

July 7, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182

Dear Ms. Dortch:

In May, the U.S. Court of Appeals for the Third Circuit observed that the 1975 ban on the common ownership of printed newspapers and broadcast stations “remains in effect to this day even though the FCC determined more than a decade ago that it is no longer in the public interest.”<sup>1</sup> This maintenance of an outdated rule that fails to serve the public interest violates Section 202(h) of the 1996 Telecommunications Act and the FCC’s fundamental obligation to regulate in the public interest under the Communications Act of 1934, and is arbitrary and capricious under the Administrative Procedure Act (APA). Especially in light of the transformation of the media marketplace and vast changes in how consumers obtain news and information since 1975, the Commission cannot show that either the printed newspaper rule or the radio/television cross-ownership rule remains “necessary in the public interest.”<sup>2</sup>

Beyond failing to promote the public interest, retaining outdated cross-ownership rules affirmatively harms the public’s interest in local news production, particularly given the dire condition of the newspaper industry. For the reasons discussed below and in our previous submissions, NAB urges the Commission to recognize that both the printed newspaper rule and the radio/television cross-ownership rule are vestiges of a bygone era and eliminate them.

---

<sup>1</sup> *Prometheus Radio Project v. FCC*, Nos. 15-3863, 15-3864, 15-3865 & 15-3866, at 38 (3d Cir. May 25, 2016).

<sup>2</sup> Section 202(h), Telecommunications Act of 1996 (requiring FCC every four years to determine whether its ownership rules are necessary in the public interest as the result of competition and to repeal or modify any regulation no longer in the public interest).

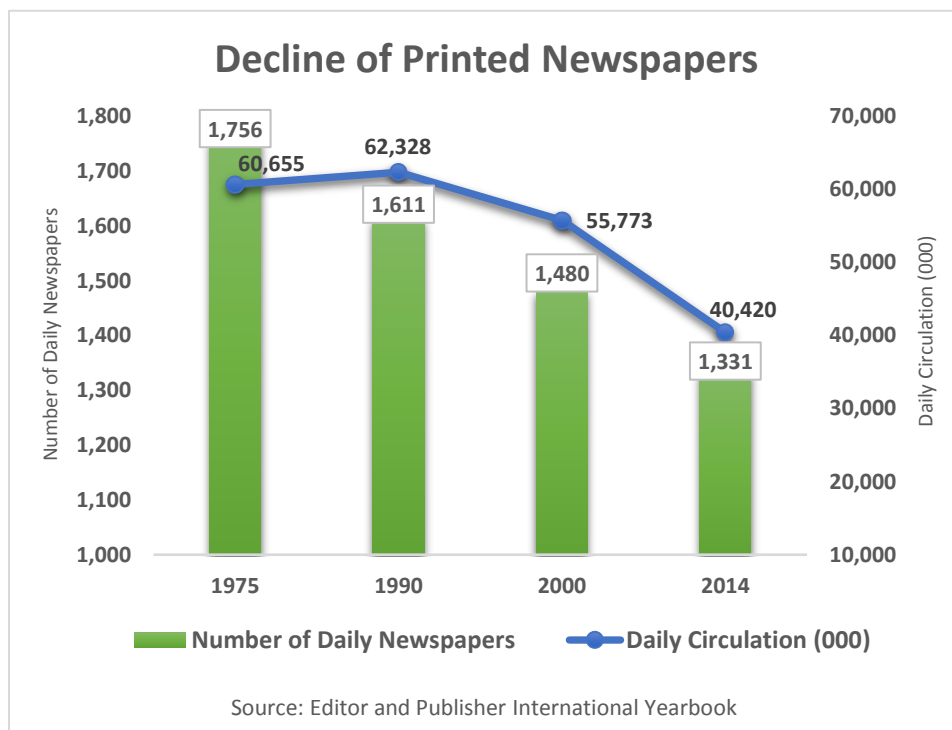
1771 N Street NW  
Washington DC 20036 2800  
Phone 202 429 5300

## Given the Perilous State of the Newspaper Industry, the FCC Must Eliminate Regulation that Reduces Potential Sources of Investment and Impedes Local News Production

The Commission continues to maintain a newspaper rule adopted in the print and analog era even though, according to the Pew Research Center's 2016 report on the State of the News Media:

2015 was perhaps the worst year for newspapers since the Great Recession and its immediate aftermath. Daily circulation fell by 7% . . . while advertising revenue at publicly trade newspaper companies fell by 8% . . . . At the same time, newsroom staffing fell by 10% in 2014, the last year for which data were available. . . . *[T]his accelerating decline suggests the industry may be past its point of no return.*<sup>3</sup>

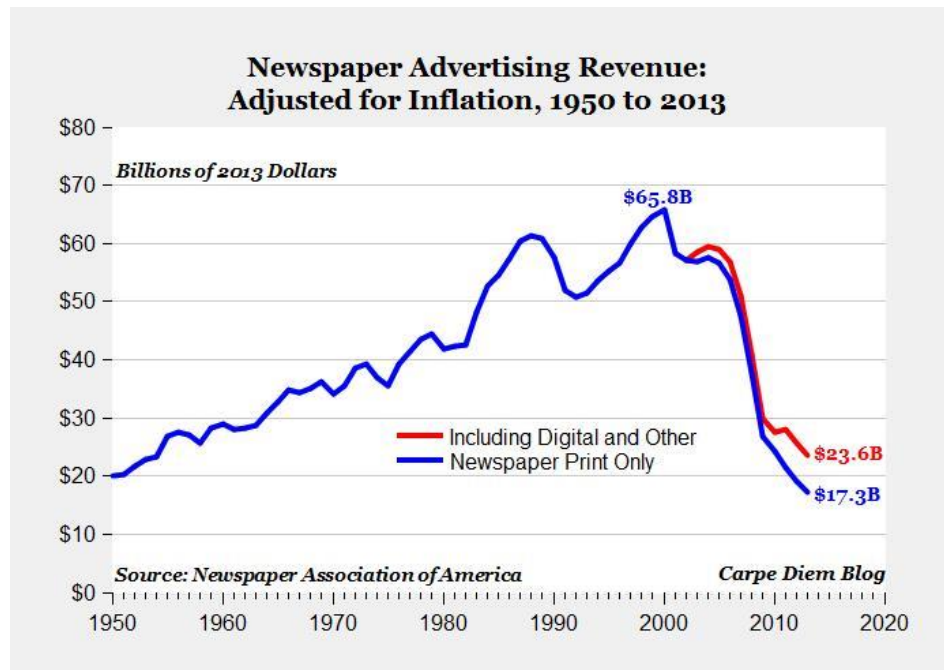
The industry's poor performance in 2015 follows years of declining circulation, revenues and newsroom employment, which accelerated after the turn of the century. As shown below, from 1975 to 2014 the number of daily newspapers declined by 24.2 percent (from 1,756 to 1,331) and total daily circulation dropped by 33.4 percent (from 60.7 million to 40.4 million) even while the U.S. population rose from about 216 million to nearly 319 million.



Unsurprisingly, the newspaper industry's advertising revenues have fallen off a cliff – from a peak of \$65.8 billion (on an inflation-adjusted basis) in the early 2000s to only \$23.6 billion

<sup>3</sup> Michael Barthel, *5 key takeaways about the State of the News Media in 2016*, Pew Research Center (June 15, 2016) (emphasis added; internal citations omitted).

in 2013, as shown below.<sup>4</sup> Daily newspapers have experienced dramatic devaluations in recent years, with major papers declining more than 90 percent in value.<sup>5</sup>

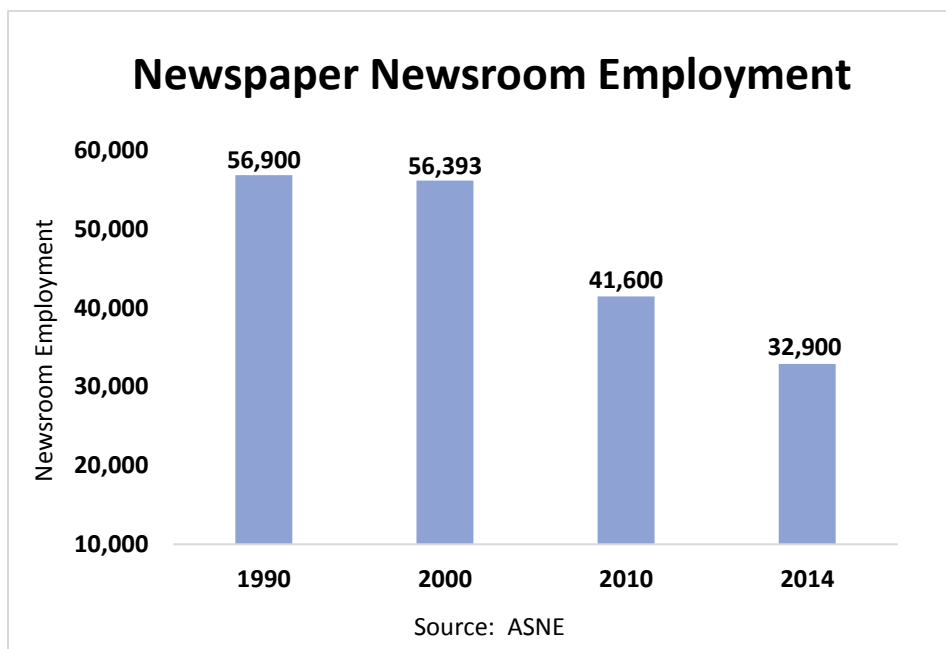


As a result of newspapers' declining economic base, newsroom employment has dropped dramatically. According to the American Society of News Editors (ASNE), total newsroom employment declined from 56,900 in 1990 to 32,900 in 2014—a drop of 42.2 percent.<sup>6</sup> Notably, virtually all of this decline occurred after the year 2000, as the Internet and online outlets rapidly developed, diverting both advertisers and readers to competing options.

<sup>4</sup> According to the Pew Research Center, the Newspaper Association of America stopped releasing industry-wide revenue data in 2014. See *State of the News Media 2016*, at 13, Pew Research Center (June 2016) (Pew State of the News Media).

<sup>5</sup> For example, the Philadelphia Inquirer and Philadelphia Daily News suffered a 91 percent decline in value in the short period between 2006 and 2012. Amy Mitchell and K.E. Matsa, *The declining value of U.S. newspapers*, Pew Research Center (May 22, 2015) (documenting even larger valuation declines for the Boston Globe, Chicago Sun Times and Minneapolis Star Tribune from the 1990s to the 2011-2013 period).

<sup>6</sup> See <http://asne.org/content.asp?contentid=415>; <http://asne.org/content.asp?contentid=169>. Newsroom employment data from 2015 should be available from ASNE later this summer. Overall employment at newspapers has declined by nearly 60 percent since 1990, falling from 457,800 to 183,200 in 2016. Joseph Lichterman, *There are now more Americans working for online-only outlets than newspapers*, Niemanlab.org (June 2016) (citing U.S. Bureau of Labor Statistics data).



Particularly in light of this documented crisis in the newspaper industry, the Commission – if it still believes local news is a priority – must eliminate ownership rules affirmatively harming news production and local journalism. It is useless to pretend that the economic health of local news producers is irrelevant to the localism and diversity concerns that the FCC’s rules purportedly address. An “industry’s ability to function in the ‘public interest, convenience and necessity’ is fundamentally premised on its economic viability.”<sup>7</sup> Non-existent or economically moribund outlets, whether printed newspapers or broadcast stations, cannot maintain costly local news operations, support strong local journalism and provide a significant voice.<sup>8</sup> Unsurprisingly, numerous empirical studies have found “a positive and statistically significant

<sup>7</sup> *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992).

<sup>8</sup> The largest expense for the average U.S. television station is news production, and NAB has previously documented the high and increasing costs of local news operations. According to the most recent available data, the average station spends \$3.2 million per year producing local news – representing 24.3 percent of a station’s expenses, on average. See *NAB Television Financial Report* (2015), at 3, Table 1 (reporting 2014 financial data). News related expenditures vary widely across markets, however, as the average news production expense for large stations in the top 10 markets exceeds \$17 million. *Id.* at 39, Table 19. The cost of producing local news is on the rise, up 25 percent since 2010. See *NAB Television Financial Report* (2011). NAB previously submitted detailed information about the costs of local news production and the difficulties that stations with fewer resources face in maintaining viable news operations. See, e.g., Written *Ex Parte* Submission of NAB, MB Docket Nos. 09-182, *et al.*, at 6-10 & Att. A (Mar. 21, 2014); *The Economic Realities of Local Television News—2010: A Report for the Nat’l Ass’n of Broadcasters*, Attachment B to Comments of NAB, MB Docket No. 09-182 (July 12, 2010).

relationship between revenue and local news production” on TV stations,<sup>9</sup> and between station revenues and public affairs programming.<sup>10</sup>

But beyond the effect of sheer revenue, NAB previously identified **15** studies concluding that the common ownership of a TV station and a printed newspaper in the same market increases the amount and quality of the local news and other non-entertainment programming offered by the station.<sup>11</sup> In light of the increasing struggles of newspapers and, to a lesser extent, TV stations to maintain the audiences and advertisers that support quality local journalism,<sup>12</sup> the Commission must remove the printed newspaper rule, which prevents the formation of arrangements proven to promote local news production.

Elimination of the rule also will remove a harmful prohibition on a potential source of investment for local newspapers. According to congressional testimony on behalf of the newspaper industry, the rule “undermines the FCC’s own goal of preserving strong journalism” and “actively stifl[es] much needed investment in newspapers.”<sup>13</sup> The National Association of Media Brokers recently stated that eliminating the printed newspaper rule would bring resources and add reach to both the newspaper and the broadcast property in a combination.<sup>14</sup>

The Commission is well aware of the trends discussed above. In its last completed quadrennial review, the FCC cited evidence about declines in the number and circulation of newspapers; sharp reductions in the number of journalists employed in the newspaper industry; drops in the overall advertising revenues earned by newspapers; decreases in classified advertising specifically due to competition from the Internet; and increasing costs for the industry.<sup>15</sup> Along with this evidence demonstrating the struggles of the newspaper industry, the Commission in its 2006 review found that the media marketplace was “profoundly different” than in 1975.<sup>16</sup> It discussed the dramatic increases in the number and type of media voices competing for the public’s attention, including multichannel video and

---

<sup>9</sup> J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 45-46 & Table 8 (2011), Att. A to Reply Decl. of J.A. Eisenach and K.W. Caves (June 27, 2011) in Reply Comments of NAB, MB Docket No. 10-71, at Appendix A (June 27, 2011).

<sup>10</sup> Philip Napoli, *Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data*, 6 Info: The Journal of Policy, Regulation, and Strategy for Telecommunications, Information, and Media 112, 119 (2004).

<sup>11</sup> Comments of NAB, MB Docket Nos. 14-50, *et al.*, at 74-76 (Aug. 6, 2014) (NAB 2014 Ownership Comments). These comments also identified two additional studies showing that common ownership of a radio station and a printed newspaper promotes news and public affairs programming on the radio station. *Id.* at 83.

<sup>12</sup> See, e.g., NAB Written *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, at 4-10 (June 6, 2016) (providing updated information on the video marketplace and TV stations’ declining competitive position against multichannel and online outlets) (NAB June TV Ownership *Ex Parte*).

<sup>13</sup> Testimony of Paul Boyle, Senior Vice President, Newspaper Association of America, “Broadcast Ownership in the 21<sup>st</sup> Century,” Before the House of Representatives, Committee on Energy & Commerce, Subcommittee on Communications and Technology (Sept. 25, 2015).

<sup>14</sup> Leslie Stimson, *How Ownership Changes Would Help Radio, Newspapers*, Radio & Television Business Report (June 1, 2016).

<sup>15</sup> 2006 Quadrennial Regulatory Review, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2026-29 (2008) (2006 Review Order).

<sup>16</sup> *Id.* at 2024.

audio providers, and cited the development of the Internet as a major distribution channel for content.<sup>17</sup> As a result of these changes in the newspaper industry and in the broader marketplace, the FCC concluded for the second time that changes to the printed newspaper rule were warranted;<sup>18</sup> it eliminated the complete ban and provided flexibility for new combinations under certain circumstances.<sup>19</sup> All of these marketplace trends, and their effects on the FCC's competition, diversity and localism goals, have accelerated since 2006 and are much more pronounced today, thereby warranting greater loosening of the FCC's ownership restrictions. A decision in 2016 to retain the ban on common ownership of a printed newspaper and a broadcast station therefore would be arbitrary and capricious under the FCC's own reasoning and its findings in the 2006 and 2002 quadrennial reviews.<sup>20</sup>

Discounting the competition from online outlets and digital platforms that has caused the accelerating crisis in the newspaper industry and increasing competitive struggles for local TV stations also would violate Section 202(h)'s requirements that the FCC repeal or modify ownership rules no longer in the public interest as the result of competition. In belatedly concluding the pending quadrennial reviews, the Commission must repeal the printed newspaper rule that impedes local news production and stifles investment in journalistic enterprises, consistent with its basic obligation to regulate in the public interest.<sup>21</sup>

### **The FCC Can No Longer Ignore the Internet's Transformative Effects on the Media Marketplace and on Consumers' Access to News and Information**

As early as 1996, Congress found that the Internet offers a "forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."<sup>22</sup> In 2010, the FCC found that:

---

<sup>17</sup> *Id.* at 2024-25.

<sup>18</sup> In its 2002 review, the FCC cited the growth in local voices and the varied range of media choices available to consumers, finding that "most media markets are diverse" and that a blanket ban on newspaper/broadcast combinations was not needed. *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13748, 13766 (2003).

<sup>19</sup> 2006 Review Order, 23 FCC Rcd at 2023. On review, the Third Circuit Court of Appeals found that the FCC had failed to comply with APA notice requirements as to the specifics of its revised newspaper rule, but did not reach any challenges to the substance of the revised rule. See *Prometheus Radio Project v. FCC*, 652 F.3d 431, 445 (3d Cir. 2011).

<sup>20</sup> An agency changing course must show good reasons for doing so, and at times must "provide a more detailed justification than what would suffice for a new policy created on a blank slate"; for example, when the agency's new policy "rests upon factual findings that contradict those which underlay its prior policy." *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009); accord *Encino Motorcars, LLC v. Navarro*, No. 15-415 at 9-10 (Sup. Ct. June 20, 2016). If the FCC were to change course now and decide that the complete ban on common ownership of newspapers and broadcast stations should remain, its factual findings to support a continued ban will necessarily contradict or ignore its findings from 2006 and 2002 about the state of the newspaper industry and the profound changes in the media marketplace. The FCC will be hard pressed to explain to a reviewing court why its reversal of course is not arbitrary and capricious.

<sup>21</sup> The FCC's "general rulemaking power is expressly confined to promulgation of regulations that serve the public interest." *Geller v. FCC*, 610 F.2d 973, 980 (D.C. Cir. 1979); see also 47 U.S.C. § 303(r).

<sup>22</sup> 47 U.S.C. § 230(a)(3).

Due to the lack of gatekeeper control, the Internet has become a major source of news and information, which forms the basis for informed civic discourse. Many Americans now turn to the Internet to obtain news, and its openness makes it an unrivaled forum for free expression. Furthermore, local, state, and federal government agencies are increasingly using the Internet to communicate with the public, including to provide information about and deliver essential services.<sup>23</sup>

More recently, the Commission stated that consumers' "explosive adoption" of the Internet has had "wide-ranging impacts on everything from: the way people get, share and create news . . . the way they learn; the nature of their political activity; their interactions with government . . . and the way they organize in communities."<sup>24</sup> Given the FCC's clear findings about the transformative impact of the Internet, it cannot rationally continue to discount the Internet's impact on the need for broadcast ownership restrictions, including the printed newspaper rule.<sup>25</sup> As discussed in NAB's previous submissions and updated below, the newspaper rule is no longer needed to promote viewpoint diversity in today's online world.<sup>26</sup>

As an initial matter, the printed newspaper rule is arbitrary and capricious on its face in the current digital media marketplace. The rule prohibits the common ownership in the same market of a broadcast station and a "daily newspaper"; that is, one published four or more days per week in the dominant language in the market and "circulated generally in the community of publication."<sup>27</sup> This concept is now outdated, and the very notion of a rule hinging on a newspaper being printed and circulated shows its age and inherent arbitrariness. It borders on the absurd to contend that the viewpoint diversity concerns supposedly sufficient to ban the common ownership of a broadcast station and a newspaper publishing a print edition four or more days a week magically disappear when that newspaper publishes online every day but publishes in print three or fewer days a week. In fact, the entire distinction between print and online publications is increasingly irrelevant, if not quaint, as traditional print publications, such as newspapers, magazines and even books, are now both print and online publications (and some formerly print publications have moved exclusively online).<sup>28</sup>

---

<sup>23</sup> *Preserving the Open Internet, Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, 17912 (2010) (internal citations omitted).

<sup>24</sup> *Preserving and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5573 (2014) (quoting S. Fox & L. Rainie, *The Web at 25 in the U.S.*, at 4, Pew Research Internet Project (2014)).

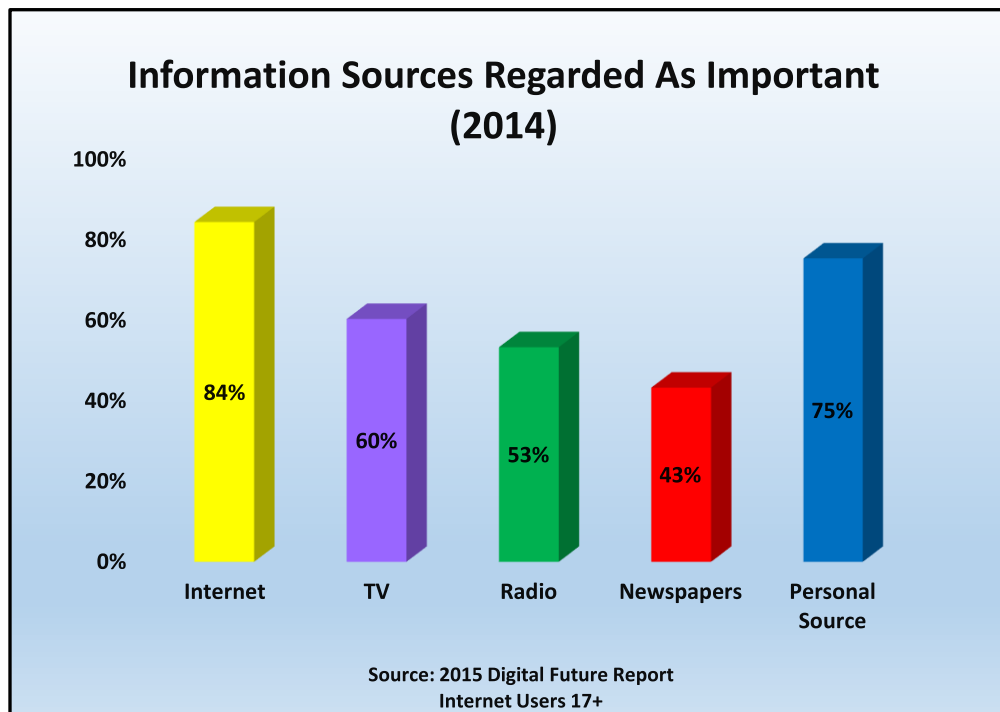
<sup>25</sup> See, e.g., *2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4381, 4404-5, 4425-26 (2014) (2014 Quadrennial FNPRM) (making multiple statements downplaying the significance of the Internet for its broadcast ownership policies).

<sup>26</sup> See, e.g., NAB 2014 Ownership Comments at 9-38; 77-83. NAB further notes that neither the FCC nor any commenter has refuted the **15** studies (some of them FCC-commissioned ones) cited in our comments showing that factors other than separate ownership drive viewpoint diversity on media outlets. *Id.* at 79-83 & Att. C (providing non-exhaustive illustrative list of studies, many of which conclude that consumer preferences drive media diversity).

<sup>27</sup> 47 C.F.R. § 73.3555(d) & Note 6 (defining daily newspaper).

<sup>28</sup> News publications from the Seattle Post-Intelligencer to U.S. News & World Report are now found online only.

It is also abundantly clear that consumers today access news and information via myriad platforms and outlets – many of which did not exist in 1975 – and no longer depend, nearly to the extent they did in the past, on broadcast stations and, especially, on newspapers. As of 2014, 91 percent of Americans reported using the Internet, and usage was 100 percent in younger demographic groups.<sup>29</sup> When asking about several different sources of information, the 2015 Digital Future Report, as shown below, found that 84 percent of Internet users age 17 and older regarded the Internet as an important information source, well ahead of both television (at 60 percent) and radio (at 53 percent). Only 43 percent responded that newspapers were an important information source – *a decline of 20 percentage points for newspapers just since 2007*.<sup>30</sup> The percentage of those respondents regarding TV and radio as important sources of information also declined noticeably from 2007, *dropping by eight percentage points for TV and ten percentage points for radio*.<sup>31</sup>



Other studies have reported even lower levels of consumer reliance on newspapers. A very recent Knight Foundation study examining the sources of news used by consumers who own mobile devices found that print media were the least used. Only 27 percent and 16 percent of those surveyed reported using newspapers and magazines, respectively, while they used

<sup>29</sup> *The 2015 Digital Future Report: Surveying the Digital Future, Year Thirteen*, at 15-16, Center for the Digital Future, USC Annenberg School for Communication and Journalism (2015).

<sup>30</sup> *Id.* at 43.

<sup>31</sup> *Id.* This report additionally showed the continuing importance of non-media sources (e.g., family, friends, colleagues) of information and opinion for most people, a fact that tends to be forgotten, causing an over-estimation of the influence of “the media” (itself a concept of little relevance in today’s fragmented marketplace).



television (all TV, not just broadcast) and social media as news sources at the highest rates.<sup>32</sup> A Pew Research Center report focusing on local news in three specific cities similarly found that in Denver, the largest market examined, only 23 percent of residents often get local news from a daily newspaper. Such a low figure is hardly surprising given that, according to Pew, Denver has 143 local news providers of various types.<sup>33</sup>

Use of social media, including for accessing news, has skyrocketed across all age groups in recent years. According to the Pew Research Center, use of social networking sites rose from only seven percent in 2005 to 65 percent of all American adults (not just adults who use the Internet) in 2015.<sup>34</sup> Ninety percent of young adults (ages 18-29) use social media, as do 77 percent of those ages 30-49, and 51 percent of those ages 50-64.<sup>35</sup> A strong majority of all U.S. adults – 62 percent – obtain news via social media,<sup>36</sup> and use of social networking sites for getting news is rising quickly. A Pew Research Center report released in May found that 66 percent of Facebook users and 59 percent of Twitter users obtain news from those sites, up from 47 percent of Facebook users and 52 percent of Twitter users in 2013.<sup>37</sup> Notably, a 2015 survey reported that 53 percent of Facebook’s news users and 52 percent of Twitter’s news users regularly see posts about local government and politics, with higher numbers regularly accessing information about national government and politics.<sup>38</sup> While the online discussion forum Reddit reaches a relatively small portion of the population, 78 percent of its users obtain news there and 45 percent of users report learning about the 2016 presidential campaign in a given week on the site.<sup>39</sup>

Millennials – the first digital generation – depend even more than other demographic groups on online sources, especially social media, to obtain news and information. Millennials report

---

<sup>32</sup> *News Goes Mobile: How People Use Smartphones to Access Information, Part 1*, at Figure 11, Knight Foundation (May 2016). This study further found that 89 percent of the U.S. adult population owning mobile devices use them to access news and information. *Id.* According to Edison Research, as of early 2016, an estimated 76 percent of the U.S. population (age 12 and older), or about 207 million people, own smartphones. Smartphone ownership is approaching saturation levels in some demographic groups, with 93 percent of those ages 12-24 owning smartphones. Tablet ownership has increased rapidly, rising from 29 percent of the population (age 12 and older) in 2013 to 51 percent today, or approximately 136 million people. Edison Research and Triton Digital, *The Infinite Dial 2016*. Widespread ownership of mobile devices enables consumers to access news and information, particularly from online sources, whenever and wherever they choose.

<sup>33</sup> *Local News in a Digital Age* at 3, Journalism & Media Staff, Pew Research Center (Mar. 5, 2015). Even in Macon, GA and Sioux City, IA, much smaller markets with fewer local voices, only 36 percent and 40 percent of residents, respectively, reported frequently obtaining news from the city’s daily newspaper. *Id.*

<sup>34</sup> Andrew Perrin, *Social Media Usage: 2005-2015*, at 2, Pew Research Center (Oct. 8, 2015).

<sup>35</sup> *Id.* at 4.

<sup>36</sup> Jeffrey Gottfried and Elisa Shearer, *News Use Across Social Media Platforms 2016*, at 2, Pew Research Center (May 26, 2016).

<sup>37</sup> *Id.* at 9.

<sup>38</sup> *The Evolving Role of News on Twitter and Facebook*, at 9, Pew Research Center (July 14, 2015).

<sup>39</sup> Reddit attracts major news makers, including President Obama who conducted a Q&A session on the site during the last election, and it can “drive substantial attention to news events.” M. Barthel, G. Stocking, J. Holcomb & A. Mitchell, *Nearly Eight-in-Ten Reddit Users Get News on the Site*, at 1, Pew Research Center (Feb. 25, 2016).

obtaining three-quarters (74 percent) of their news from online sources, and social networks play a “preeminent role” in Millennials’ news acquisition, especially Facebook.<sup>40</sup> Of the 24 different news and information topics inquired about in a 2015 study of Millennials’ news habits, Facebook ranked as the top choice for 13 of the topics and the second-most popular choice for seven others – meaning it ranked first or second for 20 out of 24 topics.<sup>41</sup>

A recent Pew Research Center study of Millennials and political news found that 61 percent of online Millennials report accessing political news on Facebook in a given week, a much larger percentage than turn to any other news source including local TV (at only 37 percent). In addition, 51 percent of online Gen Xers obtain political and government news on Facebook in a given week, compared to 46 percent of those doing so via local TV.<sup>42</sup> Given these trends among younger demographic groups, social media and other online outlets will only continue to increase in importance as sources of news and information, while traditional media outlets further decrease in importance.

The rise of online news sources and the declining reliance on print media for political news is fully evident in the 2016 Presidential campaign. A Pew Research Center survey earlier this year found that 91 percent of American adults had learned about the campaign during the previous week, but had differing opinions as to which news sources were the most helpful. Cable TV news was identified as the most helpful source by the largest number of those surveyed (24 percent), with social media and local TV tied for second (with 14 percent each).<sup>43</sup> Notably, national newspapers in print were identified as most helpful by only two percent of those surveyed and local print newspapers tied late night comedy programs at three percent.<sup>44</sup> This report also made clear that the vast majority of the public relies on multiple types of news sources. Eighty percent of those who learned about the Presidential campaign in the past week obtained news and information from three or more sources, with 45 percent using five or more sources and only nine percent utilizing a single source.<sup>45</sup> Among these varied sources, television (local and national, cable and broadcast) is the most commonly used source, utilized by 78 percent of those who learned about the election in the past week, followed by online/digital sources (65 percent), radio (44 percent) and local and national print newspapers (36 percent).<sup>46</sup> This survey shows a sharp increase in the use of

---

<sup>40</sup> *How Millennials Get News: Inside the Habits of America’s First Digital Generation* at 5, 12, The Media Insight Project (March 2015).

<sup>41</sup> *Id.* at 12.

<sup>42</sup> *Millennials & Political News: Social Media – the Local TV for the Next Generation?*, at Overview, Pew Research Center (June 1, 2015). Millennials were born from 1981 to 1996 and Gen Xers were born from 1965 to 1980.

<sup>43</sup> J. Gottfried, M. Barthel, E. Shearer and A. Mitchell, *The 2016 Presidential Campaign – a News Event That’s Hard to Miss*, at 1-2, Pew Research Center (Feb. 4, 2016).

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.* at 5.

online sources for campaign news; a survey during the 2012 election found that just 36 percent regularly turned to Internet sources.<sup>47</sup>

Additional evidence illustrates the decline of traditional newspapers as sources for political news. As of 2014, reporters for niche and digital outlets outnumbered journalists who work for daily newspapers in the accredited press corps that covers Congress, 662 to 576. Only five years previously, traditional newspaper journalists had outnumbered those working for niche and digital publications by 608 to 502.<sup>48</sup> Today, 21 of the 50 states do not have a single local daily newspaper with its own dedicated Washington, D.C. correspondent accredited to cover Congress.<sup>49</sup>

These various studies soundly refute any diversity-based rationale for maintaining a rule restricting the ownership of print newspapers. And it is not just broadcasters and newspaper owners who recognize that the media landscape has fundamentally changed and that consumers today access information, including political news, in vastly different ways and from non-traditional sources. As Common Cause has commented to the Commission:

With the decline of newspaper reading and local TV news viewing, voters are finding a new forum online, where citizens discuss the issues and advocates organize their constituents. Candidates for election are increasingly using the Internet to reach out, inform, and spread their campaign messages, and voters are utilizing diverse forums to communicate their messages to public officials. . . . With a few keystrokes, engaged citizens can express their political voices by generating website content, writing on a blog, or simply posting on a social networking site. . . . Voters use the Internet not only to discuss and share their views, but to seek out information and the latest news regarding our government and its many players. Both high profile reporters and newer voices are increasingly finding homes on digital media news sources. With traditional outlets ever more constrained, these online reporters are both filling in gaps in local and diverse niche topics, and are cultivating new forms of storytelling via video, crowdsourcing, and new visualizations, styles, and means to connect with viewers.<sup>50</sup>

Common Cause's statement well summarizes why a special restriction on print newspapers is no longer needed, and why the FCC's dismissal of the profound effects of the Internet on "free expression and civic engagement"<sup>51</sup> in evaluating its ownership rules would be arbitrary and capricious and contrary to Section 202(h).

---

<sup>47</sup> Pew State of the News Media at 45. In October 2012, only 17 percent of U.S. adults said that they regularly turned to any social media platforms for campaign news, compared to 44 percent who learned about the election in the past week in early 2016. *Id.*

<sup>48</sup> George Gao, *15 striking findings from 2015*, Pew Research Center (Dec. 22, 2015).

<sup>49</sup> Kristine Lu and Jesse Holcomb, *In 21 states, local newspapers lack a dedicated D.C. reporter covering Congress*, Pew Research Center (Jan. 7, 2016).

<sup>50</sup> Comments of Common Cause, GN Docket No. 14-28, at 4-5 (July 14, 2014) (internal citation omitted).

<sup>51</sup> *Preserving and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5573 (2014).

## For Similar Reasons, the FCC Should Eliminate the Remaining Restrictions on Radio/TV Cross-Ownership

Consistent with the requirements of Section 202(h), the Commission also must eliminate the remaining restrictions on owning radio and television stations in combination.<sup>52</sup> The FCC tentatively concluded in 2011 that the radio/TV cross-ownership rule was no longer “necessary to promote the public interest.”<sup>53</sup> As discussed above and in previous NAB filings, the media marketplace has only become more competitive and diverse since 2011.<sup>54</sup>

Like other traditional media sectors, the radio industry faces growing competitive challenges from online and digital options, with weekly online radio listening growing slowly from only two percent of the total population (age 12 and older) in 2000 to 17 percent in 2010, and then skyrocketing to 50 percent in 2016.<sup>55</sup> This trend will only accelerate, as nearly three-quarters (73 percent) of those ages 12-24 listen to online radio weekly, and 56 percent of Americans ages 25-54 listen weekly to online radio.<sup>56</sup> The radio sector’s advertising revenue has fallen significantly over the past decade, with SNL Kagan reporting that radio advertising revenue shrunk at a compound annual growth rate (CAGR) of (3.8) percent from 2006-2015.<sup>57</sup> Over the next decade, SNL Kagan projects the radio sector’s advertising revenue to be flat (a CAGR of 0.4), with ad revenue by 2025 still substantially below the sector’s revenue in 2006.<sup>58</sup> The Commission cannot ignore this evidence of competition for listeners and advertisers when completing its 2010 and 2014 reviews.

Concerns about viewpoint diversity do not support retention of the radio/TV cross-ownership rule. The Commission tentatively concluded in 2011 that the rule is no longer needed to promote its viewpoint diversity goal.<sup>59</sup> In 2014, the Commission found that most radio stations did not produce significant amounts of local news; that most consumers did not rely on radio outlets as their primary source of local news; and that consumers’ reliance on radio news had declined steadily over the past two decades.<sup>60</sup> In light of the explosion of online and digital sources of news and information and the lack of empirical evidence that the radio/TV

---

<sup>52</sup> See, e.g., NAB 2014 Ownership Comments at 85-88. As NAB previously explained, the remnant of this rule has limited effects. *Id.*

<sup>53</sup> 2010 Quadrennial Regulatory Review, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 at ¶ 119 (2011) (2010 Quadrennial NPRM).

<sup>54</sup> See, e.g., NAB June TV Ownership *Ex Parte*; NAB 2014 Ownership Comments at 17-38.

<sup>55</sup> Edison Research and Triton Digital, *The Infinite Dial* 2016.

<sup>56</sup> *Id.*

<sup>57</sup> Derek Baine, *Local ad revenue up 3.4% in 2015 to \$74.97B; mobile, Internet ads rule*, SNL Kagan (Dec. 15, 2015).

<sup>58</sup> *Id.*

<sup>59</sup> 2010 Quadrennial NPRM, 26 FCC Rcd 17489 at ¶ 131.

<sup>60</sup> 2014 Quadrennial FNPRM, 29 FCC Rcd at 4419, 4436. The Commission has stated consistently since 1970 that broadcast radio services are substantially less significant than TV stations and newspapers as a source of news and information. See, e.g., *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Further Notice of Proposed Rulemaking, 22 FCC 2d 339, 344 (1970).

cross-ownership rule supports viewpoint diversity or that repeal of the rule would decrease viewpoint diversity,<sup>61</sup> continued retention of the rule would violate Section 202(h) and be arbitrary and capricious. Indeed, retaining the rule would harm the public interest because at least five studies have shown that the common ownership of radio and TV stations produces localism benefits, including greater amounts of news and public affairs programming.<sup>62</sup>

\* \* \* \* \*

In 2004 the Third Circuit Court of Appeals agreed with the FCC's decision in its 2002 ownership review that prohibiting all common ownership of a print newspaper and a broadcast outlet (1) was not necessary to promote competition in local markets; (2) undermines localism by preventing efficient combinations that would promote the production of high-quality local news; (3) was not justifiable on grounds of diversity due to insufficient evidence that ownership influences viewpoint; and (4) was unwarranted given the presence of other media sources in local markets, including cable and the Internet.<sup>63</sup> In 2016, the same court observed that the 1975 ban remains in effect despite the FCC's determination over a decade before that it no longer serves the public interest, causing "significant expense to parties that would be able, under some of the less restrictive options being considered by the Commission, to engage in profitable combinations."<sup>64</sup> In light of the FCC's determinations in its previous quadrennial reviews and relevant developments in the newspaper industry and in the media marketplace as a whole, NAB strongly urges the Commission to eliminate the printed newspaper rule, as well as the radio/TV cross-ownership rule. Retaining these rules today is contrary to the 1996 Telecommunications Act, the Communications Act and the APA.

---

<sup>61</sup> 2014 Quadrennial FNPRM, 29 FCC Rcd at 4465 (noting that no commenter, despite the FCC's specific request in its notice for the 2010 quadrennial review, had submitted studies showing that the rule promotes viewpoint diversity or that elimination of the rule would harm it).

<sup>62</sup> NAB 2014 Ownership Comments at 85-86 & n. 290-291.

<sup>63</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398-400 (3d Cir. 2004). The Court, however, found that the specific ownership limits the FCC set for the common ownership of newspapers and radio and TV stations, based on the "Diversity Index," were arbitrary and capricious. *Id.* at 402-3.

<sup>64</sup> *Prometheus III*, at 38.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Rick Kaplan', with a long horizontal flourish extending to the right.

---

Rick Kaplan  
General Counsel and Executive Vice President  
Legal and Regulatory Affairs

Jerianne Timmerman  
Senior Vice President and Deputy General Counsel  
Legal and Regulatory Affairs

cc: William Lake, Mary Beth Murphy, Susan Singer, Brendan Holland