How Changes in the Economics of Broadcast Television Are Affecting News and Sports Programming and the Policy Goals of Localism, Diversity of Voices, and Competition

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Summary

Market and technological changes are creating challenges to the long-standing business models employed by broadcast television networks and local television stations, but at the same time generating potential opportunities. The changes also may be affecting the three pillars of U.S. government media policy—localism, diversity of voices, and competition—and damping the effectiveness of existing regulations intended to foster them. These changes generally are strengthening the position of parties that own or control popular content in their negotiations with distributors of video programming. Broadcast networks and stations, alike, both own content and distribute programming, so they have been strengthened and weakened by these changes.

The successful entry of hundreds of cable networks and the proliferation of social networking and video Internet websites have fragmented audiences and provided advertisers with alternative avenues for reaching consumers. This presents a significant challenge to broadcast networks and stations, which traditionally have relied on advertising for more than 90% of their revenues. As audiences have declined for both national and local news programming, networks and stations alike have reduced costs by sharing the fixed costs of newsgathering over multiple platforms and undertaking cooperative newsgathering with other outlets. Some broadcasters have sought to generate additional cost savings or revenue by combining with other newsgathering organizations, and urge modifications to the Federal Communications Commission's broadcast media ownership rules that restrict such combinations. Policymakers will have to weigh whether allowing such consolidation will, on net, benefit the public by improving the financial viability of newsgathering firms or harm the public by reducing diversity of voices and competition.

At the same time, competition has developed among the companies that deliver multiple channels of video programming to subscribers—cable operators, satellite operators, and some telephone companies. If a multichannel video distributor fails to obtain the retransmission rights to popular national and local broadcast television programs, it risks losing subscribers to a competitor that does offer the programming. As a result, broadcast networks and stations are able to demand higher payments from these multichannel video distributors for the retransmission rights. This has created a second revenue stream for broadcasters that is projected to reach $2.6 billion in 2016. It also occasionally results in subscribers losing access to broadcast programming when their video provider and the broadcaster reach an impasse in retransmission negotiations. A coalition of video distributors and consumer organizations has petitioned the FCC to modify its retransmission consent rules by adding dispute resolution mechanisms and mandatory interim carriage.

The amount of local broadcast news programming has been increasing despite declining audiences and does not appear to be threatened by stations' revenue declines. Many stations are broadcasting more news because local news programs can be cheaper to provide than purchased programming. In addition, local news provides a way for stations to develop strong brand identities as they compete for local advertising dollars.

The production and distribution of major sports programming is largely controlled by the sports entities that control the events. If it benefits them to distribute their programming through pay venues, such as cable networks that they own, rather than over-the-air broadcast, they will do so. This is likely to result in more events being televised, though many will only be available to subscribers to pay television services.

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As a result, various stakeholders have asked the Federal Communications Commission (FCC or commission) to eliminate or modify some of its broadcast media ownership rules and retransmission consent rules. In particular:

- The FCC currently is collecting data and comments, and sponsoring research, as part of the statutorily mandated quadrennial review of its broadcast ownership rules.[1] Those rules, among other things, set limitations or prohibitions on the number of national broadcast networks under a single owner, the number of television stations that can be jointly owned in a local market, and the cross-ownership of a television station and a major daily newspaper in a local market.[2] In its comments in that proceeding, the National Association of Broadcasters (NAB) seeks elimination of the cross-ownership restrictions and relaxation of the restrictions on a single entity owning or controlling two television stations in a single local market, claiming these rules prevent efficient combinations required to support the cost of providing local news and emergency journalism.[3] Other commenters claim that such consolidation would harm, rather than foster, diversity of voices, competition, and localism. For example, the National Association of Black Owned Broadcasters claims that consolidation places smaller firms with few stations at a competitive disadvantage, and that "any further relaxation of the Commission's multiple ownership rules would exacerbate the already dismal lack of minority ownership in the broadcast industry."[4]
- The FCC is seeking comment on a petition for rulemaking, submitted by a coalition of multichannel video distributors[5] (cable operators, satellite operators, and telephone companies) and consumer organizations, requesting that the

[1] *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Notice of Inquiry, adopted and released May 25, 2010.

[2] For a detailed discussion of the FCC's broadcast media ownership rules, see CRS Report RL34416, *The FCC's Broadcast Media Ownership Rules*, by (name redacted).

[3] *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Comments of the National Association of Broadcasters, July 12, 2010, at pp. i-iv.

[4] *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Comments of the National Association of Black Owned Broadcasters, July 12, 2010, at p. iii.

[5] In statutes and FCC rules, these firms are formally referred to as "multichannel video programming distributors" or "MVPDs." For ease of presentation, in this report they will be referred to as "multichannel video distributors."

> commission amend its retransmission consent rules[6] to include dispute resolution mechanisms and mandatory interim carriage while disputes are being resolved.[7] The NAB and the associations of the local station affiliates of the four major broadcast networks oppose the petition, claiming that the market is working properly and that FCC intervention is unwarranted and would be harmful.[8]

Since the FCC has addressed such issues in response to statutory instructions intended to foster diversity, competition, and localism, Congress may choose to provide statutory or informal guidance to the FCC as it moves forward with the proceedings.

The Market Changes

Broadcast networks and broadcast stations control program content that is highly valued by multichannel video distributors and also distribute programming in competition with many other media outlets. Thus, they are both strengthened and weakened by recent market changes.

Most notably, the successful entry of hundreds of cable networks and the proliferation of social networking and video Internet websites have fragmented audiences and provided advertisers with alternative avenues for reaching consumers. A recent UBS Investment Research report[9] claims that "every year, global advertising is losing 200 points [2 percentage points] of growth to other marketing usage or is eliminated, thanks to technology improvements" and that "structural changes [affecting broadcast television advertising] remain strong and are even accelerating." This presents a significant challenge to broadcast networks and stations, which traditionally have relied upon advertising for more than 90% of their revenues.[10] (In contrast, in 2008, advertising revenues represented only 42.8% of the revenues of advertising-supported cable networks[11] and that proportion likely has fallen since then.)

Several research companies project television advertising revenues, each employing its own proprietary model and assumptions.[12] Although the various forecasters project different levels of

[6] 47 C.F.R. §§ 76.64-65, which implement statutory provisions that were added to the Communications Act by the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat. 1460 (1992). For a brief discussion of the retransmission consent rules, see the section entitled "Broadcast Networks and Their Affiliated Local Broadcast Stations" in CRS Report R41063, *The Proposed Comcast-NBC Universal Combination: How It Might Affect the Video Market*, by (name redacted).

[7] Public Notice, *Media Bureau Seeks Comment on a Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, DA 10-474 , Media Bureau, Federal Communications Commission, released March 19, 2010.

[8] *In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, Opposition of the Broadcaster Associations, May 18, 2010.

[9] Matthieu Coppet, et. al., "Broadcast Rally: When Will the Music Stop," UBS Investment Research, UBS Global I/0: Global Media, March 15, 2010.

[10] See, for example, Pew Project for Excellence in Journalism, *State of the News Media 2010* (*Pew Study*), Section on Local Television Economics, unpaginated, available at http://www.stateofthemedia.org/2010/, viewed on August 23, 2010, which states that despite the fall in advertising revenues, in 2010 they still will represent 91% of local broadcast station revenues.

[11] See SNL Kagan, *Economics of Basic Cable Networks*, 2009 Edition, at p. 2.

[12] These include Magna Global, BIA/Kelsey, Veronis Suhler Stevenson, and SNL Kagan, as well as analysts at brokerage and other financial firms, such as UBS.

advertising revenues, they generally identify the same trends. As an example, according to a recent forecast by Magna Global, a consultant to advertisers:[13]

- the advertising revenues of *English language national broadcast networks* peaked at $14.7 billion in 2005, fell slightly in 2006 and 2007 and then fell significantly in 2008-2009; they have begun to recover in 2010 but are not likely to reach the previous peak until about 2015.
- the advertising revenues of *Spanish language national broadcast networks* experienced a slight decline from their 2007 peak but are growing rapidly and may be 50% higher in 2015 (exceeding $1.5 billion) than they are today.
- the Olympics, which have provided a revenue shot in the arm in alternate years to the network with the broadcasting rights and its affiliate stations, generating as much as $785 million in incremental advertising revenues in 2000, will generate substantial, but lesser amounts in the future as more of the programming is carried on cable networks and the Internet.[14]
- the non-political advertising revenues of *local broadcast television stations* peaked in 2007 at about $17.8 billion, fell substantially in 2008 and 2009, and are now experiencing increases, but are not expected to reach the 2007 high by 2015.[15]
- the political advertising revenues of local broadcast television stations, which are much higher in even-numbered years than in odd-numbered years, and greatest for the quadrennial presidential election, will continue to grow substantially, so that the sum of non-political and political advertising revenues is likely to equal or surpass that of the earlier peak. But political advertising revenues are not spread equally across all broadcast stations; they are focused on stations in geographic areas where there are contested elections.

This forecast implies that during the next five years, total broadcast television advertising revenues will at best recover to their previous peak.

Other market changes, however, have led to a brighter outlook for broadcasters' non-advertising revenues. For example, competition has developed among the companies that deliver multiple channels of video programming to subscribers—cable operators, satellite operators, and some

[13] Magna Global can be contacted at http://www.magnagloval.com/?action=register.

[14] It is likely, however, that in at least some cases the broadcast network will be part of the same parent company as the cable network.

[15] Interestingly, none of the forecasters projected the high level of revenue growth that a number of broadcast station owners have been reporting for the second quarter of 2010. Although most forecasters projected rates of growth (after the 2008-2009 decline) in the vicinity of 5%, most broadcast television station groups have reported double digit revenue growth in the second quarter of 2010, with some reporting growth approaching 40%. For example, Fisher Television reported a 37% increase in television revenues over the same quarter last year (see Michael Malone, "Fisher Television Revenue Up 37%," *Broadcasting & Cable,* August 9, 2010) and E.W. Scripps reported a 26% increase in advertising revenues at its stations in the second quarter (see David Goetzl, "E.W. Scripps: Broadcast Enjoys Ad Hike, Newspapers Dip," *Media Post News,* August 9, 2010). This discrepancy between the forecasts of revenue growth and the actual second quarter 2010 results can be at least partially explained: forecasters do not attempt to estimate quarterly rates of growth, but rather try to project an average rate of growth over a longer period of time. To do this, they must factor in, for example, the risk of a double-dip recession beginning later in the year that would not affect second quarter 2010 revenue levels, but could affect later revenue levels.

telephone companies. If a multichannel video distributor fails to obtain the retransmission rights to national and local broadcast television programming, which many households consider "must-have" programming, it risks losing some of its subscribers to a competitor that does offer the programming. As a result, broadcast networks and stations are able to demand higher cash payments from these multichannel video distributors for the retransmission rights. This has created a second revenue stream for broadcasters that is projected by SNL Kagan, a media research firm, to grow from $762 million in 2009 to $1.09 billion in 2010, $1.36 billion in 2011, and more than $2.6 billion in 2016.[16] Note, however, that the projected increases in retransmission consent revenues, which will be shared by broadcast networks and local stations, may be less than the fall in network and local station advertising revenues from their earlier peaks.

Technological innovations are creating the potential for other new broadcast revenue sources. For example, in June 2010 12 large broadcast groups created a joint venture, Mobile Content Ventures, to develop broadcast-based mobile digital television technology and bring it to market.[17] In September 2010, a second consortium of broadcasters owning 346 television stations announced the creation of the Mobile500 Alliance in support of mobile digital television technology.[18] This technology, an alternative to wireless broadband video, would allow a station to broadcast encrypted video signals that could be received by anyone in its geographic service area with the appropriate receiver; the viewer could move anywhere within the service area and continue to receive the signal. With broadcast mobile video, the bandwidth (and, hence, spectrum) requirements increase as the number of different video signals offered increases, but do not increase as the number of users increases. In contrast, with wireless broadband video distributed to cell phones, the more users in a location, the more bandwidth and spectrum is needed. Since the broadcast technology allows many consumers to share the same spectrum, broadcasters are unlikely to have to impose the sort of usage charges that AT&T recently imposed on its customers.[19] The underlying broadcast technology may not allow broadcasters to offer as wide an array of programming as wireless broadband video providers, but the broadcasters already own or control much of the "must-have" programming sought by consumers.

Also, with the digital transition, broadcasters are able to broadcast multiple video programming streams, rather than a single stream, and this "multicasting" may generate additional advertising and retransmission consent revenues for broadcasters. Although to date revenues are small, some analysts are bullish on multicasting's potential impact on broadcast station cash flow.[20]

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[16] SNL Kagan is a research firm specializing in media and communications whose data are widely used in the industry. The SNL Kagan estimates for 2009, 2010, and 2011 were reported in Michael Malone, "Local Broadcasters Bullish at SNL Conference," *Broadcasting & Cable*, June 26, 2010. The SNL Kagan projection for 2016 was reported in Steven C. Salop, Tasneem Chipty, Martin DeStefano, Serge X. Moresi, and John R. Woodbury, "Economic Analysis of Broadcasters' Brinkmanship and Bargaining Advantage in Retransmission Consent Negotiations," a study prepared at the request of Time Warner Cable, June 3, 2010, at p. 18, Figure 4. The study is available at http://www.americantelevisionalliance.org under "Broadcaster Brinksmanship."

[17] See, for example, Glen Dickson, "Mobile DTV Joint Venture Outlines Leadership: Fox, NBC execs to handle product development, distribution for Mobile Content Venture," *Broadcasting & Cable*, June 8, 2010.

[18] See "Broadcast Note," *Communications Daily*, September 9, 2010.

[19] See, for example, William Kidd, "Bandwidth Caps Are a Barrier to Emerging Internet TV Competition," iSuppli Applied Market Intelligence, July 20, 2010, available at [http://www.isuppli.com/Home-and-Consumer-Electronics/News/Pages/Bandwidth-Caps-Area-Barrier-to-Emerging-Internet-TV-Competition.aspx.], viewed on August 11, 2010.

[20] See, for example, Mary Collins, "Turning Subchannels Into Revenue," *TVNewsCheck*, July 30, 2010, available at http://www.tvnewscheck.com/article/2010/07/30/44016/turning-subchannels-into-revenue, viewed on September 14, (continued...)

None of these potential new revenue streams has been proven yet in the marketplace, and other technological innovations may not benefit broadcasters. For example, while it is possible that the nascent 3-D technology will lead to popular programming, it is more likely that such programming will be distributed via a pay-television model than an over-the-air broadcasting model.[21]

News, Sports, and Broadcaster Profitability

This macro picture of the broadcasting industry, with some networks and local stations facing declining advertising revenues without compensating new sources of revenues, has led to concern about the future of broadcast television news and sports programming.

More Americans rely upon television news than any other news medium[22] and, despite the success of cable news networks, the national news broadcasts of ABC, CBS, and NBC continue to attract more prime time viewers than the cable networks.[23] But most network news programs continue to lose audience share,[24] and the average viewer age for the networks' evening newscasts has risen to 63.1 years.[25] Not only does a smaller audience mean that broadcasters can charge less for ads, but as advertisers tend to prefer younger viewers, an aging audience generates less advertising revenue. As a result, in the past three years all three national broadcast networks that have national news divisions have made cuts in those divisions and taken other steps that could affect the quality or scope of their news coverage.[26]

Although viewership of local television news programming continues to decline,[27] Americans still rely more on broadcast television than any other media source for local news and public affairs information.[28] Those stations that produce original news programming are broadcasting more such programming than ever,[29] but there has been a slight decline in the number of stations that

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2010, citing a study performed by International Media Advisors and Bortz Media & Sports Group.

[21] See, for example, Matthieu Coppet, et al, "3D TV is here to stay," UBS Investment Research, UBS Global I/O: 3D TV and Media, January 15, 2010, which suggests that consumers are most likely to obtain 3D TV service from the multichannel video distributors.

[22] According to a March 2010 Pew Internet & American Life Project report, entitled "Understanding the Participatory News Consumer," at p. 5, available at http://www.pewinternet.org/Reports/2010/Online-News.aspx?5=1#, "78% of Americans say they get news [on a typical day] from a local TV station; 73% say they get news from a national network such as CBS or cable TV station such as CNN or Fox News." Although most Americans now get their news information from multiple sources, no other source is as widely used as television.

[23] See, for example, *Pew Study*, Section on Network TV Audience, at p. 4, which explains that the lowest-rated broadcast network newscast (CBS Evening News with Katie Couric) had an average nightly audience of 5.9 million viewers for the year, while the most popular prime time cable news program (Fox News Channel's O'Reilly Factor) had an audience of 3.3 million.

[24] *Pew Study*, Section on Network TV Audience, at pp. 1-5.

[25] *Pew Study*, Section on Network TV Audience, at p. 5.

[26] These actions are discussed below in the section entitled "Market Forces Affecting Broadcast News Networks."

[27] *Pew Study*, Section on Local TV Audience, at pp. 1-5.

[28] See footnote 22 above.

[29] See Bob Papper, *2010 RTDNA/Hofstra Staffing & Profitability Survey* (*RTDNA/Hofstra Survey*), Section on TV Staffing and News 2010, unpaginated, available at http://www.rtdna.org/pages/media_items/2010-rtdnahofstra-staffing-profability-survey--full-data1944.php, viewed on July 22, 2010. According to the survey, the average amount of original local news programming broadcast by those stations that produce their own programming increased to 5.0 (continued...)

produce news programming and some stations have cut their news staffs.[30] Some of the additional hours of news consist of repeats of earlier broadcasts rather than fresh programming. Increasingly, television stations that create news programming sell some of their programming to other media outlets.[31]

Major professional and intercollegiate sports leagues command very high payments for the rights to televise their sports events. Cable networks have been able to successfully bid for the programming rights to major events, either in conjunction with or in direct competition with broadcast networks. Most recently, the National Collegiate Athletic Association (NCAA) signed a $10.8 billion, 14-year agreement with CBS and Time Warner's Turner Cable Networks under which Turner will get the rights to first- and second-round NCAA basketball tournament (March Madness) games in 2011-2015. Coverage of the semifinals will be split between Turner and CBS, with the national championship game alternating each year between the two networks.[32] At the same time, major sports leagues and conferences increasingly are retaining a portion of their sporting events for cable networks in which they have an equity stake, rather than making them available to outlets in which they do not have an equity stake. The National Football League (NFL), the Big Ten Intercollegiate Conference, and the New York Yankees have created cable networks of their own and distribute some of their games exclusively or semi-exclusively over those networks. These changes have increased the total amount of sports programming available to U.S. households, but an increasing proportion of popular teams' or leagues' schedules is televised only on cable networks and therefore available only to subscribers.

Some broadcasters claim that relaxing broadcast media ownership rules would assure the continued availability of free, over-the-air news and sports programming. They also claim that their ability to offer such programming would be harmed if changes to the retransmission consent rules constrain their ability to negotiate compensation from multichannel video distributors. A report prepared for the National Association of Broadcasters, based on an April 2010 survey of 53 television stations that originate local news programming,[33] concludes:

> As the Commission examines the Future of the Media and considers ways to bolster the provision of local news, it should adopt policies that allow (and to rescind, or at least not adopt, policies that hinder) local broadcasters to (1) pursue opportunities for non-advertising revenue, such as that derived from retransmission consent, and (2) benefit from economies of scale and allocate their news resources in the most efficient ways, such as through modifications to the Commission's structural ownership rules. Such policies will support the Commission's vital focus on "localism" by providing a solid financial foundation for the production of local news.

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hours per weekday in 2009 from 4.7 hours in 2008.

[30] These actions are discussed below in the section entitled "Market Forces Affecting Local Broadcast Station News."

[31] See *RTDNA/Hofstra Survey*, Section on How the Business of TV News is Changing, unpaginated.

[32] See, for example, "Mass Media Notes," *Communications Daily,* April 22, 2010.

[33] Mark J. Prak, David Kushner, and Eric M. David, "The Economics Realities of Local Television News—2010: A Report for the National Association of Broadcasters" (*NAB Survey*), *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of the National Association of Broadcasters, Attachment B, July 12, 2010, at p. 30.

Not all market data, however, suggest that broadcast provision of news and sports programming is at risk. News and sports programming are major sources of station revenues and continue to be profitable for most broadcast networks and stations.[34] Moreover, it often is easier for broadcast networks or stations to control the costs of news programming they produce than the costs of scripted or syndicated programming they must purchase. As will be explained below, broadcasters at both the network and local station level have undertaken cost-cutting measures and are employing business models that better exploit the economies of scope associated with newsgathering and program production. These changes may require Congress and the FCC to review how best to foster the goals of localism, diversity, and competition.

Audience fragmentation and the substantial upfront fixed costs associated with newsgathering and the rights to major sports events are not going away. Increasingly, to recoup these upfront costs, programming will have to be distributed over multiple platforms, and media outlets may have to share facilities and staff to gain economies of scope and scale. But some broadcasters claim that cooperative activity and sharing does not provide the cost savings or generate the additional revenues attainable if they could combine with other newsgathering organizations. Traditionally, there have been concerns that such consolidation could reduce diversity of voices, harm competition, and discourage programming of local interest. In light of the underlying market changes, however, Congress and the FCC may decide to reexamine whether and when the benefits of consolidation of newsgathering capabilities outweigh the harms and whether it would be possible to construct either bright-line rules or criteria for case-by-case evaluations that could limit the harms while retaining the benefits.

Market Forces Affecting Broadcast News Networks

Two studies of national broadcast television news networks prepared 11 years apart—*The State of the News Media 2010* study prepared by the Pew Foundation Project for Excellence in Journalism and a Nieman Foundation Special Issue report prepared in 1999[35]—present very similar portraits of the market forces at play and identify the same market trends and policy implications. This suggests that many of the market forces that broadcast news networks are contending with today represent long-term structural trends that may be accentuated by, but are not the result of, cyclical economic factors. It also suggests that while these trends have challenged old business models, the networks have been able to adapt and to survive in the marketplace.

Three of the four major national broadcast networks—ABC, CBS, and NBC, but not FOX—have national news divisions that produce for their local affiliates half-hour evening newscasts, morning news shows (that range in length from two to four hours and tend to provide softer news than the evening newscasts), Sunday morning public affairs discussion shows, weekly or periodic news magazine shows (such as "60 Minutes" and "20/20") that mix investigative news with softer

[34] In reviewing the financial data in this report specific to newsgathering and news (and sports) program production, please note that neither broadcast networks nor local broadcast stations are required to report revenues, costs, and profits at that level of disaggregation. The data presented therefore either are indirect estimates prepared by researchers or the aggregated responses of individual news directors to survey questions, where the respondents may not all be basing their responses on the same set of definitions and assumptions. As a result, it generally is more useful to rely on these data to identify trends over time than to provide point estimates of revenues, costs, or profits.

[35] See *Pew Study*, Section on Network Television, and Marc Gunther, "The Transformation of Network News: How Profitability Has Moved Networks Out of Hard News," Nieman Reports Special Issue 1999 *(Nieman Report*), available at http://www.nieman.harvard.edu/reportsitem.aspx?id=102153, viewed on August 16, 2010.

news and entertainment, and unscheduled breaking news reports.[36] This mix of programming has not changed significantly in the past decade. Although the networks continue to lose audience to cable and Internet providers of news and information, they still serve a much larger audience than the cable news networks or Internet news services.[37]

Interestingly, in the late 1990s the broadcast television networks were losing money on their entertainment and sports programming, for which costs were growing faster than revenues, but were able to earn profits on their news programming, in part by controlling costs.[38] NBC News, the most watched and the most profitable national broadcast news division, a decade ago created a multiplatform organization that shares the high fixed costs of newsgathering across broadcast, cable, and Internet platforms. NBC News was quite profitable then and remains so.[39] The other two national news divisions, ABC and CBS, do not have cable news networks with which to share costs and have not developed as effective an Internet presence. They earned relatively small profits in 1999 and today they are at best marginally profitable and, in the case of CBS News, may be losing money.[40]

The *Nieman Report* and *Pew Study*, supplemented by current market data, provide a dynamic portrait of the broadcast network news market:

- The average nightly audience for the three major broadcast networks' evening newscasts has fallen from more than 50 million viewers in 1980 to 30.4 million in 1998 to 22.3 million in 2009, a decrease of about 1 million viewers per year (though the annual decline has been less than that in recent years).[41] The audiences nonetheless remain far larger than the prime time audiences for cable news networks.[42] The audience for broadcast network morning news shows also has fallen for the past five years.[43] The prime time news magazine programs continue to attract large audiences, with each of the three networks having at least one successful program.

[36] The Fox Broadcasting Company provides its affiliates the one-hour weekly public affairs program Fox News Sunday. It also provides coverage of political events such as the State of the Union address and national election coverage and breaking news, with programming produced by, but separate from the programming provided on, the cable Fox News Channel. Also, the Fox News Edge service provides national and international news reports for local Fox affiliates to use in their own newscasts.

[37] See footnote 24 above.

[38] *Nieman Report*, at p. 1. The following discussion of network news profitability presents estimates made by industry analysts who had to make many explicit or implicit assumptions about how much of the parent company's overhead and other costs should be assigned to the broadcast news network. It is not possible to verify the findings of these analysts.

[39] According to the 1999 *Nieman Report*, NBC News earned more than $200 million in 1998 and its profits had grown steadily during the decade. The *Pew Study* estimates 2008 NBC News pre-tax profits of $400 million, although about two-thirds of its revenues came from the cable networks MSNBC and CNBC.

[40] The 1999 *Nieman Report* estimated that ABC News earned $55 million in 1998, down from a peak of $110 million two years earlier. It also estimated that CBS News earned only $15 million in 1998, but that those earnings were growing. The 2010 *Pew Study* estimated that the ABC news division may have generated a small operating profit in 2009 on total revenues of approximately $600 million. It also estimated that CBS News lost money in 2009 on revenues of about $400 million.

[41] *Pew Study*, Section on Network TV Audience, at p. 2, citing Nielsen Media Research data.

[42] See footnote 26 above.

[43] *Pew Study*, Section on Network TV Audience, at pp. 6-8, citing Nielsen Media Research data.

- The audiences for the evening newscasts of the two Spanish language broadcast networks—Univision and Telemundo (owned by NBC)—are almost as large as the prime time audiences for the major cable news networks (FOX News, CNN, MSNBC, HLN, and CNBC).
- The declining and aging audience for evening and morning newscasts has placed downward pressure on advertising revenues. This is countered somewhat by the relative affluence of that audience and by the fact that, despite the decline, the audience for the evening newscast at each network continues to be significantly larger than the audience for any other broadcast or cable programming presented at that time of day. The network newscast audiences therefore continue to command a premium from advertisers. There has been a shift toward sponsorships of particular segments of network news programs—or even entire newscasts—by a single advertiser. Still, advertising revenues generated by evening and morning network news programming have been falling.
- Since the 1990s,[44] there have been periodic layoffs in all three network news divisions. Some domestic and foreign bureaus were closed, with the networks relying more heavily on outside sources they could pay as needed rather than on full-time staff and offices. The broadcast networks have expanded their use of "pooling"—sharing footage from a single camera with other networks, including cable networks. They have reduced the amount of "breaking news" coverage, increasingly leaving that to 24-hour cable news networks. These cost-cutting measures continue. In 2010,[45] ABC announced it would reduce its news division by 300 to 400 employees, out of 1,500. CBS News reduced its staff in 2010 by 100 people, or 7%. NBC News reduced its workforce by more than 10% in 2009. Although the number of domestic bureaus has stabilized, the three networks continue to trim permanent overseas bureaus and rely more on one-person operations, often sending resources to overseas locations only as events occur.
- The broadcast news networks continue to employ a business strategy developed in the 1970s, using news teams to create hybrid news and entertainment programming shown during prime time. These "newsmagazine" programs tend to be less expensive to produce than scripted entertainment programming for two reasons: many of the underlying costs can be shared with the hard news programming and, even when successful, the correspondents and writers tend not to be able to demand the huge increases in salary and other compensation that the stars and writers of successful entertainment programming can demand. As a result, even if newsmagazines generally attract smaller audiences than pure entertainment programming, they can be more profitable. The correspondents and news teams have credibility from their involvement with hard news programming that their counterparts on competing cable networks may lack. Newsmagazines continue to provide the financial backbone of network news organizations.

Even with serious cost containment measures in place, the fixed costs associated with maintaining a news network are substantial. Since the late 1990s, the networks have responded by seeking economies of scope by using those news assets to produce revenue-generating programming for

[44] The following discussion of the 1990s is based on the presentation in the *Nieman Report*.

[45] The following discussion of 2010 is based on the presentation in the *Pew Study*.

multiple platforms. The 1999 *Nieman Report* explained how NBC was already successfully following this business model:

> Here is why this model works so well. ABC and CBS generate nearly all of their income from broadcasting. NBC takes in additional revenues from cable (MSNBC, CNBC), NBC's Internet sites, and NBC News channels distributed outside of the United States.... Therefore NBC is better able to shoulder the overall costs involved with newsgathering not just for the "Nightly News" and "Today," but for its 24-hour cable networks and Internet sites as well.... By programming more than 6,000 hours of news a year across its broadcast and cable platforms, the average cost per hour of news at NBC has fallen from about $250,000 to $50,000 during the past five years.[46]

This essence of this quote is echoed in the 2010 *Pew Study,* which finds:

> NBC News is a profit center for NBC Universal, but its earning power now comes from its multiplatform structure. On paper, the news division derives more revenue from cable news channels than from the broadcast. About two-thirds of news revenues come from MSNBC and CNBC. ABC News and CBS News, by contrast, have no such multiplatform systems....
>
> Sooner rather than later, other platforms like the Web or video streaming will need to become a more integral part of the networks' distribution and revenue strategy, a strategy NBC has already largely developed and reaped benefits from.[47]

Market forces thus appear to be pushing ABC and CBS toward partnerships with other news organizations. The *Pew Study* cites speculation in 2010 that ABC or CBS were looking to partner with cable news networks, with CBS News and CNN the likeliest partners since CNN correspondents already appear regularly on the CBS program "60 Minutes."[48] In 2009, ABC reporters began appearing on the Bloomberg business cable channel; the two organizations have jointly hired employees, and Bloomberg obtains content from ABC's affiliate news service. It also is possible that the ABC or CBS news divisions could seek to form partnerships with non-television newsgathering organizations, such as major newspapers, to share the high fixed costs of newsgathering. Such consolidation might prove the best way to ensure the continued existence of three strong newsgathering organizations supporting broadcasting networks, though at the potential expense of diversity of news sources and competition.

Formal Ties Between National Newsgathering and Programming Organizations: Issues for Congress

A formal tie between two previously independent major newsgathering organizations would trigger review by either the Antitrust Division of the Department of Justice or the Federal Trade Commission to determine whether the combination would lessen competition. This review would only scrutinize economic effects—for example, if the combination would allow the new entity to raise the price broadcast stations and other outlets pay for news programming. It would not consider the impact on the diversity of voices or localism.

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[46] *Nieman Report,* Section on Economics of Network News, unpaginated.

[47] *Pew Study,* Summary Essay in Section on Network TV, at pp. 1-2.

[48] Such speculation is not new. According to the *Nieman Report*, in 1998 ABC, NBC, and CBS each had discussions with CNN about sharing staff and bureaus outside the United States.

If the proposed merger or formal tie would result in the transfer of ownership or control of a spectrum license—broadcast networks and other major newsgathering organizations are likely to hold a variety of licenses for spectrum needed to gather and distribute information and programming—the FCC would have to review the proposed transfer to determine whether it is in the public interest. That review would take into account such public interest goals as diversity of voices and localism, as well as competition.

Although the merger of two major newsgathering organizations primarily would affect diversity and competition at the national level, such a combination also would be subject to existing FCC broadcast media ownership rules for local markets if the merging companies owned local outlets, as all the major broadcast networks, and some other major newsgathering organizations, do.

The national cable news networks do not have a local presence and therefore a merger with a national cable news network would not be subject to the FCC's broadcast media ownership rules. There are no specific statutory or FCC rules that set bright line tests or even generic criteria for evaluating the public interest implications of a proposed combination of a broadcast news network and a cable news network.[49] Given that both the NBC and FOX corporate organizations already own broadcast newsgathering capabilities alongside cable news networks without being subject to unique regulatory conditions or requirements, it might be difficult for the FCC to set conditions on an ABC or CBS merger with a cable news network.

It is possible that a broadcast news network seeking to share the fixed costs of newsgathering and to exploit economies of scope would find a good potential partner among the major newspaper companies, which face similar, if generally more threatening, challenges.[50] Most large newspaper companies already own television stations and websites that use video, so they already have some experience turning their newsgathering capabilities into video news programming. They also have a presence in many local markets, though perhaps not in the local markets where ABC or CBS own their own local affiliate stations.

If ABC News or CBS News were to propose a merger or other formal tie with a major newspaper company, then, in addition to the normal antitrust review and the FCC transfer of license review, the proposed combination would be subject to the current local market broadcast-newspaper cross-ownership rule.[51] The rule includes a rebuttable presumption that the merger in one of the 20 largest local markets of a major daily newspaper and one of the four highest-rated television stations would be deemed inconsistent with the public interest. ABC and CBS own and operate local stations in many large cities. In all of those cities, the ABC and CBS stations are among the four highest-rated in the market. It therefore might be necessary for the combined entity to divest itself of a television station or a newspaper to consummate the merger. In addition, most major newspaper companies also own broadcast television stations, which might compete in a local market with an ABC or CBS owned-and-operated station. In such a situation, the companies might be unable to consummate a proposed merger without divesting a local television station.

[49] The FCC's Dual Network Ownership rules prohibits a merger among the "top four" broadcast networks—ABC, CBS, FOX, and NBC—but does not relate to cable networks. The FCC's National Television Ownership Rule allows a broadcast network to own and operate local broadcast stations that reach, in total, up to 39% of U.S. television households, but does not relate to the reach of co-owned cable networks.

[50] See, for example, CRS Report R40700, *The U.S. Newspaper Industry in Transition*, by (name redacted).

[51] The broadcast-newspaper cross-ownership rule had been stayed by the Third Circuit Court of Appeals while it is being appealed, but the court has vacated its stay. See John Eggerton, "Third Circuit Lifts Stay on Media Ownership Rules," *Broadcasting & Cable*, March 23, 2010.

The local market broadcast ownership rules thus could make it more difficult for the ABC or CBS news networks to consummate a merger or formal tie with a major newspaper company than with a cable news network.

The economic impact of Internet competition and audience and readership fragmentation is affecting all newsgathering organizations, though some are more challenged than others. According to the *Pew Study*, the median prime-time viewership of the three major cable news networks (FOX, CNN, and MSNBC) increased from approximately 1.3 million households in 1998 to about 3.9 million in 2009, but in 2009 CNN's median prime-time audience fell 15% from 2008, while the FOX audience grew by 19% and the MSNBC audience grew by 3%.[52] The cumulative audience (the number of unique viewers who watch a channel for at least six minutes over the course of a month) of the three cable news networks fell slightly between 2002 and 2009, but remains between 50 million and 68 million for each of the networks.[53] Cable news network revenues and profits continue to be robust. The *Pew Study* reports that SNL Kagan estimated that aggregate revenues for FOX News, CNN, HLN, and MSNBC increased from $2.62 billion in 2008 to $2.76 billion in 2009, and profits increased from $1.07 billion in 2008 to $1.16 billion in 2009.[54] Although the combined revenues of CNN and HLN fell slightly in 2009, their profits increased slightly.[55]

In contrast, newspaper readership, revenues, and profits are falling. The number of daily newspapers in the United States fell from 1,600 in 1990 to 1,400 in 2008,[56] and continues to fall. Paid newspaper circulation in the United States in September 2009 was 43,500,000 daily and 46,500,000 Sundays, a decline of 31.5% and 27%, respectively, from peak totals in the last 25 years.[57] That decline has been greatest recently. In the six-month period ending September 30, 2009, compared to the same period a year earlier, newspaper circulation fell 10.6% daily and 7.1% Sundays. Newspaper advertising revenues reportedly fell by a total of 23% in 2007 and 2008 and by 26% in 2009.[58] The *Pew Study* estimates that, despite substantial cost cutting, average newspaper operating margins fell from the high teens in 2007 to the low teens in 2008, and then to around 8% in 2009.[59]

It appears that the newsgathering activities of newspaper companies are more challenged than those of cable news networks. But the current FCC broadcast media ownership rules, which focus on safeguarding localism, could unintentionally encourage broadcast network consolidation with newsgathering organizations such as cable news networks rather than with newspaper companies. This is consistent with long-standing U.S. media policy to foster localism and local programming, but could lead to a reduction of national and international news coverage.

[52] *Pew Study*, Section on Cable TV Audience, unpaginated, based on Nielsen Media Research data.

[53] Ibid. Interestingly, although Fox prime-time programs have the highest ratings among the three networks, CNN continues to have the highest cumulative audience.

[54] *Pew Study*, Section on Cable TV Economics, unpaginated.

[55] Ibid.

[56] *Pew Study*, Section on Newspaper Audience, unpaginated, citing *Editor and Publisher Yearbook* data.

[57] Ibid, citing Audit Bureau of Circulations and Newspaper Association of America data.

[58] *Pew Study*, Section on Newspaper Economics, unpaginated, citing data from the Newspaper Association of America and newspaper industry analyst Rick Edmonds.

[59] Ibid.

Market Forces Affecting Local Broadcast News

Today, just under half of the non-PBS broadcast television stations in the United States produce and air original local news programming, an additional 14% broadcast local news programming produced by another station,[60] and somewhat less than 40% do not broadcast local news at all.[61] This represents a small decline from 2009 in the number of stations originating news programming, but a slightly larger increase in the number of stations broadcasting news programming produced by others.

The Amount of Local Broadcast News Programming Is Increasing as Its Audience Decreases

Those stations that produce their own local news programming increased the amount of original news programming aired from an average of 4.7 hours per station per weekday in 2008 to an average of 5.0 hours in 2009, continuing an upward trend that began in the early 2000s.[62] Although most stations reported no changes in the amount of newscasts in 2009, 28.6% reported adding a newscast and only 13.7% reported cutting a newscast;[63] almost all of the cuts were in weekend programming. Some of the additional programming represents the rebroadcast of programming offered in an earlier program or the use of national or international news programming provided by the national network to which the station is affiliated.

Interestingly, the increase in local news programming comes when audiences for local early morning, early evening, and late news programs are falling, and when local television advertising revenues and local television station profits also are falling. The *Pew Study*[64] analyzed Nielsen Media Research data for 2009 and found:

- ratings, share, and viewership declined for the local news programming of the affiliates of all four major broadcast networks—which produce most of the local television news in the United States—in all months and in all news timeslots studied. The viewership declines for the early evening and late news were steeper than in 2008.
- even FOX affiliates, which employ the strategy of broadcasting local news at off-hours (7 a.m. and 10 p.m.), experienced declining news viewership.

[60] This may be unique programming produced exclusively for the station, the rebroadcast of programming aired by the producing station, or a combination of these.

[61] These aggregate figures were constructed by Bob Papper, the Lawrence Stessin Distinguished Professor of Journalism and chairman of the Department of Journalism, Media Studies, and Public Relations at Hofstra University. He is the primary researcher and author of the annual *RTDNA/Hofstra Staffing and Profitability Survey* of broadcast station news directors cited earlier in this report that is widely recognized within the industry. Professor Papper found that currently 737 non-PBS stations produce local programming, 214 run programming of local interest produced by other stations, and 609 do not air local news programming. He also found that 19 Public Broadcasting System (PBS) stations originate local news programming and 181 do not broadcast local news programming.

[62] *2010 RTDNA/Hofstra Survey,* Section on TV Staffing and News 2010, unpaginated. The amount of original local news programming is much lower on weekends, averaging 1.7 hours on Saturdays and 1.6 hours on Sundays.

[63] *RTDNA/Hofstra Survey*, Section on TV Staffing and News, unpaginated.

[64] *Pew Study,* Section on Local TV Audience, at pp. 1-5.

- local affiliate news in nontraditional timeslots, such as noon and 4 p.m., also experienced declining audiences.
- only a few independent stations had large enough audiences for Nielsen to track. These collectively attracted 9% of the news audience when their news programming competed in the news time slots used by ABC, CBS, and NBC affiliates. When they competed in the time slot used by FOX affiliates, they typically attracted at most 10% of the news audience. Only at noon did they capture almost half of the news audience.

Broadcast Station Profits Fell Most Rapidly in the Late 1990s

The broadcasting industry has voiced concern that the decline in station advertising revenues without compensating new revenue sources could reduce profitability and impair stations' ability to offer news programming. It is difficult to construct a reliable database of the profits of individual television stations because most are owned by companies that own multiple stations or other interests; the reported profitability of any individual station thus depends heavily on how the parent company chooses to allocate non-station-specific costs and revenues to the station. Nonetheless, companies' reports on individual stations may provide useful information on trends in station profitability, unless there is reason to believe that station owners as a group have an incentive to over-assign or under-assign non-station-specific costs and revenues to the station.

Since the 1980s, the NAB has collected data on local station revenues, expenses, and profits, which it compiles each year in an annual *Television Financial Report*.[65] It appears that the dollar level of profits enjoyed by local broadcast television stations in the mid-1990s eroded sharply in the late 1990s—perhaps as a result of competition from cable channels.[66]

Table 1 reproduces a table included in the submission made by the NAB in the FCC's current media ownership proceeding,[67] showing the distribution of station pre-tax profits for 1998-2008. (The NAB has not yet released data for 2009.) The data show that profits (1) are highly cyclical, falling substantially in economic downturns, when advertising falls, and (2) generally increase in even-numbered years, when broadcasters benefit from high levels of political advertising and broadcasts of the Olympic Games. In each year, average profits are significantly higher than median (50th percentile) profits, and in many years are higher than the profits of the station in the 75th percentile, indicating that a relatively small number of highly profitable stations bring up the average.

[65] National Association of Broadcasters, annual *Television Financial Report: Station Revenue, Expenses and Profit*, from 1980s through 2010.

[66] Unfortunately, the NAB's annual *Television Financial Reports* in the 1990s do not include average and percentile data for "all stations in all markets," but they do include tables for many different subsets of television stations and a review of them indicates that, for stations as a whole, the dollar level of profits fell substantially in 1999 and has not recovered to the 1998 level. Through 1997, only a relatively small share of stations had before-tax losses; since 1998, at least one-fourth of all stations have had pre-tax losses.

[67] *NAB Survey*, Attachment C, at p. 2. The NAB table provides pre-tax station profits for the average station, the station in the 25th percentile for profits, the 50th percentile (the median station), and the 75th percentile for the years 1998-2008, based on data compiled by the NAB is an annual survey of more than 700 stations. Unfortunately, those data are not included in the NAB's annual *Television Financial Reports* prior to 2002 and therefore it is not possible to reproduce the data the NAB provides for the period 1998-2001 and it is not possible to use the annual *Television Financial Reports* to extend the overall profits data back earlier than 1998. But a review of the data in the earlier *Financial Reports* strongly indicates that stations in the mid-1990s earned higher absolute levels of profits than they have (continued...)

Table 1. Broadcast Television Station Pre-Tax Profits

(all markets, all stations)

Year	Average	25th Percentile	50th Percentile	75th Percentile
1998	$6,145,583	$220,970	$1,575,778	$5,944,967
1999	$4,361,828	$659,146	$916,554	$4,323,452
2000	$4,537,894	$584,884	$1,113,634	$4,596,413
2001	$2,171,188	$1,445,544	$67,067	$2,575,895
2002	$3,858,644	$451,601	$911,827	$4,188,476
2003	$4,073,056	$458,512	$464,019	$3,344,000
2004	$4,442,379	$158,079	$1,128,782	$4,686,237
2005	$3,512,208	$512,639	$670,946	$3,426,952
2006	$4,210,359	$305,161	$1,120,443	$4,154,310
2007	$3,320,667	$454,837	$520,164	$3,446,126
2008	$2,686,481	$750,149	$630,300	$3,178,780

Source: Mark J. Prak, David Kushner, and Eric M. David, "The Economics Realities of Local Television News—2010: A Report for the National Association of Broadcasters", *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Comments of the National Association of Broadcasters, Attachment C, p. 2, "Television Station Financial Data 1998-2008: Pre-Tax Profit Television Station National Averages," based on NAB Television Financial Surveys 1999-2009

Average pre-tax profits have remained well below the high level posted in 1998. It is possible that some of that decline is attributable to high debt loads taken on by ownership groups that financed acquisitions of stations through highly leveraged borrowing.[68] Such leveraging increases the risk of financial loss if revenues do not grow as forecast, but increases the return on equity if revenues meet expectations. It is possible that a highly leveraged firm could experience a financial loss despite enjoying positive operating cash flow, because the latter takes into account operating expenses but not debt service.

The NAB's *Television Financial Reports* present data indicating that the great majority of stations enjoy positive operating cash flows. The 85 tables in the 2009 *Report* suggest, however, that there are three general categories for which a significant minority of stations suffered negative operating cash flow in 2008: major network affiliates in small markets, Spanish language stations in large markets, and independent stations.[69] While losses are sometimes attributable to poor

(...continued)

subsequently.

[68] Table 1 of the NAB's *2009 Television Financial Report* presents "national average" data for all stations, for the overall average, the 25th percentile, 50th percentile (median), and 75th percentile. For both the 25th and 50th percentile, interest expenses are zero. For the 75th percentile the interest expenses are $431,571. Average interest expenses are $772,920. This suggests that some stations have very high debt loads. (There are several reasons why a company might choose a highly leveraged financial structure. The tax code creates an incentive since interest payments are tax deductible for the company but dividend payments (to equity holders) are not. Also, there is no dilution of the equity base if a company chooses to fund expansion (whether internal or by acquisition) by using debt financing. If an owner chooses a highly leveraged financing strategy, it trades off higher equity capital requirements for higher interest expenses.)

[69] The 2009 *Television Financial Report* presents 2008 operating cash flow data for 85 different categories of television (continued...)

management, there also may be other explanations. Some major network affiliates in small markets are owned by station groups that may be allocating non-station-specific costs to those stations. Alternatively, it may be that small markets have too little advertising to support all the stations in the market. Similarly, Spanish-language stations that are not affiliated with a major Spanish-language network may have difficulty attracting sufficient advertising revenues, even though they are located in a large market, because they attract a niche audience. The same is true for independent stations, which do not have access to network programming.

Even though most stations are enjoying positive operating cash flows, the high debt loads of some stations are imposing large interest expenses that may be causing pre-tax losses.[70] These debt burdens do not appear to be threatening the viability of the stations, which generally continue to enjoy positive operating cash flows. In the more serious cases they are forcing the financial restructuring of the station groups, with lenders taking equity positions while the stations continue to operate largely as before. Nonetheless, financial distress can affect station investment and programming decisions.

It would be useful to have a better understanding of the underlying financial position of those stations that are experiencing pre-tax losses. If most of those stations have positive operating cash flows, are affiliates of major national networks whose retransmission consent revenues are likely to grow,[71] and are successfully offering branded local news programming to their communities, but are burdened by interest expenses due to highly leveraged acquisitions, then there may be little reason for concern that losses will lead to reductions in local news programming. On the other hand, if most of the stations with pre-tax losses originate local news programming but have not successfully created strong brand identities, do not have major network programming to bolster their retransmission consent negotiations, and are suffering operating losses due to structural market changes, then it is more likely that local news programming will be cut back. It would be useful if the FCC could collect the data necessary to analyze these relationships as part of the current quadrennial review of its media ownership rules.

Falling profits and the expectation that revenues may be relatively slow to recover have reduced selling prices of broadcast television stations. SNL Kagan estimates that the "stick price" for a television station—roughly, the price per household that can be reached with a signal of

(...continued)

stations (by network affiliation, by size of market, by station revenues, and various combinations of these). Of these 85 categories, the cash flow is negative for the station in the 25th quartile for 10 categories of stations: all affiliate and independent stations in markets 121-130; ABC, CBS, and NBC affiliates with net revenues between $5 million and $6 million; ABC, CBS, and NBC affiliates with net revenues between $4 million and $5 million; ABC, CBS, and NBC affiliates with net revenues between $2 million and $3 million; ABC, CBS, and NBC affiliates with revenues under $2 million; CW affiliates in markets 76+; Spanish language stations in markets 1-25; all independent stations; independent stations in markets 1-25; and independent stations in market 26+. For one category—CW affiliates in markets 76+—at least half the stations had a negative cash flow. Unfortunately, the *Television Financial Report* does not indicate the number of stations in each of its categories; it is possible that some of these tables are reporting the financial data of only a very few stations.

[70] The format in which the data are presented in the NAB's annual *Television Financial Reports* does not allow for an analysis of the impact of debt load and interest expenses because it is presented in percentile format. The station in the 25th percentile for pre-tax profits is unlikely to be the same station that is in the 25th percentile for cash flow, or the station that is in the 25th percentile for interest expenses. As a result, there is no way to use the data as presented by the NAB to determine the impact of debt load on profits.

[71] Cash payments for retransmission consent is a relatively new phenomenon. Major networks provide more "must-have" programming of the sort that can command high cash payments than do non-major networks or independent stations.

reasonable quality for a station without measurable market share or cash flow, thus simply representing the value of the broadcast license and equipment[72]—peaked at $32.52 in 2001 and then fell irregularly to a low of $12.68 in 2009.[73] As other avenues became available for advertisers to reach consumers, the broadcast licenses generated less cash and became less valuable.[74] It is likely that most broadcast television stations will continue to generate revenues that exceed their operating costs, but the value that the broadcast license commanded when the station was a cash cow may continue to fall, or at least not rebound to earlier peaks. Owners that acquired licenses near the peak price may have difficulty covering those acquisition costs.

Financial Factors Specific to News Programming

While a station's decisions on the amount and type of local news programming may be affected by its overall financial status, those decisions are more likely to be affected by the direct financial impact of the news programming itself. Although broadcast stations are not required to report financial information specific to their news programming, there is some information available about the revenues, costs, and profits attributable to such programming.

For those stations that originate their own local news programming, that programming generates a significant portion of station revenues. Although most local station news directors responding to the *RTDNA/Hofstra Survey* did not know what portion of their station's revenues came from news programming, those that did know reported, on average, that local news generated 44.7% of station revenues—about the same level as reported throughout the past decade.[75] The median reported figure was 45% and the average and mean did not vary much by market size, never falling below 39.7% or rising above 50%. Since the amount of news programming has increased over time, however, this suggests that news programming is generating a smaller share of station revenues per hour of programming. The *NAB Survey* corroborates the importance of local news for station revenues. It found that "although local news programming accounts, on average, for only 16% of the broadcast day, 39% of a station's revenues, on average, is derived from advertising associated with the broadcast of local news."[76]

News programming continues to be profitable for most stations. The annual *RTDNA/Hofstra Survey* asks news directors about the profitability of their news programming. As shown in **Table 2**, far more news directors characterize their news programming as profitable than unprofitable or just breaking even. While a smaller percentage of respondents indicated in 2010 that their news programming was profitable than in most previous years, at the same time a smaller percentage of respondents indicated that their news programming lost money than in most previous years (reflecting, in part, that more news directors reported they did not know the profitability).[77] The percentage of stations reporting that their news programming is profitable did not vary much by

[72] This is the price that a religious broadcaster or other non-profit broadcaster would seek to pay to acquire a license from an existing licensee. Stations with positive cash flows would of course command a higher price.

[73] SNL Kagan, *Broadcast Investor: Deals & Finance*, Number 538, June 29, 2010, at p. 4.

[74] See, for example, Steve Lawson, "How Much is a TV Station worth today?" on the blog Explaining Social Media and Social Networking, February 24, 2010, available at [www.friendlyvoice.com/blog/2010/02/24/how-much-is-a-tv-station-worth-today], viewed on October 12, 2010.

[75] *RTDNA/Hofstra Survey*, Section on TV News Staffing and Profitability, at p. 4. 71.4% of survey respondents said they did not know how much revenue (or what percentage of station revenue) came from news programming.

[76] *NAB Survey*, at p. 10.

[77] *RTDNA/Hofstra Survey*, Section on TV News Staffing and Profitability, at p. 3.

market size—ranging from a low of 42.9% for stations in the 25 largest markets to a high of 51.7% for stations in markets 26-50. In the smallest markets (151-210), 45.8% of stations reported their news programming was profitable, 12.5% reported breaking even, 8.3% reported losses, and 33.3% did not know. Even for stations for whom news is not profitable, however, it may be beneficial to produce news programming if that programming creates a strong brand identity or if a news audience provides a stronger lead-in to the entertainment programming that follows.

Table 2. The Profitability of Local Station News Programming

(percentage of stations)

	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
Showing Profit	47.8	52.7	55.4	56.2	57.4	44.5	58.4	55.3	54.9	56	58
Breaking Even	14.6	11.6	11.5	11.5	8.1	24.2	10.4	13.6	11.6	13	11
Showing Loss	8.3	14.5	10.5	6.4	10.0	12.1	9.2	9.2	11.2	10	11
Don't Know	29.2	21.3	22.6	26.0	24.4	19.2	22.0	21.9	22.3	21	20

Source: *2010 RTDNA/Hofstra Staffing & Profitability Survey*, Section on TV News Staffing and Profitability, at p. 3.

The stations that spend most on local news production tend to be in the larger markets, but station spending on news programming does not appear to be correlated with market size, and a higher proportion of stations in large markets do not originate local news. In its 2010 *Television Financial Report*, the NAB provides detailed information on the television news expenses (defined as "the salaries and wages of those engaged in the production and presentation of news and other expenses incurred by the news department") incurred by stations. **Table 3** presents summary data, broken out by market size and station affiliation. While average news expenses fall as market size falls, that appears to be the result of heavy spending by a few stations in large markets; the spending by the median station does not appear to vary significantly by market size for the top 120 markets. It is more likely that in large markets with many stations some stations focus on news programming and others entirely forgo it. In the top 60 markets, more than one-quarter of television stations have no expenses for news programming. Local stations affiliated with ABC, CBS, and NBC are more likely to spend on news programming than stations affiliated with other networks or independent stations. More than half of the CW and MTN affiliates do not have any expenses associated with news programming.

Television stations are taking cost-cutting actions. Even as the quantity of news programming has been increasing, station news staffs, in aggregate, fell by 400 positions in 2009 (primarily in the large markets), after a loss of 1,200 positions in 2008.[78] Almost two-thirds of TV news directors reported budget cuts and staff cuts in 2009.[79] Although hard statistics are not available, the *Pew Study* reported many instances of stations laying off experienced and highly paid staffers, including anchors, on-air reporters, and sportscasters, and of salary reductions, as well as anecdotal evidence of use of part-time journalists and freelance and per-diem staffers to gather

[78] *RTDNA/Hofstra Survey*, Section on TV News Staffing and Profitability, at p. 1.

[79] *RTDNA/Hofstra Survey,* Section on TV News Staffing and Profitability, at p. 1.

and produce the news.[80] It is important to recognize, however, that some of the staffing reductions are the result of technological changes associated with the digitization of television program production that allow stations to use fewer editors and other skilled staff to produce news programming. Most notably, in recent years there has been a trend toward "one-man bands"—reporters equipped with cameras to eliminate the need for separate camera operators.[81]

Table 3. The News Expenses of Local Television Stations, 2009

	Average Station News Expenses	News Expenses as Percentage of Station Expenses (Average)	News Expenses for Station at 25th Percentile	News Expenses for Station at 50th Percentile (Median)
All Stations	$2,662,766	23.9%	$47,420	$1,188,758
Markets 1-10	$9,332,778	24.4%	$0	$2,675,000
Markets 11-20	$4,886,718	24.9%	$0	$1,026,153
Markets 21-30	$4,286,410	25.5%	$0	$4,999,000
Markets 31-40	$3,132,172	25.2%	$0	$2,612,343
Markets 41-50	$2,350,654	23.0%	$0	$1,010,444
Markets 51-60	$1,971,951	22.3%	$0	$1,341,376
Markets 61-70	$1,977,246	22.5%	$246,698	$2,371,189
Markets 71-80	$1,747,958	25.1%	$32,563	$1,414,020
Markets 81-90	$1,640,597	24.4%	$681,065	$1,741,917
Markets 91-100	$1,582,148	22.7%	$812,904	$1,726,716
Markets 101-110	$1,298,857	20.2%	$480,234	$1,542,042
Markets 111-120	$1,342,884	22.1%	$800,347	$1,658,677
Markets 121-130	$1,077,062	21.5%	$338,343	$1,210,838
Markets 131-150	$1,028,904	22.7%	$340,618	$1,085,758
Markets 151-175	$717,734	21.2%	$35,082	$846,120
Markets 176+	$488,507	17.2%	$50,453	$397,721
All ABC, CBS, and NBC affiliates	$3,862,522	28.2%	$1,144,873	$2,011,276
All FOX affiliates	$1,190,646	16.0%	$115,348	$532,370
All CW affiliates	$1,379,084	10.8%	$0	$0
All MNTV affiliates	$534,684	9.0%	$0	$0
All Spanish Language Stations	$771,952	15.5%	$0	$154,182
All Independent Stations	$2,522,099	16.5%	$0	$81,306

Source: National Association of Broadcasters, *2009 Television Financial Report: Station Revenue, Expenses and Profit,* various tables.

80 *Pew Study,* Section on Local TV News Investment, at pp. 2-3.

81 *RTDNA/Hofstra Survey,* Section on One-Man-Bands 2010 Update.

The *RTDNA/Hofstra Survey* found that, across market size and network affiliation, many television news departments provide content for media platforms other than their own television station, as shown in **Table 4**. Approximately one-third of all stations produce news programming for another television station in their local market, with this most prevalent among stations in markets 101-150. The survey explicitly asked about mobile devices for the first time in 2010—in past years it was included under "other"—and yet more than 40% of local stations make their programming available on mobile devices. As is the case for broadcast networks, producing content for multiple platforms allows stations to exploit economies of scope by sharing the high fixed costs associated with newsgathering across those outlets.

Table 4. Percentage of Television News Departments Providing Content to Other Media, 2010

	Another Local TV Station	TV in Another Market	Cable TV Channel	Local Radio	Website not your own	Mobile Device	Other
All TV Stations	32.7%	13.8%	10.7%	52.0%	13.8%	44.9%	13.8%
Big Four Affiliates	33.5%	12.5%	9.7%	52.8%	12.5%	46.0%	14.8%
Other Commercial Stations	23.5%	23.5%	23.5%	35.3%	29.4%	41.2%	5.9%
Markets 1-25	38.9%	13.9%	16.7%	44.4%	22.2%	55.6%	19.4%
Markets 26-50	22.7%	18.2%	0.0%	63.6%	9.1%	50.0%	9.1%
Markets 51-100	26.2%	13.1%	11.5%	49.2%	14.8%	50.8%	21.3%
Markets 101-150	45.2%	11.9%	4.8%	59.5%	7.1%	31.0%	4.8%
Markets 151+	28.6%	14.3%	17.1%	48.6%	14.3%	37.1%	8.6%

Source: *2010 RTDNA/Hofstra Survey*, Section on How the Business of TV News is Changing, unpaginated.

In addition to producing news programming for others, more than 60% of all stations are involved with some sort of cooperative newsgathering or coverage agreement, as shown in **Table 5**, which reproduces a table from the *RTDNA/Hofstra Survey*. More than one-quarter of those stations that do not currently participate in a cooperative arrangement indicate they are planning or discussing one. The *RTDNA/Hofstra Survey* authors noted, "Interestingly, stations in smaller markets are a little less likely to be involved in cooperative agreements than stations in larger markets." Also, smaller stations are less likely to participate in cooperative agreements than larger ones.

Stations also are increasingly using their newsgathering and news program production capabilities to provide news programming for the non-primary video streams made possible by the digital transition. More than 50% of the news directors responding to the *2010 RTDNA/Hofstra Survey* oversee at least some portion of the programming on a secondary video stream.[82] Programming ranges from all-news formats to weather channels to entertainment programming that includes some local news programming in the schedule. Almost half of the news directors that do not currently oversee news programming on their station's non-primary video streams expect to do so sometime in the future.

[82] *RTDNA/Hofstra Survey*, Section on How the Business of TV News is Changing, unpaginated.

Station websites are nearly universal; only one responding station in the *RTDNA/Hofstra Survey* did not have one.[83] Only the stations with the smallest news staffs do not include local news on their websites. Nearly all station websites provide news videos, 35.9% provide live newscasts, and 37.5% provide recorded newscasts. On average, station websites have 2.8 full-time and 4.5 part-time staffers. Respondents for 70% of the stations indicated that employees with other responsibilities also help with the website.

Table 5. Percentage of TV Stations with Cooperative Newsgathering or Coverage Agreements with Other Media Outlets

(excluding local or nearby TV stations for which station produces news programming)

	Another TV Station	Local Newspaper	Local Radio Station	Other	No
All Stations	23.6%	23.6%	27.7%	4.0%	38.6%
Markets 1-25	41.3%	22.2%	22.2%	9.5%	30.2%
Markets 26-50	22.7%	27.3%	22.7%	2.3%	38.6%
Markets 51-100	18.5%	33.7%	33.7%	6.5%	30.4%
Markets 101-150	13.1%	19.0%	29.8%	0.0%	50.0%
Markets 151+	28.6%	14.3%	25.4%	1.6%	42.9%

Source: *2010 RTDNA/Hofstra Survey,* Section on How the Business of TV News is Changing, unpaginated.

Increasingly, broadcast television stations are pursuing a business model that focuses on local content distributed over the air and on websites to strengthen local brand identity. SNL Kagan has monitored the growing "hyper-localism" strategy of combining the capabilities of stations and their websites to create a strong local brand identity:

> In recent years, local content has been a cornerstone of broadcasters' strategies. Nowadays broadcasters have learned to tailor this local content specifically for the Web to take advantage of local audiences via platforms outside of television. In addition, many broadcasters are engaging in major M&A deals to grow their local content online and increase their market share among competitors.[84]

This strategy may be further strengthened by broadcast-based mobile digital television. An ongoing test by the Open Mobile Video Coalition in Washington, DC, has revealed local news to be the most popular type of programming, with spikes in viewing during weather and public safety emergencies.[85]

As a result of the expanded use of station newsgathering capabilities, two-thirds of news directors indicated their station employs a three-screen—on air, online, and mobile—approach to news.[86] More than one-third of all stations are either producing programming for other stations or media

[83] This discussion of station websites is based on the presentation in *RTDNA/Hofstra Survey,* section on "TV and Radio on the Web," unpaginated.

[84] E-mail message from SNL Kagan to clients, August 19, 2010, marketing its scheduled video presentation entitled "Watch: SNL Kagan analyzes the broadcast strategy of tailoring hyper-local content."

[85] "Broadcast," *Communications Daily,* September 15, 2010.

[86] *RTDNA/Hofstra Survey*, Section on How the Business of TV News is Changing, unpaginated.

outlets or actively involved in cooperative newsgathering or coverage arrangements with other stations or media outlets. These strategies appear to allow many stations to use news programming to compete successfully in the market, even as advertising revenues are challenged.

As the *Pew Study* found: "It comes down to a simple cost-benefit analysis. For most stations, producing more local content is cheaper than paying the fees stations [must pay] for syndication programming."[87]

The various survey results presented in this report suggest that local news programming does not appear to be threatened by market forces currently at play. However, that general conclusion may not reflect the situation facing an individual station when it is making news programming decisions. As a reminder, almost 40% of all broadcast television stations—primarily in large markets—do not broadcast any local news programming. If these stations were to offer original local news programming, that programming would not necessarily increase station profits, particularly for stations with weak brand identify and no existing audience for local news programming.

Local Newsgathering and Programming: Issues for Congress

"Duopolies"

Table 4 and **Table 5** show how common it has become, on the local level, for broadcast television stations to cooperate with other media outlets. About one-third of all stations that have their own news departments produce original news programming for other stations in their local market. Also, almost one-quarter of all stations that produce news programming participate in cooperative newsgathering or coverage agreements with other television stations in their local market and a similar number participate in cooperative newsgathering or coverage agreements with newspapers in their local market. As long as each of the stations and newspapers involved retains control of its own programming decisions and operations, such arrangements are not subject to the restrictions in the FCC's local television multiple ownership rule or newspaper-television cross-ownership rule. But the NAB and Newspaper Association of America claim that the sharing activities currently allowed by the rules do not provide sufficient financial relief and seek to reduce or eliminate current restrictions on local television and local television-newspaper mergers.[88]

It is not possible to determine from the data in **Table 4** and **Table 5** the extent to which the cooperative news activities were fostered by earlier changes in FCC ownership rules—and, if so, whether these rule changes led to more or to less independent news programming. In 1999, the FCC revised its local television ownership rules to allow common ownership of two stations in a market that has at least eight competing television owners, as long as one of the two stations is not among the top four in ratings. (This was intended to prohibit a single entity from operating in

[87] *Pew Study,* Section on Local TV News Investment, unpaginated.

[88] *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Comments of the National Association of Broadcasters, July 12, 2010, at pp. i-iv, and *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Comments of the Newspaper Association of America, July 12, 2010, at p. 1.

a local market two stations that were affiliated with major broadcast networks. Typically, the top-rated stations in a market are affiliated with national news networks. These high ratings often, but not always, hold for local news programming as well as for entertainment programming.) The rule change allows a single entity—including a large station group—to own two stations in a single large market. In the broadcast industry this is often referred to as a "duopoly," although that is not the usual meaning of the word duopoly.[89]

Stations affiliated with major news networks are more likely than other stations to originate local news programming and also are likely to offer more local news programming than other stations (see **Table 3**). If a duopoly consists of a top-four station and a non-top-four station, the latter is less likely than the former to have been originating its own news programming prior to acquisition. Data are not publicly available to determine whether the rule change allowing duopoly ownership affected the amount of independently produced local news programming in the local market (for example, by one of the stations discontinuing its own news production and letting its partner station produce news programming for it; or by a station producing news programming for its duopoly partner station that had not previously broadcast any news; or by the two stations entering into a cooperative newsgathering or coverage agreement that affects the total amount of news programming aired). It would be informative if the FCC were to collect relevant data and investigate the impact of duopolies on local news programming in the current quadrennial review of its local television multiple ownership rule. This might provide insights on whether the current bright line rule should be retained, eliminated, or modified to allow for the case-by-case determination of whether a proposed combination would be in the public interest.

Local Marketing Agreements (LMAs) or "Virtual Duopolies"

In addition to the shared newsgathering activities, since the 1980s some station owners have entered into various contractual arrangements—local marketing agreements (LMAs), management service arrangements, shared services agreements, and joint operating agreements—whereby one station in a market performs sales, marketing, and operational functions for another station in the market.[90] In 1999 the FCC formally allowed these arrangements, sometimes referred to as "virtual duopolies," as long as the controlling station does not program more than 15% of the programming day of the other station. It is possible for one station to produce or co-produce news programming for its contractual partner without exceeding that 15% ceiling.

In some cases, the two parties to a virtual duopoly arrangement are fully independent. In other cases, it appears that a station group has been actively involved in the creation and financing of a separate entity that has acquired stations in markets in which the station group already owns a station, and then entered into LMAs or similar arrangements with that new entity such that the station group effectively controls more than one station in the market. For example, Cunningham Broadcasting Corporation owns six television stations, all of which are operated by Sinclair Broadcast Group under LMAs. It appears that most Cunningham stock is or has been controlled by trusts in the name of members of the family of the Sinclair founder, who concurrently owned

[89] To economists, and in common usage, a "duopoly" is a market situation in which there are only two producers, so each firm consciously takes into account the decisions of the other when making its own business decisions.

[90] This discussion is based on Kim McAvoy, "Virtual Duopolies Coming Under Fire," *TVNewsCheck Focus on Washington*, June 9, 2010, available at http://www.tvnewscheck.com/article/2010/06/09/42842/virtual-duopolies-coming-under-fire, viewed on August 31, 2010.

controlling shares of Sinclair.[91] Similarly, Mission Broadcasting, Inc. owns 15 broadcast television stations that all are managed by Nexstar Broadcasting Group through LMAs. Nexstar and Mission have a very close financial relationship. In April, they were co-issuers of $325 million in senior secured second lien notes due in 2017.[92] Sometimes these LMAs exist in markets where a formal duopoly would not be allowed.

Data are not available to determine whether the amount of independently produced local news programming in the local market has changed as a result of these LMA or similar contractual relationships. If the FCC were to collect relevant data and investigate the impact of LMAs on local news programming in the current quadrennial review of its local television multiple ownership rule it might provide insights on whether the rule, which does not address LMAs, should be retained or modified to address LMAs and, if the latter, whether a bright line rule or a case-by-case review would be the best way to serve the public interest.

LMAs and similar arrangements allow broadcasters to exploit potential efficiencies from running multiple stations in a market, which could foster competition, diversity of voices, and localism if the cost savings strengthen the financial viability of marginal stations and foster programming of local interest. But LMAs also have been criticized by multichannel video programming distributors, especially small cable operators, for allegedly enabling broadcasters to raise retransmission consent fees. According to the American Cable Association (ACA),[93] when a single broadcaster can jointly negotiate retransmission consent agreements for two local stations in a market, especially if both stations are affiliated with one of the Big Four broadcast networks that offer "must-have" programming, it has great leverage when dealing with a small cable operator. Three small MVPDs that are members of the ACA—Cable America, USA Companies, and Pioneer Telephone Cooperative—filed letters in the FCC's retransmission consent proceeding alleging that when they have negotiated with broadcasters that jointly represented two "Big 4" stations in a market, the average subscriber fee they paid was 161%, 133%, and 30% higher, respectively, than the average fee that they paid to separately controlled Big Four stations.[94] The cable operators argue that they must pass through these higher payments to their subscribers. Thus, at a time when broadcasters are actively promoting their need for higher retransmission consent payments to be able to support local newsgathering, produce original local news programming, and bid for major sports programming, cable and satellite distributors are pushing back, arguing that these increased retransmission consent fees will result in higher cable and satellite subscriber bills.

LMAs also tend to strengthen the position of the affiliated stations when negotiating advertising rates with local merchants. Rather than competing with one another, the two stations can act as a single entity to maximize their joint profits. Advertisers may benefit by obtaining access to two separate audiences through a single contractual negotiation, and may even be able to obtain

[91] See, for example, Leon Lazaroff, "Media Firm Accused of Dodging FCC Rules, *Knight-Ridder,* October 17, 2004.

[92] United States Securities and Exchange Commission, Mission Broadcasting Inc. Form 8-K, April 12, 2010.

[93] *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Comments of the American Cable Association, July 12, 2010, at pp. 11-17.

[94] *In the Matter of Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent,* MB Docket No. 10-71, letter dated May 28, 2010, from Christopher A. Dyrek, executive vice president, Cable America, to Marlene H. Dortsch, Secretary, Federal Communications Commission.; letter dated May 28, 2010, from Christian M. Hilliard, president, USA Companies, to Marlene H. Dortsch; letter dated June 4, 2010, from Scott Ulsaker, manager Pioneer Long Distance, Pioneer Telephone Cooperative, to Marlene H. Dortsch.

volume discounts by advertising on two stations rather than one, but they are likely to be at a disadvantage relative to negotiating with two independent, competing stations. This is especially the case if the two stations are major network affiliates and thus among the small number of media outlets capable of reaching a wide audience. This likely will increase the advertising revenues of the virtual duopoly stations, which would increase the level of resources potentially available to them for local news programming. But this might come at the expense of advertising revenues available to non-duopoly stations in the market. This question might be answered if the FCC conducted a study of the impact of virtual duopolies on retransmission consent fees, on the local advertising market and, indirectly, on the level of local news programming in the current quadrennial review of its local television multiple ownership rule.

Television-Newspaper Combinations

The market pressures on local television stations to develop multiple program platforms to support their newsgathering and news program production facilities and to participate in cooperative newsgathering or coverage agreements with other media outlets in their local markets are also being felt by local newspapers. Some of these newspapers may have an even more urgent need than local television stations to share with or combine with another local newsgathering organization.[95] Under the current rule, a proposed combination between a television station and a major daily newspaper is presumed inconsistent with the public interest if the combination is not in one of the 20 largest markets, or if the television station is among the four highest-rated stations in the market, or if after the transaction there were no longer at least eight independently owned and operating major media voices in the market. However, that presumption is reversed—it is presumptively in the public interest—if the proposed merger includes a newspaper or television station that has failed or is failing. In addition, one of the factors considered to confirm or rebut the positive or negative public interest presumption is the financial condition of the newspaper and television station and, if either is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

In general, newspapers in smaller markets are in less distress than major daily newspapers in large markets. CRS analyst Suzanne Kirchhoff found: "Smaller papers are in a better financial position than large dailies for several reasons. Smaller papers are less dependent on classified ads, operate in less complex markets, and tend to be closer to their readers and advertisers than large dailies."[96]

This would suggest that the current FCC cross-ownership rule—which presumes a proposed newspaper-television merger in the largest 20 markets to be consistent with the public interest, but presumes such a merger in a smaller market to be inconsistent with the public interest—reflects current market conditions. At the same time, the current rule takes into account financial distress when addressing proposed mergers in smaller markets, though the burden remains on the entities proposing the merger to make a public interest case.

[95] See CRS Report R40700, *The U.S. Newspaper Industry in Transition*, by (name redacted). See also *In the Matter of 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182, Comments of the Newspaper Association of America, July 12, 2010, at p. 3.

[96] CRS Report R40700, *The U.S. Newspaper Industry in Transition*, by (name redacted).

The ability to claim financial distress raises an interesting policy issue. In the past decade, a number of broadcast station groups and newspaper groups expanded through acquisition, using highly leveraged financing that left them with sizable debt loads.[97] When television and television advertising revenues fell during the economic downturn, some of these companies did not generate enough revenues to cover their interest expenses in addition to their operating expenses; the companies had positive cash flows, but pre-tax losses. In some cases, they were in breach of financing agreements or covenants with their lenders or at least risked being in breach. What if such a newspaper or television station group chose to use this financial distress as the basis for justifying an otherwise prohibited merger? If the station or newspaper enjoyed a positive cash flow, but experienced distress in significant part as a result of choosing a risky method of financing expansion, could that distress provide the basis for rebutting a negative public interest presumption against allowing that station or newspaper to merge with another local station? Or would the proper test be whether the station or newspaper would be in stress even if relieved of its heavy debt load, which could happen if there were a restructuring with the lenders assuming equity positions?

Market Forces Affecting Broadcast Carriage of Major Sports Events

Unique Supply-side and Demand-side Characteristics

Unique supply-side and demand-side characteristics of major professional, intercollegiate, and Olympic sports programming create market forces that are very different than those for other types of programming, especially news programming. On the supply side, major sports programming presents unique, time-sensitive events for which there is no close substitute programming. A competing programmer cannot create copycat programming, the way a popular scripted or unscripted show could spur imitators that potentially could create an even more highly demanded product.[98] Moreover, with major sports programming there is a well-defined entity—a professional sports league, a major intercollegiate conference, or an International Olympic Committee—that controls access to the events that provide the basis for the programming and that typically retains control of the programming itself. This is in sharp contrast with news programming, which primarily covers events to which competing programmers have roughly the same access. As a result of their control over access to the sports events, these sports entities are able to negotiate with programmers and distributors from a position of strength.[99]

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[97] For example, Sam Zell acquired the Tribune Co. in a leveraged $8.2 billion deal in 2007; in 2006, McClatchey Co. bought newspaper chain Knight Ridder for more than $4 billion. See CRS Report R40700, *The U.S. Newspaper Industry in Transition*, by (name redacted).

[98] See, for example, Testimony of W. Kenneth Ferree, President, The Progress & Freedom Foundation, Hearing on "Competition in the Sports Programming Marketplace," Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, United States House of Representatives, March 5, 2008, at p. 3.

[99] While major sports events that can be expected to attract a large audience frequently will generate bids for the programming rights to those events, less popular sports events are more likely to be packaged into television programming by syndicators (independent sports television producers who develop programs they sell directly to local stations, sell to advertisers who in turn pay stations to run them, or barter with local stations, with the station and syndicator sharing advertising revenues) or as time buys (in which show producers pay networks or local stations for (continued...)

On the demand side, there are several distinctive characteristics of the audience for major sports programming. First, a minority of U.S. households have such a high intensity of demand for the programming that they consider it "must-have" programming. They are likely to decide whether to rely on free over-the-air broadcast service or to subscribe to a pay multichannel video service—and which such service to subscribe to—based upon which option gives them the most favorable access to the desired sports programming.[100] The behavior of this small minority of total television households affects the sports programming decisions of pay multichannel video distributors. At the same time, there is a much larger total audience for major sports programming.[101] Individual households in that mass audience are less likely to base their decisions to subscribe or not subscribe to a pay service on the availability of that programming and are unlikely to be willing to pay specifically for that programming. Both the high-intensity audience and the mass audience include men who watch very limited amounts of other types of programming and therefore represent a unique target for advertisers. The entity that controls the sports programming will take into account these demand characteristics—mass appeal, high-intensity appeal, and unique appeal—when constructing a profit-maximizing distribution strategy.

Sports Programming Is of High Value to Video Distributors Even if Not Profitable

Program networks and multichannel video providers have long utilized major sports programming to promote their own brand identities, and major sports entities have been able to take advantage of that to generate competitive bidding for the rights to their sports programming:

- In 1987, ESPN obtained rights to offer ESPN Sunday Night Football, on the condition that it simulcast the games on local broadcast stations in the participating markets. Although ESPN had carried National Basketball Association games in 1982-1984, its acquisition of rights to National Football League games was viewed as an important step in attaining credibility as a major distributor of sports programming.
- In 1993, when the FOX Broadcasting Company's network had neither the full schedule of programs nor the geographic reach of the three established broadcast networks (ABC, CBS, and NBC), it successfully bid $1.58 billion for four years of programming rights to the National Football Conference of the NFL. At the time, the FOX network had neither a sports division nor a news division, but by winning the rights and then attracting key on-air talent away from CBS (which

(...continued)

broadcast time, sell advertising for their shows, and keep all the advertising revenues generated).

[100] Different households may define "favorable access" differently. For example, one household may favor access to a large amount of the desired sports programming, even at a high price, and another household may favor access to sports programming subject to some price ceiling.

[101] Although programming of major sports events attract large audiences, not even the Super Bowl attracts half of U.S. television households in most years—typically attracting 43%-48% of households. NFL conference championship games may attract about 30% of television households, the Olympics 18%. Over the decades, only a handful of blockbuster programs—the *I Love* Lucy show where Lucy went to the hospital to have her baby, Elvis Presley's first appearance on the *Ed Sullivan Show,* the final *M*A*S*H* episode, the *Dallas* episode that answered "Who shot J.R.?," the finale of the *Roots* mini-series programs, and a CNN program of the O.J. Simpson murder trial—have attracted half of U.S. households. (See Nielsen Media Research and other data presented in the Wikipedia entry on "Highest rated network telecasts.") Most programming of major sports events attract at most 20% of U.S. television households.

lost the rights), it created credibility that allowed it both to purchase additional owned and operated stations for its network and to attract additional affiliates.

- More recently, DirecTV has obtained the exclusive rights to the NFL Sunday Ticket package of "out of market" games[102] and other sports programming as part of a strategy to brand itself as the premier provider of sports programming.

As the proliferation of cable networks led to audience fragmentation, major sports programming that attracted a large audience offered new value to the broadcast or cable network that won the programming rights—a means to market the other programs on the network to the large sports viewing audience. It became common for the game announcers to market other network programs by identifying the stars of those programs that were in attendance at the sports event being aired. When the network with the rights to the sports programming is owned by a major programmer with multiple broadcast and/or cable networks, the major sports programming also can be utilized to cross-market the programming aired on those other networks. As a result, the bids for sports programming rights increased even though the sports programming on its own did not generate enough revenues to directly cover costs.[103]

One reason why bids increased is that, with the successful entry of cable networks, there were more entities able to bid. By 1998, the most successful cable networks, such as TBS, TNT, and ESPN, each had achieved penetration into more than 75 million cable and satellite households; by 2007, they were received by more than 95 million households.[104] Although the cable networks generated significantly lower advertising revenues than the broadcast networks, they generated very substantial per subscriber fees. In 2003, at a time when broadcast stations were not receiving cash payments from cable operators for retransmission consent rights, ESPN commanded monthly fees of $2.17 per subscriber, TNT $0.77, and TBS $0.30.[105] SNL Kagan estimates that in 2010 ESPN commanded $4.41; TNT commanded $0.96; and TBS $0.48. These popular cable networks all were carried on the cable and satellite tiers reaching the largest number of subscribers.

In 2008, subscriber license fees represented 54.0% of revenues for advertiser-supported cable networks; advertising revenues only represented 42.2% of revenues.[106] In 2009, advertising

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[102] In March 2009, DirecTV signed a contract with the NFL valued at $4 billion for four years for the exclusive rights to sell the Sunday Ticket package. (See Matthew Futterman, "NFL, DirecTV Extend Pact in $4 Billion Deal," *The Wall Street Journal*, March 24, 2009, at p. B5.) DirecTV offers the service for a monthly charge of $59.95 for five months of the year. The target audience is football fans who are living outside the local viewing area of their favored team as well as football fanatics who want to view games other than the games of their home team. Some of the NFL Sunday Ticket subscribers live in so-called "orphan counties" that are located in one state, but assigned to the local market (known as a "designated market area") for which the principal city and most or all of the local television stations are in another state. Cable and satellite subscribers in these counties may only receive the retransmitted broadcast signals of the stations in their market area, which may not carry the NFL games of their in-state team. Households in these orphan counties can only see the programming of their in-state team if they subscribe to the NFL Sunday Ticket package.

[103] See, for example, Penelope Patsuris, "A Wider World of TV Sports," *Forbes.com*, December 12, 2002, available at http://www.forbes.com/2002/12/12/cx_pp_1212sports.html, viewed on 08/24/10, which states that "Football, baseball, basketball and hockey often are moneylosing propositions, but they make up for that to some degree since they're excellent platforms for promoting prime-time shows and also help affiliate TV stations boost profits."

[104] SNL Kagan, *Broadband Cable Financial Databook*, 2009 Edition, table entitled "Census of Basic Cable TV Services (Mil.)," at pp. 14-15.

[105] SNL Kagan, *Economics of Basic Cable Networks*, 2009 Edition, table entitled "Network Monthly Affiliate Revenue Per Subscriber, By 2010 Average ($)," at p. 53.

[106] Based on data in SNL Kagan, *Economics of Basic Cable Networks*, 2009 Edition, at p. 2.

revenues fell while subscriber fees grew, so today advertising represents an even smaller share of cable network revenues. In contrast, advertising continues to represent the preponderance of broadcast network revenues, in the vicinity of 90%. It is only recently that broadcasters began to collect retransmission consent compensation from multichannel video providers in the form of per subscriber fees. Given that advertising revenues are highly sensitive to the business cycle, and often fall during recessions, broadcast networks rely on a less stable source of revenues than cable networks.

To compensate for this, broadcast networks increasingly are demanding that their local station network affiliates help fund the acquisition of expensive sports (and other) programming, either through direct affiliate payments to the network or by requiring the affiliates to share a portion of their retransmission consent revenues with the network.[107]

The bidding for the programming rights to major sports events occurs years before the events, at which time it is not possible to accurately predict economic conditions in the months leading up to the event, when the bulk of the advertising will be sold. As they bid for rights against cable networks, broadcast networks invariably have less certain projections of the revenues they will have available to support the bid. Thus, in February 2002 News Corp., parent of FOX Entertainment Group, cited the downturn in advertising as the reason why it took a $909 million one-time operating charge for broadcast sports contracts with the National Football League, Major League Baseball, and Nascar auto racing.[108] In 2003, NBC bid $2.2 billion for the rights to the 2010 and 2012 Olympic Games (including $820 million for the 2010 Winter Olympics), a 33% increase over the rights fees for the 2006 and 2008 Olympic Games,[109] but had to attempt to sell advertising during 2009 and early 2010, when the advertising market was at its nadir. NBC has indicated that it lost approximately $200 million on the 2010 Olympics.[110] In comparison, for the 2006 Olympics, when General Motors was the primary advertiser, NBC was able to generate advertising revenues that exceeded rights payments by about $200 million.[111] Many observers believe the 2010 experience will constrain future bids for the programming rights to the Olympics.

The Distribution of Major Sports Programming over Multiple Platforms

Despite the negative financial bottom line of the 2010 Olympic programming, the strategy employed by NBC is likely to be the model for the future. NBC fully exploited its wide range of distribution outlets—the USA, MSNBC, CNBC, and Universal HD cable networks, as well as NBCOlympics.com—to provide far more complete coverage of the Olympics than ever before. The NBC broadcast network and its cable networks offered more than 835 hours of sports programming—more than the total number of hours that elapsed between the opening and closing of the Olympics. Multiple events occurred simultaneously and thus could not be covered by a

[107] See, for example, Michael Malone, "Sinclair, ABC Agree on License Fees for Affiliates," *Broadcasting & Cable*, March 26, 2010.

[108] Derek Caney, "News Corp posts wider loss on sports write-down," *Reuters*, February 12, 2002.

[109] See Jon Weisman, "Olympics become NBC loss-leader," *Variety*, January 29, 2010.

[110] Ibid.

[111] Ibid.

single network, but the combination of broadcast and cable networks was able to provide extensive coverage, including significant amounts of live coverage. The NBC broadcast network did not want to pre-empt so much of its non-Olympics programming that it undermined its other programming, but the 835 hours of Olympic programming could be borne by a combination of networks with less impact on their program schedules. There also was coordinated coverage on a website, NBCOlympics.com. The high fixed costs associated with the rights fees and production facilities were spread across the many NBC-Universal affiliated distribution outlets, and the total quantity of Olympics programming far exceeded that for any previous Olympic Games.[112]

This strategy of using several outlets to cover a complex sports competition also was used in the recent successful bid by CBS and the Turner Cable Networks for the rights to future National Collegiate Athletic Association basketball tournaments (March Madness). Even as the tournament expands to include more teams, and thus encompass more games, the wider reliance on cable networks to supplement the broadcast network will allow all games to be televised. The fixed costs of production will be shared across more hours of programming.

Similarly, the strategy of coordinating television and Internet is being adapted to other sports. A recent GMR Marketing survey of consumers in markets where Comcast offers cable service found that while television remains the most important medium for National Football League fans, "the number of multimedia multi-taskers is growing at a swift pace due to the enormity of fantasy sports,"[113] with 76% of the respondents who identified themselves as NFL fans using the Internet to follow sports at the same time as they are watching sports on television.

The Rise of Cable Networks Owned by Major Sports Entities

There is a major new development in the sports programming market. A number of major sports entities with strong brand identities—leagues such as the National Football League and the Big Ten Intercollegiate Conference, and teams such as the New York Yankees and Baltimore Orioles—have created their own national or regional cable networks and distributed some or all of their sports events exclusively over those networks. This business strategy allows leagues or teams to leverage their control of a limited amount of seasonal "must-have" programming, which represents only a relatively small number of hours in a network's annual programming schedule, into a package that can command payment year round. In effect, it ties access to the limited amount of must-have programming to the purchase of lots of less-demanded programming, such

[112] Interestingly, beginning in 2006, the United States Olympic Committee (USOC) sought to launch its own Olympic cable channel. It unsuccessfully pursued creating a partnership with several major program networks before reaching an agreement with Comcast in 2009. Its intention was to create a cable network, which would debut after the conclusion of the January 2010 Winter Olympics in Vancouver, whose programming would include future and past Olympic events and additional programming and for which multichannel video providers would pay monthly per subscriber fees. (This business model of a major sports entity creating its own cable network is discussed below.) When the USOC-Comcast agreement was announced in 2009 it was immediately criticized by the International Olympic Committee. Subsequently, Comcast announced its proposed merger with NBC-Universal, which has been the holder of the U.S. television rights to the Olympic Games, and that dampened Comcast's interest in the cable venture. In April 2010, USOC and Comcast ended their agreement to launch the Olympic cable channel. See Tripp Mickle and John Ourand, "USOC, Comcast End Agreement to Launch New Olympic Channel," *SportsBusiness Journal*, April 21, 2010. Although the channel is not going forward at this time, it does indicate that in the future USOC may seek to place all the Olympic events programming on a cable network, rather than keeping the more popular events on a broadcast network.

[113] Mass Media Notes, *Communications Daily,* September 2, 2010.

as "classic" game re-runs, interviews, pre- and post-game shows, pre-season shows, player drafts, and less popular sports events.

In general, these successfully branded sports entities have insisted that cable and satellite operators place their sports networks on the tier with the largest number of subscribers, in order to generate monthly per subscriber fees from the maximum number of subscribers. This also allows the sports entity to receive payment for the entire year. If the must-have programming were placed on a sports tier, fans could sign up just for the season and then drop the tier. Although cable companies initially resisted the requirement that the sports networks be placed on the tier with the largest number of subscribers—preferring that the sports networks be put in a special sports tier—the sports entities have succeeded in their negotiations by using the threat that those subscribers with a high intensity of demand will desert the cable or satellite operator who does not carry the sports channel on a basic tier for an operator who does carry it on a basic tier. The sports entities have been able to exploit the fact that their events represent must-have programming to a sufficiently large minority of television households to require all households to pay for the programming through the entire year. This is likely to reinforce the long-standing pattern of sports networks accounting for a much larger percentage of cable and satellite operator programming costs than their percentage of cable and satellite subscriber viewing.[114]

The unique supply and demand characteristics of major sports programming appear to have two significant implications for future broadcast carriage of such programming. On one hand, the sports entities control access to the sports events and therefore have the ability to command for themselves most of the economic rents generated by the intensely valued sports programming.[115] Broadcasters may have relatively little control over the largest programming cost—the license fee for the right to broadcast the sports events. On the other hand, broadcast networks are adapting to this by coordinating with other program distributors to compete more effectively when bidding for programming rights and to generate more revenues when they win the rights. At a minimum, broadcast networks are seeking a share of the fees their affiliates are able to command from cable and satellite operators for the retransmission of intensely demanded network-produced major sports programming. In addition, broadcast networks are collaborating with affiliated or independent cable and Internet outlets to develop multi-platform distribution strategies that generate greater revenues from the programming rights. These strategies cede a greater portion of sports programming to cable networks than in the past, but allow broadcasters to retain a share of that programming.

Sports Programming: Issues for Congress

Given that the entities that control major sports events have much greater control over the production and distribution of major sports programming than do broadcasters, existing regulatory rules that are directed at broadcasters—whether retained or modified—are unlikely to have much impact on broadcast provision of major sports programming. If Congress is concerned about how the public can access major sports programming—for example, if it is concerned that such programming be available over the air without subscription or that cable subscribers not be

[114] For example, James Robbins, chief executive of Cox Cable, reportedly stated at a Goldman Sachs investors conference in 2003 that ESPN accounted for 4% of Cox subscribers' viewing, but 18% of Cox programming costs. (See David D. Kirkpatrick and Geraldine Fabrikant, "Sports Fan Is the Prize, or the Victim, in Cable Fight," *The New York Times*, October 6, 2003, at pp. C1 and C4.

[115] This has not been the case for sports leagues that do not have a mass fan base, such as the National Hockey League.

required to pay for such programming even if they do not view it—then it will need to examine sports entities as well as the broadcast and cable networks. Issues might include the program blackout policies of the sports entities, the antitrust laws as they apply to sports entities, and the FCC's program carriage rules applicable to impasses in negotiations between sports entities that own cable networks and multichannel video programming distributors.

- **Blackouts.** Some National Football League teams are not selling out tickets to their home games. They often would prefer to televise those games to hometown fans in order to foster broad-based interest in and support for the team, but league rules impose a blackout on games when tickets are not sold out 72 hours in advance of the game. The NFL has made the determination that it is beneficial to the league to black out those games, even if the home team and its fans are harmed. NFL officials are concerned that if a stadium is only half full, it also harms the quality of the televised program because viewers prefer to see the frenzy of a full stadium of fans cheering on their team.[116] In many cases, the team's stadium was directly or indirectly funded by a governmental entity, and taxpayers may feel deceived if they have borne some of the costs of the stadium but are denied television access to the games. If blackouts were prohibited and as a result stadium attendance fell because some fans chose to watch the games on television rather than at the stadium, team revenues and local tax revenues from ticket sales and food and parking concessions could fall. In the extreme case, a team's ability to make lease payments to the stadium owner could be impaired. In most situations, however, the fall in stadium attendance would be too small for the impact on team revenues and tax revenues to be substantial. Is market intervention justified if a league's joint profit maximizing behavior is harmful to a team and that team's community and, if so, can an intervention be devised that is not itself harmful?
- **Bundling.** Consider a major sports entity with programming that is so intensely valued by a sufficiently large minority of households (who would threaten to abandon a multichannel video provider that does not carry that programming) that the sports entity can insist that all multichannel video providers carry that programming on their tier with the largest subscriber base, even if the multichannel video provider would prefer to carry it on a special sports tier. This may maximize revenues for the sports entity but at the expense of a majority of multichannel video subscribers who do not watch that programming but must bear some of its cost. Is market intervention justified if it can be shown that there is significant loss in consumer welfare as a result and, if so, can an intervention be devised that is not itself harmful?[117]
- **"Free" broadcasts.** With more than 85% of all U.S. households subscribing to a multichannel video provider, and more than 90% of those households purchasing more than just a basic package of programming, is there any public policy basis for market intervention to keep sports programming on "free" broadcast television? If so, can intervention be devised that is not itself harmful?

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[116] See Mark Maske, "The NFL's business conundrum," *The Washington Post,* September 19, 2010, at p. D1.

[117] This is a unique subset of the larger issue of tiered vs. a la carte pricing of cable networks. See CRS Report RL32398, *Cable and Satellite Television Network Tiering and "a la Carte" Options for Consumers: Issues for Congress*, by (name redacted).

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