

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

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

**REPLY COMMENTS  
OF THE NEWSPAPER ASSOCIATION OF AMERICA**

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April 17, 2012

## **SUMMARY**

The Newspaper Association of America established in its opening comments that repealing the NBCO Rule will contribute to ensuring the future of local and national journalism in the United States. The record in this proceeding supports repeal of this long-outdated rule, including the Commission's independent studies, which demonstrate that jointly owned newspapers and broadcast outlets air more and better local news than their in-market counterparts. Parties supporting repeal comprise the full spectrum of commentators, from industry associations to entities with successful in-market newspaper-broadcast combinations to a coalition of 50 public-interest groups seeking to advance diversity in the media industry.

Even if the Commission decides to keep an NBCO Rule, a retained rule must take account of the evidence in this record. In particular, any rule must permit significant investment in newspapers by media outlets, ensure that mergers that promote localism are permitted, and not impede those mergers by proceeding under a case-by-case waiver standard.

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As the Newspaper Association of America (“NAA”) established in its opening comments, repeal of the newspaper-broadcast cross-ownership (“NBCO”) rule is the only concrete step the Commission can take that will contribute toward ensuring the future of excellent local and national journalism in the United States. The record in this proceeding persuasively supports repeal of this long-outdated rule. Parties supporting repeal comprise the full spectrum of commentators, including industry associations, companies seeking to expand investment in the news industry, and a coalition of some 50 public-interest groups seeking to advance diversity in the media industry. Each commenter has added to the already overwhelming evidence in support of repeal. The time for action is now, and the action that should be taken is repeal.

## **I. THE RECORD DEMONSTRATES THAT CROSS-OWNED NEWSPAPER-BROADCAST ENTITIES SERVE THE PUBLIC INTEREST.**

Comments filed in response to the NPRM illustrate how cross-ownership of newspapers and broadcast stations serves the public interest. Commenters with first-hand experience of the impact that existing cross-owned newspaper-broadcast entities have on their communities recognize that such combinations benefit localism by providing “more and better public interest content and programming.”<sup>1</sup> As the National Association of Broadcasters (the “NAB”) notes, several studies have “demonstrated a clear connection between increased cross-ownership and greater local news coverage.”<sup>2</sup> The Commission itself has acknowledged that cross-ownership promotes the production of high-quality, professional local news by enabling the newspaper and broadcast station to share newsgathering resources, “increasing the amount of news and information transmitted by the co-owned outlets.”<sup>3</sup> Furthermore, the combined efforts of news outlets with different areas of strength and expertise—broadcasters excel at providing timely and concise audio and video coverage of news events, while newspapers offer in-depth

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<sup>1</sup> Comments of Tribune Co., MB Docket Nos. 09-182 and 07-294, at p. 3 (filed Mar. 5, 2012) (“Tribune Comments”); *see also* Comments of Cox Media Group, MB Docket Nos. 09-182 and 07-294, at pp. 3-5 (filed Mar. 5, 2012) (“Cox Comments”); Comments of A.H. Belo Corp., MB Docket Nos. 09-182 and 07-294, at pp. 8-10 (filed Mar. 5, 2012) (“A.H. Belo Comments”); Comments of Cedar Rapids Television Company Comments, MB Docket Nos. 09-182 and 07-294, at pp. 3-7 (filed Mar. 5, 2012) (“CRT Comments”).

<sup>2</sup> Comments of the National Association of Broadcasters, MB Docket Nos. 09-182 and 07-294, at pp. 45-47 (filed Mar. 5, 2012) (“NAB Comments”).

<sup>3</sup> 2006 *Quadrennial Regulatory Review – Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2038 (2008); *see also* Cox Comments, at 8; Tribune Comments, at pp. 9-10; A.H. Belo Comments, at p. 8.

examination and analysis of the subject matter—can result in improved news products that “enrich[] and improve[] the public’s understanding of the issues.”<sup>4</sup>

NAA agrees with A.H. Belo’s submission that “preserving the ability of daily newspapers and broadcasters to serve their local communities should be the central consideration in this proceeding.”<sup>5</sup> As Tribune notes, elimination of the NBCO rule would provide newspapers “with increased access to capital that could benefit the public by preserving [newspapers’] investigative journalism and in-depth coverage of local news and public affairs.”<sup>6</sup> And, as recognized by the 50 public interest organizations that comprise Diversity and Competition Supporters (“DCS”), including the National Association for the Advancement of Colored People, Rainbow PUSH Coalition, and Women’s Institute for Freedom of the Press, the increased newspaper-broadcast cross-ownership that would result from elimination of the NBCO Rule can “help underwrite original journalism,” benefitting communities that might otherwise suffer from a lack of the same. NAA also supports DCS’s long-pending “incubator” proposal, which would grant structural waivers of ownership rules, including any retained NBCO Rule, for companies that finance or otherwise incubate disadvantaged businesses’ ownership of radio stations.<sup>7</sup>

Furthermore, the record demonstrates that broadcast-newspaper cross-ownership benefits localism without harming the viewpoint diversity of a news market. Despite worries that cross-ownership might lead to a commonly owned newspaper and broadcast station speaking

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<sup>4</sup> Tribune Comments, at p. 17.

<sup>5</sup> A.H. Belo Comments, at p. 10.

<sup>6</sup> Tribune Comments, at pp. 11-12.

<sup>7</sup> Comments of the Diversity and Competition Supporters, MB Docket Nos. 09-182 and 07-294, at pp. 22-24, 41 (filed Mar. 5, 2012) (“DCS Comments”).

with a single editorial voice, studies that have tested this premise have failed to find support for it.<sup>8</sup> This empirical evidence is supported by the real-world experiences submitted in the record, including results from NAA’s own survey, which showed that in every jointly owned newspaper-television combination, ultimate responsibility for exercising editorial and news judgment is held by a different individual for each outlet.<sup>9</sup> And, as Cox notes, common owners have a strong business incentive “to vary their editorial approach in order to reach the largest possible number of viewers, listeners, and readers.”<sup>10</sup>

Thus, as A.H. Belo recognizes, even while cooperating on newsgathering in cross-ownership markets, cross-owned entities seek to preserve editorial independence.<sup>11</sup> Tribune notes that cooperation among its properties “has helped to ensure that . . . more stories are presented, and more and different perspectives are shared.”<sup>12</sup> Moreover, as DCS and its constituent public interest organizations recognize, in practice, “cross-ownership appears to have little impact on minority ownership,” and the increased reporting demonstrated by cross-owned newspapers and television stations results in more content available for “potential repurposing or aggregation by online entrepreneurs, who are disproportionately minorities.”<sup>13</sup>

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<sup>8</sup> Cox Comments, at pp. 22-24.

<sup>9</sup> NAA Comments, at pp. 18-19 & n.71.

<sup>10</sup> Cox Comments, at pp. 10-11; *see also* Tribune Comments, at pp. 17-20.

<sup>11</sup> A.H. Belo Comments at p. 8; *see also* Cox Comments, at p. 11.

<sup>12</sup> Tribune Comments, at p. 15.

<sup>13</sup> *See* DCS Comments, at pp. 41-42.

## II. THE RECORD DEMONSTRATES THAT NEW MEDIA OUTLETS CONTRIBUTE TO VIEWPOINT DIVERSITY.

The record also demonstrates that new online media sources contribute to viewpoint diversity by providing original viewpoints in the national and local news markets. While the Commission has previously recognized that “the question confronting media companies today is . . . whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans,”<sup>14</sup> as Cox recognizes, the NPRM “underemphasizes the positive diversity impact of the Internet and social media.”<sup>15</sup> Today’s media landscape is “far richer, more competitive and more democratic than it was in 1975, and with the advent of broadband and the Internet, consumers of news and information now can obtain news and information from a wide variety of sources.”<sup>16</sup>

As NAB notes, concerns that the NBCO rule is needed to promote viewpoint diversity ignore the impact of the Internet on the way Americans consume news.<sup>17</sup> As numerous commenters recognize, Americans already rely heavily on Internet news sources for national and international news and are increasingly turning to the Internet for local news and information.<sup>18</sup> Not only do traditional media sources offer web-only content, but online-only national, local, and hyper-local new media sources and opinion bloggers provide discussion of more issues and present more viewpoints than broadcasters and newspapers have ever been able to present on their own. And while online media sources frequently rely upon newsgathering and reporting

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<sup>14</sup> 2003 Order, ¶ 356; *see also* Tribune Comments at pp. 9-10.

<sup>15</sup> Cox Comments, at p. 8.

<sup>16</sup> Tribune Comments, at p. 11.

<sup>17</sup> NAB Comments, at pp. 25-26.

<sup>18</sup> *See, e.g.*, A.H. Belo Comments, at p. 7; CRT Comments, at p. 10.

done by traditional media sources,<sup>19</sup> these new media sources typically add their own editorial viewpoints to the information they share with their readers. Such viewpoints may be expressed within the body of a new story or may accompany a link to the original story, posted on the website of a traditional media source. As Tribune notes, even news stories distributed by users of social media are typically accompanied by the comments of the distributing user, “creating a virtual town square.”<sup>20</sup> Given the dramatically changed conditions in the media landscape since the enactment of the NBCO rule, as Bonneville International and the Scranton Times stated, the Commission should acknowledge again in this proceeding that interactive online media and communications services have substantially eliminated the agency’s old diversity concern about traditional media’s “gatekeeping” power over news and information.”<sup>21</sup>

### **III. THE NBCO RULE IS NOT IN THE PUBLIC INTEREST.**

#### **A. Newspaper-Broadcast Combinations Do Not Reduce Local News on the Market Level.**

As demonstrated in the comments cited above, newspaper-broadcast combinations promote localism without harming diversity. However, Free Press, relying on its own reinterpretation of data from independent studies commissioned for the FCC’s last ownership review in 2007, claims that newspaper-broadcast combinations actually reduce news

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<sup>19</sup> See, e.g., CRT Comments, at p. 10.

<sup>20</sup> Tribune Comments, at p. 33.

<sup>21</sup> Comments of Bonneville International Corp. and the Scranton Times, L.P., MB Docket Nos. 09-182 and 07-294, at p. 20 (filed Mar. 5, 2012); see also Comments of Fox Entertainment Group, Inc. & Fox Television Holdings, Inc., MB Docket Nos. 09-182 and 07-294, at p. 23 (filed Mar. 5, 2012) (“[E]ver-increasing contributions of the Internet to viewpoint diversity and localism further solidify the conclusion that the NBCO rule should now be scrapped entirely.”).

at the market level. The Commission correctly rejected Free Press’s reinterpretations in its last ownership review. It should do the same here.<sup>22</sup>

In its prior review, the Commission recognized that there were “numerous difficulties” with Free Press’s attempt to reanalyze the objective data.<sup>23</sup> In doing so, the Commission relied on its own assessment as well as an econometric analysis filed by Media General in the 2007 proceeding, which discredited Free Press’s claimed “findings” as methodologically ill-founded and reliant on several mismeasures. The econometric analysis also found that Free Press selectively quoted, if not misrepresented, the independent peer-reviews that commented on those studies, none of which found any significant, let alone fatal, errors in the independent studies. As Media General’s econometric analysis of the Free Press “data reinterpretations” found:

Fifteen independent peer reviewers were unable to conclude that the results of the FCC studies [commissioned for the last Quadrennial Review] were unreliable; the [2007 reinterpretations upon which Free Press’s comments rely] do not provide specific analyses that render results of the FCC studies unreliable.<sup>24</sup>

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<sup>22</sup> See *2006 Quadrennial Review Order*, at ¶¶ 42-46 and accompanying footnotes (discussing ownership studies and their peer-reviews in detail and concluding that studies supported the proposition that cross-owned stations “enhanced localism,” and rejecting Free Press’s challenges to those studies). As a matter of administrative law, the Commission would be barred from reversing course on its prior rejection of the 2007 Free Press reinterpretations without new evidence to the contrary. As the controlling opinion in *Fox v. FCC* states, “an agency’s decision to change course may be arbitrary and capricious if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so.” *Id.*, 129 S. Ct. 1800, 1824 (2009) (Kennedy, J., concurring).

<sup>23</sup> *2006 Quadrennial Review Order*, at ¶ 44.

<sup>24</sup> Media General, Reply Comments on FCC Research Studies on Media Ownership, MB Docket No. 06-121, etc. (Nov. 1, 2007), Appendix A: Econometric Review of Dr. Harold Furchtgott-Roth, at p. 5; endorsed in *2006 Quadrennial Review Order*, at ¶ 44.

More fundamentally, Free Press's market-wide theory (both in 2007 and now) rests on a "crowding out" "hypothesis" that does not survive even cursory common-sense analysis. Free Press claims that it is possible for cross-ownership to *increase* local news programming at the station level (a finding that Free Press's comments do not meaningfully contest with any new data or analysis) yet *decrease* local news programming at the market level. This happens, Free Press alleges, because "[i]n markets without cross-ownership, local TV news stations generally take their cues from the local newspaper," and when newspapers are "independently owned, all the local TV news departments have reasonably equal access to the newspaper's reporters and editors"; however, this "mutually beneficial relationship is destroyed in markets with cross-ownership" because "cross-owned TV stations are able to use their exclusive access to the local newspaper to shut out competitors from the stories" that they would "normally report."<sup>25</sup> This "hypothesis" is frankly uninformed by how news is actually investigated and produced at both newspapers and local television stations.

As an initial matter, even if accepted on its own terms, Free Press's "crowding out hypothesis" equates "access to the newspaper's reporters and editors" with "stories." This is obviously incorrect. Newspaper reporters and editors are not even a usual source for television station newsgathering and reporting, let alone a primary one. Television station news departments conduct their own journalism constantly, and need not rely on "access" of any type to newspaper staff in their markets to do so.

More importantly, story ideas and published news are nonrival goods. There is nothing barring "competitor stations" from reporting on stories that appear in a cross-owned

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<sup>25</sup> Free Press Comments, at p. 29.

newspaper in their market; indeed, this happens nearly every day. Likewise, newspaper newsroom editors can and do watch the local noon news to see if their television station competitors air any stories they are not covering, and if the stations do, then the newspaper editors exercise their editorial judgment to decide whether to cover those stories for the next day's paper. No television news station "curtails" (Free Press's word) its journalism because it competes with a cross-owned station in its market. If a story on a particular topic is newsworthy and of interest to a station's viewership, the station will investigate, produce, and air that story.

Free Press's claim that this Quadrennial Review's studies confirm its "crowding out" hypothesis is also wrong. As Study 4 itself notes, and as NAA noted in its initial comments, Study 4's finding that "the newspaper cross-ownership variables [that] show a negative correlation with market-level news" are "imprecisely measured" and "*not statistically different from zero.*"<sup>26</sup> This is in stark contrast to Study 4's findings on the station level, which "indicates that "newspaper-television cross-owned stations provide almost 50 percent more news than the average station."<sup>27</sup> And unlike in the prior Quadrennial Review, Free Press makes no attempt to challenge Study 4's station-level findings that newspaper-broadcast cross-ownership leads to more local news, or on Study 4's peer review supporting the means used to arrive at that conclusion. Nor does it demonstrate why the Commission should rely in *this* proceeding on Free Press's previously rejected "reinterpretations" of data from 2007 rather than unrebutted, objective data from 2011.

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<sup>26</sup> NAA Comments, at p. 16, n. 62 (emphasis added).

<sup>27</sup> Study 4, at pp. 27-28.

**IV. ANY RETAINED NBCO RULE MUST BE CONSISTENT WITH THE COMMISSION'S STATUTORY MANDATE AND THE RULE'S PURPOSES.**

Finally, the Commission must review, and if necessary revise or repeal, the NBCO Rule in light of its Section 202(h) obligations. Given the evidence in this docket, the NBCO Rule is not in the public interest. Nor are the nominally deregulatory revisions to the Rule that the NPRM proposes.

**A. The Record Supports Repeal of the NBCO Rule.**

As shown above, market experience and empirical analysis prove that repealing the NBCO Rule is in the public interest because doing so would promote localism without harming diversity. The current rule also effectively bars newspapers from attracting investment from media entities, which is contrary to the public interest.<sup>28</sup>

For the reasons stated in the NPRM and by NAA and several other parties, the newspaper/radio component of the rule should also be repealed, regardless of whether any other aspect of the rule is retained. Cox, a longtime owner of radio stations and newspapers, noted that the rule “cannot be supported as necessary to promote” diversity, competition, or localism.<sup>29</sup> Repealing the rule would also “revitaliz[e] local news on radio stations.”<sup>30</sup>

**B. The Commission Should Not Expand the NBCO Rule's Restriction to Daily Newspapers and Stations Within the Same DMA.**

NAA agrees with commenters stating that a DMA-based extension of the NBCO Rule's proscription would “improperly expand the geographic application of the Rule beyond

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<sup>28</sup> NAA Comments, at pp. 15-21.

<sup>29</sup> Cox Comments, at pp. 19-22.

<sup>30</sup> *Id.*

where it was presumed necessary when it was adopted,” and that such an expansion would be ironic given the Commission has twice found that the Rule is no longer in the public interest.<sup>31</sup> In many cases, adopting a DMA-wide NBCO Rule would bar newspaper-broadcast combinations where no overlap exists between the newspaper’s community of circulation and the broadcaster’s service area. As NAB stated, “in cases where the Nielsen DMA ... is larger than the station’s city grade contour, there will be a greater likelihood that the rule will be triggered than under the current standard.”<sup>32</sup> According to NAB, this expansion would result in 24 instances in which an existing newspaper-broadcast combination would violate a DMA-based rule.<sup>33</sup>

An alternative to a DMA-based approach would be to adopt a “digital Grade A” contour for newspaper-broadcast cross-ownership purposes. The Commission adopted analog Grade A contours to provide an estimate of interference-free over-the-air service to a higher percentage of locations than the Grade B contour that also took into account the man-made signal noise typical of urban areas. As the NPRM notes, over-the-air digital service lacks an actual equivalent to the analog Grade A contour historically used as part of the NBCO Rule.<sup>34</sup> However, in its *In the Matter of Carriage of the Transmissions of Digital Television Broadcast Stations* proceeding, the Commission established a “propagation and implementation margin” factor to determine the signal level necessary to provide a good-quality digital television signal at cable headends that took into account reception impairments such as man-made signal noise, co-

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<sup>31</sup> Tribune Comments, at pp. 62-63.

<sup>32</sup> NAB Comments, at p. 48.

<sup>33</sup> *Id.* (emphasis added). NAB also notes that such a rule would also create significant uncertainty given Nielsen’s tendency to redefine DMAs. *Id.*

<sup>34</sup> See NPRM, at ¶ 91.

and adjacent-channel interference, and other Grade A-type signal quality factors.<sup>35</sup> This propagation and implementation factor was determined to be 20dB. Accordingly, applying a 20dB factor to stations' existing digital noise-limited contour would permit the Commission to adopt a "digital Grade A contour" reach for the NBCO Rule's geographical proscription without expanding the reach of the rule.

In addition, NAA agrees with the NPRM's tentative conclusion that if a retained NBCO Rule includes a DMA overlap component, "existing combinations ... that would conflict with the newspaper/broadcast cross-ownership rule by virtue of the change" should be grandfathered.<sup>36</sup> Forcing divestiture upon longstanding newspaper-broadcast combinations "is disruptive to the industry and a hardship for individual owners," as well as the viewers and readerships of those entities.<sup>37</sup>

**C. The Case-by-Case Approach to Approving Mergers Proposed in the NPRM Would Not Be in the Public Interest.**

Paragraphs 103 and 104 of the NPRM ask whether the NBCO Rule should adopt a case-by-case approach in approving mergers, as was the case for the 2006 rule, or whether a bright-line NBCO Rule would be preferable. As the comments in response have demonstrated, this is not a close question.<sup>38</sup> The fact that, to NAA's knowledge, not a single entity sought to

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<sup>35</sup> See First Report and Order, *In the Matter of Carriage of the Transmissions of Digital Television Broadcast Stations*, CS Docket No. 98-120 *et al.*, FCC 01-22 (Jan. 18, 2001), at ¶ 46.

<sup>36</sup> NPRM, at ¶ 114; *see also id.* at ¶ 100.

<sup>37</sup> *Id.*, at ¶ 100. NAA also believes that grandfathered newspaper-broadcast combinations should be "freely transferrable in perpetuity" for the same reasons. *See id.*

<sup>38</sup> *See, e.g.*, Tribune Comments, at pp. 57-58 ("[t]he use of presumptions ... needlessly injects uncertainty, additional cost and prejudice, [and] undercut[s] the benefits of any rule" and "[m]edia owners, investors, and lenders deserve the benefits of certainty"); A.H. Belo Comments, at p. 5.

merge with a television station during the near-year-and-a-half that the 2006 version of the NBCO rule was in effect proves that a case-by-case approach—particularly one whose viability is obscured by the shadow of looming appellate litigation—is a nonstarter.<sup>39</sup> And as recent history shows, the regulatory uncertainty associated with a case-by-case, multi-presumption approach would stifle potential investment and impede transaction planning in any in-market cross-media mergers.<sup>40</sup> If two companies are competing for an acquisition, the company that need not suffer through a years-long waiver process to complete that purchase will win. The newspaper company, suffering under the weight of a waiver requirement, will lose.

Moreover, as the FCC well knows, media ownership issues are highly politicized and (unnecessarily) contentious. It is reasonable to conclude that even the most straightforward merger requests under a case-by-case analysis would take many months if not years to decide, even if any presumptive factors the Commission decides to adopt were met. *See, e.g., 2008 Quadrennial Review Order*, at ¶ 77 & nn. 253-56 (noting applications for waiver of the NBCO Rule that were pending for between two-and-a-half and over three years). And meanwhile, the newspaper or broadcast station seeking to merge may be without important investments in newsgathering while awaiting the Commission’s decision. Subjecting every proposed newspaper-broadcast merger to adjudicatory procedures may benefit the communications law bar, but it would not serve the public interest.

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<sup>39</sup> The 2006 version of the NBCO Rule was in effect from March 23, 2010, when the Third Circuit lifted its 2003 stay of the Commission’s media ownership rules, to the same court’s vacatur and remand of the 2006 NBCO Rule in *Prometheus II* in July 2011. The vacatur and remand in *Prometheus II* kept the 1975 version of the NBCO Rule in effect “until the FCC promulgates new cross-ownership regulations.” *Prometheus II*, 652 F.3d 431, 454 n.25 (3d Cir. 2011).

<sup>40</sup> *See NAA 2010 Quadrennial Review NOI Comments*, at p. 9.

**D. If the FCC Retains an NBCO Rule, It Should Permit Waivers for Mergers That Would Retain Editorial Independence and/or Result in More Local News and Public Affairs Programming.**

The record conclusively demonstrates that the public interest calls for repeal of the NBCO Rule. However, any retained NBCO Rule must serve the goals the Rule was adopted to promote in light of the evidence in the record. Media mergers that promote the public interest without harming viewpoint diversity must be permitted, if not encouraged.

***1. If merging entities commit to exercising independent news judgment, any NBCO Rule should permit the merger.***

As this record shows, there is no evidence, empirical or otherwise, supporting the proposition that combinations between newspapers and television stations result in a loss in viewpoint diversity. But to quell any lingering concerns, if the FCC retains an NBCO Rule, it should permit any in-market merger if the merging entities commit to retaining, protecting, and exercising their respective editorial independence. Such an assurance would ensure that the proposed combination would not adversely affect diversity, and that journalistic efficiencies associated with the new combination would serve localism.

The Commission should not be concerned about the purported lack of enforceability of such commitments at the pre-merger stage.<sup>41</sup> In fact, such a concern would contradict current practice. The FCC credits prospective buyers' public interest-related commitments to improve local service on the target entity on a regular basis. *See, e.g., In re KSCW*, 22 FCC Rcd. 11,845, 11,847 (2007) (noting prospective buyer's commitments to

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<sup>41</sup> *See* NPRM, at ¶ 116 (asking whether “a requirement that a waiver applicant show that a proposed combination would increase the number of local news programming [would be] overly focused on future behavior that may be too difficult to predict or enforce”).

improve local news service and public service contributions); Opinion and Order, *In re Comcast and NBC Universal*, MB Docket No. 10-56, FCC 11-4 (Jan. 20, 2011), at ¶¶ 200-03 (crediting NBC Universal’s local programming commitments post-merger in public interest analysis); *id.*, ¶¶ 203-07 (crediting existing NBCU policy that ensured independence of its news operations).

**2. *A proposed merger between a same-market newspaper and a television station not currently airing news should always be permitted if the newspaper commits to adding news or public affairs programming to the station.***

Similarly, any proposed merger between a same-market newspaper and television station that currently does not air news should always be permitted if the newspaper commits to adding news or public affairs programming. Such a merger would result in a net gain in localism and diversity by any measure. Adopting this component as part of a new NBCO Rule would also take a needed step in correcting one of the FCC’s most fundamentally flawed assumptions underlying its ownership policy: that every broadcast outlet—regardless of whether it airs *any* local news or public affairs programming at all—constitutes a “voice” for viewpoint diversity purposes. It is simply nonsensical for the Commission to adopt a newspaper-television cross-ownership rule that considers WPXW, a station that airs no local news, a “voice” in the Washington, DC market, but does not consider WAMU 88.5 FM, WTOP 103.5 FM, or all-news cable channel NewsChannel 8 and dcist.com—all of which produce significant amounts of local news programming every week—to be “voices.” But this is exactly what the Commission did in its last revision to the NBCO Rule. It should not make the same mistake in this proceeding.

To the extent the Commission retains a “voices remaining”-type merger condition, its sole concern should be whether the remaining “voices” contribute to local news diversity. Thus, if the FCC does not lift its ban on newspaper-television cross-ownership, it

should adopt a rule permitting mergers if, for example, a certain number of “independent media voices that contribute meaningfully to local news diversity” will remain post-merger. The definition of “contributing meaningfully to local news diversity” could depend on the media outlet; for example, a cable news channel or broadcaster that produced a certain number of hours of locally-focused news programming per week (whether the TV station is commercial or noncommercial) could be considered a “voice.” The Commission should also include Internet websites that focus on local issues in its count of “voices.”<sup>42</sup>

## V. CONCLUSION

The record in this proceeding demonstrates that the current NBCO Rule should be repealed. And should the Commission take half-measures in this proceeding for relaxing this three-decade prohibition, it must eliminate the newspaper/radio ban and significantly relax the regulations to permit in-market newspaper/television combinations that promote localism and protect diversity.

Respectfully submitted,



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<sup>42</sup> The Commission could seek comment on a methodology for counting Internet “voices” in a Further Notice of Proposed Rulemaking.

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