

## INTRODUCTION AND SUMMARY

### COMMENTERS

The Consumer Federation of America, Consumers Union and Free Press (hereafter Consumer Commenters) respectfully submit these comments in response to the publication by the Federal Communications Commission (FCC or the Commission) of 10 studies in the ongoing media ownership proceeding. Consumer Commenters have been the leading providers of sound, scientific information in the media ownership proceeding, one of the few commenters that has provided original research on a broad range of issues affecting both traditional and alternative media. In these comments we supply a thoroughgoing critique of the FCC studies based on policy relevant definitions and concepts as well as a rigorous approach to statistical analysis that we have developed and consistently applied throughout this proceeding.

### SUMMARY:

#### **THE FCC'S RESEARCH AGENDA: ADMINISTRATIVE ABUSE, NEGLECT AND "JUNK SCIENCE"**

Consumer Commenters will show that the FCC's official studies in this proceeding are an ad hoc collection of inconsistent, incompetent and incoherent pieces of research cobbled together to prove a foregone conclusion. Overwhelming evidence suggests that the Commission wanted to dramatically relax or eliminate the newspaper cross ownership rule, so it put together a series of studies it thought would support its preconceived notion. A paper written in June of 2006 by the FCC's then-Chief Economist, Leslie Marx, leaves little in doubt as to the motivations of the agency. She wrote: "This document is an attempt to share some thoughts and ideas I have about how the FCC can approach relaxing newspaper-broadcast cross-ownership restrictions."<sup>1</sup> The Commission's research agenda appears to be based on this document and aimed at accomplishing its stated goal. As a consequence of this results-driven, narrow focus on eliminating the cross ownership rule, the Commission's research is deeply flawed in fundamental ways. In its haste to deregulate, the agency completely ignores the objective realities of core public interest goals supported by media ownership limits.

First, the process by which the studies were conceived and executed was flawed at every stage, leading to studies that are substantively weak and methodologically tainted. The Commission did not ask the right questions and it was so hell-bent on supporting its predetermined result that basic data definitions, the framing of policy and research questions and the implementation of statistical methodologies do not stand close scrutiny.

Second, the claim that relaxing the cross ownership rule is in the public interest is not supported by a proper analysis of the FCC's own data—a new and expanded data set collected for this round of studies. Once definitions are corrected and policy relevant variables included in properly specified statistical models, there is no support in the FCC data to relax media ownership limits. In fact, the FCC's data show the opposite result. Newspaper-broadcast cross-ownership results in a net loss in the amount of local news that is produced across local markets by broadcast stations. The Commission has studied the impact of these mergers only at the

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<sup>1</sup> <http://www.fcc.gov/ownership/materials/newly-released/newspaperbroadcast061506.pdf> Notably, the public was obliged to file a Freedom of Information Act request in order to obtain this document.

station level, rather than at the market level. At the market level, cross-ownership results in the loss of an independent voice as well as a decline in market-wide news production. This finding obliterates the conclusions of the recent studies on cross-ownership as well as the basis for the Commission's argument for relaxing the rule in the *Prometheus* case.

Third, the Commission failed to address pressing localism issues in its 2003 Final Order, declaring its intention to rectify the situation with a Broadcast Localism Task Force. Four years later, the initial work of that task force was completely ignored in the studies commissioned by the FCC. The vast majority of localism and diversity issues identified by the Commission for further study have not been explored in any meaningful way. It appears that the FCC is only interested in window dressing when it comes to substantive analysis of the public interest benefits of a diverse and independent local media system.

Fourth, in its 2003 Final Order, the Commission ignored minority ownership issues – the under-representation of minorities and females and the lack of diversity in the media – so totally that it elicited a stern reprimand from the court. Unfortunately, over the course of four years, the FCC has failed to rectify the situation in its research agenda. In fact, the Commission has never bothered to create an accurate census of the gender and race of broadcast licensees based on its own data—relying instead on summary data that are hopelessly inadequate. Instead, it commissioned last minute studies that attempted to gloss over its own inattention to the issue. The authors of both studies were hamstrung by the absence of usable data on minority ownership. At the same time, the commission's flawed data on minority and female ownership was allowed to infect all of the major statistical studies of the broadcast media. Closer examination of corrected data shows that relaxation of media ownership limits reduces minority ownership. The obvious contradiction between permitting further media consolidation and promoting minority ownership begs the question of whether the Commission is ignoring this central policy issue in order to avoid inconvenient realities that derail its preset agenda.

On the whole, despite months of research, the Commission has never provided any compelling evidence that public interest limits on media ownership should be relaxed. On the contrary, the data collected show the opposite—the ownership limits protect the quantity and quality of local news. Further, the Commission has ignored the key questions of localism and diversity, avoiding any substantive analysis of consolidation's impact on minority ownership based on an accurate count of minority owners. Throughout, the Commission has followed a process that was ends-oriented from the start, never deviating from a research plan that traded objectivity and the public interest for blind faith in deregulation.

## **SYNOPSIS:**

### **PART I: THE FCC'S INADEQUATE, RESULTS DRIVEN RESEARCH AGENDA**

Consumer Commenters respond to the research studies commissioned by the FCC first by addressing the process by which they were conducted. These comments not only demonstrate that the body of research is woefully inadequate to address the central questions in the implementation of Congress' stated goals for media policy – to promote competition, localism

and diversity – but Part I also shows that the outcome of the research was the result of biased, tainted process. The FCC research barely scratches the surface of the many concerns that underlie these three policy goals. The extremely narrow focus of the research and the failure of the agency to pursue fruitful lines of research that it had opened after the remand of the June 2003 Final Order in the omnibus media ownership proceeding make it clear that this research cannot stand as the basis for altering current policy.

Worse still, the research agenda behind the current studies was set in a blatantly, results-driven process that calls the objectivity of the entire undertaking into account and the peer review of the research did not follow required procedures. As a result, the research is methodologically flawed and analytically feeble. The Chief Economist established a research agenda with the express purpose of designing studies “that might provide valuable inputs to support a relaxation of newspaper-broadcast ownership limits.”<sup>2</sup>

The research is also plagued with many data and methodological problems, problems that might have been solved if the FCC had conducted a proper peer review of the research. In violation of OMB guidelines on implementation of the Data Quality Act the FCC disseminated the research studies as “influential scientific information” prior to the conclusion of peer review. The peer review itself was haphazard, hidden from the public and not in compliance with the guidelines. In some cases, peer reviewers offered valuable critiques. In others, the peer review was purely perfunctory and meaningless. In no case was the peer review thorough and none of the peer reviewers attempted to reproduce the results of the studies they examined. The resulting studies are not “influential scientific information;” a better description is “junk science.” The designation “influential scientific information” should be removed and the FCC should not rely on the studies in its decision making.

## **Chapter I. Understanding and Measuring Localism and Diversity**

In Chapter I, we explore the wide range of issues that the FCC’s Broadcast Localism Initiative had teed-up and the research to which it gave rise in the 2003-2004 period. The Commission failed to address pressing localism issues in its 2003 Final Order and declared its intention to rectify the situation with a Broadcast Localism Task Force. The credibility deficit incurred as a result of studying policies after they have already been made was, unfortunately, not closed by the resulting commitment to the process of the Task Force. The multi-faceted and complex issues that make up the concept of “localism” identified in this period were the subject of ongoing research at the agency for only a short period. The research became the center of controversy when the studies seeking to examine some of the concepts empirically were not released by the agency. It is not because the Bureau economists were off the mark on the substance of their inquiry. This very rich concept of localism is well grounded in prior actions of the agency. The problem was that the findings in the localism research were contrary to the outcomes desired by the leadership at the agency.

The record of public hearings, filed comments and even the FCC own internal analyses identify numerous issues and concerns about localism and diversity, but the FCC dropped these lines of analysis and implemented a new set of research studies upon which we are now focused.

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<sup>2</sup> Ibid.

These studies, in direct contrast to the broad scope of inquiry conducted previously in the 2003-2004 period, were so determined to relax or eliminate the cross-ownership limits that the research fails to address the key policy questions or present an objective assessment of the data. Over four years later, the initial, very good work of that Task Force was completely ignored by the authors of the studies commissioned by the FCC this year. The vast majority of issues identified have not been explored in any meaningful way. The Commission has never explained why it abandoned a serious commitment to studying localism. In fact, the removal of the early studies from circulation resulted in a controversy when these so-called “spiked” studies were leaked to the Senate Commerce Committee. The resulting Inspector General’s report did not persuasively address why the Commission chose to terminate this research nor even identify the present whereabouts of the data set upon which the research was conducted. The history of the Localism Task Force and the disappearance of any true inquiry into the issues it identified speak volumes about the bankruptcy of the Commission’s process.

## **Chapter II. A New, Results-Driven Research Agenda**

Chapter II examines the specific research agenda laid out by the Chief Economist’s memo which served as the blueprint for the Commission’s ten studies. The evidence shows quite clearly that the research agenda was set with an outcome in mind. It was results-driven, a research agenda that was intended to provide ammunition to dramatically relax the limitation on newspaper-TV cross-ownership. Three of the studies target the newspaper-TV cross-ownership policy and pursue the research hypotheses offered by the Chief Economist. Our review of the overall approach identifies a number of weaknesses and biases that then play out in the substantive discussions of the specific studies, which are analyzed in the remainder of the comments. We do not here identify small problems at the margins which tweak the integrity of this research. We identify fatal errors that undermine the policy conclusions of these studies.

The studies suffer from four major categories of problems.

- They omit analyses that are critical to the policy issues before the Commission.
- They omit important variables that bear on the policy issues before the Commission.
- They are based on poorly defined and inadequately documented statistical models.
- The underlying data is unrepresentative or the variables are poorly defined.

Upon close examination, the analytical errors in these studies result in flawed, unsupported conclusions. They do not support the research hypotheses of the Chief Economist. Ironically, the data assembled in order to conduct the ends-oriented research agenda point to the opposite conclusions to those posited by the Chief Economist. Doubly ironic, this is precisely what happened to the Commission when it undertook its first study of localism during the Task Force of 2003-2004.

## **Chapter III. Policy, Process and Methodological Flaws in the FCC Media Ownership Research**

Chapter III follows the failure of the Commission to implement a sound research agenda through three other phases. First, we discuss the FCC's failure to conduct a proper peer review of the 10 studies. This is not only a violation of the Data Quality Act, it also facilitates a flawed research agenda by shielding the studies from appropriate criticism. Second, the report of the Inspector General's investigation into studies in the 2003-2004 period that the agency failed to make public is considered in light of the behavior of the agency with respect to the 10 studies it did publish. The primary claims the Commission asserts to justify not publishing the research done during the 2003-2004 period deal with methodological and data concerns. We demonstrate that this is a preposterous ruse, pointing out that several of the FCC's 10 studies use precisely the same methodology and data as the earlier research. The primary difference between the studies that were not published and those that were is that the former contained inconvenient findings with respect to the preconceived notions and intentions of the Commission to relax limits on media ownership. Third, the chapter concludes with an outline of the methodological flaws in the research identified by those peer reviewers that offered substantive critiques. Since the studies were published before the peer reviews, the authors were not in a position to respond and adjust their methods and arguments accordingly. To do justice to the public record, we conducted the suggested lines of analysis identified by the peer reviewers as necessary in Parts II and III of our comments.

## **PART II. DOING IT RIGHT AND FILLING THE GAPS: EXTRACTING GOOD DATA FROM THE FCC'S BIASED RESEARCH FRAMEWORK**

The flaws in the underlying data and statistical methods could be cited as rendering the studies "irrelevant," but in Part II we proceed in the opposite direction. We build correct analyses based on the data from the original studies that show that the conclusions of the original studies are either wrong or irrelevant. One of the positive externalities of the 10 studies is the creation of a usable data set for the public to use to conduct policy analysis of its own. When we reanalyze the data from the perspective of the multifaceted and rich definition of localism and diversity—which the FCC had been developing in 2003-2004—and we apply a consistent analytic approach, we find that there is no support in the data for a relaxation of the cross-ownership limits. Every one of the research hypotheses that the Chief Economist framed to support the relaxation of the rule is refuted by the FCC's own data. The underlying data, when extracted from the biased research framework and analyzed in a proper policy framework with correctly defined variables and consistently rigorous statistical methods, thoroughly contradicts the major policy implications of the studies as published by the Commission.

In a true public interest analysis, the data shows that the limitation on cross-ownership promotes “the widest possible dissemination of information from diverse and antagonistic sources” both in the quantity of news and the diversity of opinions available in local media markets. Contrary to the evidence the Commission has relied upon for years to argue for relaxing the rule, increased market concentration actually *reduces* the amount of TV news available across the market. Conversely, greater local ownership increases the amount of news available. In short, Part II shows that the Chief Economist’s plan to commission “some studies that might provide valuable inputs to support a relaxation of newspaper-broadcast ownership limits” fell flat on its face. Limits on cross-ownership are in the public interest. The chapters in Part II are comprised of our analysis of the FCC’s data that fills in the gaps ignored by the 10 studies and corrects the errors that they have made.

#### **Chapter IV. Market and Station Level Analysis with Properly Defined Variables and Statistical Models**

This chapter outlines presents the most significant analysis of the impact of newspaper-broadcast cross-ownership on local news that has been conducted in this proceeding to date. It addresses the Chief Economist’s primary research hypotheses on the supply-side of media markets. This hypothesis states that cross-owned broadcast stations will provide quantitatively more local news than non-cross-owned stations. This was the analytical basis of the Commission’s argument to relax the cross-ownership ban in the *Prometheus* case and remains the cornerstone of the rationale for deregulation. At least two of the FCC’s new studies attempt to reinforce this argument. There is a certain intuitive logic to the idea that a broadcast station backed by the influx of newsroom resources from a commonly owned newspaper will do more

local news. For that reason, and not because of the solid basis of evidentiary support, this argument has resonated for the last few years.

The central problem with the approach in previous studies of this question is the one-dimensional focus of the effect of cross-ownership on the local news output of the cross-owned station, rather than the local news output of the entire market. From the standpoint of the individual citizen, it is the total amount of available news and the diversity of independent voices offering that news in the entire market that matters. While in some cases there may be an increase in news output at the individual cross-owned station (although much of this is sports and weather), examining the question at the market level reveals a *decline* in the total output of local news for the market as a whole. A reanalysis of the data in FCC Studies 3 and 4.1 shows that when analyzed at the proper level (the market) using a complete set of variables and applying the proper statistical approach, cross-ownership does not increase the quantity of local news, which is a necessary but not sufficient condition for relaxing the ownership limits. In fact, we find:

- Cross-ownership reduces the total amount of local news available in the market and
- Cross-ownership does *not* increase the number of stations providing news in a market.
- There is no evidence to support the hypothesis that allowing cross ownership will increase with the quantity of diversity of news available in smaller markets, as hypothesized by the Chief Economist.

The effect of cross-ownership on a marketplace is therefore not only the loss of an independent voice in local news, it is the overall reduction of local news in the community. The importance of this finding should be underlined. Not only has a fundamental assumption of the Chief Economist's research plan failed to pan out, the evidentiary basis offered by the Commission in the *Prometheus* case for relaxing the cross-ownership rule has been invalidated. If the Commission's goal is to maximize the output of local news and the diversity of voices offering it, then clearly cross-ownership limits must be maintained.

Chapter IV then addresses the FCC Study that attempted to analyze “bias” or “slant” in news coverage of the 2006 election. The hypothesized result in the Chief Economist’s research agenda was that no bias in reporting would appear based on ownership. This would support the conclusion that ownership does not matter. However, Chapter IV shows that, when the variables are properly defined, there is a clear pattern of bias in the set of cross-owned stations that were grandfathered when the rule was adopted. The bottom line is that ownership matters and has a direct impact on content. The second major hypothesis in the Commission’s research plan failed to find support in the data.

Chapter IV also addresses a hypothesis offered by the Chief Economist regarding market size, curtailment of news production and cross-ownership. The theory was that in small markets the pressure on resources could be alleviated by cross-ownership, which would allow cross owned stations to do more news. Although the FCC did not commission a specific study in this area, the industry has continued to fill the record with these claims. Using the data from several FCC studies and adding data that is readily available from the same sources that the FCC used, we show that the claim that cross-ownership will promote more news output in small markets is not supported. In the end, none of the arguments that cross-ownership increases local news production for a market was verified by the data.

## **Chapter V. Traditional Media are Still the Dominant Sources of Local News and Information**

Chapter V is based on an analysis of FCC Study 1, which is a survey of media usage patterns among a large national random sample of respondents. It shows that traditional media outlets, particularly broadcast TV and newspapers, are overwhelmingly the dominant sources of local news and information. The Chief Economist hypothesized that new media (cable and Internet) might be supplementing or substantially replacing traditional media as the primary source of local news. If this were the case, ownership of traditional media would not matter. The survey results do not support such a claim. This is not the case, and the third major result hypothesized by the Chief Economist fails.

With respect to the importance of news source, traditional media are far more important than alternative media, according to the national survey:

- 89 percent of respondents say traditional media are both their first and second most important sources of local news (i.e. neither Internet nor cable is their first or second most important source of news).

- In contrast, only 3 percent of respondents say alternatives are their first and second most important source of news.

With respect to usage we find an equally powerful result.

- 88 percent of respondents say they use traditional media for local news and current affairs and 46 percent say they use only traditional media and no alternative media.
- In contrast, while 54 percent of respondents say they use alternative media for local news and current affairs, only 1 percent says they use only alternative media.

Econometric analysis shows that: 1) the Internet is not a good substitute for TV; and 2) cable is a complement rather than a substitute.

- One hour of Internet use for news gathering reduces TV use for news gathering by less than two minutes.
- Using the Internet for news lowers the probability that TV will be used for news by about 4 percent.

This chapter concludes with a straightforward presentation of the FCC's survey results that the notion that traditional media have been displaced by new media is baseless. Any policy made on those grounds to relax ownership limits is not in the public interest.

## **Chapter VI. The Lack of Production of Local News and Information by Alternative Media Outlets**

Chapter VI further refutes the assertion that the Internet has led to a wealth of significant competitors for local news by looking at the supply-side of the market. Utilizing the websites cited as competitors by traditional media companies in their FCC filings, we performed a quantitative and qualitative analysis comparing these outlets to the websites of traditional media in the same market. To provide additional evidence, we undertook an exhaustive analysis in two cities, which act as the flagship markets for two large media companies. Our results illustrate the continued dominance of traditional media outlets even in the online space.

For the hyper-local web sites identified by the Newspaper Association of America as competing with newspapers:

- Only 3.6 percent of the stories from the city-specific websites contained original reporting on "hard news" topics such as crime, local governance, education and local politics.
- The median number of unique monthly visitors to the websites of the local newspapers examined in the NAA study was over 50 times as large as the traffic to the alternative web sites. Including the physical space presence of the traditional media outlets would make their viewership almost two thousand times as large.

In our intensive study of city- specific websites in Tampa and Chicago, we find the following:

- Over 70 percent of the stories in our sample of Tampa-specific Web sites were on non-hard news topics such as sports and entertainment.
- The unique visitors to the websites of the two major Tampa newspapers are nearly 90 times as large as the 7,000 visiting the independent Tampa-specific websites.
- More than half of the stories on “hard” news topics in our sample of Chicago-specific websites were hyperlinked to stories on websites owned by traditional media.
- Only 12 percent of the visitors to the independent Chicago-specific websites viewed the site between 2 and 30 times in a month. However, 28 percent of the visitors to the websites of the dominant Chicago daily newspapers, and 19 percent of the visitors to local TV websites were frequent users, viewing the sites between 2 and 30 times in a month.

## **Chapter VII. Station Revenues in Large and Small Markets**

The National Association of Broadcasters (NAB) has repeated its outrageous claim that the FCC should base its policy decision on an analysis that looks at the financial results for TV stations excluding even numbered years. Using company specific data, our earlier analysis showed that such an approach is absurd, ignoring the fatter years while counting the leaner years. Chapter VII extends this analysis by combining revenue data for a large number of stations with the larger database on markets and stations characteristics and shows that the more recent NAB arguments remain absurd. There is simply no justification for excluding the years of increased broadcast revenues.

The NAB claim that election year revenue is too variable to be used in a policy analysis is simply wrong. Our analysis shows that election year revenues are no more variable than off year revenues, as measured by the coefficient of variation, a standard statistical measure used to compare variability across units of observation. Not only is the variability between odd and even number years almost the same, but the variability has been declining over the past decade, as the revenue has been increasing. Even looking at data for the state and DMA levels, the claim about variability between odd and even years does not hold up. Looking at the differences between “competitive” states or DMAs and others does not alter the conclusion.

Moving beyond the NAB’s silly claims we have examined several models that are policy relevant with respect to the Chief Economist’s claims about how relaxation of media ownership limits might improve the prospects of for stations in small markets. We find no support for the argument that combinations will provide a better financial outlook for these stations.

## **PART III: CRITIQUE OF THE FCC STUDY METHODOLOGY**

Whereas Part II corrects the flaws in the FCC studies, Part III presents the critique of the underlying data and methodology of the FCC studies as disseminated. The FCC published these studies prior to completion of the peer review. However, the peer review suggested a huge number of improvements that could be made in the research. Since the authors were never

afforded the opportunity to revise their analyses based on the critiques in the peer reviews, we did it for them. Our analysis in Part III follows the suggestions of the peer reviewers, and we find that the conclusions of the studies, even within the narrow and incorrectly framed research questions the agency asked, do not hold up. If the analysis had been done properly, the studies would not have supported the Chief Economist's agenda.

## **Chapter VIII. Critique of Statistical Methods**

Combining the concerns of the peer reviewers of the major statistical studies, we find that the reviews suggest a number of methodological approaches should have been applied to test the robustness of the analysis.

1) The dependent variable should be modeled for minutes of news, not just percent (applies to Study 3);

2) Regressions should be run separately for Big-4 and non-Big-4 stations (applies to Study 3, 4, and 6);

3) Standard errors should be clustered to account for non-independence. This could be done by clustering by station or by market (applies to Study 3 and 4; Study 6 did cluster at the station level, and was quite adamant that this is the appropriate treatment);

4) Market-Time fixed effects should be included to relax the assumption that time period effects are equal across all markets (applies to Study 3, 4, and 6); 5) Models should be run with parent fixed-effects (applies to Study 3, 4, and 6).

While the peer reviewers focused on statistical methods, we also feel strongly that the models used in Study 3, 4 and 6 had additional flaws related to the substance of the policy issues being studied

5) They missed important control variables whose omission may have led to a positive bias on the cross-ownership variable. For example, the airing of local news is strongly correlated with the age of a station and the position of the station on the dial (VHF versus UHF).

6) We also feel that certain policy-relevant control variables should have been included in the models: duopoly dummy variable; Local Marketing Agreement dummy variable; and market concentration (HHI) variable. Neither Study 3, 4, nor 6 discussed any model specification tests for omitted variable bias. We present the results of such tests.

7) Finally, from a policy perspective, it is extremely important to distinguish between waived and grandfathered newspaper-TV cross-owned stations. We present results on both the aggregate and separated cross-ownership variables.

These seven additional specifications are systematically applied to the statistical models of the studies. The results change the conclusions dramatically:

- When properly specified, the models from each of these three studies indicate no positive impact on the production of local news (or news in study 4).
- In the case of Study 6, which was the only study to examine actual content, we see that there is actually a statistically significant negative relationship between cross-ownership and the output of hard local news content.

These results when viewed in conjunction with the evidence that cross-ownership is associated with less market-level output of local news programming provides a strong case for maintenance of the cross-ownership restriction. The loss of a diverse local voice provides no tangible public interest benefits, but brings substantial harms. On the whole, the FCC's case for relaxing the ban stands on shakier and shakier ground the more analysis is conducted.

### **Chapter IX. The Weaknesses of Contentless Content Analysis: Flaws in the Methodology for Analyzing the Relationship between Media Ownership and Media Bias**

Chapter VIII focused its critique on the statistical methods used in the FCC studies. Chapter IX presents a broader critique of the approach to content analysis which raises concern about the basic conceptualization of implementation of the research, particularly the bias, or slant analysis. The bias analysis embodied in Study 6 can best be described as “contentless content analysis.” Contentless content analysis seeks to ascribe bias, or slant, to a media outlet by defining certain words or issues as liberal or conservative (Democratic or Republican) and then counting the number of times the word or issue is used/covered by the outlet. What is actually said or shown about the issue is not analyzed.

This critique is relevant not only because many of the flaws in the broader approach apply to FCC Study 6, but also because FCC Study 7 invokes the broad findings of “contentless content analysis” to mistakenly claim that ownership does not matter. In addition, the examination of the two leading studies in this radical and controversial style of analysis is particularly relevant since the author of Study 6 is also the author of one of the studies, while the peer reviewer of Study 6 is the author of the other leading study. In fact, the article cited by Study 7 to claim that ownership does not matter was written by the peer reviewer of study 6. It is a small club.

Critiques of the approach from academics and professional journalists identify four major concerns:

- It fails to understand what it means for a reporter to cite a source and to distinguish between ideological opinion in news coverage and reporting.
- The selection of external referents to ascribe ideology to media outlets is inevitably biased.
- Selectivity in coverage of citations leads to bias and questions of unrepresentativeness of the data.
- The creation of single indices to represent complex concepts is flawed.

We show that the use of contentless content analysis is a highly dubious undertaking for all of these reasons.

## **Chapter X. Critique of Data, Definitions and Analyses**

Chapter X demonstrates that the conceptual criticism of contentless content analysis is evident in the empirical specification of the FCC studies. It focuses primarily on mis-defined variables, unrepresentative samples and missing analyses.

Study 6 chose to base its analysis on a single week, the week before the 2006 election. While this is certainly an interesting week, it may not be representative of the other 103 weeks that occur between elections. Study 6 chose to focus on content variables that focus on the national election. While these are important issues, there are a vast array of other issues that better capture the concept of localism. A good case can be made that federal elections and federal issues are very bad indicators of how the media behave in general, particularly when localism is the policy concern.

Several of the political variables are doubtful as measures of the concepts the study attempts to operationalize. For example, the study assumes coverage of the Iraq war is a Democratic issue, but President Bush was out campaigning for Republicans and talking about the Iraq war in many of the states included in the Study 6 analysis. In assessing the political leaning of the DMA during the congressional elections of 2006, the study used the vote for Kerry in 2004, instead of the vote in 2006.

Other problems abound across different studies. Study 4.1, which examines news and public affairs programming on broadcast television, used total news, not local news as its dependent variable and produces results that are inconsistent with the other studies that measure local news. Study 9, which examines the impact of vertical integration on entertainment programming on broadcast and cable, fails to consider fundamental factors that affect the availability of programming and are routinely included in the analysis.

- In the broadcast space, the study excludes short-run shows. It ignores the cost difference between scripted entertainment and reality shows. As a result, it dramatically underestimates the importance of vertical integration.
- In the cable space, the study ignores the important role that broadcast must carry plays in determining carriage. It fails to identify the tiers on which cable networks are carried.

Ironically, the basic findings demonstrate the important role of vertical integration, but the methodological weaknesses are used to mask the ultimate impact of vertical integration.

## **PART IV: THE FAILURE OF THE FCC TO FULLY ADDRESS AND PROPERLY ANALYZE MINORITY AND DIVERSITY ISSUES**

Given that the Third Circuit in *Prometheus v. The FCC* chastised the FCC for failing to devote adequate attention to minority issues, the neglect of these concerns over a four year period is remarkable. There are two primary areas of neglect.

First, the FCC still has not correctly identified minority and female owners of broadcast outlets. The neglect of minority issues is so pervasive that in the only study of media usage by the public, the FCC failed to attempt to identify Hispanic respondents. The largest and fastest growing minority population in America is invisible in the FCC study of media usage.

Second, the FCC has devoted almost no attention to analyzing the impact of past policy changes or the likely impact of future policy changes on minority ownership. Not only did the Commission do virtually nothing on the analysis for ten years, but when it decided to Commission studies it apparently devoted inadequate resources to the task, at least that is the opinion of one of the peer reviewers.

### **Chapter XI. The Commission has Failed to Adequately Account for the True Level of Female and Minority Ownership**

The utter failure of the FCC to properly account for minority ownership and its inattention to minority issues has been evident for years and caught the attention of the Court in its remand of the Final Order in the media ownership proceeding. Unfortunately, the Commission has done little if anything to rectify the situation. The data set provided for the research studies contains fundamental errors that Consumer Commenters have pointed out in the record. The FCC studies that tried to describe the current state of minority ownership were both highly critical of the FCC's data. Yet, this data was used in the econometric analyses of station ownership, infecting them with its flaws.

The authors of the two external studies of minority issues commissioned by the FCC both abandoned the FCC's data base and were forced to resort to other data bases. Our own efforts to construct an accurate census of minority ownership suggest that the FCC has missed between two-third and three quarters of the stations that are minority/female owned. It is flatly inexcusable that the agency has never bothered to tabulate—using its own data—an accurate count of the race and gender characteristics of broadcast licensees. Instead, it has relied on summary data that is unusable on its face. It is a deeply troubling statement about the Commission's disregard for minority ownership issues.

### **Chapter XII. The FCC has Failed to Thoroughly Analyze the Impact of Relaxing Ownership Limits on Minority Ownership**

The remarkable inability of the FCC to count minority and female owners is exceeded only by its inability and lack of effort to understand the impact of broader media ownership policy on minority ownership. In the three years since the Court reprimanded the Commission for neglecting this issues, the FCC devoted virtually no attention to this issue.

Constructing an accurate data base of minority ownership and examining the impact of the decision to allow duopolies, as well as the impact of market concentration on media ownership, we conclude that relaxation of media limits harms minority ownership. The FCC

studies do not contradict this conclusion in any way. In fact, no where has the FCC ever attempted to address the obvious contradiction between permitting further media consolidation and promoting opportunities for minority and female ownership.

This chapter concludes with a critique of the minority oriented studies among the 10 commissioned studies. The main issue is the absence of usable data. The authors of Study 7 recognized this problem and were forced to use a proxy data set. Study 7 relied on a Bureau of the Census count of firms to estimate minority ownership. Unfortunately, Study 7 counted the wrong thing in its analysis. It counted firms, instead of stations, implicitly assuming that majority and minority firms own the same number of stations. That assumption is wrong and leads to a gross under estimate of the under representation of minorities in the ranks of station owners. Study 7 purports to show that the percentage of minority/female ownership in broadcasting is about half of the percentage of minorities/females. When analyzed properly, at the level of stations or revenues, the percentage accounted for by minorities/females is just one-tenth of their percentage in the population.

Study 10 attempted to assess the impact of the decision to allow duopolies and to raise the national cap on minority ownership. It sought to build an accurate data base, although it did not achieve that goal. It was the only study commissioned by the FCC to attempt to explicitly assess the impact of changes in national policy on minority/female ownership. Here the study is supportive of our independent findings. It finds that sales of minority stations were twenty times higher in duopoly markets than in non-duopoly markets. This corroborates the conclusion in our analysis that relaxation of ownership limits has already reduced minority ownership.

The implications of the long standing neglect of minority and female issues, the strongly expressed concerns of the Third Circuit and the failure to deal with them in the recent research are clear. The Commission cannot move forward with changes in ownership limits without gaining a much better understanding on how it will impact minority ownership.

## **Chapter XIII. Minority Targeted Programming: Still at the Back of the Bus**

Chapter XIII examines the issue of minority-targeted programming addressed in Study 3. Moving beyond the cursory analysis in FCC Study 3, Chapter XIII examines the issue of which tiers carry minority-targeted programming and concludes that minority programming is still at the back of the bus – severely underrepresented in carriage compared to the size of the minority population and relegated to expensive tiers on cable networks.

- The 192 networks that are deemed minority-targeted represent about 40 percent of the total number of network, but minority-owned, minority-targeted programming accounts for less than 4 percent of the total carriage.
- The more broadly available programming, which is carried on the expanded basic tier, is dominated by a handful of programmers. Four-fifths of the carriage on expanded basic tiers is accounted for by five networks – three owned by broadcasters (Univision and Telemundo (owned by NBC) and one owned by a cable programmer (Viacom).
- In order to gain access to the 98 percent of the minority-targeted programming, subscribers must pay for extra tiers – an average of almost \$43 per month.