

SUPPORTING STATEMENT

A. Justification:

1. Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its media ownership rules quadrennially to determine whether its rules “are necessary in the public interest as the result of competition.”¹ The Commission must “support its decision with a reasoned analysis” when it determines whether to retain or modify its media ownership rules.² This Consumer Survey (Consumer Survey or Information Collection) is collecting information that will inform the Commission’s public interest determination in accordance with this statutory requirement. The media ownership rules under review are (1) the local radio ownership rule, 47 C.F.R. § 73.3555(a); (2) the local television multiple ownership rule, 47 C.F.R. § 73.3555(b); (3) the radio/television cross-ownership rule, 47 C.F.R. § 73.3555(c); (4) the daily newspaper/broadcast cross-ownership rule, 47 C.F.R. § 73.3555(d); and (5) the dual network operation rule, 47 C.F.R. § 73.658(g). The Commission is required to repeal or modify any regulation it determines no longer to serve the public interest. The statute does not define the public interest standard. Nor does the statute specify the elements the Commission must consider in determining whether its rules serve the public interest. Rather, through its long history of rulemakings and court decisions, the Commission has determined that its public interest determination requires it to set numerical limits in order to promote the goals of competition, localism, and diversity. None of these terms are defined in Commission’s regulations and the Commission does not set specific numerical targets for these three pillars that broadcasters must meet due to the constitutional protections enshrined in the First Amendment. Instead, as discussed below, the Commission has developed definitions through its 70 years of Commission policy development.

Competition

In the 2002 media ownership proceeding, the Commission discussed in detail its goal of promoting competitive market structures.³ Specifically, the Commission stated that it is charged with promoting competition by ensuring pro-competitive market structures. Consumers receive more choice, lower prices, and more innovative services in competitive markets than they do in markets where one or more firms exercises market power. These benefits of competition can be achieved when regulators accurately identify market structures that will permit vigorous competition. Since the beginning of the federal government’s regulation of broadcast spectrum,

¹ Telecommunications Act of 1996, Pub. L. No. 104-104 §202(h), 110 Stat. 56, 111-12 (1996) (“1996 Act”), as amended by Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004), 47 U.S.C. §303 note.

² *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004).

³ 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13637-43, ¶¶ 53-72 (2003) (2003 Biennial Order).

it has been a basic tenet of the communications policy that “there be competition in the radio broadcasting industry.”⁴ For that reason, the Communications Act prohibits the Commission from “grant[ing] a monopoly in the field of broadcasting,”⁵ and it is directed instead to serve the “public interest” by “assur[ing] fair opportunity for open competition in the use of broadcasting facilities.”⁶ From its inception, the Commission has adhered closely to that mandate and sought to ensure that its rules that govern the ownership of stations in local market remain consistent with the policy of free competition embodied in the Communications Act.⁷

Diversity

The Commission has had a long standing policy of setting ownership limits to encourage a number of forms of diversity. In previous media ownership decisions, the Commission has recognized five types of diversity that may be pertinent when it is setting numerical ownership limits: viewpoint, outlet, program, source, and minority and female ownership diversity. Viewpoint diversity refers to the availability of media content reflecting a variety of perspectives. Outlet diversity means that, in a given market, there are multiple independently-owned firms. Program diversity refers to a variety of programming and content. Source diversity refers to the availability of media content from a variety of content producers.⁸ The Commission also has long encouraged minority and female ownership in order to foster diverse programming.⁹

As explained in the 2002 media ownership proceeding, the Commission has always considered viewpoint diversity to be an important aspect of its diversity policy goal.¹⁰ A diverse and robust marketplace of ideas is the foundation of our democracy. Consequently, “it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”¹¹

⁴ *Mansfield Journal Co. v. FCC*, 180 F.2d 28, 33 (1950).

⁵ *FCC v. Sanders Bros. Radio Stations*, 309 U.S. 470, 474-76 (1940).

⁶ *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956).

⁷ See *Genesee Radio Corp.*, 5 FCC 183, 186-87 (1938).

⁸ 2003 Biennial Order, 18 FCC Rcd at 13627-35, ¶¶ 18-46.

⁹ 2003 Biennial Order, 18 FCC Rcd at 13635, ¶ 46 (citing *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978); *Promoting Diversification of Ownership in the Broadcasting Services*, MB Doc. No. 06-121, *et al.*, Report & Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5924, 5926 ¶¶ 2&7 (2007).

¹⁰ See 2003 Biennial Order, 18 FCC Rcd at 13627-35, ¶¶ 18-45; see also *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Doc. No. 18110, Second Report & Order, 50 FCC 2d 1046, 1048-49, ¶¶ 9-10 (1975).

¹¹ *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663-64 (1994) ((internal quotation marks omitted) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)).

This policy is given effect, in part, through regulation of broadcast ownership. Because outlet owners select the content to be disseminated, the Commission has traditionally assumed that there is a “positive correlation” between viewpoints expressed and ownership of an outlet.¹² The Commission has sought, therefore, to diffuse ownership of media outlets among multiple firms in order to diversify the viewpoints available to the public. Prior Commission decisions limiting broadcast ownership concluded that a larger total number of outlet owners increased the probability that their independent content selection decisions would collectively promote a diverse array of media content. The Commission needs to obtain data to determine the correlation between market structure and viewpoint diversity in order to determine whether its ownership rules are necessary in the public interest.

Questions 42-44 of the Consumer Survey are intended to determine consumers’ perception of viewpoint diversity. The Survey defines the levels of viewpoint diversity as a range from only one viewpoint to many viewpoints.

In addition to viewpoint diversity, Questions 48-50 of the Survey also will collect information on the extent to which consumers recognize the existence of programming that reflects the interests of women and minority citizens. In order to assist the panelists, the Survey introduces the term “multiculturalism” as information you get from your media environment that reflects the interests of women and minority citizens (e.g., disabled, persons of non-white ethnicity). The Survey provides the following examples of multiculturalism programming: reports on Black History month, the Cinco de Mayo celebration, female wage inequality, or programs that help people with disabilities find a job.

Localism

The Commission has long considered localism a cornerstone of its broadcast regulation.¹³ In fact, the Commission has declared that broadcasters, in serving their public interest obligation, “must air programming that is responsive to the interests and needs of [the broadcasters’] communities.”¹⁴ The Commission also discussed in the Order for the 2002 media ownership rule review proceeding that federal regulation of broadcasting has historically placed significant emphasis on ensuring that local television and radio stations are responsive to the needs and interests of their local communities.¹⁵ In the Communications Act of 1934, Congress directed the Commission to “make such distribution of licenses, frequencies, hours of operation, and

¹² *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159-60 (D.C. Cir. 2002).

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² *Broadcast Localism*, MB Doc. No. 04-233, Notice of Inquiry, 19 FCC Rcd 12425, ¶ 1 (2004) (*Localism NOI*); see also, *Deregulation of Radio*, BC Doc. No. 79-219, Report & Order, 84 FCC 2d 968, 994, ¶ 58 (1981) (noting that “[t]he concept of localism was part and parcel of broadcast regulation virtually from its inception”).

¹⁴ *Localism NOI*, 19 FCC Rcd at 12425, ¶ 1.

¹⁵ See 2003 *Biennial Order*, 18 FCC Rcd at 13643-46, ¶¶ 73-79.

power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”¹⁶ In the legislative history of the 1996 Act, Congress strongly reaffirmed the importance of localism: “Localism is an expensive value. We believe it is a vitally important value, however [and] should be preserved and enhanced as we reform our laws for the next century.”¹⁷

The Commission decided long ago that local station licensees have a responsibility to air programming that is suited to the tastes and needs of their community and that the station licensee, not a network or any other party, must decide what programming will best serve those needs. Therefore, program selection is a means by which local stations respond to local community interests, and we will use it as one measure of localism. A second measure of localism is the quantity and quality of local news and public affairs programming. News and public affairs goes to the core of the Commission’s policy objectives. Airing of local news and public affairs programming by local television stations can serve as a useful measure of a station’s effectiveness in serving the needs of its community.

The Commission, in its Localism Proceeding received and examined public comments on the nature and amount of local community-responsive programming provided by licensees. There, the FCC discusses various types of local programming, including, breaking stories, crime reporting, investigative and consumer advocacy features, segments on politics, local sports and community events, and vital weather information.¹⁸ The Commission also noted that some broadcasters air other types of local programming involving health, minority, education, religion and women’s issues.¹⁹

Consistent with the Commission’s localism policies, the Consumer Survey will collect information on consumers’ perception of the quality and quantity of the local content provided. Questions 46-48 use the term “localism” to mean the amount of information you get from your media environment on local news and events. The Survey provides the following examples of local programming, which is consistent with Commission policy: school sporting results, local council meetings, city/county elections, neighborhood crime, local heroes who give their time to the community, or job layoffs at a local factory.

Analytical Approach

For this rulemaking, our general plan has been to define performance metrics for each goal and to commission studies that examine variations in performance metrics across different market

¹⁶ 47 U.S.C. § 307(b).

¹⁷ H. REP. NO. 104-204 at 221 (1996).

¹⁸ *Broadcast Localism*, MB Doc. No. 04-233, Report & Notice of Proposed Rulemaking, 23 FCC Rcd 1324, 1339, ¶ 31 (2008) (*Broadcast Localism NPRM*).

¹⁹ *Id.* at ¶ 32.

structures. We are commissioning many studies and we also expect to receive input from commenters, including studies submitted with such comments. Our studies and any significant studies submitted by commenters that we would rely on in our analysis will be subject to peer review. The Survey that OMB is reviewing that will be used for one of the studies is designed to gather information on end user valuation of media because market price information is not available for broadcast TV and radio. This study, which is being prepared by the contractor of the Survey, is “Consumer Valuation of Media as a Function of Local Market Structure.”

End user valuation is particularly appropriate because some of the attributes of interest (localism and diversity specifically) are subject to externalities, *i.e.*, not all of the social benefits would be reflected in a market price, even if we had a market price to consider. To that end, the Commission is conducting two other complementary studies, one on TV viewing and one on radio listening—that also address (imperfectly) end user satisfaction with their media environment, in the absence of a market price for TV and radio.

The Commission requested emergency processing under 5 C.F.R. §1320.13 for this collection so that the information would be available for Commission use for formulating the media ownership rules as required by section 202(h) of the Telecommunications Act of 1996. The Commission sought 17 days of public comment on the information collection requirement(s) contained in this supporting statement.

With the Notice of Inquiry (NOI) released on May 25, 2010, the Commission launched its fifth proceeding pursuant to the statutory mandate requiring that the media ownership rules be reviewed.²⁰ Subsequently, in June 2010, the Commission’s Media Bureau sought Requests for Quotation (RFQ) for nine studies to be incorporated as part of the 2010 Quadrennial Review.²¹ The survey that is the subject of this review, the Consumer Survey, was included in the RFQ and a bid was selected on September 30, 2010. The Consumer Survey is the fundamental building block of the awarded contract that will estimate how consumer satisfaction with the local media environment is influenced by the local media market structure. As discussed further in section B of this supporting statement, the Consumer Survey is designed to collect information that can be used to estimate consumers’ willingness to pay for the attributes of the media environment that fall under the public interest mandate of the FCC. The Survey collects this information by asking respondents about their current media consumption and the overall media environment in their locale. With this baseline information on their environment and the choices they have made, the Consumer Survey proceeds to present them with a series of questions asking them to choose between two hypothetical media consumption packages and indicate whether they prefer

²⁰ *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*, Notice of Inquiry, MB Doc. No. 09-182, 25 FCC Rcd 6086, 6087, ¶¶ 1-2 (2010).

²¹ *Media Bureau Announces the Release of Requests for Quotation for Media Ownership Studies and Seeks Suggestions for Additional Studies in Media Ownership Proceeding*, MB Doc. No. 09-182, DA 10-1084 (MB, rel. June 16, 2010) 1-2 (The description of the Consumer Survey that is the subject of this review is listed under “Study 2”).

their chosen hypothetical package to the package they are currently consuming. The Survey responses are then used as inputs into the econometric model discussed in section B that will provide estimates of consumers' overall satisfaction with their media environment and their willingness to pay for specific public interest attributes. The results of this model are then used as inputs to estimate the influence of local media market structure on consumer satisfaction.

The statutory authority for this collection of information is contained in Section 202(h) of the Telecommunications Act of 1996.

2. Agency Use of Information: The Consumer Survey will be distributed to a selected sample of consumers. The results of the Consumer Survey will form the basis of the study, Consumer Valuation of Media as a Function of Local Market Structure, created by the contractor. This information collection and resulting study is critical to the development and completion of the media ownership rules proceeding required pursuant to Section 202(h) of the 1996 Telecommunications Act. The Commission will use this study in its review of the media ownership rules to determine whether its rules are "necessary in the public interest as the result of competition." After its review, the Commission is then required to repeal or modify any regulation it determines no longer to serve the public interest. The Commission will release the study to the public subject to the terms and conditions of a protective order, seek formal comments, and provide for a formal peer review process. This is a new information collection.

3. Consideration Given to Information Technology: Knowledge Networks (KN) will administer the Consumer Survey via the Internet to its panel members. For more information on KN's online survey procedures, please visit <http://www.knowledgenetworks.com/knpanel/index.html>. Additional information on KN is submitted in part B of this supporting statement.

4. Effort to Identify Duplication and Similar Information: To our knowledge, there are no similar information collections on consumers.

5. Effort to Reduce Small Business Burden: Not applicable. This survey collection affects individual consumers.

6. Less Frequent Data Collections: If this collection of information were not conducted, the contractor would be unable to complete an important study that the Commission will rely on in its review and determination of whether the media ownership rules are necessary in the public interest as a result of competition, as required by Congress, pursuant to Section 202(h) of the 1996 Telecommunications Act.

7. Information Collection Circumstances: This collection of information is consistent with 5 C.F.R. § 1320.5(d)(2).

8. Consultations with Persons outside the FCC: Opportunity for public comment on this information collection requirement has been published in the *Federal Register* on November 5,

2010 (75 FR 68356). To date, no comments have been received from the public on the information collection requirement.

9. Payment or Gift: The sub-contractor, KN, provides free netbook computers and Internet service to panelists without home Internet access. Non-specific survey incentives are used to maintain a high degree of panel loyalty and to prevent attrition from the panel. For the households provided Internet appliances and an Internet connection, their ‘panel loyalty’ incentive is the hardware and Internet service that KN provides free. For households using their own personal computers and Internet service for survey participation, KN enrolls the panelists into a points program that is analogous to a ‘frequent flyer’ program, in that respondents are credited with points in proportion to their regular participation in surveys. Panelists receive cash-equivalent checks approximately every four to six months in amounts reflecting their level of participation in the panel, which commonly results in distributions in the range of \$4 to \$6 per month.

10. Confidentiality of Information: No personally identifying information will be transmitted to the Commission from the Survey contractor as a matter of vendor policy. KN’s privacy statement, which is provided and always available to panelists, is available at <http://www.knowledgenetworks.com/company/privacy.html>. Respondents are informed that, except as provided in the Privacy Statement, personal information will not be disclosed to third parties without the express permission of the respondent.

11. Justification for Sensitive Questions: This information collection does not address any private matters of a sensitive nature.

12. Estimate of Annual Burden and Annual Burden Hour Cost: The Commission estimates that the Consumer Survey will take respondents 15 minutes (.25 hours) per survey to complete and the respondent will not require any outside assistance. Therefore, the burden is as follows:

Total Number of Respondents: 5,000 consumers

Total Number of Estimated Annual Responses: 5,000 Consumer Surveys

Total Annual Burden Hours: 5,000 Consumer Surveys x .25 hours/survey = 1,250 burden hours

There is no “in-house” cost for this information collection because consumers are responding online via a computer to the Survey.

13. Annual Cost Burden: This information collection is based on an online Survey that will impose no cost burden on the respondents reached on their computers at home.

14. Cost to the Federal Government. An outside party will administer this collection. Specifically, the Commission has contracted with Professor Scott J. Savage and Professor Donald

Waldman, Department of Economics, University of Colorado at Boulder to draft the Consumer Survey. This Survey contractor has subcontracted the survey out to KN to administer. KN will conduct the Survey. Professors Savage and Waldman will collect and analyze the data. The cost of the contract for the Survey is \$88,300. The Commission does not anticipate any additional costs to the Commission as a result of this collection.

15. Reason for Changes in Burden or Cost: This is a new information collection which adds program changes/increases to this collection of 5,000 respondents, 5,000 responses and 1,250 burden hours.

16. Plans for Publication: The Commission will publish the study, Consumer Valuation of Media as a Function of Local Market Structure, which analyzes the underlying data. Within two weeks after the Commission receives OMB approval for the Survey, the contractor plans to release the Survey. The results of the survey are due 30 days thereafter, and the final study is due March 31, 2011.

17. Display of OMB Approval Date: The Commission is not seeking approval to not display the OMB expiration date for approval of the information collection. The Commission publishes a list of all OMB-approved information collections including the OMB control numbers, OMB expiration dates and titles in 47 C.F.R. § 0.408.

18. Exceptions to the Certification Statement: There are no exceptions to the Certification Statement.