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

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 12-203
Competition in the Market for the	)	
Delivery of Video Programming	)	

To: The Commission

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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September 10, 2012

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EXECUTIVE SUMMARY

As the video marketplace continues its process of dramatic change, free over-the-air local television stations are evolving, innovating and expanding their service to the public. The comments that follow discuss developments over the past year that will help inform the Commission's annual report on the status of video competition. One of the most significant changes discussed herein is increasing consumer reliance on broadcast television services. Free over-the-air broadcast television is now the primary video programming delivery method for 17.8 percent of U.S. television households, representing 20.7 million households (or 53.8 million consumers). These households are incredibly diverse – in fact, a disproportionate number of them have an Asian-American, Hispanic, or African-American head of household, or a younger head of household (aged 18-34).

Free over-the-air broadcast television improves the quantity, quality and diversity of video programming available to all American television households. Viewers accessing broadcast signals over-the-air, online, or from pay television services are all benefiting from exponential increases in the amount and type of available broadcast programming. Today's broadcasters are investing heavily in their local news operations, with local news staffing at the second highest levels on record, and the number of hours per weekday of local news at a record high. Much of that news is available in high definition ("HD") format, with an estimated three-fifths of broadcasters now airing local news in HD. The number of multicast channels has skyrocketed from 2,518 channels at year-end 2010 to an estimated **4,552 channels** by year-end 2011. Much of that growth was fueled by the launch of entirely new broadcast networks. With recent developments in mobile DTV, more than 130 stations in 30 states now make significant amounts of programming accessible via handheld mobile devices.

Broadcasters' ability to continue to innovate and invest in new and expanded services depends upon its ability to compete on a level playing field. By improving their service offerings, broadcasters have remained competitive and viable, in spite of a regulatory regime that limits their ability to develop efficient combinations and attract capital. The Commission should consider regulatory relief with regard to its ownership and attribution rules to permit broadcasters to realize greater efficiencies and investment. The well-functioning system of retransmission consent also is critical to broadcasters' ability to develop and expand their service to the public. Broadcasters must continue to have the right to control the distribution of their signals and to negotiate for compensation from both traditional multichannel video providers and online video distributors seeking to retransmit such signals. Continued control of their signals will enable local stations to make the substantial investments needed to maintain high-quality, costly programming, including news, and to enhance their HD, multicast, and other current and future service offerings that will benefit consumers.

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The National Association of Broadcasters ("NAB")[1] submits these comments in response to the Commission's *Notice of Inquiry* requesting data and information on the status of competition in the market for the delivery of video programming through June 30, 2012.[2] Through this *Notice*, the Commission seeks comment on consumer reliance on broadcast television services and developments in the broadcast television industry, among other inquiries. Today, free over-the-air broadcast television is the primary video programming delivery method for millions of American consumers – and that number is on the rise. Since the last *Notice,* local broadcasters have continued to innovate and expand upon their longstanding roles as leading providers of news, information and entertainment. Through expansion of high definition ("HD") offerings, additional programming on multicast streams and mobile DTV, local broadcast stations are increasing the quantity, quality and diversity of their services. Television broadcasting

[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

[2] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Notice of Inquiry, MB Docket No. 12-203, FCC No. 12-80 (rel. July 20, 2012) ("*Notice*").

also remains an unconcentrated and competitive sector of the video marketplace, particularly as compared to multichannel video programming distributors ("MVPDs").

I. Current Data Show that Free Over-the-Air Broadcasting Plays a Significant Role in the Video Marketplace

A. Over-the-Air Reliance is On the Rise

The *Notice* seeks comment on the number of households relying solely on over-the-air broadcast television for programming, as well as the number of households subscribing to an MVPD that also rely on over-the-air service for one or more of their television sets not connected to MVPD service.[3] The most recent data show that there are 116.3 million television households in the United States.[4] Of these, 17.8 percent—a total of 20.7 million households (or 53.8 million consumers) – rely solely on over-the-air broadcast television.[5] This represents a significant increase over the past year, when 15 percent of U.S. television households were broadcast-only. There are approximately 41.2 million sets in over-the-air television households.[6] An additional 32.5 million television sets in 17.7 million MVPD households remain unconnected to the MVPD service.[7] Thus, a total of approximately 73.7 million television sets currently are not connected to any MVPD service and receive all broadcast signals over-the-air.[8]

[3] *Notice* at ¶ 39.

[4] *See* GfK-Knowledge Networks, *Home Technology Monitor 2012 Ownership Survey and Trend Report* (Spring 2012-March 2012) ("*Home Technology Monitor Survey*").

[5] *Id.*

[6] *Id*.

[7] *Id.*

[8] *Id.*

Households relying solely on over-the-air broadcasting are predominantly lower income.[9] While nationwide approximately 17.8 percent of television households are broadcast-only, approximately 26 percent of television households with incomes under $30,000 annually are broadcast-only (up from 23 percent in 2011).[10] In contrast, only 11 percent of the households with annual incomes exceeding $75,000 depend solely on over-the-air broadcasting to receive video programming.[11] Thus, it is clear that the broadcast-only households in the United States include a disproportionate number of viewers who would be least able to afford a subscription television service.

It is also noteworthy that broadcast-only households include relatively greater numbers of racial/ethnic minorities. For example, while 15 percent of television households with a white head of household nationwide are broadcast-only, approximately 28 percent of Asian-American, 26 percent of Hispanic and 23 percent of African-American television households rely completely on over-the-air broadcasting.[12] These percentages represent a significant increase since 2011, when 25 percent of Asian-American, 23 percent of Hispanic, and 17 percent of African-American households relied solely on over-the-air television.[13] Homes headed by younger adults are also more likely to access television programming exclusively through broadcast signals. Twenty-four percent of homes with a head of household aged 18-34 are broadcast-only (up from 20 percent in 2011), compared with 17 percent of homes in

[9] *Notice* at ¶ 39 (requesting information on demographic characteristics of over-the-air television households).

[10] *See Home Technology Monitor Survey, supra* note 4.

[11] *Id.*

[12] *Id*. Among Hispanic television households where Spanish is the language of choice, reliance on over-the-air television is even greater, at 33 percent.

[13] GfK-Knowledge Networks, Press Release, "Over-the-Air TV Homes Now Include 46 Million Consumers" (June 6, 2011).

which the head of household is 35-49, or 15 percent of homes in which the head of household is 50 years of age or older.[14]

Over-the-air television households are distinct in other ways, such as their use of consumer premises equipment.[15] For example, only four percent of over-the-air households have digital video recorders (DVRs) compared with 34 percent of all television households and 41 percent of MVPD households.[16] In light of the lack of DVRs in broadcast-only households, the airing of programming at different times of day (or time-shifting) becomes particularly important. Adoption of DVRs appears to be significantly correlated with household income. Only 18 percent of households with incomes below $30,000 have DVRs, while 52 percent of households with incomes of $75,000 or more have DVRs.[17]

The *Notice* also seeks comment on the trend away from subscribing to MVPD service – the rise of "cord-cutters," "cord-avoiders" and even "cord-nevers."[18] Nearly 70 percent of over-the-air television households report that they have never subscribed to MVPD service.[19] Recent survey data indicate that six percent of television households have stopped subscribing to MVPD service in the past, up from four percent in 2011.[20] Over seven in ten (72 percent) television households that stopped pay television service

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[14] *See Home Technology Monitor Survey, supra* note 4.

[15] *Notice* at ¶¶ 77-81 (seeking comment on consumer premises equipment that facilitates delivery of video programming).

[16] *See Home Technology Monitor Survey, supra* note 4.

[17] *Id.*

[18] *Notice* at ¶ 82.

[19] *See Home Technology Monitor Survey, supra* note 4.

[20] *Id.*

cited overall cost cutting as their reason for stopping service.[21] Over four in ten (43 percent) also said they stopped pay television service because it did not offer enough value for the cost.[22] Among pay TV households that kept their service, 16 percent decreased services, with 69 percent of these cutting back on the number of program tiers purchased.[23] According to recent reports, publicly traded MVPDs had a combined net loss of about 200,000 subscribers in the second quarter of 2012, and one analyst estimates the losses at a total of 418,000 if closely-held operators are included.[24] Prior to 2010, the MVPD industry had never seen a quarterly subscriber decline. But since then, there have been declines in five different quarters.[25] Available data thus demonstrate that American television viewers increasingly recognize the value provided by free digital broadcast services.

Some over-the-air households supplement their viewing of television broadcast signals with video content from online video distributors ("OVDs").[26] Recent data show that 35 percent of over-the-air only households watch streaming video on a computer using the Internet.[27] This figure is very close to the percentage of MVPD households that use streaming video (33 percent) and the percentage of all television households

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[21] *See Home Technology Monitor Survey, supra* note 4.

[22] *Id*.

[23] *Id*.

[24] Shalini Ramachandran, *Evidence Grows on Cord-Cutting*, THE WALL STREET JOURNAL (Aug. 7, 2012), available at: http://online.wsj.com/article/SB10000872396390443792604577574901875760374.html (visited Sept. 7, 2012).

[25] *Id.*

[26] *Notice* at ¶¶ 59-71 (seeking comment on OVD structure, conduct and performance).

[27] *See Home Technology Monitor Survey, supra* note 4.

that use streaming video (also 33 percent), suggesting that OVD use is equally common across various types of television households. [28]

The emergence of OVDs creates opportunities for consumers by providing them with another alternative to existing MVPD services. Additionally, video programming providers, including local television broadcast stations, may benefit from the emergence of OVDs. These platforms could provide new opportunities for stations to reach more local viewers and to augment and enhance their program services to their local communities.

As NAB has previously explained, however, it is important that Internet-based services not be permitted to expropriate broadcast signals at will.[29] Broadcasters must continue to have the right to control the distribution of their signals via all platforms, including the Internet, and to negotiate for compensation from broadband video service providers (as well as traditional MVPDs) seeking to retransmit such signals.[30] Continued control of their signals will enable local stations to make the substantial investments needed to maintain high-quality, costly programming, including news, and to enhance their HD, multicast, and other current and future service offerings that will benefit consumers. Moreover, a balanced and symmetrical regulatory regime applicable to all video service providers seeking to transmit broadcast signals will best promote competition in the video marketplace.

[28] *See Home Technology Monitor Survey, supra* note 4.

[29] *See* NAB Comments in MB Docket No. 12-83 (filed May 14, 2012).

[30] *See* 47 U.S.C. § 325(b). *See also* S. Rep. No. 92-102 at 34, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1167 (1991) ("broadcasters [must be allowed] to control the use of their signals *by anyone engaged in retransmission by whatever means*.")(emphasis added).

B. Broadcasters Are Increasing the Quality and Quantity of Diverse Digital Programming Available to Viewers

Local television broadcast stations offer a community-specific mix of news, information, and entertainment that is not otherwise available to viewers of video programming. Broadcasters have continued to innovate and expand upon their strengths, with the past year marked by a dramatic rise in such offerings as news programming, HD content, multicast programming, and mobile DTV. Key developments in these areas are discussed below.[31]

Broadcast Television Viewership Trends. Despite rising competition for viewers from multiple outlets, broadcasters remain a leading source of news, information and entertainment. During the 2011-2012 season, 96 of the top 100 television programs were aired by broadcast stations.[32] Broadcast television is the leading news source, with 37.4 percent of American adults reporting that they consider broadcast television to be their primary source of news.[33] Local broadcast television is the top source for local weather, traffic and sports, with 35.1 percent of viewers choosing local stations for this information.[34]

Viewers also consider local television news more trustworthy than other news sources. A recent survey of American voters shows that local TV news is considered the most trustworthy source of news, earning the highest ranking from voters among

[31] *See Notice* at ¶¶ 48-52, 54 (seeking information on competitive strategies and viewership).

[32] Television Bureau of Advertising, TV Basics Report (June 2012) at 11, available at: http://www.tvb.org/media/file/TV_Basics.pdf ("TV Basics Report").

[33] *Id.* at 25.

[34] *Id.* at 26.

various other media.[35] Another recent survey yielded similar results, showing that "the believability ratings for local TV news are higher than those for the three cable news outlets" and that over the years, "credibility ratings for local TV news have remained more stable than have ratings for the three main cable news outlets."[36] Confidence in television broadcast news also is reflected in other indicators – viewership of local television news increased in both the morning (1.4 percent) and late evening (3 percent) during 2011.[37]

Investing in Local News. Television broadcast stations continue to be a leading source of local and national news and vital emergency information and alerts. To meet the needs and high expectations of their viewers, local television stations invest heavily in their local news operations. Despite the uncertain economy, television news staffing grew in 2011 to the second highest levels on record, with stations adding 1,131 jobs for a total of 27,653 full time staff.[38] For the fourth consecutive year, the average television station set a new record for the amount of local news aired, rising by another 12 minutes per day to an average of five-and-a-half hours per weekday per station.[39] In

[35] *See* University of Southern California Annenberg, *National USC Annenberg-Los Angeles Times Poll Shows Local Television News Rules with Voters,* Press Release (Aug. 27, 2012), *available at:* http://www.usc.edu/uscnews/newsroom/news_release.php?id=2795 (visited Sept. 7, 2012).

[36] The Pew Research Center for People and the Press, Further Decline in Credibility Ratings for Most News Organizations at 4 (Aug. 16, 2012), *available at*: http://www.people-press.org/files/2012/08/8-16-2012-Media-Believability1.pdf (visited Sept. 7, 2012).

[37] Amy Mitchell & Tom Rosenstiel, Pew Research Center Project for Excellence in Journalism, *The State of the News Media 2012 (*"State of the News Media 2012"), "Key Findings," *available at:* http://stateofthemedia.org/2012/overview-4/key-findings/ (visited Sept. 7, 2012).

[38] Bob Papper, RTDNA/Hofstra University, "2012 TV and Radio Staffing and News Profitability Survey," summarized at http://www.rtdna.org/pages/media_items/2012-tv-and-radio-news-staffing-and-profitability-survey2094.php ("RTDNA/Hofstra Study"), Part I (this represents a gain of 4.3 percent over the previous year).

[39] *Id.* at Part II (reporting that over the past four years, the average amount of local news per television station has increased from four hours and 36 minutes to five hours and 30 minutes; for stations affiliated with the four largest broadcast networks, it is even higher, averaging five hours and 48 minutes).

2011, 42.4 percent of surveyed stations reported adding a newscast, and a significant number (31.2 percent) reported plans to increase news during the coming year.[40] The vast majority of stations surveyed either increased or maintained their news budgets over the past year, with 38 percent reporting an increase over the previous year, and another 38.7 percent reporting that their budgets had remained the same.[41] Investing in local news is critical not only to broadcasters' role in meeting viewers' needs and interests, but is also important to their economic viability. Stations report that, on average, 48.2 percent of their revenue is generated by local news.[42]

Local television stations also are increasing the amount of content available on their websites. Most local stations (82.2 percent) report that they have a "three-screen" approach to news distribution (on-air, online, and mobile).[43] One analysis estimates that, as of year-end 2011, 94 percent of television broadcast stations had websites.[44] Among stations with websites, an estimated 86 percent stream video content, and 69 percent provide local news and weather video updates.[45] These stations also typically make use of social media, with their websites featuring links to station pages on Facebook (81 percent) and Twitter (76 percent).[46] Many station websites (44 percent) include mobile applications to make their pages accessible via smartphones.[47] Recent

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[40] RTDNA/Hofstra Study at Part II.

[41] *Id.* at Part I.

[42] *Id.* at Part I.

[43] *Id.* at Part III.

[44] *TV Stations Multiplatform Analysis '12 Update: New Digital Networks, Mobile TV Channels Expand Content Options*, SNL Kagan (Jan. 31, 2012) ("Kagan Multiplatform Analysis 2012") at 4.

[45] *Id.*

[46] *Id.*

[47] *Id.*

survey data suggest that traffic to local stations' websites is on the rise.[48] Stations reported 3.58 million page views and 554,200 unique visitors over a thirty-day period, representing increases of 19 percent and 35 percent, respectively, over the previous year.[49]

HD Programming. SNL Kagan data show that 82.2 percent of all full-power television stations were broadcasting in HD as of year-end 2011, representing an increase of nearly fifty percent over the previous year.[50] Significantly, in addition to airing HD network and syndicated programming, numerous stations have invested in new cameras, new video processing and storage equipment, updated studios and staff training in order to produce their own HD content. A recent survey indicates that three-fifths of full power television stations (60.1 percent) are now broadcasting local news in HD.[51] The percentage of stations offering HD local news varies according to market size, with 83 percent of stations in markets 1-25, 72.5 percent of stations in markets 26-50, and 71.6 percent of stations in markets 51-100 offering HD news.[52] These increases have been accompanied by rising levels of HD set penetration, which has increased from an estimated 69.8 percent of television households at the end of 2010 to 73.5 percent by year-end 2011.[53]

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[48] RTDNA/Hofstra Study at Part IV, pp. 8-9.

[49] *Id.*

[50] Kagan Multiplatform Analysis 2012 at 3 (reporting that 1,501 stations were broadcasting in HD at the end of 2011, up from 1,036 stations at the end of 2010).

[51] RTDNA/Hofstra Study at Part III, p. 5.

[52] *Id.* Additionally, 44.6 percent of stations in markets 101-150 and 26.1 percent of stations in markets 151 and higher are offering HD local news. *Id.*

[53] Justin Nielson, *New SNL Kagan Report: The Future of 3-D, Internet TV*, SNL Kagan (Aug. 17, 2012) at 3.

Multicast Programming. Broadcasters are airing ever-increasing amounts and types of programming through the use of multiple programming streams.[54] Multicasting has fostered the development of entirely new programming networks, many of which are aimed at meeting the needs and interests of specific ethnic groups. One analysis reports that the total number of over-the-air television channels skyrocketed from 2,518 channels as of year-end 2010 to **4,552 channels** as of year-end 2011.[55] These rising numbers are attributable in part to the launch or affiliate expansion of several new networks, including Antenna TV, Bounce TV, Live Well, This TV, Me-TV, The Cool TV, The Country Network and others.[56] Spanish-language offerings have nearly doubled over the past year, with 216 multicast channels and ten live mobile DTV channels.[57] NAB also has identified sixteen different multicast programmers offering nearly 50 channels of programming geared specifically toward Asian-American viewers.[58] And the availability of Bounce TV, a multicast network focused on African-American viewers, grew from 50 percent of U.S. television households (and 72 percent of African-American

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[54] *Notice* at ¶ 48 (seeking comment on use of broadcasters use of multiple programming streams to attract viewers and the amount and type of programming available).

[55] Kagan Multiplatform Analysis 2012 at 1. This analysis includes mobile DTV channels.

[56] Kagan Multiplatform Analysis 2012 at 1.

[57] *Id. See also, Digital Multicast Networks,* SNL Kagan Data Services, TV Station Database (Dec. 31, 2011) (Hispanic-focused programming is available from several sources on numerous secondary channels, including V-me (47 channels), LATV (30 channels), Telemundo (28 channels), TeleFutura (27 channels), Estrella TV (26 channels), Azteca America, Mexicanal, Univision, SOI TV, Imigrante TV, Spanish IND, Vasallo Vision, V-me HD, TeleFutura HD, and Tele Vida Abudante). Additional options are being added, such as the launch of MundoFox in August 2012. Tanzina Veda, *MundoFox to Enter the Latino TV Market,* THE NEW YORK TIMES (Aug. 12, 2012) *available at*: http://www.nytimes.com/2012/08/13/business/media/mundofox-new-spanish-language-network-to-make-debut.html (visited Sept. 7, 2012).

[58] *See Digital Multicast Networks,* SNL Kagan Data Services, TV Station Database (Dec. 31, 2011).

homes) in early 2012[59] to 60 percent of all households and 80 percent of African-American households by August.[60]

Mobile DTV. Broadcasters nationwide continue to roll out mobile DTV service – a spectrally efficient, robust over-the-air service that provides viewers with access to local news and other popular video content on an on-the-go basis. Unlike other mobile video services, mobile DTV does not rely on the wireless carriers' one-to-one architecture, in which each additional mobile video user requires the use of additional capacity. Instead, mobile DTV provides clean, clear, uninterrupted service even when wireless providers' networks go down. This is especially important when disaster strikes. The recent "derecho" storm that swept across the Midwest and Mid-Atlantic regions provides a good example. In many markets, electrical power and wireless broadband services were unavailable for days.[61] With mobile DTV service, affected users could still access critical emergency information provided by local broadcast stations, whether at home or on-the-go.

More than 130 stations in 30 states have commenced providing mobile DTV service, and are offering over 150 channels of programming.[62] This year, the Mobile Content Venture, a consortium of broadcasters, launched the Dyle Mobile DTV service,

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[59] *See Bounce TV Adds Eight Stations to Start 2012*, TV NEWSCHECK (Jan. 2, 2012), *available at:* http://www.tvnewscheck.com/article/56397/bounce-tv-adds-eight-stations-to-start-2012 (visited Sept. 7, 2012).

[60] *See Bounce TV to Debut on Fox-Owned Stations in Phoenix, Minneapolis, Orlando,* BROADWAYWORLD (Aug. 27, 2012), *available at*: http://tv.broadwayworld.com/article/Bounce-TV-to-Debut-on-FOX-Owned-Stations-In-Phoenix-Minneapolis-Orlando-20120827 (visited Sept. 7, 2012).

[61] *See* Roger Yu, *Wireless Carriers' Disaster Plans Tested after Storm*, USA TODAY (July 2, 2012), *available at:* http://www.usatoday.com/tech/news/story/2012-07-02/wireless-carriers-emergency-response/55991088/1 (visited Sept. 7, 2012).

[62] NAB staff analysis of SNL Kagan Data Services, TV Station Database (Aug. 20, 2012).

with signals that already reach more than 55 percent of the U.S. population.[63] Samsung recently released a 4G phone with integrated Dyle service,[64] and more devices with integrated mobile DTV service will be released in the next year. Dyle service also will be accessible on iPhones, iPads using an attachment.[65] Further, another group, the Mobile 500 Alliance, which includes stations that reach more than 90 percent of the U.S. population, is aggressively moving forward with a Mobile DTV rollout.[66]

II. Broadcasting is an Unconcentrated and Highly Competitive Segment of the Video Marketplace, Especially as Compared to the MVPD Industry

Television broadcasters compete with a wide range of others in the delivered video programming market. Today, broadcasting's chief competitors for advertisers and viewers are MVPDs and nonbroadcast programming networks. These competitors enjoy certain advantages over their broadcast rivals because they are subject to significantly fewer structural regulations, which allows them to realize efficient horizontal and vertical combinations that broadcasters cannot achieve. As NAB and other broadcasters have explained in other proceedings,[67] the FCC's rules should allow broadcasters greater flexibility in establishing efficient ownership structures.

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[63] *See* Dyle Mobile TV, *Consumers Demand More On-the-Go TV Options According to Dyle Mobile TV Data Report*, Press Release (Jul. 3, 2012), available at: http://www.marketwire.com/press-release/Consumers-Demand-More-On-the-Go-TV-Options-According-to-Dyle-Mobile-TV-Data-Report-1679730.htm (visited Sept. 4, 2012).

[64] *See* Metro PCS and Samsung Telecommunications America, *MetroPCS Dials In Unique Entertainment Experience with the Samsung Galaxy S Lightray 4G Smartphone,* Press Release (Aug. 3, 2012), *available at*: http://www.prnewswire.com/news-releases/metropcs-dials-in-unique-entertainment-experience-with-the-samsung-galaxy-s-lightray-4g-smartphone-164868166.html (visited Sept. 7, 2012).

[65] *See MCV Announces Expanded Rollout, LG Phone Demonstrating,* TWICE (Apr. 16, 2012), available at: http://www.twice.com/news/mcv-announces-expanded-rollout-lg-phone-demo-0 (visited Sept. 7. 2012).

[66] The Mobile 500 Alliance, *About*, *available at*: http://mobile500alliance.fisherinteractive.com/about-2/ (visited Sept. 7, 2012).

[67] *See* NAB Comments in MB Docket No. 09-182 (Mar. 5, 2012); NAB Reply Comments in MB Docket No. 09-182 (April 17, 2012).

Additionally, as discussed further below, the Commission should carefully examine its statutory obligations to monitor and promote competition in the MVPD market.

A. Industry Structure: Horizontal and Vertical Relationships

***Horizontal Concentration*.** The MVPD segment of the delivered video programming market is highly horizontally concentrated at the national, regional and local levels, and this concentration is on the rise.[68] For example, in 2002, the ten largest MVPDs controlled 67.4 percent of the MVPD market nationally (measured in terms of subscribers).[69] By 2010, the top ten MVPDs controlled nearly 90 percent of the market,[70] and today, the ten largest MVPDs control 91.3 percent of the nationwide MVPD market.[71] Indeed, the four largest MVPDs alone currently serve 68.7 percent of MVPD subscribers nationally, a dramatic increase from their collective 51.5 percent share of the market in 2002.[72]

Similarly, at the regional and local levels, cable multiple system operators ("MSOs") have increased their market shares through clustering.[73] Clustering reduces the number of individual systems in each local market, thereby increasing the clustered MSOs' ability to compete with local television stations for local advertising revenues and the MSOs' relative bargaining power against a local television station in retransmission

[68] *Notice* at ¶¶ 18-19 (seeking comment on horizontal concentration in the MVPD industry).

[69] *See* Declaration of Jeffrey A. Eisenach and Kevin W. Caves at 6 (May 27, 2011) ("*Eisenach 2011 Declaration*") (citing SNL Kagan data), attached to NAB Comments in MB Docket No. 10-71 as Attachment A.

[70] *Id.*

[71] *See 2012 SNL Kagan Media Census Estimates,* First Quarter 2012.

[72] *2012 SNL Kagan Media Census Estimates,* First Quarter 2012; *Eisenach 2011 Declaration* at 6.

[73] The Commission has described clustering as "an increase over time in the number of cable subscribers and homes passed by a single MSO in particular markets (accomplished via internal growth as well as by acquisitions)." *See Revision of the Commission's Program Access Rules*, Notice of Proposed Rulemaking, 27 FCC Rcd 3413, 3472 n.75 (2012).

consent negotiations.[74] Until recently, the Commission's video competition proceedings monitored developments with regard to regional clustering, but this information was absent from the *Fourteenth Annual Video Competition Report* and was not sought as part of the *Notice.*[75] NAB believes that information on clustering is relevant to a variety of important competitive analyses and should continue to be part of these video competition assessments.

As NAB and other broadcasters have noted in previous proceedings, local markets are frequently dominated by a single MVPD. For example, Time Warner Cable, Inc. ("TWC") enjoys a *66 percent or greater share of the MVPD markets in eight DMAs*, including Honolulu, HI (90.9 percent); Rochester, NY (77.9 percent); Syracuse, NY (71.3 percent); and Albany, NY (70.5 percent).[76] CableOne, Inc., which may consider itself a "smaller" cable operator, controls 66 percent of the Bilioxi, MS DMA.[77] Suddenlink controls 62.7 percent of the Victoria, TX DMA and 56.8 percent of the

[74] The number of clustered cable systems (cable systems under the same ownership serving the same local market area or region) serving over 500,000 subscribers rose from 29 in 2005, covering 29.8 million subscribers, to 36 at the end of 2008, covering 36.7 million subscribers. *See Eisenach 2011 Declaration* at 8 (citing SNL Kagan, Broadband Cable Financial Databook (2009)). Unfortunately, SNL Kagan is no longer tracking regional clusters.

[75] *See, e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 24 FCC Rcd 750, 765 ¶ 34 (2009) ("We continue to monitor the practice of clustering, whereby operators concentrate their operations in specific geographic areas. We request data and comment on its effect on competition in the video programming distribution market. How many transactions resulted in an MSO establishing a presence in a new area versus adding to an existing cluster? As cable operators eliminate headends and more closely integrate their systems, what regulatory and technical issues arise that can affect competition? What effect does clustering have on economies of scale and scope?"). *See also Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 21 FCC Rcd 12229, 12241-42 (2006); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 20 FCC Rcd 14117, 14127-28 (2005) (making similar inquiries). No such information was requested in this proceeding.

[76] *See MediaBiz:MediaCensus Competitive Intelligence/SNL Kagan, Video Market Share (Cable & DBS & Telco Video) by DMA—2nd Quarter 2012.*

[77] *Id.*

Parkersburg, WV DMA.[78] Bright House Networks dominates two Florida DMAs, serving 59.1 percent of all MVPD subscribers in Orlando, FL and 57.7 percent of the subscribers in the Tampa, FL market.[79] Charter Communications, Inc. serves 56.7 percent of the Alpena, MI market, 55.4 percent of the Marquette, MI market, and 53.5 percent of the North Platte, NE market.[80] In all, NAB counts 67 DMAs in which a single cable company enjoys a share of 50 percent or more of the MVPD market as a whole, even taking direct broadcast satellite and other MVPD subscribers into account.[81]

In short, although there has been some increase in the types of MVPDs serving each market, the video programming distribution market (both nationally and locally) continues to be dominated by a few large MVPDs. There are currently no regulatory constraints on MVPDs' ability to consolidate their operations, despite the mandate in the Cable Television Consumer Protection and Competition Act of 1992 that the Commission adopt such regulations. Specifically, there are no limits on the numbers of subscribers that can be served by any MVPD in a local market or at the regional or national levels.[82] By contrast, television broadcast station ownership is capped at both the national[83] and local[84] levels.

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[78] *See MediaBiz:MediaCensus Competitive Intelligence/SNL Kagan, Video Market Share (Cable & DBS & Telco Video) by DMA—2nd Quarter 2012*.

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] In 2009, a court vacated the national cable horizontal ownership cap. *See Comcast Corp. v. FCC,* 579 F.3d 1 (D.C. Cir. 2009). In 2001, the Commission's horizontal and vertical cable ownership limits were remanded. *Time Warner Entm't Co. v. FCC,* 240 F.3d 1126 (D.C. Cir. 2001). These cable horizontal and vertical limits were mandated by Congress in 1992. 47 U.S.C. § 533(f). However, because of court reversals, vacatur, and remands, the limits have been invalid for a longer period of time than they have actually been in effect.

[83] *See* 47 C.F.R. § 73.3555(e) (a single entity cannot own stations with a combined national audience reach of more than 39 percent of U.S. television households).

While the MVPD market remains highly concentrated, the market for television programming is increasingly competitive. MVPDs now offer dozens and often hundreds of channels of video programming, which compete with local broadcast stations for viewership and advertising dollars. Broadcasters also are competing with an increasing amount and variety of their own programming because of the rise of multicasting (discussed above). A recent economic analysis found that, unlike the MVPD industry, "the broadcasting industry is not highly concentrated."[85] Among other things, this analysis relied upon data demonstrating that, in 2010, the top four station owners (by advertising revenue) in the 25 largest markets earned only 19.5 percent of the total broadcast and cable television advertising revenues in these markets. Even the top ten station owners in the 25 largest markets accounted for only 31.2 percent of the advertising revenues in these markets.[86]

Just one year later, advertising revenue shares are even more fragmented. As of year-end 2011, the top four station owners collectively earned only 16.6 percent of advertising revenues in the 25 largest markets, and the top ten station owners earned only 25.9 percent of ad revenues (chart below).

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[84] *See* 47 C.F.R. § 73.3555(b) (a single entity cannot acquire a second television broadcast station in the same local market unless: (1) the stations' contours do not overlap or (2) (a) at least one station is not ranked among the top four in terms of audience share; and (b) there will remain at least eight independently owned television "voices" post-acquisition. As a practical matter, this restriction prevents an entity from owning more than one station in most local markets. Television broadcasters also face limits on their ownership of newspapers, 47 C.F.R. 73.3555(d), and radio stations, 47 C.F.R. 73.3555(c).

[85] *Eisenach 2011 Declaration* at 8.

[86] *Id*. (showing that even the top broadcast television station groups do not earn large shares of the advertising market).

Advertising Shares of Top 10 US Broadcast Station Owners
Top 25 Markets (2011)

Rank	Station Owner	Market Share
1	FOX Television Stations, Inc.	5.2%
2	CBS Corporation	4.2%
3	NBC/Comcast	3.7%
4	ABC/Disney	3.5%
Top 4		**16.6%**
5	Tribune Broadcasting Company	2.2%
6	Gannett Company, Inc.	1.9%
7	Univision Television Group, Inc.	1.6%
8	Cox Broadcasting	1.4%
9	Belo Corp	1.3%
10	Hearst-Argyle Television, Inc.	0.9%
Top 10		**25.9%**

Sources: SNL Kagan, "TV Station Revenues in Top 25 Markets by Station Owner" (2011); SNL Kagan "TV Network Industry Benchmarks (Broadcast Networks)" (2011); SNL Kagan, "TV Network Industry Benchmarks (Basic Cable Networks)" (2011).

Vertical Integration. MVPDs also enjoy the benefits of vertical integration, giving many the incentive and ability to favor their own programming over that of others who seek carriage on their platforms.[87] In its 13th annual video competition report, the Commission identified 84 national satellite-delivered programming networks owned by five major cable operators and another 24 such networks owned by the two DBS providers (who were also the second and third largest MVPDs).[88] This means that 107 of the 565 national programming networks identified in the report,[89] or 18.9 percent, were vertically integrated with seven MVPDs. A more recent analysis of vertical integration found that the top five cable operators owned 127 national programming

[87] *See, e.g.,* S. Rep. No. 92-102 at 24-25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 (1991) (*Senate Report*) ("vertical integration gives cable operators the incentive and ability to favor their affiliated programming service").

[88] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd 542 ¶ 184 (2009).

[89] *Id.*

networks, with another 54 such networks owned by DBS providers as of early 2012.[90] This report did not list national programming networks, but estimated their total number at 800.[91] Based on this estimate, 22.6 percent of national programming networks are now vertically integrated with the seven largest MVPDs. Additionally, as the Commission recently observed in seeking comment on its program access rules, seven of the top 20 national programming networks (as ranked by subscribership or prime time ratings) are vertically integrated with cable operators.[92]

The *Notice* in this proceeding asks several questions about vertical integration in the broadcast industry.[93] NAB observes that some of these inquiries do not concern vertical integration at all. The ownership of a television broadcast station and a cable network does not relate to vertical integration because cable network programming is not distributed by television broadcast stations (nor is television broadcast station programming carried via cable programming networks). Because neither of these video products are used as an upstream input into the other's downstream offering, ownership of broadcast stations and cable programming networks cannot implicate any vertical integration analyses or concerns.[94] To some extent, a broadcast station's over-the-air signal can be viewed as an input into an MVPD's downstream product. Thus, a vertical

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[90] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fourteenth Annual Report, MB Docket No. 07-269, FCC No.12-81 (rel. Jul. 20, 2012) at ¶ 44 ("*Fourteenth Annual Video Competition Report*").

[91] *Id.* at n. 96 ("Because of the difficulty we find in identifying all networks, we are not providing this information in our 14th Report. However, we believe the number of networks is approximately 800.")

[92] *See Revision of the Commission's Program Access Rules*, Notice of Proposed Rulemaking, 27 FCC Rcd 3413 (2012) at Appendix B, Table 1.

[93] *See Notice* at ¶¶ 41-42.

[94] *See* Dennis W. Carlton & Jeffrey M. Perloff, *Modern Industrial Organization* (Addison Wesley 4th ed. 2005), at 395 ("A firm that participates in *more than one* successive stage of the production or distribution of goods and services is vertically integrated.") (emphasis added).

relationship can arise where a cable operator also owns a broadcast station in the same market. This remains relatively uncommon, however, with only two entities owning both a broadcast station and a cable system in the same market.[95] Overall, the broadcast television industry is not characterized by significant vertical integration.

B. Realizing Efficiencies and Promoting the Public Interest Through Sharing Arrangements

The Commission also seeks comment on whether joint sales agreements ("JSAs"), shared services agreements ("SSAs") and local marketing agreements ("LMAs") impact the provision of programming to the public.[96] As NAB and other broadcasters have demonstrated in other contexts, these agreements are often critical to a broadcaster's ability to improve the quality and quantity of available programming and to remain financially viable in the face of rising competition. The operational efficiencies afforded by JSAs, SSAs, and LMAs have allowed broadcasters to maintain and even expand local news on many stations, even during a period of declining advertising revenue.[97] Sharing arrangements are important to local station operations because television broadcasting generally, and local news production specifically, are subject to strong economies of scale and scope.[98] Placing limitations on broadcasters'

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[95] *Fourteenth Annual Video Competition Report* at ¶ 175. Comcast Corporation and Cox Communications, Inc. each own a cable system and a broadcast station in the same market. NAB knows of no transactions since the *Fourteenth Annual Video Competition Report* that has resulted in common ownership of a broadcast station and a cable operator.

[96] *Notice* at ¶ 42.

[97] Pew Project for Excellence in Journalism, *The State of the News Media 2012: An Annual Report on American Journalism* (2012), available at http://stateofthemedia.org/2012/local-tv-audience-rise-after-years-of-decline/local-tv-by-the-numbers/ (visited Sept. 7, 2012)(the estimated on-air advertising revenue of local television stations declined by 10 percent from 2007 to 2011).

[98] *See* Jeffrey A. Eisenach & Kevin W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting 1 (2011) ("Economies of Scale Report"), Attachment A to Reply Declaration of Jeffrey A. Eisenach and Kevin W. Caves (June 27, 2011) ("Eisenach 2011 Reply Declaration") in NAB

ability to achieve economies of scale and scope "result[s] in higher costs, lower revenues, reduced returns on invested capital, lower output and, potentially, fewer firms."[99] As demonstrated in economic analyses filed previously, sharing arrangements "allow broadcasters, especially in small markets, to reduce their fixed costs – i.e., to realize economies of scale and scope – and thus continue to operate where it would otherwise be uneconomic to do so."[100] Thus, "depriving stations, especially smaller ones, of the ability to engage in [sharing agreements] could have a significant impact on both the production of local news and on the stations' ultimate financial viability."[101]

The Commission has requested information on these agreements in its quadriennial ownership review proceeding.[102] Comments filed in that proceeding demonstrated that these arrangements, as well as local news service agreements ("LNSAs") facilitate the production of local news and enable broadcasters to better serve their local communities while achieving economic efficiencies. Commenters cited numerous recent examples of how these arrangements: (i) resulted in the production of additional or first time local news programming for stations in local markets; (ii) were instrumental in achieving other positive developments that would not have otherwise been possible; or (iii) even are necessary for a station's survival in the marketplace:

Reply Comments to *Notice of Proposed Rulemaking* in MB Docket No. 10-71, at Appendix A (filed June 27, 2011) (incorporated herein by reference). Scale economies arise because broadcast operations require large capital investment in equipment, production facilities, FCC licenses, and "first copy" intellectual property costs. *Id.* Economies of scope arise from the potential to use assets to create multiple products (e.g., a single transmitter can broadcast multiple digital programming streams). *Id.*

[99] Economies of Scale Report at 2.

[100] Eisenach 2011 Reply Declaration at ¶ 26.

[101] *Id.*

[102] *Notice* at n. 76.

- Belo Corp. observed that an SSA in the Tucson, AZ market with a Raycom Media, Inc. station allowed a station to add a new two-hour news broadcast;[103]

- Cox Media Group stations in Atlanta, GA and Palm Beach, FL are parties to LNSAs that have increased local news dissemination in the local markets;[104]

- An SSA between stations owned by Schurz Communications, Inc. and Entravision Holdings, LLC resulted in the launch of Spanish-language news on a station in Derby, KS, making it the first and only Spanish-language local television news operation in the state;[105]

- Grant Group, Inc. observed that its nightly newscast was made possible by a sharing arrangement with another station and reported on plans for a morning newscast;[106]

- LIN stated that it is able to offer news in Providence, RI and Austin, TX and other local programming in Dayton, OH because of sharing arrangements;[107]

- LNSAs allowed several Nexstar Broadcasting, Inc. stations to generate more local programming, including local news;[108]

- Sinclair reported the addition of news (produced by others) at stations in St. Louis, MO and Greensboro, NC, where the stations could not profitably produce news on their own.[109]

Commenters also noted additional public interest benefits that have been achieved through the use of sharing arrangements, including improvements in emergency coverage and the purchase of better equipment to disseminate emergency

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[103] Belo Corp. Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 16.

[104] Cox Media Group Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 18.

[105] Entravision Holdings, LLC Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 13.

[106] Grant Group, Inc. Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 14-15.

[107] LIN Television Corporation Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 9-13.

[108] Nexstar Broadcasting, Inc. Comments in MB Docket. No. 09-182 (filed Mar. 5, 2012) at 29-31.

[109] Sinclair Broadcast Group, Inc. Comments in MB Docket 09-182 (filed Mar. 5, 2012) at 6. *See also* Coalition to Preserve Local TV Broadcasting Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 12-13 (providing additional examples of arrangements that resulted in increased local news production and even saved a local television station).

information,[110] facilitation of full-service HD deployment where necessary investment would not otherwise have been economically feasible,[111] and the creation of jobs in some local communities.[112] This evidence substantiates other empirical data previously submitted to demonstrate that sharing arrangements facilitate the production of local news, and that without such arrangements many stations (particularly in small or mid-sized markets) could not achieve the operational efficiencies necessary to finance their own news production.[113]

C. Promoting New Entry in Broadcasting

The *Notice* also seeks comment on issues affecting entry into the broadcast industry.[114] NAB has previously explained that ownership restrictions reduce economic incentives to invest in broadcasting, in general, making it more difficult for both existing and aspiring broadcasters to raise capital.[115] Outdated limitations that contribute to an undercapitalized and less competitive broadcast sector do not benefit any broadcasters, including new entrants and small businesses that face increased challenges in obtaining needed investment. In past proceedings, NAB has described its own efforts to

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[110] *See* New Vision Television, LLC and TTBG, LLC Joint Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 10.

[111] *See id.* at 11.

[112] *See* NAB Comments in MB Docket No. 09-182 (filed Mar. 5, 2012) at 59 (a Burlington, VT SSA resulted in the creation of 28 new jobs).

[113] *See e.g.*, Coalition to Preserve Local TV Broadcasting Reply Comments to *Notice of Inquiry* in MB Docket No. 09-182 (filed July 26, 2010) at 7-10; Michael G. Baumann and Kent W. Mikkelsen, Economists Incorporated, Effect of Common Ownership or Operation on Television News Carriage: An Update, Reply Comments on FCC 2006 Studies at Attachment A, 6-7).

[114] *Notice* at ¶ 43.

[115] *See* NAB Comments in MB Docket 09-182, at 56-57 (filed Mar. 5, 2012). *See also* NAB Reply Comments in MB Docket No. 06-121, at 33-38 (filed Nov. 1, 2007).

encourage new entry into broadcast ownership,[116] and also has supported the Commission's adoption of a wide range of incentive-based programs designed to encourage media ownership by women and minorities.[117] As NAB and other broadcasters have observed, improving access to capital through modifications to ownership and attribution rules would be a significant catalyst for increased ownership diversity, while existing asymmetric ownership restrictions serve to disadvantage broadcasters in today's media marketplace.

D. The Importance of Retransmission Consent to Local Broadcast Operations

The viability of local broadcast stations and their continued local service are closely tied to their ability to negotiate for fair value and carriage of their signals through the retransmission consent process.[118] In today's competitive video market, retransmission consent compensation enables broadcasters to deliver free, locally-oriented programming and services. Broadcasters who receive retransmission consent compensation are able to defray some of the high costs associated with the production of local news and other programming valued by their viewers. Because today's viewers now use a combination of media platforms to obtain news, information, and

[116] *See, e.g.,* NAB Comments in MB Docket No. 09-182 (Mar. 5, 2012) at 53 (discussing NAB's partnerships with the NAB Education Foundation and the Broadcast Education Association, both of which offer programs designed to provide professionals and students with access to employment in the broadcasting industry, as well as with the tools they need to excel in broadcast management and ownership).

[117] The most concise description of NAB's views on diversity proposals currently pending before the Commission can be found in our reply comments in the Commission's 2010 quadrennial ownership review proceeding. NAB Reply Comments in MB Docket No. 09-182 (April 17, 2012) at 32-34.

[118] *Notice* at ¶ 47 (observing that some television broadcast stations earn revenue in the form of retransmission consent fees and requesting comment on the characteristics of stations that seek retransmission consent compensation).

entertainment,[119] broadcasters must increasingly rely on non-advertising revenue sources to support their local news budgets.[120] NAB anticipates that retransmission consent fees will continue to play a critical role in ensuring the ongoing vitality of local television services, including news, in the future.

NAB sought to assess the impact of retransmission consent on broadcasters' ability to deliver the content and services viewers have come to expect through a detailed analysis of the economics of television broadcasting.[121] This analysis determined that retransmission consent revenue plays an important role in stations' financial viability.[122] Notably, the analysis also observed that, because "retransmission consent fees are used by broadcasters to pay for inputs that increase the quantity and quality of television broadcast content," depriving stations of retransmission consent revenue would result in a reduction in the quantity and quality of available programming, including local news, as well as, in the long run, "significant exit from the industry."[123] Preserving the ability of broadcasters to negotiate freely with MVPDs for retransmission consent is critical to broadcasting's ability to compete in the marketplace and continue to offer highly relevant, top quality content for viewers.

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[119] FCC, Steve Waldman and the Working Group on Information Needs of Communities, *The Information Needs of Communities: The Changing Media Landscape in a Broadband Age* (June 2011), *available a*t: www.fcc.gov/infoneedsreport, at 15.

[120] *See, e.g., id* at 299 (the president of Gannett Co., Inc.'s broadcasting division observed that "[i]f [broadcasters] can't use retransmission consent [to fund news budgets], local news will die.").

[121] *See* Economies of Scale Report.

[122] *See* Eisenach 2011 Reply Declaration at ¶¶ 9-13; Economies of Scale Report at Section III.

[123] Eisenach 2011 Reply Declaration at ¶¶ 14-15 (explaining how a lack of retransmission consent compensation would reduce the median station's future profit margins and lower its rate of return below its cost of capital).

III. Conclusion

Free over-the-air broadcast television improves the quantity, quality and diversity of video programming available to all American television households. An increasing number of households rely exclusively on free broadcast signals for news, weather, emergency information and entertainment. A disproportionately high number of these are low income and minority households. Viewers are benefiting from exponential increases in the amount and type of available of broadcast programming, an expanding array of HD content, and the delivery of broadcast signals to portable handheld devices. The retransmission consent process helps ensure that consumers benefit from broadcasters' programming services, including these developing digital services. By improving their service offerings, broadcasters have remained competitive and viable, in spite of a regulatory regime that limits their ability to develop efficient combinations and attract capital. The Commission should consider regulatory relief with regard to its ownership and attribution rules to permit broadcasters to realize greater efficiencies and investment.

Respectfully submitted,

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September 10, 2012