription-based media. Policies turning back the regulatory clock would create a fragmented, undercapitalized broadcast industry and place broadcasters at an even greater competitive disadvantage against multichannel and other information/entertainment providers and outlets. As the FCC recognized in its 1992 *Radio Order*, only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer the valuable programming and services that local viewers and listeners want and expect.

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[3] H.R. Rep. No. 204, 104th Cong., 2d Sess. at 48 (1995) (*House Report*).

Despite the claims by some opposing any modernization of the broadcast ownership restrictions, I also observe that the FCC is hardly rushing to judgment in its current statutorily-required review of the ownership rules.[4] The Commission began its reexamination of the newspaper/broadcast cross-ownership ban in 1996 with a notice of inquiry on newspaper/radio cross-ownership, and commenced the still-pending review of the newspaper/broadcast prohibition in 2001. The Commission also commenced a review of radio ownership in 2001. The Commission's review and revision of the television duopoly and radio/television cross-ownership rules in the 1990s resulted in a 2002 court appeal finding the revised duopoly rule to be arbitrary and capricious, and sending the FCC's decision back to the agency for further consideration. *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002). This remand remains pending, with the arbitrary and capricious duopoly rule still in effect. In addition, the Commission reexamined the local broadcast ownership rules in its statutorily-required 1998, 2000 and 2002 biennial reviews (the last of which remains pending at the FCC after an appeal and decision by the Third Circuit Court of Appeals remanding the agency's decision for further consideration). *See Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). Given the number of years that the Commission has been considering reform of the local broadcast ownership restrictions, and the voluminous empirical and anecdotal evidence that has been submitted by those urging reform of these rules, the opponents of reform have no basis for their claims that the Commission is somehow rushing to judgment or that another decade of delay is necessary.

[4] Section 202(h) of the Telecommunications Act of 1996 (1996 Act), as amended, requires the FCC to review its broadcast ownership rules every four years and determine whether those rules remain "necessary in the public interest as the result of competition." Pub. L. No. 104-104 § 202(h), 110 Stat. 56 (1996), as amended by Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

The Existing Local Ownership Restrictions Are Not Needed to Prevent Broadcasters from Exercising Market Power in Today's Multichannel Marketplace

In a multichannel environment dominated by consolidated cable and satellite system operators and supplemented by the information explosion of the Internet, local broadcast stations are clearly unable to obtain and exercise any undue market power. For this reason, the traditional competition rationale for maintaining a regulatory regime applicable only to local broadcasters and not their competitors is not a proper basis for keeping the current rules. Indeed, the primary competition-related concern in today's digital, multichannel marketplace is the continued ability of local broadcasters to compete effectively and to offer the free, over-the-air entertainment and informational programming upon which Americans rely. Due to technological advancements, the growth of multichannel video and audio outlets and the Internet, and an expansion in the number of broadcast outlets, an FCC report concluded that, even five years ago, traditional broadcasters were struggling to maintain their audience and advertising shares "in a sea of competition." [5] This competition has only intensified in the past five years.

Specifically, NAB has documented in detail the audience fragmentation and increasing competition for listeners, viewers and advertising revenue experienced by broadcast stations, as the result of new entry by cable television, satellite television and radio, numerous Internet video and audio applications, and mobile devices such as iPods and other Mp3 players. For example, in the first three months of 2007, Internet advertising set new records by taking in $4.9 billion, a 26% increase over the previous year.[6] Meanwhile, advertisers are expected to spend 5% less on

[5] Jonathan Levy, Marcelino Ford-Livene, Anne Levine, OPP Working Paper Series #37, *Broadcast Television: Survivor in a Sea of Competition* (Sept. 2002).

[6] *Internet ads hit another milestone*, Chicago Tribune, June 7, 2007.

local and national spot advertising in 2007 than they did last year.[7] U.S. Internet advertising spending is now predicted to overtake radio advertising in 2007.[8] Cable's share of local television advertising has also grown substantially, with cable local advertising revenues increasing 12.2% from 2003 to 2004 and 12.0% from 2004 to 2005.[9] Local cable system advertising revenue experienced compound annual growth of 10% from 1999-2004, with local television station revenue experiencing only 2% compound growth in those same years.[10] In light of this undisputed evidence about enhanced competition in the advertising market, the local ownership rules should be structured so that traditional broadcasters and newer programming distributors – which clearly compete fiercely for advertising revenue -- can all compete on an equitable playing field.

A more level regulatory playing field is particularly urgent, given that local broadcasters' most prominent competitors enjoy dual revenue streams of both subscriber fees and advertising revenues. Broadcasters, of course, are almost solely dependent on advertising, and local stations today must struggle to maintain needed revenues in a vastly more competitive advertising market. Any realistic assessment of today's media marketplace leads to the conclusion that competition considerations dictate change in the broadcast ownership rules.[11]

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[7] Jack Myers Media Business Report, *2007 Advertising and Marketing Communications Forecast*, Nov. 1, 2006.

[8] Louis Hau, *Web Ad Spending To Eclipse Radio In '07,* forbes.com, Aug. 29, 2007.

[9] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, Table 4 (2006). This report also documented the continued growth in viewing shares of cable/satellite television, at the expense of broadcast television.

[10] *Local Television Market Revenue Statistics,* Attachment F to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

[11] Claims by opponents of reform that post-1996 ownership changes in the radio industry have resulted in competitive harm are unfounded. A recent study commissioned by the FCC concluded that "consolidation in local radio has no statistically-significant effect on advertising prices" and that "[n]ational ownership has a statistically significant, *negative* effect on advertising prices." Tasneem Chipty, CRA International,

Consumers' Interests in Diversity Are Unquestionably Being Fulfilled Nationally and in Local Markets

The existing broadcast-only local ownership restrictions are not necessary to maintain diversity in today's media marketplace. The proliferation of broadcast outlets and the rise of new multichannel video and audio programming distributors and the Internet have produced an exponential increase in programming and service choices available to viewers and listeners. This proliferation has been documented by numerous surveys of the numbers of media outlets and owners in local markets.[12] An FCC study of selected radio markets from 1960 to 2000 showed an increase in the number of outlets of almost 200% and an average increase in the number of owners of 140% over the 40-year period.[13] Empirical studies have also shown that consumers routinely access many additional "out-of-market" outlets, thereby adding to the diversity of entertainment and information sources widely accessible to viewers and listeners in local communities.[14] The public's interest in receiving diverse content is therefore being met both nationally and on a market basis.

Inc., *Station Ownership and Programming in Radio* at 40-41 (June 24, 2007) (emphasis added). This study is consistent with previous academic studies on advertising and consolidation in the radio industry.

[12] *See, e.g.,* BIA Financial Network, *Media Outlets Availability by Markets*, Attachment A to NAB Comments in MB Docket No. 06-121 (Oct. 23, 2006) (an examination of 25 Designated Market Areas of various sizes from 1986-2006 found an average increase of 39.0% in the number of full power television stations; an average increase of 42.3% in the number of full power radio stations; an increase in multichannel video programming service penetration from 52.0% to 86.5%; and an increase in the average number of cable delivered channels in use from 31.7 channels in 1986 to 283.3 channels in 2006). This BIA Financial Network study also showed that, on average, there were 8.8 different owners of the 11.7 full power television stations, and 37.6 different owners of the 73 radio stations, in these DMAs.

[13] *See* Scott Roberts, Jane Frenette and Dione Stearns, *A Comparison of Media Outlets and Owners for Ten Selected Markets (1960, 1980, 2000)* (Sept. 2002).

[14] *See* BIA Financial Network, *A Second Look at Out-of-Market Listening and Viewing: It Has Even More Significance*, Attachment C to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

Numerous studies, including those by independent parties, have confirmed that the post-1996 changes within local broadcast markets, especially among radio stations, have enhanced the diversity of programming offered by local stations. Indeed, independent studies have concluded that "increased concentration" in radio markets has "caused an increase in available programming variety."[15] A 2007 study commissioned by the FCC concluded that "consolidation of radio ownership does not diminish the diversity of local format offerings." Indeed, "[i]f anything, more concentrated markets have less pile-up of stations on individual format categories, and large national radio owners offer more formats and less pile-up." *Station Ownership and Programming in Radio* at 44.

A 2006 study by BIA Financial Network also showed that radio stations are providing a wide range of programming targeted for diverse audiences, including minority groups and groups with niche tastes and interests. For example, between 2000-2006, the number of Spanish-language radio stations increased by 45.5%; as a result, over half (50.4%) of the Hispanic population in Arbitron metro areas receive over-the-air 10 or more Spanish-language radio stations, with more than three-quarters (79.5%) receiving six or more of these stations. The number of news/talk stations grew by 20.6% between 2000-2006 so that more than half (55.5%) of the population in Arbitron metros receive at least six news/talk radio stations and 70.8% have over-the-air access to at least four such stations.[16] Given the diversity benefits stemming from

[15] Steven Berry and Joel Waldfogel, *Mergers, Station Entry, and Programming Variety in Radio Broadcasting*, National Bureau of Economic Research, Working Paper 7080 at 25-26 (April 1999). *Accord* Steven Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting*, 116 Q. J. Econ. 1009 (Aug. 2001); BIA Financial Network, *Has Format Diversity Continued to Increase?*, Attachment A to NAB Comments in MM Docket Nos. 01-317 and 00-244 (filed March 27, 2002); Bear Stearns Equity Research, *Format Diversity: More from Less?* (Nov. 2002); BIA Financial Network, *Over-the-Air Radio Service to Diverse Audiences*, Attachment G to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

[16] *Over-the-Air Radio Service to Diverse Audiences* at 9-10; 13-14. This study also documented growth in the number of Urban programmed stations and Asian language stations. *See id*. at 10-12.

joint ownership of radio stations, and the lack of any competitive harm from such ownership, there is no basis for cutting back on the permitted levels of common ownership in local radio markets, but in fact the continued relaxation of these limitations should be considered.

Beyond increasing diversity of content, numerous other studies indicate that the joint ownership of media outlets in local markets does not inhibit the expression of diverse *viewpoints* by the commonly owned outlets. For instance, two studies examining the diversity of information and viewpoints expressed by commonly owned newspaper/broadcast combinations regarding the 2000 Presidential campaign concluded that commonly owned outlets did not speak with a single voice about important political matters.[17] One of the new studies commissioned by the FCC examined the partisan slant of television news coverage, finding that there is no difference between newspaper cross-owned television stations and other major network-affiliated stations in the same market.[18] In fact, the most recent research casts considerable doubt on the long-assumed (but never proven) link between ownership and viewpoint and shows instead a link between *consumer* preferences and the viewpoint or slant of media outlets, whether print or broadcast. For instance, a 2006 academic study of newspaper slant found that "ownership does not account for any of the variation in measured slant," but concluded that the political orientation of newspapers is driven more by the ideology of the targeted market than by

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[17] *See* David Pritchard, *A Tale of Three Cities: "Diverse and Antagonistic" Information in Situations of Local Newspaper/Broadcast Cross-Ownership*, 54 Fed. Comm. L. J. 31 (2001); David Pritchard *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002). An examination of 2004 presidential endorsements similarly found no pattern among the endorsements made by commonly owned newspapers, with newspapers owned by the same company frequently endorsing different candidates. *See* Comments of Media General in MB Docket No. 06-121, Appendix 6 (filed Oct. 23, 2006).

[18] *See* Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News* (June 13, 2007) (*Milyo Television News Study*).

ownership and that “newspapers’ actual slant is close to the profit-maximizing level.”[19] Similarly, an FCC-commissioned 2007 study examining the political slant of television stations found that the partisan slant of local television news was associated with average partisan voting preferences in the local market, rather than ownership patterns. *Milyo Television News Study* at 23-24. In other words, the most recent research has found that any media slant is in direct response to *consumer* preferences – not the ideology of any particular owner.

The ability of consumers to obtain diverse content and viewpoints is only enhanced by the growing level of substitutability between media for both entertainment and informational purposes. Studies conducted for the Commission and other surveys on media usage reveal considerable substitutability between media for various uses. Indeed, the recent studies showed that multichannel outlets and the Internet compete with – and substitute for – the use of traditional media including broadcast and newspapers for both entertainment and information, especially among younger consumers. For example, Arbitron/Edison Media Research recently found that the Internet is now regarded by consumers as the second “most essential” media in American life, and researchers predict that “it is likely that the Internet will soon” move into “first place.”[20] One of the recent FCC-commissioned studies confirms that the Internet is gaining as a competitor to traditional media outlets.[21] Respondents to the Nielsen Media Research survey in *FCC Study I* reported greater weekly Internet usage (12.8 hours) than usage of both broadcast television (10.4 hours) and radio (6.2 hours). *FCC Study I* at 4, 30, 72. When compared to

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[19] Matthew Gentzkow & Jesse Shapiro, *What Drives Media Slant? Evidence from U.S. Daily Newspapers* at 4-5, 43-44 (Nat’l Bureau of Econ. Research, Working Paper No. 12707, 2006).

[20] Arbitron/Edison Media Research, *Internet & Multimedia 2007 Report Summary*, at 1, June 26, 2007.

[21] Nielsen Media Research, Inc., *Federal Communications Commission Telephone Study: May 7-27; May 29-31; June 1-3, 2007* (*FCC Study I*).

similar survey results from 2002, this new Nielsen survey also strongly indicates that the extent to which consumers are substituting the Internet for television and radio is increasing over time. In just the five years between the two Nielsen surveys, the percentage that responded that they did not use the Internet fell sharply from 31.3% to only 5.4%.[22] These Nielsen surveys also showed that other outlets, particularly cable television, are important sources of news and information, including local, national and international.

Opponents of reform, however, continue to insist that the effect of the Internet in the media marketplace generally, and especially as a source of news, is minor. This position is contrary to reality. Obtaining news and information (along with sending or reading e-mail) are the most popular on-line activities. As of early 2007, 72% of all Internet users (and 79% of home broadband users) report that the “get news” online, with 37% of all Internet users (and 45% of home broadband users) reporting that they got news “yesterday” online.[23] Online video, including news videos, now reach a mainstream audience, with 57% of online adults using the Internet to watch or download video and nearly one-fifth (19%) doing so on a “typical day.”[24] More than three in four (76%) young adults Internet users (ages 18-29) report online consumption of video, with 31% watching or downloading some type of video on a typical day. News content is the most popular type of online video overall and with every age group, except

[22] *Compare* Nielsen Media Research, Inc., *Consumer Survey on Media Usage* (Sept. 2002), at 88, 90, 94, with *FCC Study I* at 4, 30, 72 (showing that number of respondents not using traditional media, including radio and television, increased substantially between 2002 and 2007).

[23] John Horrigan and Aaron Smith, Pew Internet & American Life Project, *Home Broadband Adoption 2007* at 11-12 (June 2007).

[24] Mary Madden, Pew Internet & American Life Project, *Online Video* at i (July 25, 2007) (*Pew Online Video Report*).

for the youngest. Overall, 37% of adult Internet users report watching news videos. *Pew Online Video Report* at i-ii.

Thirty-one percent of all Americans (and 46% of all Internet users) used the Internet during the 2006 campaign to obtain political news and information and discuss the races through e-mail.[25] Fifteen percent of all American adults reported that the Internet was their "primary source for campaign news" during the 2006 mid-term elections, up from only 7% in the 2002 mid-term elections. Broadband users under age 36 said that the Internet was a "more important political news source than newspapers." *Pew 2006 Election Report* at i-ii.

Moreover, the Internet is already proving more integral than ever to political candidates in the upcoming 2008 elections. Candidates are spending large sums on Internet advertising and relying heavily on the Internet to communicate with supporters, while potential voters looking more to the Internet to find political information, either directly from candidates or from blogs and other online news sources.[26] The fact that politico.com could become one of the top-25 most viewed publication website in only its first ten months of operation is persuasive testament to this phenomenon. Clearly, the number of Americans relying on most traditional media, such as newspapers, magazines and television, for political/election news has declined significantly since the 1990s as on-line sources have become much more important. *See id.* at i.

In sum, continued claims about the miniscule impact of the Internet in the media marketplace cannot be credited, and certainly cannot be used to justify retaining the current broadcast ownership rules unchanged. Given the growth of multichannel video and audio outlets

[25] Lee Rainie and John Horrigan, Pew Internet & American Life Project, *Election 2006 Online* at ii (Jan. 17, 2007) (*Pew 2006 Election Report*).

[26] *See* NAB *Ex Parte* in MB Docket No. 06-121 at 14-15 (filed Nov. 1, 2007) (giving numerous examples of the growth of the Internet in the 2008 campaign).

and consumers' ability to access content as "diverse as human thought" via the Internet,[27] claims that, for example, allowing a television broadcaster to own two stations in a local market could somehow substantially reduce the diversity of ideas and views available to consumers is not sustainable.

Localism Is Best Preserved by Permitting Broadcasters to Compete Effectively in the Digital Multichannel Marketplace

As shown by NAB in the Commission's pending localism proceeding, local stations provide a wealth of local news and public affairs programming, political information, emergency information, other locally produced and responsive programming, and additional, unique community service (including billions of dollars of free air time for local and national public service announcements and billions of dollars in monies raised for charities, other local organizations and causes, and needy individuals).[28] But given the relentless competition for audience and advertising shares from the vast array of other media outlets, the real threat today to the extensive locally-oriented service offered by television and radio broadcasters is not the group ownership of stations. Rather, it is the challenge stations face in maintaining their economic viability in a market dominated by consolidated multichannel providers and other competitors. To maintain a system of competitively healthy commercial broadcast stations offering free, over-the-air service to local communities, stations must be allowed to form efficient and financially sustainable ownership structures.

Studies almost too numerous to recount have shown that local service is enhanced if local broadcasters are able to jointly own media properties in the same market. For example, several of

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[27] *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

[28] *See* Comments of NAB in MB Docket No. 04-233 (filed Nov. 1, 2004) Reply Comments of NAB in MB Docket No. 04-233 (filed Jan. 3, 2005).

the recent FCC-commissioned studies concluded that television stations owned by in-market newspapers aired more news programming overall, more local news programming specifically, and more political news coverage.[29] Similar empirical evidence from earlier studies[30] persuaded the Third Circuit Court of Appeals to agree with the Commission's determination in its 2002 review of the broadcast ownership rules that the blanket ban on newspaper/broadcast cross-ownership no longer served the public interest. *Prometheus*, 373 F.3d at 398. The Court concluded that "newspaper/broadcast combinations can promote localism," and agreed with the Commission that a "blanket prohibition on newspaper/broadcast combinations is not necessary to protect diversity. *Id*. at 398-99. We fully agree with these earlier determinations, and urge the FCC in its pending ownership review to reaffirm its repeal of the complete ban on newspaper cross-ownership.

One of the recent FCC studies similarly concluded that the co-ownership of two television stations in the same market "has a large, positive, statistically significant impact on the quantity of news programming." *Shiman Ownership Structure Study* at I-21. "For each additional co-owned station within the market," this study found "an increase in the amount of news minutes by 24 per day about a 15% increase." *Id.* A November 2007 study by Economists Incorporated found that same-market television stations that are commonly owned or operated are significantly more likely to carry local news and public affairs programming than other

[29] *See Milyo Television News Study*; Gregory Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming* (July 23, 2007); Daniel Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* (July 24, 2007) (*Shiman Ownership Structure Study*).

[30] A 2002 FCC study concluded that network affiliated television stations co-owned with newspapers received higher ratings for their local news programs, aired more hours of local news, and received a higher number of awards for local news than other network affiliates. *See* Thomas Spavins, Loretta Denison, Scott Roberts and Jane Frenette, *The Measurement of Local Television News and Public Affairs Programs* (2002).

television stations, even after controlling for other factors.[31] Two earlier studies by BIA Financial Network demonstrated that the acquired stations in duopolies experience increases in their local audience share and revenue share following their acquisition.[32] As this evidence makes clear, the formation of a duopoly allows the acquired station to offer programming more attractive to viewers, thereby better serving their local audiences.

Interestingly, recent research from certain opponents of ownership reform indicates that television "duopolies may lead to more local news and public affairs."[33] Although these parties generally continue to insist that, "[a]s market concentration increases, local news and public affairs decreases," they also conclude that "duopolies appear to work in the opposite direction." Comments of Consumers Union, *et al.* at 98. Thus, the research of those opposing reform of the local ownership rules provide further evidence of the public interest and localism benefits that flow from the common ownership of television stations in local markets. Indeed, even before these recent studies, the Third Circuit Court of Appeals agreed with the Commission that media other than broadcast television contributed to viewpoint diversity in local markets, and agreed that common ownership of television stations "can improve local programming." *Prometheus*, 373 F.3d at 414-15.

Given these established public interest benefits flowing from television duopolies, we support allowing duopolies more freely in markets of all sizes, especially in smaller ones where

[31] Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage: An Update*, Attachment to NAB Comments in MB Docket No. 06-121 (filed Nov. 1, 2007) (a station in a same-market combination is 6.2% more likely to carry such programming than a station that is not in such a local combination).

[32] *See* BIA Financial Network, *Economic Viability of Local Television Stations in Duopolies*, Attachment H to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006); BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?*, Attachment A to Comments of Coalition Broadcasters in MB Docket No. 02-277 (filed Jan. 2, 2003).

[33] Further Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket No. 06-121 at 98 (filed Oct. 22, 2007) (Comments of Consumers Union, *et al*.).

the need for television stations to form more competitively viable ownership structures in the most acute.[34] As the FCC has previously recognized, "the ability of local stations to compete successfully" in the video marketplace has been "meaningfully (and negatively) affected in mid-sized and smaller markets," primarily because "small market stations are competing for disproportionately smaller revenues than stations in large markets."[35] Reform of the television duopoly rule would thus enable local television stations, especially those in medium and small markets, to compete more effectively and thus ultimately to better serve their local communities.

Finally, I observe that, despite exaggerated claims by those opposing any modernization of the local ownership restrictions, local owners and small owners have not disappeared from the broadcast industry. According to the Commission, the number of locally owned television stations increased approximately 3% from 2002-2005.[36] In 2005, 6,498 radio stations (out of 13,590) were locally owned. *FCC Media Robustness Study* at 11. As of 2006, nearly 37% of all radio stations in Arbitron markets were either standalone (*i.e,* the only station owned within its market by its station owner) or part of a duopoly (*i.e*., part of a two station group within that

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[34] The current rule limits the formation of duopolies only to large markets. This rule allows an entity to own two television stations in the same DMA only if at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned and operating commercial and noncommercial full power television stations would remain in the DMA after the combination. In 2002, the Court of Appeals for the D.C. Circuit found that the FCC had failed to justify its exclusion of nonbroadcast media, including cable television, from the duopoly rule's eight voice threshold, and remanded the rule to the FCC for further consideration. *See Sinclair*, 284 F.3d at 165, 169. This remand remains pending at the FCC and the eight voice standard still remains in effect.

[35] *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13698 (2003) (*2002 Biennial Review Order*). NAB has further documented the "different economics of station ownership depending on market size." *Id. See, e.g.*, *Local Television Market Revenue Statistics*, Attachment F to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006); NAB, *Ex Parte* in MB Docket No. 06-121 (filed Sept. 25, 2007) at Attachments B, E & F.

[36] Kiran Duwadi, Scott Roberts and Andrew Wise, *Ownership Structure and Robustness of Media* at 5, 11 (2007) (*FCC Media Robustness Study*) (reporting 439 locally owned television stations in 2005).

local market).[37] Nationwide, there were, as of 2005, 4,412 unique radio station owners and 480 unique television station owners. *FCC Media Robustness Study* at 11. These figures do not even include the additional owners of thousands of low power television and low power FM stations. Given these large numbers of separate owners, it is hardly surprising that radio and television station ownership is less concentrated than other media sectors and less concentrated than other leading industries.[38]

Conclusion

Broadcasters are not calling for an end to all ownership regulation, but for the modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age. Reasonable reform to outmoded limitations will enable free, over-the-air broadcasters to compete more effectively against multichannel video and audio operators and Internet-based media providers, many of which earn subscription fees yet also compete against broadcasters for vital advertising revenues unencumbered by local ownership restrictions. As the FCC has previously recognized, only competitively viable broadcast stations supported by adequate advertising revenues can serve the public interest effectively, provide a significant presence in local communities, and offer costly local services such as local news. Above all, broadcasters want to be able to continue to serve their local communities and audiences effectively. Reform of broadcast-only local ownership limitations can help local stations do just that.

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[37] *Independent Radio Voices in Radio Markets*, Attachment B to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).

[38] *See, e.g., Percentage of Industry Revenues Earned by Top 10 Firms in the Sector*, Attachment E to NAB Comments in MB Docket No. 06-121 (filed Oct. 23, 2006).