

# Overview

- 1 MG Siegler, *Eric Schmidt: Every 2 Days We Create As Much Information As We Did Up to 2003*, TECH CRUNCH, Aug 4, 2010, <http://techcrunch.com/2010/08/04/schmidt-data/>.
- 2 *Company History*, THOMSON REUTERS (*Company History*), [http://thomsonreuters.com/about/company\\_history/#1890\\_1790](http://thomsonreuters.com/about/company_history/#1890_1790) (last visited Feb. 8, 2011).
- 3 *Company History*. Reuter also used carrier pigeons to bridge the gap in the telegraph line then existing between Aachen and Brussels. Reuters Group PLC, <http://www.fundinguniverse.com/company-histories/Reuters-Group-PLC-Company-History.html> (last visited Feb. 8, 2011).
- 4 Reuters Group PLC (Reuters Group), <http://www.fundinguniverse.com/company-histories/Reuters-Group-PLC-Company-History.html> (last visited Feb. 8, 2011).
- 5 Reuters Group.
- 6 This calculation assumes that the bird carried about 1,000 words and that 64,782 Microsoft Word pages can fit per gigabyte. *How Many Pages in a Gigabyte?*, LEXISNEXIS, [http://www.lexisnexis.com/applied-discovery/lawlibrary/whitePapers/ADI\\_FS\\_PagesInAGigabyte.pdf](http://www.lexisnexis.com/applied-discovery/lawlibrary/whitePapers/ADI_FS_PagesInAGigabyte.pdf) (last visited Feb. 8, 2011). If one assumes stripped down text files, then a 256 gigabyte flash drive could carry 86,779,264 times more than the pigeon *id.*
- 7 See WikiSource, Letter to Edward Carrington—January 16, 1787, [http://en.wikisource.org/wiki/Letter\\_to\\_Edward\\_Carrington\\_-\\_January\\_16,\\_1787](http://en.wikisource.org/wiki/Letter_to_Edward_Carrington_-_January_16,_1787) (last visited Jan. 25, 2011).
- 8 THE KNIGHT COMMISSION, INFORMING COMMUNITIES: SUSTAINING DEMOCRACY IN THE DIGITAL AGE at XI (2010), available at <http://www.knightcomm.org/read-the-report-and-comment/>.
- 9 The Commission's statutory mandate includes responsibility for a wide range of media issues, including policy and licensing for the regulation of cable television, broadcast television and radio, and satellite services in the United States and its territories. See 47 U.S.C. Titles I, III and VI. See also *id.* at § 303(g) (requiring the FCC to “encourage the larger and more effective use of radio in the public interest”); *NBC v. United States*, 319 U.S. 190, 217 (1943) (Communications Act of 1934, as amended, confers on the FCC “comprehensive powers to promote and realize the vast potentialities of radio”). More specifically, the FCC's media regulatory responsibilities include, but are not limited to: broadcast television and radio station licensing, technical standards, ownership, localism, equal employment opportunity, children's programming, political programming, sponsorship identification, and indecency. See 47 U.S.C. §§ 301, 303a, 303b, 307–310, 315, 317, 334–336, 507; 18 U.S.C. § 1464 (1994); Telecommunications Act of 1996 § 202, Pub. L. No. 104-104, 110 Stat. 56 (1996). Additionally, cable television rates, technical standards, consumer protection and customer service, ownership, broadcast station signal retransmission and carriage, program access, wiring, equipment, and channel leasing are also included in the FCC's media regulatory responsibilities. See 47 U.S.C. §§ 611–617, 623, 624, 628, 632. Digital Broadcast Satellite licensing, ownership, broadcast station signal retransmission and carriage also fall under the purview of the FCC. See 47 U.S.C. §§ 335, 338–341. We believe effective performance of these responsibilities requires FCC Commissioners and staff to have an understanding of developments within the broader sphere where radio, television, cable and satellite media outlets operate. Accordingly, we do not confine the discussion in this report to those specific issues within the Commission's regulatory jurisdiction. Instead, we describe below a set of inter-related changes in the media landscape that provide the background for future FCC decision-making, as well as assessments by other policymakers beyond the FCC.
- 10 Founders' Constitution, James Madison, Report on the Virginia Resolutions, [http://press-pubs.uchicago.edu/founders/documents/amend\\_speechs24.html](http://press-pubs.uchicago.edu/founders/documents/amend_speechs24.html) (last visited Feb. 7, 2011).
- 11 *Advertising Expenditures*, NEWSPAPER ASSOC. OF AM. (last updated Mar. 2010), <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx>.
- 12 “Newspapers: News Investment” in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010 (PEW, STATE OF NEWS MEDIA 2010), <http://stateofthemediamedia.org/2010/newspapers-summary-essay/news-investment/>.
- 13 The editorial workforce for daily newspapers in 1971 was estimated to be 38,000. JOHN W.C. JOHNSTONE, EDWARD J. SLAWSKI, & WILLIAM W. BOWMAN, THE NEWS PEOPLE: A SOCIOLOGICAL PORTRAIT OF AMERICAN JOURNALISTS AND THEIR WORK 195 (University of Illinois Press, 1976). The American Society of Newspaper Editors put total newspaper newsroom employment in 2010 at 41,600. *Newsroom Employment Up Slightly, Minority Numbers Plunge for Third Year*, AM. SOC'Y OF NEWS EDITORS, Apr. 7, 2011, [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx). This means that roughly the same number of journalists are working at newspapers today as in 1970, even though the population of the US has increased by more than 50 percent. The population in 1970 was 203,302,031, while the population in 2010 was 308,745,538. *Population, Housing Units, Area Measurements, and Density: 1790 to 1990*, U.S. CENSUS BUREAU, <http://www.census.gov/population/www/censusdata/files/table-2.pdf>; Press Release, U.S. Census Bureau, U.S. Census Bureau Announces 2010 Census Population Counts—Apportionment Counts Delivered to President (Dec. 21, 2010), <http://2010.census.gov/news/releases/operations/cb10-cn93.html>.
- 14 “Overview” in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/overview-3/>.
- 15 “Magazines: News Investment” in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/magazines-summary-essay/news-investment/>.
- 16 “News on the Radio” in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2011 (PEW, STATE OF NEWS MEDIA 2011), <http://stateofthemediamedia.org/2011/audio-essay> (citing Arbitron Inc., Radio Today 2010 Edition); Email from Claudine Kinsley, Dir., Syndicated Standards & Analysis, Arbitron Inc., to Alexandra McKinney, FCC, Nov. 17, 2010. Arbitron provided aggregate data to the FCC but did not identify the stations that identified themselves as all-news stations.
- 17 ADAM LYNN, MARK COOPER & S. DEREK TURNER, NATIONAL OWNERS DOMINATE LOCAL CABLE NEWS: LOCAL CABLE NEWS CHANNELS DO NOT SIGNIFICANTLY CONTRIBUTE TO SOURCE OR VIEWPOINT DIVERSITY 1, 5 (Free Press) (2006) [http://www.freepress.net/files/study\\_4\\_cable\\_local\\_news.pdf](http://www.freepress.net/files/study_4_cable_local_news.pdf) (“these stations serve about one-fifth of the total population...”). The number could be slightly higher. Our own FCC analysis, based on research in September 2010 by FOM team members Simon Banyai and Ava Seave (Banyai and Seave Research), we previously

- found there to be approximately 39 local or regional cable news channels that produced their own news. These channels serve subscribers on cable systems in approximately 71 out of the total 210 Designated Market Areas in the country, and many of these DMAs contain large metropolitan regions—New York, Boston, Chicago, or San Francisco—with multiple channels. Using 2010 data, out of the total of 54,335,000 TV households located in 71 DMAs, we found that 52.4 percent or 28,471,540 were cable subscribers. Therefore, we estimated that these 39 cable news channels were available to at least 24.6 percent of the 115.8 million total TV households in the country in 2010. Our cable news channel count incorporates only those channels that continue to utilize journalists to originate local or regional news. While Americans may receive news from a somewhat greater number of cable channels that merely rebroadcast or simulcast network news programming, we have omitted such channels from our tally. The “20 to 30 percent” figure also includes local cable news channels referenced in footnote 264 of Chapter 3, Television.
- 18 FCC staff analysis of data from Tribune Media Services for Nov. 1–Nov. 14, 2009 and May 6–May 12, 2010.
  - 19 LEONARD DOWNIE JR. & MICHAEL SCHUDSON, COLUMBIA JOURNALISM REV., THE RECONSTRUCTION OF AMERICAN JOURNALISM, Oct. 19, 2009 (DOWNIE & SCHUDSON, RECONSTRUCTION OF AMERICAN JOURNALISM), [http://www.cjr.org/reconstruction/the\\_reconstruction\\_of\\_american.php?page=all](http://www.cjr.org/reconstruction/the_reconstruction_of_american.php?page=all).
  - 20 HOW NEWS HAPPENS: A STUDY OF THE NEW ECOSYSTEM OF ONE AMERICAN CITY, PROJECT FOR EXCELLENCE IN JOURNALISM 2 (2010), [http://www.journalism.org/sites/journalism.org/files/Baltimore%20Study\\_Jan2010\\_0.pdf](http://www.journalism.org/sites/journalism.org/files/Baltimore%20Study_Jan2010_0.pdf).
  - 21 JAN SCHAFFER, J-LAB: THE INSTITUTE FOR INTERACTIVE JOURNALISM, EXPLORING A NETWORKED JOURNALISM: COLLABORATIVE IN PHILADELPHIA: AN ANALYSIS OF THE CITY'S MEDIA ECOSYSTEM WITH FINAL RECOMMENDATIONS 3, <http://www.j-lab.org/publications/exploring-a-networked-journalism-collaborative-in-philadelphia>.
  - 22 JAMES T. HAMILTON, SUBSIDIZING THE WATCHDOG: WHAT WOULD IT COST TO SUPPORT INVESTIGATIVE JOURNALISM AT A LARGE METROPOLITAN DAILY NEWSPAPER? 3 (2009), <http://sanford.duke.edu/nonprofitmedia/documents/dwchamiltonfinal.pdf>; Fiona Morgan, *An Information Community Case Study: The Research Triangle, N.C.*, NEW AM. FOUND. (2011), at 12, [http://mediapolicy.newamerica.net/sites/newamerica.net/files/policydocs/Triangle%20NC%20Case%20Study%20%28Version%202.0%29\\_0.pdf](http://mediapolicy.newamerica.net/sites/newamerica.net/files/policydocs/Triangle%20NC%20Case%20Study%20%28Version%202.0%29_0.pdf).
  - 23 Jennifer Dorroh, *Statehouse Exodus*, AM. JOURNALISM REVIEW, Apr./May 2009 (*Statehouse Exodus*), <http://www.ajr.org/article.asp?id=4721>. See also *Summary of State and Local Government Finances by Level of Government: 2002–03*, U.S. CENSUS BUREAU, <http://www.census.gov/govs/estimate/03sl00us.html> (2003 figure); *State and Local Government Finances Summary: 2008*, U.S. CENSUS BUREAU, Apr. 2011, at Table 1, <http://www2.census.gov/govs/estimate/08statesummaryreport.pdf> (2008 figure).
  - 24 *Statehouse Exodus*.
  - 25 *Statehouse Exodus*.
  - 26 *Statehouse Exodus*.
  - 27 *Statehouse Exodus*.
  - 28 Interview of Mark Horvit by M.K.Guzda Struck, FCC, Aug. 16, 2010.
  - 29 Interview of Mary Walton by M.K.Guzda Struck, FCC, Aug. 29, 2010.
  - 30 The total number of members has increased, with the bulk describing themselves as freelancers. They had 1,100 members in 2000 and 1,500 members now. Interview with Beth Parke, Executive Director, Society of Environmental Journalists, by M.K.Guzda Struck, FCC, Aug. 23, 2010.
  - 31 PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, THE NEW WASHINGTON PRESS CORPS: AS MAINSTREAM MEDIA DECLINE, NICHE AND FOREIGN OUTLETS GROW (Feb. 11, 2009), [http://www.journalism.org/analysis\\_report/new\\_washington\\_press\\_corps](http://www.journalism.org/analysis_report/new_washington_press_corps).
  - 32 Email from Debra Mason, Religion Newswriters Association, to Steven Waldman, FCC, Feb. 18, 2011.
  - 33 GARY SCHWITZER, KAISER FAMILY FOUNDATION, THE STATE OF HEALTH JOURNALISM IN THE U.S. 16 (Mar. 2009), <http://www.kff.org/entmedia/upload/7858.pdf>.
  - 34 Email from Richard Colvin to Steven Waldman, FCC, Jan. 19, 2011.
  - 35 Interview with Andrew Lack by Steven Waldman, FCC, Dec. 16, 2010.
  - 36 Testimony of David Simon, former Baltimore Sun reporter and Creator, HBO series *The Wire*, Hearing on the Future of News and Journalism, U.S. Senate Subcommittee on Communications, Technology and the Internet, May 8, 2009, *available at* <http://www.onthemediamedia.org/transcripts/2009/05/08/01>.
  - 37 Interview with Mark Silverman, (Nashville) Tennessean, by Steven Waldman, FCC, May 24, 2010.
  - 38 Interview with Brian Hamlin, Senior Reporter, Vacaville (CA) Reporter, by M.K.Guzda Struck, FCC, June 2010. Hamlin provided an example of the distances he was required to drive in a single day to cover far-flung stories, due to staff reductions: Stockton to Vallejo, 65.7 mi.; Vallejo to Fairfield, 17 mi.; Fairfield to Sacramento, 43 mi.
  - 39 Jodi Enda, *Capital Flight*, AM. JOURNALISM REV., June/July 2010, <http://www.ajr.org/Article.asp?id=4877>.
  - 40 Interview of Vivek Sankaran by M.K.Guzda Struck, FCC, Aug. 17, 2010.
  - 41 PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY (Jan. 11, 2010), [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens).
  - 42 Interview with Bill Girdner, Editor and Publisher, Courthouse News Service by M.K. Guzda Struck, FCC, July 2, 2010.
  - 43 Dean Starkman, *The Hamster Wheel*, COLUMBIA JOURNALISM REV. (Oct. 2010), [http://www.cjr.org/cover\\_story/the\\_hamster\\_wheel.php?page=all](http://www.cjr.org/cover_story/the_hamster_wheel.php?page=all).
  - 44 Interview with Matthew Zelkind, Station Mgr., WKRN-TV, by Steven Waldman, FCC, May 24, 2010.
  - 45 Interview with Fred Young, former Vice President of Hearst Broadcasting, by Cynthia Kennard, FCC, June 2010.
  - 46 MARTIN KAPLAN AND MATTHEW HALE, LOCAL TV NEWS IN THE LOS ANGELES MEDIA MARKET: ARE THE STATIONS SERVING THE PUBLIC INTEREST? 4–6 (USC Annenberg School of Communication & Journalism, 2010), <http://www.learcenter.org/pdf/LANews2010.pdf>.
  - 47 THOMAS BALDWIN, DANIEL BERGIN, FRED FICO, STEPHEN LACY, & STEVEN WILDMAN, NEWS MEDIA COVERAGE OF CITY GOVERNMENTS IN 2009 4–5 (Michigan State Univ., 2010), [http://quello.msu.edu/sites/default/files/pdf/PEJ\\_City\\_Govt\\_report-final.pdf](http://quello.msu.edu/sites/default/files/pdf/PEJ_City_Govt_report-final.pdf).
  - 48 Interview with Con Psarris, Vice President of Editorials and Special

- Projects, KSL-TV, by Cynthia Kennard, FCC, July 20, 2010.
- 49** Interview with Reporter, KNTV ABC Las Vegas, Nevada, by Steven Waldman, FCC, Apr. 13, 2010.
- 50** Curtis Brainard, *News Director Quits over Hospital Deal*, COLUMBIA JOURNALISM REV., Jan. 25, 2008, [http://www.cjr.org/the\\_observatory/news\\_director\\_quits\\_over\\_hospi.php](http://www.cjr.org/the_observatory/news_director_quits_over_hospi.php).
- 51** Steph Gregor, *And Now a Word from our Sponsor*, THE OTHER PAPER (Columbus Ohio), Nov. 29, 2007.
- 52** Howard Kurtz, *TV Station Cashes in on Interview 'Guests'*, WASH. POST, Oct. 16, 2003, at C1.
- 53** The survey was conducted December 2009 through January 2010. See *News Leaders and the Future: News Executives, Skeptical of Government Subsidies, See Opportunity in Technology but are Unsure About Revenue and the Future*, PROJECT FOR EXCELLENCE IN JOURNALISM, AMERICAN SOCIETY OF NEWS EDITORS (ASNE), RADIO TELEVISION DIGITAL NEWS ASSOCIATION (RTDNA), Apr. 12, 2010, [http://www.journalism.org/analysis\\_report/news\\_leaders\\_and\\_future](http://www.journalism.org/analysis_report/news_leaders_and_future).
- 54** Average recurring EBITDA from 2005 to 3Q 2010 is 36.64 percent, according to SNL Kagan data.
- 55** PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY 2 (Jan. 11, 2010), available at [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens).
- 56** American Society of Newspaper Editors, *Newsroom Employment Census, 2011*, [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx); "Newspapers: News Investment" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthedia.org/2010/newspapers-summary-essay/news-investment/>.
- 57** *Meet the New Media Makers—and the Foundations that Make Their News Sites Possible*, KNIGHT CITIZEN NEWS NETWORK, [http://www.kcnn.org/toolkit/funding\\_database/](http://www.kcnn.org/toolkit/funding_database/) (last visited Mar. 1, 2011).
- 58** Interview with Rick Blair, President, Examiner.com by Steven Waldman, FCC, Dec. 17, 2010.
- 59** Michele McLellan, *Debunking the Replacement Myth*, KNIGHT DIGITAL MEDIA CTR., July 26, 2010, [http://www.knightdigitalmediacenter.org/leadership\\_blog/comments/20100726\\_the\\_replacement\\_myth/](http://www.knightdigitalmediacenter.org/leadership_blog/comments/20100726_the_replacement_myth/).
- 60** *Newspaper Websites (Nielsen)*, NEWSPAPER ASSOC. OF AM., <http://www.naa.org/TrendsandNumbers/Newspaper-Websites-Nielsen.aspx> (last visited Jan. 20, 2011) (providing that in May 2009: 69,950,403 uniques, 2,995,584,721 page views, versus May 2005: 43,704,725 uniques, 1,635,119,778 page views).
- 61** *Advertising Expenditures*, NEWSPAPER ASSOC. OF AM., <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (last visited Nov. 18, 2010).
- 62** "Survey: Mobile News & Paying Online" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/mobile-survey/>.
- 63** Research by FCC staff on May 27 (iPad) and May 31 (iPhone), 2011, counting all iPad and iPhone apps that appeared within the Apple iTunes App Store's pages displaying "All News iPad Apps—Paid," "All News iPad Apps—Free," "All News iPhone Apps—Paid," and "All News iPhone Apps—Free." At the time, Apple offered 537 paid iPad news apps, 2,388 free iPad news apps, 2,719 paid iPhone news apps, and 6,514 free iPhone news apps.
- 64** National Public Radio, Inc. Comments in re *FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*), filed May 7, 2010 (NPR Comments) at 3.
- 65** NPR Comments at 7.
- 66** NPR Comments at 2.
- 67** *Local News Station Survey: Executive Summary*, NAT'L PUB. RADIO, <http://www.localnewsinitiative.org/executive.cfm> (last visited Feb. 11, 2010).
- 68** THE PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, AUDIENCE SEGMENTS IN A CHANGING NEWS ENVIRONMENT: KEY NEWS AUDIENCES NOW BLEND ONLINE AND TRADITIONAL SOURCES 5 (2008), <http://people-press.org/reports/pdf/444.pdf> (1998, 2008 data); THE PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS 14 (2010), <http://people-press.org/reports/pdf/652.pdf> (2010 data).
- 69** *Statistical Abstract of the United States: 2011*, at 711, <http://www.census.gov/compendia/statab/2011/tables/11s1130.pdf>.
- 70** Alan Mutter, *The State of Play for Paid Content, 2011*, EDITOR & PUBLISHER, Jan. 11, 2011.
- 71** Email from Clay Shirky to Steve Waldman, FCC, Apr. 2, 2010.
- 72** *Newspaper Economics: Online and Offline*, Presentation by Hal Varian, Chief Economist, Google, and Professor, Univ. of California, Berkeley, FTC Workshop, "From Town Criers to Bloggers: How Will Journalism Survive The Internet Age?" (Mar. 9, 2010), at 20, available at <http://www.ftc.gov/opp/workshops/news/mar9/docs/varian.pdf>.
- 73** MICHAEL R. FANCHER, OF THE PRESS: MODELS FOR TRANSFORMING AMERICAN JOURNALISM, A REPORT OF THE 2009 ASPEN INSTITUTE FORUM ON COMMUNICATIONS AND SOCIETY 16 (2009) (quoting Esther Dyson's statement about investments in new start-ups), available at <http://www.knightcomm.org/wp-content/uploads/2010/04/Of-the-Press-Models-for-Transforming-American-Journalism.pdf>.
- 74** Interview with Esther Dyson by Steven Waldman, FCC, Sept. 3, 2010.
- 75** National Religious Broadcasters Comments in re *FOM PN*, filed Feb. 18, 2010 (NRB Comments) at 12.

## 1 Newspapers

- 1** Newspaper Association of America, *Advertising Expenditures*, <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (last visited Jan. 20, 2011) (NAA, Advertising Expenditures).
- 2** "Newspapers: News Investment" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010 (PEW, STATE OF NEWS MEDIA 2010), [http://www.stateofthedia.org/2010/newspapers\\_news\\_investment.php](http://www.stateofthedia.org/2010/newspapers_news_investment.php).
- 3** American Society of News Editors, *Newsroom employment up slightly, minority numbers plunge for third year*, April 7, 2011, [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx); *Newspapers: By the Numbers*, <http://stateofthedia.org/2011/newspapers-essay/data-page-6/>.
- 4** According to sociologist Paul Starr, "A study of the subscription books of two small-town Ohio papers in the 1820s, the *Ashtabula Sentinel* and

- the *Mansfield Gazette*, finds that a majority of subscribers to both papers lived out of town; indeed, 47 percent of the *Sentinel's* subscribers and 34 percent of the *Gazette's* lived more than 20 miles away.... In addition, postmasters collected and remitted subscription fees." PAUL STARR, THE CREATION OF THE MEDIA: POLITICAL ORIGINS OF MASS COMMUNICATION 89–90 (Basic Books) (2004) (STARR, CREATION OF THE MEDIA).
- 5** STARR, CREATION OF THE MEDIA at 90.
- 6** GERALD J. BALDASTY, THE COMMERCIALIZATION OF NEWS IN THE NINETEENTH CENTURY 20 (University of Wisconsin Press) (1992) (BALDASTY, COMMERCIALIZATION OF NEWS).
- 7** STARR, CREATION OF THE MEDIA at 93.
- 8** The ability of federal and state governments at the executive and legislative levels to fund patronage meant that diverse sources of funding generated political diversity in the partisan press. As Gerald Baldasty notes:
- "During the last two years of the John Quincy Adams administration, federal patronage went to the three major political newspapers in the nation's capital: the executive patronage went to the *National Journal*, Adams' official organ; the House printing contracts went to Joseph Gales and William Seaton of the *National Intelligencer*, and the Senate printing contract to Duff Green of the *U.S. Telegraph*. Consequently, during the 1828 presidential campaign, federal patronage funds were supporting two papers that advocated the reelection of Adams and one newspaper that advocated the election of Andrew Jackson."
- BALDASTY, COMMERCIALIZATION OF NEWS at 24–25.
- 9** FRANK LUTHER MOTT, AMERICAN JOURNALISM: A HISTORY OF NEWSPAPERS IN THE UNITED STATES THROUGH 260 YEARS: 1690–1950 314 (Macmillan) (1950). As Frank Mott has pointed out (*id.*):
- "The large circulations of the cheap papers would have been impossible without the improvements in papermaking which reduced the price of newsprint paper, and the startling developments in fast printing presses. Improvements in the Fourdrinier papermaking machine continued; and prices, variable in the period, ranged from fourteen to eight cents a pound for the rag paper used in printing.
- "More remarkable, however, were the improvements in presses. The penny papers of large circulation were printed on Napier presses built by Richard M. Hoe & Company, of New York. These were at first single-cylinder, flat-bed presses capable of about 2,000 impressions per hour and turned by cranks manned by stout laborers. As circulations expanded, they soon gave way to double-cylinder presses with two feeders and capable of 4,000 impressions an hour. In 1835 the *New York Sun* installed steam power, setting an example which was soon followed by the other successful penny papers."
- 10** STARR, CREATION OF THE MEDIA at 131.
- 11** STARR, CREATION OF THE MEDIA at 135. Starr observes (at 135):
- "According to a study of sixty-seven daily and nondaily newspapers published between 1820 and 1860, news became more localized in two senses. First, an increasing proportion of news stories concerned events in a paper's hometown or state, while relatively fewer stories reported events taking place abroad or in Washington, D.C. Second, local editors and reporters, who wrote only 25 percent of news articles in their own papers during the years 1820 to 1832, increased their share of the total to 45 percent by 1847 to 1860, while the proportion clipped from other newspapers (or, in the later period, received by telegraph) fell from 54 percent to 38 percent. During the middle decades of the nineteenth century, newspapers added sections entirely devoted to local news, and 'city editor' often became the second most important position. In other ways, however, remarkably little changed. The survey of sixty-seven papers found no significant shift during the antebellum period in the general subjects of stories (there was no reduction in attention to politics) or in the level of readability."
- 12** JAMES T. HAMILTON, ALL THE NEWS THAT'S FIT TO SELL: HOW THE MARKET TRANSFORMS INFORMATION INTO NEWS 45 (Princeton University Press) (2004) (HAMILTON, ALL THE NEWS).
- 13** MENAHEM BLONDHEIM, NEWS OVER THE WIRES: THE TELEGRAPH AND THE FLOW OF PUBLIC INFORMATION IN AMERICA, 1844–1897 16 (Harvard University Press) (1994). Blondheim observes (at 16):
- "In the period spanning 1820 and 1832, up to 28 percent of news items published in a sample of American papers reported events that had taken place a month or more previously, and only 21 percent of news items related to events that had occurred within the preceding three days. From 1833 to 1846, a corresponding sample indicated that only 13 percent of published news items concerned events more than a month old, and twice as many items (41 percent) were of events that had taken place within the three days prior to publication."
- 14** HAMILTON, ALL THE NEWS at 49.
- 15** HAMILTON, ALL THE NEWS at 48. As one editor noted in 1906:
- "The immensely large capital now required for the conduct of a daily newspaper in a great city has had important consequences. It has made the newspaper more of an institution, less of a personal organ. Men no longer designate journals by the owner's or editor's name. It used to be Bryant's paper, or Greeley's paper, or Raymond's, or Bennett's. Now it is simply *Times*, *Herald*, *Tribune*, and so on." *Id.*
- 16** According to Inland Daily Press Association data, the breakdown of 1922 newspaper revenues was: circulation 21 percent, advertising 78 percent, and miscellaneous one percent. By 1933 that had changed to circulation 30 percent, advertising 69 percent, and miscellaneous one percent. In their own study of newspaper revenue in 1941, Borden, Taylor, and Hovde found that circulation accounted for a median of 29 percent of revenues among papers with circulation under 10,000, and a median of 36 percent of revenues at papers with circulation over 100,000. See NEIL H. BORDEN, MALCOLM D. TAYLOR, & HOWARD T. HOVDE, NATIONAL ADVERTISING IN NEWSPAPERS 5, 434, 435 (Harvard University Press) (1946).
- 17** DAVID HOLBROOK CULBERT, NEWS FOR EVERYMAN: RADIO AND FOREIGN AFFAIRS IN THIRTIES AMERICA 16 (Greenwood) (1976). See also GWENYTH L. JACKAWAY, MEDIA AT WAR: RADIO'S CHALLENGE TO THE NEWSPAPERS, 1924–1939 (Praeger) (1995).
- 18** OSWALD GARRISON VILLARD, THE DISAPPEARING DAILY 8 (Knopf) (1944).
- 19** Matthew Gentzkow, *Television and Voter Turnout*, 121 Q. J. ECON. 931–972 (2006), available at <http://www.mitpressjournals.org/doi/pdf/10.1162/qjec.121.3.931>.
- 20** Newspaper Association of America, Total Paid Circulation, <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx>; U.S. Census, Families and Living Arrangements, Table HH-1. Households, by Type: 1940 to Present, <http://www.census.gov/population/www/socdemo/hh-fam.html#ht> (each last visited Feb. 28, 2011).
- 21** LEO BOGART, PRESERVING THE PRESS: HOW DAILY NEWSPAPERS MOBILIZED TO KEEP THEIR READERS 40, 41 (Columbia University Press) (1991) (BOGART, PRESERVING THE PRESS).

**22** In his 1991 book, *PRESERVING THE PRESS: HOW DAILY NEWSPAPERS MOBILIZED TO KEEP THEIR READERS*, Leo Bogart, longtime executive vice president and general manager of the Newspaper Advertising Bureau, explained:

“Zest and aptitude for a publishing career are not transmitted in the genes. Inheritance taxes sometimes forced extended families to liquidate properties whose multiple owners had other interests. These pressures to sell coincided with an incredible escalation in the market value of newspapers and television stations. Surviving dailies became all the more valuable as their competitors dropped by the wayside.

“The growth of the chains and giant media companies followed inexorably. A comparatively small number of these companies competed aggressively for the newspapers that became available in single-ownership markets at the same time that huge money-losing second papers in big cities scrambled to find new owners. The fantastic prices (up to \$4,650 a unit of circulation) that Gannett, Times Mirror, and others were willing to pay in part reflected the bullish temper of the stock market, since most of these companies were publicly owned and in a number of cases concluded their deals in exchange for stock certificates rather than cash. In a business world where to stand still was to lose ground, expansion and acquisition were the essential rules of the game. Such activities required capital and propelled companies into public ownership.”

BOGART, *PRESERVING THE PRESS* at 49.

- 23** Gene Roberts & Thomas Kunkel, *Leaving Readers Behind: The Age of Corporate Newspapering*, *AMER. JOURNALISM REV.* (May 2001), <http://www.ajr.org/Article.asp?id=363>.
- 24** Geneva Overholser, *State of the American Newspaper: Editor Inc.*, *AMER. JOURNALISM REV.* (Dec. 1998), <http://www.ajr.org/Article.asp?id=3290>.
- 25** ELI M. NOAM, *MEDIA OWNERSHIP AND CONCENTRATION IN AMERICA* 139 (Oxford University Press) (2009).
- 26** LAUREN RICH FINE, *BAD PUBLIC RELATIONS OR IS THIS A REAL CRISIS?: YES 11* (Duke Conference on Nonprofit Media) (2009) (RICH, *BAD PUBLIC RELATIONS*), available at [http://dewitt.sanford.duke.edu/images/uploads/About\\_3\\_Research\\_A\\_4\\_dwcrichfinal.pdf](http://dewitt.sanford.duke.edu/images/uploads/About_3_Research_A_4_dwcrichfinal.pdf).
- 27** BOGART, *PRESERVING THE PRESS* at 53.
- 28** As Mary Walton describes this:

“These [hometown] newspapers are indispensable in another way—as local citizens, heading up annual United Way drives, championing local business, and generally lending their communities a sense of stability in an unstable world. Just about half the nation’s 1,483 daily newspapers are under 13,000 circulation; they help form the backbone of an America seldom featured in glossy magazines or on the evening news.

“But deeply rooted as they may be, the nation’s hometown papers are vulnerable to outside forces. And these days, they are changing hands like used cars at an auction. Of the 564 U.S. newspapers sold from January of 1994 through July of 2000, about two-thirds had circulations under 13,000. One hundred and eleven of these small papers were sold two, three, or even four times during this six-and-a-half year period.

“In one of the biggest shifts in newspaper ownership since chains began devouring independent papers more than a generation ago, big-city businessmen with deep pockets are flocking to the industry, lured by small papers with generous margins. These new owners are highly leveraged and itching to make money. Indeed, often built into their financial arrangements are ‘exit strategies’ that force the companies

either to sell or go public, generally within five to seven years.”

Mary Walton, *The Selling of Small-Town America*, in GENE ROBERTS, THOMAS KUNKEL, & CHARLES LAYTON, *LEAVING READERS BEHIND: THE AGE OF CORPORATE NEWSPAPERING 19–20* (University of Arkansas Press) (2001).

- 29** RICH, *BAD PUBLIC RELATIONS* at 12.
- 30** “Newspaper—Summary Essay: Newsroom Cutbacks” in PEW, *STATE OF NEWS MEDIA 2010*, <http://stateofthemediamedia.org/2010/newspapers-summary-essay/>.
- 31** Katherine Q. Seelye, *Wall St. Journal to Shrink Page Size, Joining Trend to Cut Newsprint Costs*, *N.Y. TIMES*, Oct. 12, 2005, <http://www.nytimes.com/2005/10/12/business/media/12paper.html>.
- 32** BOGART, *PRESERVING THE PRESS* at 52–53.
- 33** BOGART, *PRESERVING THE PRESS* at 52.
- 34** PHILIP MEYER, *THE VANISHING NEWSPAPER: SAVING JOURNALISM IN THE INFORMATION AGE* (University of Missouri Press) 189–190 (2009).
- 35** Bogart, *Preserving the Press* at 52.
- 36** Geneva Overholser, *Editor Inc.* in *LEAVING READERS BEHIND: THE AGE OF CORPORATE NEWSPAPERING* at 169 (Gene Roberts, Thomas Kunkel, & Charles Layton, eds.) (Univ. of Arkansas Press) (2001).
- 37** John S. Carroll, *Last Call at the ASNE Saloon* (speech delivered at the 2006 American Society of Newspaper Editors convention, Seattle, Washington) (Apr. 26, 2006).
- 38** Mark G. Contreras, The E.W. Scripps Company, Presentation at The Aspen Institute Forum on Communications and Society (Aug. 16, 2010) (Contreras Presentation 8/16/10) at 5, available at [www.knightcomm.org/.../FOCASIO\\_Mark\\_Contreras\\_Scripps\\_Presentation.pdf](http://www.knightcomm.org/.../FOCASIO_Mark_Contreras_Scripps_Presentation.pdf)[http://www.knightcomm.org/wpcontent/uploads/2010/08/FOCASIO\\_Mark\\_Contreras\\_Scripps\\_Presentation.pdf](http://www.knightcomm.org/wpcontent/uploads/2010/08/FOCASIO_Mark_Contreras_Scripps_Presentation.pdf).
- 39** Rick Edmonds (The Poynter Institute), Emily Guskin, & Tom Rosensteil, “Newspapers: Missed the 2010 Media Rally” in *Pew, State of News Media 2011*, <http://stateofthemediamedia.org/2011/newspapers-essay/>.
- 40** Contreras Presentation 8/16/10 at 5.
- 41** NAA, Advertising Expenditures.
- 42** Newspaper Association of America, *Newspaper Websites* (Nielsen), <http://www.naa.org/TrendsandNumbers/Newspaper-Websites-Nielsen.aspx> (last visited Feb. 8, 2011).
- 43** NAA, Advertising Expenditures.
- 44** NAA, Advertising Expenditures.
- 45** Miriam Marcus, *The Best Way to Find (and Fill) a Job Online*, *FORBES*, May 26, 2009, <http://www.forbes.com/2009/05/26/job-seeking-websites-entrepreneurs-human-resources-monster.html>.
- 46** Top 10 Automotive-Classifieds Websites, *MARKETING CHARTS QUARTERLY*, July 2010, <http://www.marketingcharts.com/interactive/top-10-automotive-classifieds-websites-july-2010-13754/>.
- 47** Top 10 Real Estate Websites, *MARKETING CHARTS QUARTERLY*, Jan. 2010, <http://www.marketingcharts.com/interactive/top-10-real-estate-websites-january-2010-11938/>.
- 48** *Kansas City Star*, Online Self-Serve Order Entry, <http://kansascitystar.adperfect.com/> (last visited Feb. 8, 2011).
- 49** A 2009 profile of the site in *Wired* provides estimates of the site’s impact and profitability, including a projection that in 2009 revenues

- for the privately held company would top \$100 million. Gary Wolf, *Why Craigslist is Such a Mess*, WIRED, Aug. 24, 2009, [http://www.wired.com/entertainment/theweb/magazine/17-09/ff\\_craigslist?currentPage=all](http://www.wired.com/entertainment/theweb/magazine/17-09/ff_craigslist?currentPage=all).
- 50 NAA, Advertising Expenditures (under “Quarterly Classified” tab).
  - 51 NAA, Advertising Expenditures.
  - 52 See Alan D. Mutter, *Newspaper Ad Sales Head to 25-Year Low*, REFLECTIONS OF A NEWSOSAUR, Sept. 7, 2010, <http://newsosaur.blogspot.com/2010/09/newspaper-ad-sales-head-to-25-year-low.html>; Alan D. Mutter, *Make No Mistake: Newspapers Are Still in Trouble*, REFLECTIONS OF A NEWSOSAUR, June 15, 2010, <http://newsosaur.blogspot.com/2010/06/make-no-mistake-newspapers-are-still-in.html>; Alan D. Mutter, *Newspapers Now Have Lost Half of Core Sales*, REFLECTIONS OF A NEWSOSAUR, May 28, 2010, <http://newsosaur.blogspot.com/2010/05/newspapers-now-have-lost-half-of-core.html>.
  - 53 See David Phelps, *Star Tribune Files for Chapter 11 Bankruptcy*, MINNEAPOLIS STAR TRIBUNE, Jan. 16, 2009, <http://www.startribune.com/business/37685134.html> (*Star Tribune* positive earnings when declared bankruptcy); Mike Spector & Shira Ovide, *MediaNews Holding Company to Seek Bankruptcy Protection*, WALL ST. J., Jan. 15, 2010, <http://online.wsj.com/article/SB10001424052748703657604575005813195786280.html> (at time filed for bankruptcy, MediaNews indicated all but one of newspapers was profitable); Bob Lentz, *Top 2 Philadelphia Newspapers File for Bankruptcy*, USA TODAY, Feb. 23, 2009, [http://www.usatoday.com/news/nation/2009-02-22-newspapers\\_N.htm](http://www.usatoday.com/news/nation/2009-02-22-newspapers_N.htm).
  - 54 Erica Smith, *Closed Newspapers* (2010 tab), PAPER CUTS, <http://newspaperlayoffs.com/maps/closed/> (Closed Newspapers) (last visited Mar. 7, 2011).
  - 55 “Newspaper—Summary Essay: Newsroom Cutbacks” in PEW, STATE OF NEWS MEDIA 2010.
  - 56 The editorial workforce for daily newspapers in 1971 was estimated to be 38,000. JOHN W.C. JOHNSTONE, EDWARD J.SLAWSKI, AND WILLIAM W. BOWMAN, *THE NEWS PEOPLE: A SOCIOLOGICAL PORTRAIT OF AMERICAN JOURNALISTS AND THEIR WORK*, 195 (University of Illinois Press) (1976). The American Society of Newspaper Editors put total newspaper newsroom employment in 2010 at 41,600. American Society of News Editors, *Newsroom employment up slightly, minority numbers plunge for third year*, Apr. 7, 2011, [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx). This means that roughly the same number of journalists are working at newspapers today as in 1970, even though the population of the US has increased by more than 50 percent. The population in 1970 was 203,302,031 (<http://www.census.gov/population/www/censusdata/files/table-2.pdf>), while the population in 2010 was 308,745,538 (<http://2010.census.gov/news/releases/operations/cb10-cn93.html>).
  - 57 *Newspapers: By the Numbers*, <http://stateofthemediamedia.org/2011/newspapers-essay/data-page-6/p/>; ASNE, *Newsroom employment up slightly* [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx).
  - 58 Rob Davis & Randy Dottinga, *Layoffs Hit Union-Tribune Newsroom*, VOICE OF SAN DIEGO, June 17, 2010, [http://www.voiceofsandiego.org/environment/muck/article\\_f5f81632-7a7c-11df-ad0d-001cc4c002e0.html](http://www.voiceofsandiego.org/environment/muck/article_f5f81632-7a7c-11df-ad0d-001cc4c002e0.html).
  - 59 Michael R. Fancher, “Seattle: A New Media Case Study” in *Pew, State of News Media 2011*, <http://stateofthemediamedia.org/2011/mobile-survey/seattle-a-new-media-case-study/>.
  - 60 Anick Jesdanun, *Star-Ledger Cuts Newsroom Staff by Nearly Half*, BREITBART.COM, Oct. 24, 2008, [http://www.breitbart.com/article.php?id=d9415ac00&show\\_article=1](http://www.breitbart.com/article.php?id=d9415ac00&show_article=1).
  - 61 Phil Rosenthal, *Chicago Tribune Reduces Newsroom Staff*, CHICAGO TRIBUNE, Apr. 22, 2009, <http://newsblogs.chicagotribune.com/towerticker/2009/04/chicago-tribune-reduces-newsroom-staff.html>.
  - 62 Erica Smith, *2009 Layoffs and Buyouts at U.S. Newspapers*, PAPER CUTS, Dec. 31, 2009, <http://newspaperlayoffs.com/maps/2009-layoffs>.
  - 63 See *Miami Herald Shedding Another 49 Jobs, Imposing Another Furlough*, EDITOR & PUBLISHER, Sept. 16, 2010, <http://www.editorandpublisher.com/Headlines/miami-herald-shedding-another-49-jobs-imposing-another-furlough-62628-.aspx>; *More News Outlets Instituting Furloughs*, REYNOLDS CENTER, Mar. 23, 2009, <http://businessjournalism.org/2009/03/23/more-news-outlets-instituting-furloughs/>; Emma Heald, *New York Times to Implement Across the Board Pay Cuts*, EDITORS WEBLOG, Mar. 27, 2009, [http://www.editorsweblog.org/newspaper/2009/03/new\\_york\\_times\\_to\\_implement\\_across\\_the\\_b.php](http://www.editorsweblog.org/newspaper/2009/03/new_york_times_to_implement_across_the_b.php); and *Philly Newspapers Guild Agrees to Pay Cuts*, EDITOR & PUBLISHER, Aug. 25, 2010, <http://www.editorandpublisher.com/Headlines/philly-newspapers-guild-agrees-to-pay-cuts-62397-.aspx>.
  - 64 NAA, *Total Paid Circulation*, <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx>; U.S. Census Bureau, *Families and Living Arrangements, Table HH-1. (Households, by Type: 1940 to Present)*, <http://www.census.gov/population/www/socdemo/hh-fam.html#ht>, (each last visited March 8, 2011); *Newspapers: by the Numbers*, <http://stateofthemediamedia.org/2011/newspapers-essay/data-page-6/>.
  - 65 Brian Steffens, *Annual Readership Study Shows Good News for Small Papers*, REYNOLDS JOURNALISM INSTITUTE, Oct. 6, 2009, <http://www.rjionline.org/casr/research-reports/nna/2009-oct-readership.php>.
  - 66 National Newspaper Association, *Facts and Figures* (last updated Dec. 23, 2009), <http://www.nnaweb.org/?/nnaweb/community02/87> (last visited Mar. 8, 2011).
  - 67 Inland Press Association, *Inland Clarifies Data From Its Five-Year Trend Analysis* (press release), July 21, 2009, [http://www.inlandpress.org/articles/2010/12/08/about/press\\_releases/doc4a5665832e7d9957638950.txt](http://www.inlandpress.org/articles/2010/12/08/about/press_releases/doc4a5665832e7d9957638950.txt) (*Inland Clarifies Data*).
  - 68 Joe Mahon, *News Flash: Small-Market Papers Prosper*, FEDGAZETTE, Jan. 2007, [http://www.minneapolisfed.org/publications\\_papers/pub\\_display.cfm?id=1274](http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=1274).
  - 69 Ken Doctor, *The Newsonomics of Reborn Newspaper Profit*, NIEMAN JOURNALISM LAB, May 2010, <http://www.niemanlab.org/2010/05/the-newsonomics-of-reborn-newspaper-profit/>.
  - 70 Julia Boorstin, *2010 Surprise: Newspaper Stocks Q4 Surge*, MEDIA MONEY, Dec. 27, 2010, <http://www.cnbc.com/id/40818403/> (*2010 Surprise*).
  - 71 *2010 Surprise*.
  - 72 “Newspapers: Missed the 2010 Media Rally” in *Pew, State of News Media 2011*.
  - 73 Jennifer Dorroh, *Statehouse Exodus*, AMER. JOURNALISM REV. (April/May 2009), <http://www.ajr.org/article.asp?id=4721>.
  - 74 Rotten Tomatoes, <http://www.rottentomatoes.com> (last visited Mar. 8, 2011).
  - 75 PEW RESEARCH CTR., *HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY*, (2010), [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens), (PEW, HOW NEWS HAPPENS).

- 76 PEW, HOW NEWS HAPPENS.
- 77 The Pulitzer Prizes, Columbia Univ., Search results: Inquirer, Philadelphia, journalism, winner, [http://www.pulitzer.org/faceted\\_search/results/taxonomy-5-2-philadelphia-inquirer](http://www.pulitzer.org/faceted_search/results/taxonomy-5-2-philadelphia-inquirer) (last visited Mar. 4, 2011).
- 78 Edgar Williams, *A History of the Inquirer*, PHILADELPHIA INQUIRER, June 20, 2003, <http://web.archive.org/web/20070219044935/http://www.philly.com/mld/inquirer/news/local/6135296.htm?1c>.
- 79 Jodi Enda, *Retreating from the World*, AMER. JOURNALISM REV. (Dec. 2010/Jan. 2011), <http://ajr.org/Article.asp?id=4985>.
- 80 Katharine Q. Seelye & Andrew Ross Sorkin, *Newspaper Chain Agrees to a Sale for \$4.5 Billion*, N.Y. TIMES, Mar. 13, 2006, <http://www.nytimes.com/2006/03/13/business/media/13knight.html>; Associated Press, *McClatchy Sells Philadelphia Newspapers for \$562 Million*, USA TODAY, May 23, 2006, [http://www.usatoday.com/money/media/2006-05-23-philadelphia-newspapers-sold\\_x.htm](http://www.usatoday.com/money/media/2006-05-23-philadelphia-newspapers-sold_x.htm).
- 81 Steven Church & Greg Bensinger, *Philadelphia Inquirer's Bankruptcy Costs Owners Group (Update 2)*, BLOOMBERG, Feb. 23, 2009, <http://www.bloomberg.com/apps/news?sid=aY3Ly1UsnA&pid=newsarchive>.
- 82 Bob Warner, *Daily News, Inquirer Sale Plan OK'd by Bankruptcy Judge*, PHILADELPHIA DAILY NEWS, June 29, 2010, [http://article.wn.com/view/2010/06/29/Daily\\_News\\_Inquirer\\_sale\\_plan\\_OKd\\_by\\_bankruptcy\\_judge/](http://article.wn.com/view/2010/06/29/Daily_News_Inquirer_sale_plan_OKd_by_bankruptcy_judge/).
- 83 JAN SHAFFER, EXPLORING A NETWORKED JOURNALISM COLLABORATIVE IN PHILADELPHIA (2010), [http://www.j-lab.org/publications/philadelphia\\_media\\_project](http://www.j-lab.org/publications/philadelphia_media_project) (SHAFFER, EXPLORING).
- 84 SHAFFER, EXPLORING.
- 85 LEONARD DOWNIE JR. & ROBERT G. KAISER, THE NEWS ABOUT THE NEWS: AMERICAN JOURNALISM IN PERIL 75 (Knopf) (2002).
- 86 James T. Hamilton, *Subsidizing the Watchdog: What Would It Cost to Support Investigative Journalism at a Large Metropolitan Daily Newspaper?* (2009), (Hamilton, *Subsidizing the Watchdog*) <http://sanford.duke.edu/nonprofitmedia/documents/dwchamiltonfinal.pdf>.
- 87 FIONA MORGAN, AN INFORMATION COMMUNITY CASE STUDY: THE RESEARCH TRIANGLE, N.C. 12 (New America Foundation) (2011), [http://mediapolicy.newamerica.net/publications/policy/the\\_research\\_triangle\\_north\\_carolina](http://mediapolicy.newamerica.net/publications/policy/the_research_triangle_north_carolina).
- 88 Hamilton, *Subsidizing the Watchdog*.
- 89 Interview with Mark Silverman, (Nashville) Tennessean, by Steven Waldman, FCC (May 24, 2010) (Silverman Interview 5/24/10).
- 90 U.S. Census Bureau, Table 1: Summary of State and Local Government Finances by Level of Government: 2002–03, <http://www.census.gov/govs/estimate/03sl00us.html> (2003 figure); U.S. Census Bureau, Table 1: State and Local Government Finances by Level of Government and by State: 2007–08 (2008 figure), available at State and Local Government Finances by Level of Government, <http://www.census.gov/govs/estimate/> (select US Summary & Alabama–Mississippi).
- 91 Jennifer Dorroh, *Statehouse Exodus*, AMER. JOURNALISM REV. (Apr./May 2009) <http://www.ajr.org/article.asp?id=4721> (*Statehouse Exodus*).
- 92 *Statehouse Exodus*.
- 93 *Statehouse Exodus*.
- 94 *Statehouse Exodus*.
- 95 Mark Lisher, *Reloading at the Statehouse*, AMER. JOURNALISM REV. (Sept. 2010) (*Reloading at the Statehouse*), <http://www.ajr.org/Article.asp?id=4908>.
- 96 Jeremy W. Peters, *As Newspapers Cut Costs, A Thinning of the Guard Among Albany's Press Corps*, N.Y. TIMES, Oct. 7, 2008, <http://www.nytimes.com/2008/10/08/nyregion/08press.html>.
- 97 Interview with Jeanette Krebs by M.K. Guzda Struck, FCC (Sept. 19, 2010).
- 98 John Miller, *News Sites Funded by Think Tanks Take Root*, BOSTON.COM, Apr. 13, 2010, [http://www.boston.com/news/nation/articles/2010/04/13/news\\_sites\\_funded\\_by\\_think\\_tanks\\_take\\_root/](http://www.boston.com/news/nation/articles/2010/04/13/news_sites_funded_by_think_tanks_take_root/).
- 99 Interview with Ed Vogel by M.K. Guzda Struck, FCC (Aug. 2010).
- 100 *Statehouse Exodus*; Rich Miller, *Newspaper Carnage Continues*, Aug. 18, 2008, <http://capitolfax.com/2008/08/18/newspaper-carnage-continues/>.
- 101 Interview with John Beck by M.K. Guzda Struck, FCC (Sept. 15, 2010).
- 102 *Statehouse Exodus*.
- 103 *AJR's 2009 Count of Statehouse Reporters*, AMER. JOURNALISM REV. (Apr./May 2009), <http://www.ajr.org/article.asp?id=4722>.
- 104 See Texas Tribune, <http://www.texastribune.org/>; California Watch at <http://californiawatch.org/>; NJSpotlight at <http://www.njspotlight.com/> (each last visited Feb. 2, 2011).
- 105 *Reloading at the Statehouse*.
- 106 Interview with Rick Edmonds by Steven Waldman, FCC (Apr. 19, 2010).
- 107 Paul Pringle, Corinna Knoll, & Kim Murphy, *Rizzo's Horse Had Come In*, L.A. TIMES, Aug. 22, 2010, <http://articles.latimes.com/2010/aug/22/local/la-me-rizzo-20100822>.
- 108 Interview with Christina Garcia by M.K. Guzda Struck, FCC (July 28 2010) (Garcia Interview 7/28/10).
- 109 “If that’s a number people choke on, maybe I’m in the wrong business,” said Rizzo—who garnered the \$787,637 salary—to the *Los Angeles Times*. “I could go into private business and make that money. This council has compensated me for the job I’ve done.” “I would have to argue you get what you pay for,” said assistant city manager, Angela Spaccia, casually, who made \$376,288 annually. Jeff Gottlieb & Ruben Vives, *Is a City Manager Worth \$800,000?*, L.A. TIMES, July 15, 2010 (*Is a City Manager Worth \$800,000?*), <http://articles.latimes.com/2010/jul/15/local/la-me-bell-salary-20100715>; Corinna Knoll, *Residents of Bell Unhappy Over High Salaries for City Employees*, L.A. TIMES, July 16, 2010, <http://articles.latimes.com/2010/jul/16/local/la-me-0716-bell-residents-20100716>.
- 110 *Is a City Manager Worth \$800,000?*.
- 111 *Is a City Manager Worth \$800,000?*.
- 112 *Is a City Manager Worth \$800,000?*.
- 113 Jeff Gottlieb & Ruben Vives, *Residents Irate as Bell Council Requests Report on Salaries*, L.A. TIMES, July 20, 2010, <http://www.latimes.com/news/local/la-me-bell-20100720,0,6229042.story>.
- 114 Jeff Gottlieb, Ruben Vives, & Jack Leonard, *Bell Leaders Hauled Off in Cuffs*, L.A. TIMES, Sept. 22, 2010, <http://articles.latimes.com/2010/sep/22/local/la-me-bell-arrest-20100922>.
- 115 Garcia Interview 7/28/10.
- 116 Brian Hews, *City of Bell: Why Cities Need a Community Newspaper*, LOS CERRITOS COMMUNITY NEWSPAPER GROUP, <http://loscerritosnews.net/city-of-bell-why-cities-need-a-community-newspaper-p874-150.htm> (last visited Jan. 24, 2011).

- 117 David Folkenflik, *How the L.A. Times Broke the Bell Corruption Story*, NATIONAL PUBLIC RADIO, Sept. 25, 2010, <http://www.npr.org/templates/story/story.php?storyId=130108851>.
- 118 Email correspondence from David Lauter to M.K. Guzda Struck, FCC (July 29, 2010).
- 119 Email from David Lauter to M.K. Guzda Struck, FCC (July 29, 2010).
- 120 James Spencer, *The Story of How the Bell Scandal Broke: An Account from LA Times Reporter Jeff Gottlieb*, PUBLICCEO.COM, Aug. 11, 2010, <http://publicceo.com/index.php/local-governments/151-local-governments-publicceo-exclusive/1843-the-story-of-how-the-bell-scandal-broke-an-account-from-la-times-reporter-jeff-gottlieb>.
- 121 Interview of Jeff Gottlieb by M.K. Guzda Struck, FCC (July 29, 2010).
- 122 Terry Francke, *Why the Bell Scandal Happened and What Can Be Done*, VOICE OF OC, July 28, 2010, [http://www.voiceofoc.org/article\\_a7d-8e4e2-9a78-11df-aefd-001cc4c03286.html](http://www.voiceofoc.org/article_a7d-8e4e2-9a78-11df-aefd-001cc4c03286.html).
- 123 Interview of Christine Garcia by M.K. Guzda Struck, FCC (July 28, 2010).
- 124 Testimony of Montana State Senator Jerry Black, Knight Commission Forum on Meeting the Public's Information Needs in Montana (Oct. 25, 2008), *available at* <http://www.knightcomm.org/files/flashplayer/251008/251008a.html>.
- 125 Interview of Mark Thompson by M.K. Guzda Struck, FCC (July 15, 2010).
- 126 Interview of Brian Hamlin, Sr. Reporter, *Vacaville (CA) Reporter*, by M.K.Guzda Struck, FCC (Aug. 28, 2010) (Hamlin Interview 8/28/10). Tragically, since these interviews, Hamlin died of cancer.
- 127 Hamlin Interview 8/28/10. Hamlin provided an example of the distances he was required to drive in a single day to cover far-flung stories, due to staff reductions: Stockton to Vallejo, 65.7 mi.; Vallejo to Fairfield, 17 mi.; Fairfield to Sacramento, 43 mi.
- 128 Hamlin Interview 8/28/10.
- 129 Interview with Bill Girdner by M.K. Guzda Struck, FCC (July 6, 2010) (Girdner Interview 7/6/10).
- 130 Girdner Interview 7/6/10.
- 131 Girdner Interview 7/6/10. Girdner laments the closing of ranks on a federal level, as well, specifically in the Justice Department. Justice oversees FBI, DEA, Bureau of Prisons, U.S. Marshals, Executive Office for Immigration Review, Tax Division, Antitrust Division, Office of Professional Responsibility, and numerous other branches. See U.S. Dept. of Justice, Dept. of Justice Agencies, <http://www.justice.gov/agencies/index-org.html> (last visited Jan. 24, 2011).
- 132 Interview with Steven Kaplan by M.K. Guzda Struck, FCC (Sept. 15, 2010).
- 133 Email from Jack Kresnak, former journalist, Pres. & CEO, Michigan's Children, to Steven Waldman, (Mar. 8, 2011).
- 134 Interview with Vivek Sankaran by M.K. Guzda Struck, FCC (Aug. 17, 2010) (Sankaran Interview 8/17/10).
- 135 Professor Sankaran's research and policy interests center on improving outcomes for children in child abuse and neglect cases by empowering parents and strengthening due process protections in the child welfare system. Sankaran Interview 8/17/10.
- 136 Email from Paul Cates, Innocence Proj., to M.K. Guzda Struck, FCC (Sept. 20, 2010).
- 137 Tim Arango, *Death Row Foes See Newsroom Cuts as a Blow*, N.Y. TIMES, May 20, 2009, <http://www.nytimes.com/2009/05/21/business/media/21innocent.html>.
- 138 David Simon, *In Baltimore, No One Left to Press the Police*, WASH. POST, Mar.1, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022703591.html>.
- 139 GARY SCHWITZER, THE STATE OF HEALTH JOURNALISM IN THE U.S. 16 (Kaiser Family Found.) (2009) (SCHWITZER, STATE OF HEALTH JOURNALISM), *available at* <http://www.kff.org/entmedia/upload/7858.pdf>.
- 140 SCHWITZER, STATE OF HEALTH JOURNALISM at 16.
- 141 SCHWITZER, STATE OF HEALTH JOURNALISM at 3.
- 142 SCHWITZER, STATE OF HEALTH JOURNALISM at 3.
- 143 SCHWITZER, STATE OF HEALTH JOURNALISM at 3.
- 144 Ferrel Guillory, *Weaker Media, Weaker Health News Reporting*, 70 N.C. MED. J. 360 (July/Aug. 2009) (*Weaker Media*), *available at* <http://www.ncmedicaljournal.com/wp-content/uploads/NCMJ/Jul-Aug-09/Guillory.pdf>.
- 145 *Weaker Media*.
- 146 *Weaker Media*.
- 147 Silverman Interview 5/24/10.
- 148 MARYN MCKENNA, SUPERBUG: THE FATAL MENACE OF MRSA (Free Press) (2010).
- 149 Interview with Maryn McKenna by M.K. Guzda Struck, FCC (Aug. 22, 2010).
- 150 SCHWITZER, STATE OF HEALTH JOURNALISM at 10.
- 151 See, e.g., *PSA Test Cut-off Could Signal Low-Risk Prostate Cancer*, HEALTH NEWS REV., Feb. 16, 2011, [http://www.healthnewsreview.org/review.html?review\\_id=3639](http://www.healthnewsreview.org/review.html?review_id=3639).
- 152 Cristine Russell, The Observatory, *Science Reporting by Press Release*, COLUMBIA J. REV., Nov. 14, 2008, [http://www.cjr.org/the\\_observatory/science\\_reporting\\_by\\_press\\_rel.php](http://www.cjr.org/the_observatory/science_reporting_by_press_rel.php).
- 153 SURVEY OF AHJC MEMBERS REPORT at 4.
- 154 Kaiser Health News, <http://www.kaiserhealthnews.org/> (last visited Jan. 24, 2011) (Kaiser Health News).
- 155 Kaiser Health News.
- 156 Kevin Sack, *Foundation Starts Health Policy News Service*, N.Y. TIMES, Nov. 23, 2008 (*Foundation Starts Health Policy News Service*), [http://www.nytimes.com/2008/11/24/business/media/24health.html?\\_r=1&scp=1&sq=kaiser%20health%20news%20and%202008&st=cse](http://www.nytimes.com/2008/11/24/business/media/24health.html?_r=1&scp=1&sq=kaiser%20health%20news%20and%202008&st=cse).
- 157 *Foundation Starts Health Policy News Service*.
- 158 Carol Guensburg, *Nonprofit News*, AMER. JOURNALISM REV. (Feb./Mar. 2008), <http://www.ajr.org/Article.asp?id=4458>.
- 159 DARRELL M. WEST, GROVER J. "RUSS" WHITEHURST & E.J. DIONNE JR., RE-IMAGINING EDUCATION JOURNALISM (Brookings Institution) (2010) (RE-IMAGINING EDUCATION JOURNALISM), *available at* [http://www.brookings.edu/reports/2010/0511\\_education\\_journalism.aspx](http://www.brookings.edu/reports/2010/0511_education_journalism.aspx).
- 160 Email from Debbie Cafazzo to Jodi Enda, FCC (Nov. 19, 2010).
- 161 Email from Richard Colvin to Steven Waldman, FCC (Jan. 19, 2011).
- 162 RE-IMAGINING EDUCATION JOURNALISM.
- 163 Michael Petrilli, *Disappearing Ink*, 9 EDUCATION NEXT 83 (Fall 2009), <http://educationnext.org/disappearing-ink/>.
- 164 Interview with Jay Mathews by Jodi Enda, FCC (Nov. 20, 2010).



- 165 Interview with Dale Mezzacappa by Jodi Enda, FCC (Nov. 22, 2010).
- 166 Education News Colorado, <http://www.ednewscolorado.org/> (last visited Jan. 25, 2011).
- 167 Interview with Alan Gottlieb by Jodi Enda, FCC (Nov. 20, 2010).
- 168 DARRELL M. WEST, GROVER J. "RUSS" WHITEHURST & E.J. DIONNE JR., AMERICANS WANT MORE COVERAGE OF TEACHER PERFORMANCE AND STUDENT ACHIEVEMENT (Brookings Institution) (2011), *available at* [http://www.brookings.edu/reports/2011/0329\\_education\\_news.aspx](http://www.brookings.edu/reports/2011/0329_education_news.aspx).
- 169 Interview of Mark Horvit by M.K. Guzda Struck, FCC (Aug. 16, 2010).
- 170 Mary Walton, *Investigative Shortfall*, AMERICAN JOURNALISM REV., (Sept. 2010) (Walton, *Investigative Shortfall*), <http://www.ajr.org/Article.asp?id=4904>.
- 171 Interview of Mary Walton by M.K. Guzda Struck (Aug. 29, 2010).
- 172 Chelsea Ide & Kanupriya Vashisht, *Today's Investigative Reporters Lack Resources*, AZCENTRAL.COM, May 28, 2006, <http://www.azcentral.com/specials/special01/0528bolles-stateofreporting.html>.
- 173 Walton, *Investigative Shortfall*.
- 174 Walton, *Investigative Shortfall*.
- 175 Richard Pérez-Peña, *Group Plans to Provide Investigative Journalism*, N.Y. TIMES, Oct. 15, 2007 <http://www.nytimes.com/2007/10/15/business/media/15publica.html?oref=slogin>.
- 176 ProPublica, About Us, <http://www.propublica.org/about/> (ProPublica) (last visited Jan. 25, 2011).
- 177 ProPublica.
- 178 Richard Pérez-Peña, *In Chicago, An Ex-Editor Fights Back*, N.Y. TIMES, Nov. 22, 2009, <http://www.nytimes.com/2009/11/23/business/media/23local.html>.
- 179 Prepared Testimony of James O'Shea, Editor & Cofounder, Chicago News Cooperative, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010) *available at* <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>.
- 180 PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE NEW WASHINGTON PRESS CORPS: AS MAINSTREAM MEDIA DECLINE, NICHE AND FOREIGN OUTLETS GROW (last updated July 16, 2009), [http://www.journalism.org/analysis\\_report/new\\_washington\\_press\\_corps](http://www.journalism.org/analysis_report/new_washington_press_corps).
- 181 Al Diamon, *Barely Covering Maine's Delegation*, DOWN EAST, July 19, 2010, <http://www.downeast.com/media-mutt/2010/july/barely-maine-congressional-delegation>.
- 182 Email from Debra Mason, Exec. Dir. of Religion Newswriters Assn., to Steven Waldman, FCC (Feb. 18, 2011).
- 183 Interview with Andrew Lack by Steven Waldman, FCC (Dec. 16, 2010).
- 184 THOMAS BALDWIN, DANIEL BERGIN, FRED FICO, STEPHEN LACY, & STEVEN S. WILDMAN, NEWS MEDIA COVERAGE OF CITY GOVERNMENTS IN 2009 (Michigan State Univ. & Nat'l Science Found.) (2010).
- 185 Interview of Michael Marizco by M.K. Guzda Struck, FCC (May 26, 2010).
- 186 The total number of members has increased, with the bulk describing themselves as freelancers. They had 1,100 members in 2000 and have 1,500 members now. Interview with Beth Parke, Executive Director, Society of Environmental Journalists, by M.K. Guzda Struck, FCC (Aug. 23, 2010) (Parke Interview 8/23/10).
- 187 Parke Interview 8/23/10.
- 188 Interview of Tim Wheeler by Jodi Enda, FCC (Dec. 15, 2010).
- 189 Dean Starkman, *The Hamster Wheel*, COLUMBIA J. REV. (Sept./Oct. 2010), [http://www.cjr.org/cover\\_story/the\\_hamster\\_wheel.php?page=all](http://www.cjr.org/cover_story/the_hamster_wheel.php?page=all).
- 190 "Nielsen Analysis" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/online-summary-essay/nielsen-analysis/>.
- 191 "Newspaper Audiences" in Pew, *State Of News Media 2010*, <http://stateofthemediamedia.org/2010/newspapers-summary-essay/audience/>.
- 192 For evidence of newspaper experimentation, see Joseph Tartakoff, *Gannett Tries Out Paywalls at Three Papers*, PAID CONTENT, July 1, 2010, <http://paidcontent.org/article/419-gannett-tries-out-paywalls-at-three-papers/>; Nick Bilton, *iPad vs. Newspaper, Fly-Swatting Edition*, BITS: BUSINESS INNOVATION TECHNOLOGY SOCIETY (N.Y. Times), Sept. 10, 2010, <http://bits.blogs.nytimes.com/2010/09/10/fly-swatting-the-ipad-versus-the-newspaper/?scp=1&sq=%22swatting%20the%20ipad%20versus%20the%20newspaper%22&st=cse>; Jenna Wortham, *Betaworks and the Times Plan a Social News Service*, BITS: BUSINESS INNOVATION TECHNOLOGY SOCIETY (N.Y. Times), Sept. 9, 2010, <http://bits.blogs.nytimes.com/2010/09/09/betaworks-and-the-times-develop-social-news-service/>;
- David LaFontaine, *Mobile Advertising: The Next Big Thing Is Starting to Arrive (Part Two: Banners, Texts and Coupons)*, Apr. 2, 2010, NEWSPAPER ASSN. OF AMER., <http://www.naa.org/Resources/Articles/Digital-Media-Moving-To-Mobile-Advertising-2/Digital-Media-Moving-To-Mobile-Advertising-2.aspx>.
- 193 Bill Mitchell, *Pay Walls Debut at Three Gannett Papers Testing 'Journalism as a Service'*, THE POYNTER INSTITUTE, July 1, 2010, <http://www.poynter.org/latest-news/business-news/newspay/104103/pay-walls-debut-at-three-gannett-papers-testing-journalism-as-a-service/>; Jim Romenesko, *Gannett to Launch Page Design 'Hubs' in Five Cities*, THE POYNTER INSTITUTE, July 13, 2010, <http://www.poynter.org/latest-news/romenesko/104296/gannett-to-launch-page-design-hubs-in-five-cities/>.
- 194 Jenna Wortham, *Betaworks and the Times Plan a Social News Service*, BITS: BUSINESS INNOVATION TECHNOLOGY SOCIETY (N.Y. Times), Sept. 9, 2010, <http://bits.blogs.nytimes.com/2010/09/09/betaworks-and-the-times-develop-social-news-service/>; Richard Pérez-Peña, *The Times to Charge for Frequent Access to Its Website*, N.Y. TIMES, Jan. 20, 2010, <http://www.nytimes.com/2010/01/21/business/media/21times.html>.
- 195 Beth Lawton, *Mobilized: TBO Mobile*, NEWSPAPER ASSN. OF AMER., July 31, 2008, <http://www.naa.org/Resources/Articles/Digital-Media-Moving-To-Mobile-TBO-Case-Study/Digital-Media-Moving-To-Mobile-TBO-Case-Study.aspx>.
- 196 Damon Kiesow, *News of the World iPad App Highlights News Corp. Price Experiments*, THE POYNTER INSTITUTE, Dec. 22, 2010, <http://www.poynter.org/latest-news/media-lab/mobile-media/111941/news-of-the-world-ipad-app-highlights-news-corp-price-experiments/>.
- 197 See The Ben Franklin Project, What's the Ben Franklin Project, <http://jrbenfranklinproject.wordpress.com/about/> (last visited Mar. 8, 2011); Megan Garber, *Journal Register Company Joins with Outside.in for a Hyperlocal News/Ad Portal in Philadelphia*, NIEMAN JOURNALISM LAB, Sept. 22, 2010, <http://www.niemanlab.org/2010/09/journal-register-company-joins-with-outside-in-for-a-hyperlocal-newsad-portal-in-philadelphia/>; Mallery Jean Tenore, *Ben Franklin Project's 'Digital First, Print Last' Approach Produces First Products*, THE POYNTER INSTITUTE,

May 19, 2010, <http://www.poynter.org/latest-news/top-stories/102741/ben-franklin-projects-digital-first-print-last-approach-produces-first-products/>; Mark Fitzgerald, *Fireworks at Journal Register Co.: 'Ben Franklin Project' Successful at All 19 Dailies*, EDITOR & PUBLISHER, July 6, 2010, <http://www.editorandpublisher.com/Headlines/fireworks-at-journal-register-co-'ben-franklin-project'-successful-at-all-18-dailies-61891.aspx>.

- 198 "Newspapers: Missed the 2010 Media Rally" in *Pew, State of News Media 2011*.
- 199 PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, NEWS LEADERS AND THE FUTURE: THE STATE OF JOURNALISM (2010), [http://www.journalism.org/analysis\\_report/child](http://www.journalism.org/analysis_report/child).

## 2 Radio

- 1 HAROLD EVANS, *THEY MADE AMERICA: FROM THE STEAM ENGINE TO THE SEARCH ENGINE: TWO CENTURIES OF INNOVATORS* 219 (Little, Brown & Co.) (2004).
- 2 CHRISTOPHER H. STERLING & JOHN MICHAEL KITROSS, *STAY TUNED: A HISTORY OF AMERICAN BROADCASTING* (THIRD EDITION) 32 (Routledge) (2001) (STERLING & KITROSS, *STAY TUNED*). Even before this breakthrough Christmas Eve broadcast, Fessenden had gained notoriety for being the first to experimentally broadcast voice over the air. On December 23, 1900, Fessenden, stationed at Cobb Island on the Potomac River, successfully transmitted his voice, asking if it was snowing, to his assistant, in Arlington, Virginia. Fessenden's experiment in 1900 marked the first time that speech was broadcast over the air, even though, at this time, the experiment only involved point-to-point communication. *An Unsung Hero: Reginald Fessenden, the Canadian Inventor of Radio Telephony*, THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (reprinted from *The Radioscientist*), [http://www.ieee.ca/millennium/radio/radio\\_ungung.html](http://www.ieee.ca/millennium/radio/radio_ungung.html) (last visited Mar. 6, 2011).
- 3 Lisa Sergio, *Marconi: Wizard of the Airwaves*, THE ROTARIAN 14, 18 (Sept. 1974).
- 4 TIM WU, *THE MASTER SWITCH* 33–34 (Knopf) (2010) (THE MASTER SWITCH).
- 5 THE MASTER SWITCH at 35, *quoting Voice Broadcasting the Stirring Progress of the 'Battle of the Century,'* WIRELESS AGE (Aug. 1921).
- 6 STERLING & KITROSS, *STAY TUNED* at 63–69.
- 7 STERLING & KITROSS, *STAY TUNED* at 86–87.
- 8 WILLIAM ALBIG, *MODERN PUBLIC OPINION* 447 (McGraw-Hill) (1956) (MODERN PUBLIC OPINION). In addition to music and variety programs (more than 70 percent), small amounts of drama programming, educational information, market reports, weather, sports, health exercises, church services, and women's and children's programming made up the other 22.5 percent of a typical station's programming.
- 9 STERLING & KITROSS, *STAY TUNED* at 79–80, 93–97, 105, 207–208; *In re Great Lakes Broadcasting Co.*, Federal Radio Commission, 3 FRC Ann. Rep. 32 (1929), *rev'd on other grounds*, 37 F.2d 993 (D.C. Cir.), *cert. dismissed*, 281 U.S. 706 (1930); ROBERT W. MCCHESENEY, *TELECOMMUNICATIONS, MASS MEDIA, AND DEMOCRACY* 25 (Oxford Univ. Press) (1995); ROBERT L. HILLARD & MICHAEL C. KEITH, *THE QUIETED VOICE: THE RISE AND DEMISE OF LOCALISM IN AMERICAN RADIO* 1 (So. Ill. Univ. Press) (2005) (HILLARD & KEITH, *THE QUIETED VOICE*).
- 10 *ENCYCLOPEDIA OF RADIO* 291 (Christopher H. Sterling, ed.) (Museum of Broadcast Communications) (2004) (*ENCYCLOPEDIA OF RADIO*).
- 11 GWENYTH L. JACKAWAY, *MEDIA AT WAR: RADIO'S CHALLENGES TO THE NEWSPAPERS 1924–1939* 14 (Praeger) (1995) (JACKAWAY, *MEDIA AT WAR*).
- 12 STERLING & KITROSS, *STAY TUNED* at 136–137.
- 13 JACKAWAY, *MEDIA AT WAR* at 20.
- 14 JACKAWAY, *MEDIA AT WAR* at 20.
- 15 JACKAWAY, *MEDIA AT WAR* at 23–24.
- 16 JACKAWAY, *MEDIA AT WAR* at 27–28.
- 17 STERLING & KITROSS, *STAY TUNED* at 193.
- 18 *Newspaper-Radio Legislation Delayed*, BROADCASTING, Mar. 15, 1937, at 22; *Dailies Must Oppose Use of Radio to Impair Democracy*, EDITOR & PUBLISHER, Apr. 30, 1938, at 18; *Giving News to Radio Viewed as Menace to Newspapers by Many Editors*, EDITOR & PUBLISHER, Dec. 22, 1928.
- 19 STERLING & KITROSS, *STAY TUNED* at 194.
- 20 STERLING & KITROSS, *STAY TUNED* at 237.
- 21 In 1937, Edward R. Murrow sailed for London where he was to take up the post of chief CBS radio correspondent in Europe. At the time, Murrow had never written a news story in his life, and he had never made a scheduled radio broadcast. Mark Bernstein, *History of Edward R. Murrow: Inventing Broadcast Journalism*, available at Washington State Univ., The Edward R. Murrow College of Communication, Overview, <http://communication.wsu.edu/overview/history/history.htm> (last visited Mar. 22, 2011).
- 22 STERLING & KITROSS, *STAY TUNED* at 241.
- 23 *MODERN PUBLIC OPINION* at 447; PAUL F. LAZARFELD & FRANK N. STANTON, *COMMUNICATIONS RESEARCH, 1948–1949* 51–72 (Harper & Bros.) (1949).
- 24 STERLING & KITROSS, *STAY TUNED* at 253–255 (400,000); HUGH R. SLOTEN, *RADIO AND TELEVISION REGULATION: BROADCAST TECHNOLOGY IN THE UNITED STATES, 1920–1960* 199 (Johns Hopkins Univ. Press) (2000).
- 25 MITCHELL V. CHARNLEY, *NEWS BY RADIO* 238 (Furnas Press) (2007).
- 26 STERLING & KITROSS, *STAY TUNED* at 179, 362.
- 27 *ENCYCLOPEDIA OF RADIO* at 61.
- 28 *ENCYCLOPEDIA OF RADIO* at 581; ZEMIRA JONES, *RADIO AND THE PUBLIC INTEREST: WHERE WE ARE TODAY* 10 (All-American Mgmt. Group) (2010) (JONES, *RADIO AND THE PUBLIC INTEREST*).
- 29 JONES, *RADIO AND THE PUBLIC INTEREST*.
- 30 JONES, *RADIO AND THE PUBLIC INTEREST* at 10 (interview with Jack Swanson, former WLS news anchor).
- 31 The FCC's freeze on issuing AM licenses lasted from 1968–1973. *Amendment of Part 73 of the Commission's Rules Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services*, 39 F.C.C. 2d 645 (1973).
- 32 HILLARD & KEITH, *THE QUIETED VOICE* at 59.
- 33 STERLING & KITROSS, *STAY TUNED* at 501–502, 526–527.
- 34 *ENCYCLOPEDIA OF RADIO* at 1020.
- 35 Vernon A. Stone, *Changing Profiles of News Directors of Radio and TV Stations, 1972–1986*, 64 JOURNALISM Q. 745 (1987).
- 36 *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 975–78 (1981).

- 37** Vernon A. Stone, *Deregulation Felt Mainly in Large-Market Radio and Independent TV*, RTDNA COMMUNICATOR 9 (Apr. 1987).
- 38** EDWARD BLISS JR., NOW THE NEWS: THE STORY OF BROADCAST JOURNALISM 197–198 (1991).
- 39** Michael L. McKean and Vernon A. Stone, *Deregulation and Competition*, 69 JOURNALISM Q. 715–717 (1992).
- 40** Sterling, ENCYCLOPEDIA OF RADIO at 1020–1021.
- 41** DAVID H. WEAVER, RANDAL A. BEAM, BONNIE J. BROWNLEE, PAUL S. VOAKES & CLEVELAND G. WILHOIT, THE AMERICAN JOURNALIST IN THE 21ST CENTURY: U.S. NEWS PEOPLE AT THE DAWN OF A NEW MILLENNIUM 2 (Lawrence Erlbaum) (2007). By another measure, the number of radio journalists declined from more than 0.08 per 100,000 people in 1982 to less than 0.04 per 100,000 people in 2008. ROBERT W. MCCHESENEY & JOHN NICHOLS, THE DEATH AND LIFE OF AMERICAN JOURNALISM: THE MEDIA REVOLUTION THAT WILL BEGIN THE WORLD AGAIN 256, Appendix 3 (Nation Books) (2010).
- 42** See *Amendment of Section 73.3555*, First Report and Order, 4 FCC Rcd 1723 (1989) (relaxing the “radio duopoly” rule), and *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755 (1992) (increasing national and local ownership limits).
- 43** Lydia Polgreen, *The Death of Local Radio*, WASH. MONTHLY (Apr. 1999). See also STERLING & KITROSS, STAY TUNED at 669.
- 44** TASNEEM CHIPTY, CRA INT’L INC., FCC MEDIA OWNERSHIP STUDY #5: STATION OWNERSHIP AND PROGRAMMING IN RADIO 1 (2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A6.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A6.pdf). Of Clear Channel’s 1,183 radio stations, 821 are FM stations and 362 are AM stations. *Id.* at 7.
- 45** Interview with John Hogan, CEO, Clear Channel, by Cynthia Kennard, FCC (Oct. 7, 2010).
- 46** JONES, RADIO AND THE PUBLIC INTEREST at 12–13.
- 47** JONES, RADIO AND THE PUBLIC INTEREST at 12–13.
- 48** Arbitron Inc., *Overall Radio Listeners Persons Aged 12 and Older Increases More Than 3.3 Million Year Over Year* (press release), Dec. 7, 2010, <http://arbitron.mediaroom.com/index.php?s=43&item=731>.
- 49** ARBITRON INC., RADIO TODAY 2010 EDITION (2010), available at [www.arbitron.com/downloads/RadioToday\\_2010.pdf](http://www.arbitron.com/downloads/RadioToday_2010.pdf).
- 50** GEORGE WILLIAMS, REVIEW OF THE RADIO INDUSTRY 2007 10–12 (FCC) (2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A11.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A11.pdf).
- 51** MICHAEL C. KEITH, RADIO PROGRAMMING: CONSULTANCY AND FORMATICS 100 (Elsevier Science) (1987).
- 52** “News on the Radio” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/audio-essay> (citing ARBITRON INC., RADIO TODAY 2010 EDITION); Email from Claudine Kinsley, Dir., Syndicated Standards & Analysis, Arbitron Inc., to Alexandra McKinney, FCC (Nov. 17, 2010). Arbitron provided aggregate data to the FCC but did not identify the stations that identified themselves as all-news stations.
- 53** Based on an estimate by Dr. Gary Heller, VP, Research & Audience Measurement, CBS Radio Corp., provided to Cynthia Kennard, FCC (Oct. 29, 2010) (CBS Email 10/29/10).
- 54** “Audio: News/Talk Continues to Be an Important Force in Radio” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/audio-essay/data-page/>.
- 55** ARBITRON INC., RADIO TODAY 2010 EDITION (2010).
- 56** PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS (2010) (PEW 2010 NEWS CONSUMPTION SURVEY), <http://people-press.org/report/652/>.
- 57** PEW 2010 NEWS CONSUMPTION SURVEY.
- 58** Interview with Mel Karmazin, CEO, Sirius XM Radio Inc., by Cynthia Kennard, FCC (Sept. 20, 2010).
- 59** Interview with Paul Jacobs, Jacobs Media, by Cynthia Kennard, FCC (Sept. 25, 2010).
- 60** Lee Hood, *Radio Reverb: The Impact of “Local” News Reimported to Its Own Community*, 51 J. BROAD. & ELEC. MEDIA 1 (Mar. 2007).
- 61** Interview with Lee Hood, Assist. Prof., Loyola Univ. Chicago, School of Communication, by Cynthia Kennard, FCC (Sept. 29, 2010).
- 62** Interview with John Hogan, CEO, Clear Channel, by Cynthia Kennard, FCC (Oct. 7, 2010).
- 63** Interview with J.P. Skelly, News Dir., KORN-AM, by Monica Alba, FCC (Sept. 24, 2010).
- 64** Interview with John Hogan, CEO, Clear Channel, by Cynthia Kennard, FCC (Oct. 7, 2010).
- 65** Interview with Robert Papper, Dir., RTDNA/Hofstra Univ. Annual Survey, by Cynthia Kennard, FCC (Sept. 30, 2010) (Papper Interview 9/30/10).
- 66** Papper Interview 9/30/10.
- 67** Papper Interview. See *Radio Staff Size 2009*, RTDNA, <http://www.rtdna.org/media/PartIIIStaffing.pdf>.
- 68** *Who Killed Black Radio News?*, BLACK COMMENTATOR, May 29, 2003, [http://www.blackcommentator.com/44/44\\_cover.html](http://www.blackcommentator.com/44/44_cover.html).
- 69** Interview with Ed Perry, Station Owner, WATD-95.9 FM, by Corrina Wu, FCC (Sept. 2010).
- 70** Email from Ed Perry to Cynthia Kennard, FCC (Nov. 24, 2010).
- 71** Interview with Dan Dillion, News Dir., KFDI-FM, Wichita, KA, by Monica Alba, FCC (Sept. 2010) (Dillion Interview).
- 72** Dillion Interview.
- 73** Interview with Edward Esposito, VP, Information Media, Rubber City Radio Group (Akron, OH), by Cynthia Kennard, FCC (Sept. 14, 2010) (Esposito Interview 9/14/10).
- 74** Esposito Interview 9/14/10.
- 75** Interview of Harvey Nagler, VP, CBS Radio News, by Cynthia Kennard, FCC (April 20, 2011).
- 76** BIA Financial Network Inc., BIA/Kelsey Media Access Pro Radio Analyzer Database, May 26, 2011.
- 77** JONES, RADIO AND THE PUBLIC INTEREST at 12.
- 78** CBS Email 10/29/10.
- 79** Interview of Ron Gleason, News Dir., WBBM Radio, Chicago, by Corrina Wu, FCC (Sept. 2010).
- 80** Robert Philpot, *KRLD-AM Going All-News*, FORT WORTH STAR TELEGRAM, Sept. 24, 2010, <http://www.dfw.com/2010/09/24/339603/krld-am-going-all-news.html>.
- 81** Interview of Dan Mason, President and CEO, CBS Radio, by Cynthia Kennard, FCC (May 5, 2011).
- 82** Prepared Testimony of Barbara S. Cochran, Pres. Emeritus, Radio Television Digital News Association, FCC Workshop on the Future of Media

- and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), *available at* <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 83** ARBITRON INC., RIDING OUT THE STORM: THE VITAL ROLE OF LOCAL RADIO IN TIMES OF CRISIS 2 (2005), *available at* [http://www.arbitron.com/downloads/hurricane\\_summary.pdf](http://www.arbitron.com/downloads/hurricane_summary.pdf). The study catalogued listener praise:
- “Radio was far superior compared to any other media source.”
- “We couldn’t have done without our radio. It was the only source of info we had.”
- “Radio personalities talked people through the crisis, helped to keep hopes alive and pulled the community together.”
- “If it had not been for radio, it would have been much more difficult to deal with the 2004 hurricanes. The connection with callers calling in and announcements made me feel people were out there who knew what was going on. This experience gave me a much greater appreciation for radio.”
- “[Some] stations were able to keep audiences aware of important public-service information such as shelter locations, emergency phone numbers, and other necessary info for our area. They all did a very good job.”
- Id.* at 25.
- 84** *LPFM Activists Taking Their Case to the NAB*, RADIO & TELEVISION BUSINESS REPORT, Dec. 11, 2010, <http://www.rbr.com/radio/lpfm-activists-taking-their-case-to-the-nab.html>. See also WRAL TV (Raleigh, NC), Interview regarding amateur coverage of Hurricane Katrina by ham radio operators, *available at* <http://www.youtube.com/watch?v=yCOu42MnMdM> (last visited Mar. 23, 2011).
- 85** Email from Zemira Jones to Steven Waldman, FCC (Aug. 3, 2010).
- 86** “Audio: Talk Radio” in PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2010), (PEW, STATE OF NEWS MEDIA 2010), <http://stateofthemedias.org/previous-reports/>.
- 87** ARBITRON INC., RADAR® 103 (DEC. 7, 2009).
- 88** “Audio: Traditional Broadcast” in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemedias.org/previous-reports/>.
- 89** “Audio: News on the Radio,” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemedias.org/2011/audio-essay> (*citing* ARBITRON INC., RADIO TODAY 2010 EDITION).
- 90** “Audio: News on the Radio,” in PEW, STATE OF NEWS MEDIA 2011, (*citing* ARBITRON INC., RADIO TODAY 2010 EDITION). <http://stateofthemedias.org/2011/audio-essay/data-page/#fnref-5203-15>.
- 91** The survey was conducted by Edison Media Research for the FCC in 2005 and 2006. See FCC, Media Ownership 2006 Research Studies Archive, 7/31/07, <http://www.fcc.gov/ownership/2006-studies.html> (at link “Edison Media Research Radio Recording Data”) (Edison Media Research Radio Recording Data). Edison collected six separate 20-minute segments of airtime, totaling two hours all together. The 245 “news and talk” stations (a subset of the total of 1,128 stations in the survey) had 495 minutes daily of news programming, of which 80.6 percent was non-local and 13.5 percent was local. After Edison submitted its finding, FCC staff audited the data and found that some observations had been misclassified, with the result that some specific categories (e.g., public affairs) had been undercounted.
- 92** Edison Media Research Radio Recording Data.
- 93** Interview of Ken P. Stern, former CEO and EVP-COO, National Public Radio, by Cynthia Kennard, FCC (Sept. 12, 2010).
- 94** National Public Radio Comments in re *FOM PN (Comment Sought On FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*)), filed May 7, 2010, at 2, 3, 7.
- 95** National Public Radio, Local News Station Survey: Executive Summary, <http://www.localnewsinitiative.org/executive.cfm> (last visited Feb. 11, 2010).
- 96** See *FCC Announces Auction Winners for Digital Audio Radio Service*, Public Notice, DA 97-656, 12 FCC Rcd 18727 (1997).
- 97** See *American Mobile Radio Corporation Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Audio Radio Service*, Order and Authorization, 13 FCC Rcd 8829 (IB 1997).
- 98** *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5812 (1997); see also *Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 22123, 22141 (2007).
- 99** *Application for Consent to Transfer of Control of Licenses, XM Satellite Radio to Sirius Satellite Radio*, Memorandum Opinion and Order, 23 FCC Rcd 12348, 12419–20 (2008). See also 47 C.F.R. § 25.144(e)(4), (5); *Amendment of Part 27 of the Commission’s Rules to Govern Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710, 11825–26 (2010).
- 100** “Audio: Satellite Radio Gains in 2010” in Pew, State of News Media 2011, <http://stateofthemedias.org/2011/audio-essay/#news-on-the-radio>.
- 101** “Audio: Satellite Radio Gains in 2010” in Pew, State of News Media 2011.
- 102** Sirius/XM Satellite Radio, Presentation at Bank of America/Merrill Lynch (NYSE: BAC) Media, Communications, and Entertainment Conference (Sept. 15, 2010), *available at* <http://investor.sirius.com/events.cfm>, <http://investor.sirius.com/releasedetail.cfm?releaseid=437649> (webcast).
- 103** HILLARD & KEITH, THE QUIETED VOICE at 178.
- 104** “Audio: By the Numbers,” in Pew, State of News Media 2011.
- 105** “Audio: By the Numbers,” in Pew, State of News Media 2011.
- 106** TOM WEBSTER, EDISON RESEARCH, THE CURRENT STATE OF PODCASTING 5 (2010), *available at* <http://www.edisonresearch.com/2010%20Edison%20Podcast%20Study%20Data%20Graphs%20Only.pdf>.
- 107** “Audio: By the Numbers,” in PEW, STATE OF NEWS MEDIA 2011.
- 108** *SNL Kagan on “The Future of Online Radio Revenue,”* RADIO NEWS, July 29, 2010, <http://www.radiostreamingnews.com/2010/07/snl-kagan-on-future-of-online-radio.html>
- 109** Podcastalley.com, as reported in “Audio: By the Numbers,” in PEW, STATE OF NEWS MEDIA 2011.
- 110** Pandora, Company overview, <http://blog.pandora.com/press/pandora-company-overview.html>.
- 111** Stitcher, About Us, [http://www.stitcher.com/about\\_us.php](http://www.stitcher.com/about_us.php) (last visited Mar. 6, 2011).

- 112** Testimony of William H. Kling, Pres. and CEO, American Public Media Group, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010), Tr. at 384:15–385:7, *available at* <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>.
- 113** SNL Kagan on “The Future of Online Radio Revenue,” RADIO NEWS, July 29, 2010, <http://www.radiostreamingnews.com/2010/07/snl-kagan-on-future-of-online-radio.html>.
- 114** HILLARD & KEITH, THE QUIETED VOICE at 170.
- 115** Interview of Harvey Nagler, VP, CBS Radio News, by Cynthia Kennard, FCC (Sept. 2010).

## 3 Television

- 1** CHRISTOPHER STERLING & JOHN KITROSS, STAY TUNED: A HISTORY OF AMERICAN BROADCASTING 164–168 (Erlbaum) (2002) (STERLING & KITROSS, STAY TUNED).
- 2** Television stations often relied upon the capital provided by established radio and newspaper firms to sustain themselves through their first few years of losses. Typically, after a short period of time, they became highly profitable for their owners. STERLING & KITROSS, STAY TUNED at 283.
- 3** CRAIG ALLEN, NEWS IS PEOPLE: THE RISE OF LOCAL TV NEWS AND THE FALL OF NEWS FROM NEW YORK 3–6 (Iowa State Press) (2001) (ALLEN, NEWS IS PEOPLE).
- 4** Chicago’s WBKB began a local newscast in 1947; later, its competitor WGN followed with *Chicagoland Newsreel*. In addition, Los Angeles stations KTLA and KTTV were constantly engaged in a battle for coverage of breaking events in Los Angeles. ALLEN, NEWS IS PEOPLE at 7–8.
- 5** Owned and operated stations are owned by, rather than simply affiliated with, a television network.
- 6** ALLEN, NEWS IS PEOPLE at 11.
- 7** ALLEN, NEWS IS PEOPLE at 12.
- 8** STERLING & KITROSS, STAY TUNED at 295–297, 317, 840 App. C, 3–B.
- 9** Craig Chamberlain, *Rare “Hear It Now” Recordings Lend Insight on Murrow and News History*, ILLINOIS NEWS BUREAU, Sept. 26, 2007, <http://news.illinois.edu/news/07/0926murrow.html>.
- 10** STERLING & KITROSS, STAY TUNED at 370.
- 11** STERLING & KITROSS, STAY TUNED at 378–380.
- 12** STERLING & KITROSS, STAY TUNED at 379–380.
- 13** STERLING & KITROSS, STAY TUNED at 445.
- 14** ALLEN, NEWS IS PEOPLE at 58.
- 15** Ted Koppel, *Olbermann, O’Reilly and the Death of Real News*, WASH. POST, Nov. 14, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111202857.html?sid=ST2010111203190>.
- 16** STERLING & KITROSS, STAY TUNED at 378.
- 17** STERLING & KITROSS, STAY TUNED at 445.
- 18** PHYLLIS KANISS, MAKING LOCAL NEWS 102 (Univ. of Chicago Press) (1997).
- 19** Craig Allen, *Television News*, in HISTORY OF MASS MEDIA IN THE UNITED STATES: AN ENCYCLOPEDIA 647–648 (Margaret A. Blanchard, ed.) (Fitzroy Dearborn) (1998).
- 20** CAB analysis of Nielsen Galaxy time period level data. Mon–Sat 8–11 p.m. & Sun 7–11 p.m.; LIVE + Same Day; 9/21/09–5/26/10 vs. prior years. Email from David Woolfson, SVP–Research & Insights, Cabletelevision Advertising Bureau, to Sherille Ismail, Mar. 13, 2011.
- 21** “Average Revenue Trends Down for News-Producing Stations” in PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2011) (PEW, STATE OF NEWS MEDIA 2011), <http://stateofthemedias.org/2011/local-tv-essay/data-page-3/#local-tv-news-economics>.
- 22** National Association of Broadcasters Comments in re *FOM PN (FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age, Comment Sought*, GN Docket No. 10–25, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*), filed May 7, 2010 <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020450082>
- 23** See, e.g., NAT’L ASS’N OF BROADCASTERS, NAB TELEVISION FINANCIAL REPORT (2010), *available at* <http://www.nabstore.com/nab-television-financial-report-2010.html>.
- 24** “Local TV Economics” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemedias.org/2011/local-tv-essay/data-page-3>.
- 25** Justin Nielson, *TV Station Revenue Growth Outlook Upbeat for 2010*, SNL KAGAN, Aug. 19, 2010.
- 26** “Local TV Economics” in PEW RESEARCH CTR.’S PROJ. ON EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2010), (STATE OF NEWS MEDIA 2010), <http://stateofthemedias.org/previous-reports/>
- 27** “Local TV Economics” in PEW, STATE OF NEWS MEDIA 2010.
- 28** Lisa Phillips, *Trends in Consumers’ Time Spent with Media*, EMARKETER, Dec. 28, 2010, <http://www.emarketer.com/Article.aspx?R=1008138>.
- 29** Steve McClellan, *Political Ad Spend to Soar*, ADWEEK, Aug. 23, 2010, [http://www.adweek.com/aw/content\\_display/news/agency/e31915ec0f-14ba05d6789c0e34796b8f7d4#](http://www.adweek.com/aw/content_display/news/agency/e31915ec0f-14ba05d6789c0e34796b8f7d4#).
- 30** “Political Advertising” in PEW, STATE OF NEWS MEDIA 2011 (*citing* estimates from Campaign Media Analysis Group/Television Bureau of Advertising), <http://stateofthemedias.org/2011/local-tv-essay/#economics>. According to Morgan Stanley total political ad spending across media platforms was estimated at \$2.5–\$3.5 billion in 2010, about 75 percent of which went to local TV stations. BENJAMIN SWINBURNE, DAVID GOBER, KRISTI BONNER, & MICAH NANCE, MORGAN STANLEY, FROM THE COUCH, WE SEE EARNINGS UPSIDE IN MEDIA 3, 21 (2010) (MORGAN STANLEY, FROM THE COUCH).
- 31** “Political Advertising” in PEW, STATE OF NEWS MEDIA 2011.
- 32** National Association of Broadcasters Comments in re *FOM PN (FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age, Comment Sought*, GN Docket No. 10–25, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*), filed May 7, 2010. See also Michael Malone, *Local Broadcasters Bullish at SNL Kagan Conference: Broadcasters’ retrans over \$1 billion this year, but the networks want stations to share*, BROADCASTING & CABLE, June 16, 2010, [http://www.broadcastingcable.com/article/453826-Local\\_Broadcasters\\_Bullish\\_at\\_SNL\\_Kagan\\_Conference.php](http://www.broadcastingcable.com/article/453826-Local_Broadcasters_Bullish_at_SNL_Kagan_Conference.php).
- 33** “Retransmission Fees for Local Televisions Signals” in PEW, STATE OF NEWS MEDIA 2011 (*citing* data from Veronis Suhler Stevenson, 2010–2014 Communications Industry Forecast), <http://stateofthemedias.org/2011/local-tv-essay/#economics>.

- 34 KATIE PURCELL, ET. AL, PEW RESEARCH CTR., PEW INTERNET & THE AMERICAN LIFE PROJECT, PROJ. ON EXCELLENCE IN JOURNALISM, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER 3 (2010), *available at* <http://www.pewinternet.org/Reports/2010/Online-News.aspx>.
- 35 PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, IDEOLOGICAL NEWS SOURCES: WHO WATCHES AND WHY, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS 25 (2010), *available at* <http://people-press.org/report/652/>. Interview with Michael Dimock, Assoc. Dir., Pew Research Ctr. for People & the Press, by Cynthia Kennard, FCC (Aug. 16, 2010). Mr. Dimmock says the viewers are looking for quality and substance. There is still a core of Americans who regularly schedule their news watching; it is part of a routine for them, and they still like getting news in the packaged traditional format, and that is where local news programs still fill an important niche.
- 36 “Nielsen Analysis” in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemedias.org/previous-reports/>
- 37 RTDNA/HOFSTRA UNIV. ANNUAL SURVEY 2010, TV AND RADIO NEWS STAFFING AND PROFITABILITY SURVEY (RTDNA) (2010), [http://www.rtdna.org/pages/media\\_items/2010-tv-and-radio-news-staffing-and-profitability-survey1943.php?id=1943](http://www.rtdna.org/pages/media_items/2010-tv-and-radio-news-staffing-and-profitability-survey1943.php?id=1943).
- 38 Radio Television Digital News Association Comments in re *FOM PN*, filed May 7, 2010 (RTDNA Comments), at 44.
- 39 Robert Feder, *ABC 7 to Join Early Birds with 4:30 A.M. Newscast*, WBEZ 91.5 BLOG, July 26, 2010, <http://blogs.vocalo.org/feder/2010/07/abc-7-to-join-early-birds-with-430-a-m-newscast/31271>. In July 2010, the ABC-owned and operated station in Chicago, WLS, announced that it would add “early bird” morning news. The announcement came 10 days after WGN in Chicago had announced it would be starting its morning news block at 4:30 A.M. in mid-August. Chicago’s WMAQ had been the first to move into the 4:30 A.M. time period, in 2007.
- 40 Interview with Brian Bracco, VP, News, Hearst Corporation, by Cynthia Kennard, FCC (July 2010) (Bracco Interview 7/10).
- 41 Interview with Deborah Collura, VP, News, Post-Newsweek Stations; former News Director, WDIV-TV, by Cynthia Kennard, FCC (July 22, 2010) (Collura Interview 7/22/10).
- 42 Interview with general manager at medium-market station in Kansas (asked not to be identified), by Cynthia Kennard, FCC.
- 43 Interview with Steve Schwaid, Dir., News and Digital Content, WGCL-TV, by Cynthia Kennard, FCC, (June 30, 2010) (Schwaid Interview 6/30/10).
- 44 “Local TV: By the Numbers,” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemedias.org/2011/local-tv-essay/data-page-3/>.
- 45 RTDNA Comments at 46–47.
- 46 RTDNA Comments at 47–48.
- 47 RTDNA Comments at 46–47.
- 48 RTDNA Comments at 47.
- 49 Interview with Mike Devlin, Gen. Mgr., WFAA-TV, by Cater Lee, FCC (July 26, 2010) (Devlin Interview 7/26/10).
- 50 Interview with Matthew Zelkind, Station Mgr., WKRN-TV, by Steven Waldman, FCC (June 2010).
- 51 Barrington Broadcast Group, *et al.* Comments in re *FOM PN*, filed May 7, 2010, (Barrington Broadcast Group Comments), at 6–7.
- 52 Prepared Testimony of Jane E. Mago, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), at 5, *available at* <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 53 Interview with Tom Planchet, Mgr., News and Operations, WWL-TV, by Cynthia Kennard, FCC (Feb. 14, 2011).
- 54 Columbia Univ. School of Journalism, Alfred I. duPont-Columbia University Awards for Excellence in Broadcast Journalism, Columbia University 2000–2010 (DuPont-Columbia University Awards 2000–2010), <http://www.dupontawards.org/year/2001> (last visited Feb. 7, 2011). WWL-TV of New Orleans, LA, won in 2007.
- 55 Interview with Russell Banz, VP, Products, Desert Digital Media, by Cynthia Kennard, FCC (Mar. 18, 2011). *See also* Desert Digital Media, Why DDM?, <http://deseretdigital.com/content/view/119/why-ddm> (noting 3.8 million unique visitors in December 2009).
- 56 Bracco Interview 7/10.
- 57 Interview with Maria Barrs, news director of KDFW, June 3, 2011, by Steven Waldman
- 58 Interview with Susanna Schuler, VP, News, Raycom Media, by Cynthia Kennard, FCC (July 29, 2010) (Schuler Interview 7/29/10).
- 59 DataSphere, *Raycom and DataSphere to Launch Hundreds of Neighborhood Websites in 35 Cities* (press release), Mar. 3, 2010, <http://datasphere.com/content/raycom-and-datasphere-launch-hundreds-neighborhood-websites-35-cities>.
- 60 DataSphere, *Gannett Broadcasting and DataSphere to Launch Community Websites in 10 U.S. Cities* (press release), June 15, 2010, <http://datasphere.com/content/gannett-broadcasting-and-datasphere-launch-community-web-sites-10-us-cities>. These markets include: Atlanta, GA (WXIA/WATL); Washington, D.C. (WUSA); Tampa, FL (WTSP); Sacramento, CA (KXTV); Grand Rapids, MI (WZZM); Jacksonville, FL (WTLV/WJXX); Buffalo, NY (WGRZ); Little Rock, AR (KTHV); Portland, ME (WCSH); Macon, GA (WMAZ).
- 61 Broadcast Interactive Media, *Belo Corp Launches YouNews™ Social Media Platform on 16 Websites* (press release), Jan. 20, 2010, <http://www.broadcast-interactive.com/news/82170542.html>.
- 62 Deborah Potter, NewsLab, Katerina-Eva Matsa & Amy Mitchell, “Local TV: Good News After the Fall: Digital Revenue” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemedias.org/2011/local-tv-essay/>.
- 63 Michael Malong, *Fox Embraces Underdog Status*, BROADCASTING & CABLE, Nov. 28, 2010, [http://www.broadcastingcable.com/article/460334-Fox\\_Embraces\\_Underdog\\_Status.php](http://www.broadcastingcable.com/article/460334-Fox_Embraces_Underdog_Status.php).
- 64 Interview with Al Tompkins, Group Leader, Broadcast and Online, The Poynter Institute, by Cynthia Kennard, FCC, July 2010 (Tompkins Interview 7/10).
- 65 Engelhart, Becky, “Local Media Reach: November 2010,” Jan. 6, 2011, <http://www.ibsys.com/local-media-reach/november-2010/>.
- 66 Radio Television Digital News Association, Comments in re *FOM PN*, filed May 7, 2010 (RTDNA Comments), at 31.
- 67 Interview with Richard Boehne, CEO of Scripps, by Steven Waldman, April 26, 2011.
- 68 Interview with Greg Dawson, News Dir., KNSD-TV, by Steven Waldman, FCC, Nov. 30, 2010.
- 69 Email from Scott Lewis, CEO, Voice of San Diego, to Steven Waldman, FCC (Oct. 11, 2010).
- 70 *Applications of Comcast Corp., General Electric Co. and NBC Universal,*

*Inc.*, Memorandum Opinion and Order, FCC 11–4, 2011 FCC LEXIS 414 at \*440–441, 52 Comm. Reg. (P & F) 249 (rel. Jan. 20, 2011) (Appendix A. Conditions, XI. Localism Conditions, 5.b.).

- 71** See *NBC Stations Seek Nonprofit News Partners in Nine Markets*, Communications Daily (May 24, 2011) at 10–11.
- 72** KING 5, *The Seattle Times and KING 5 Partner to Create Local Online Advertising Network* (press release), Oct. 25, 2010, <http://www.king5.com/community/news-releases/The-Seattle-Times-and-KING-5-partner-to-create-local-online-advertising-network—105697913.html>.
- 73** Open Mobile Video Coalition, *Mobile Digital TV Viewers Watching More Local News and Weather, Consumer Showcase Research Reveals* (press release), Sept. 14, 2010, available at [http://www.openmobilevideo.com/\\_assets/docs/press-releases/2010/2010-09-14-omvc-press-release.pdf](http://www.openmobilevideo.com/_assets/docs/press-releases/2010/2010-09-14-omvc-press-release.pdf).
- 74** Columbia School of Journalism, Alfred I. duPont-Columbia University Awards for Excellence in Broadcast Journalism, 2011 Winners (2011 Winners of DuPont-Columbia University Awards for Excellence), <http://www.journalism.columbia.edu/page/659/462> (last visited Feb. 7, 2011). DuPont Awards director, Abi Wright, says the jury was impressed by what they saw from local television news stations coverage in 2009—though at the same time, of the six prizes that were given, four went to TV stations that had won previously.
- “They were repeat winners. WWL in New Orleans had won for Hurricane Katrina coverage in 2006, WTVF in Nashville had won for coverage of the Tennessee State House, and at KMGH in Denver, John Ferrugia had won before as well,” Wright says. “But WCAX in Burlington, Vermont, had never won before. WCAX is a family-owned station, and I know the reporters at these stations thank the owner and managers of these stations for giving them the resources for the reporting to do what they needed to do.”
- Wright says the jury sees consistently strong work over the years from stations that have resources or make good, strong local journalism a priority. Already this year duPont has seen a big rise in entries—5 percent—and the bulk is from local entries. Interview with Abi Wright, Dir., Alfred I. duPont Awards for Excellence in Broadcast Journalism, Columbia Univ., by Cynthia Kennard, FCC (Aug. 17, 2010).
- 75** Barrington Broadcasting Group Comments at 6.
- 76** RTDNA Comments at 11.
- 77** RTDNA Comments at 9–10.
- 78** Interview with Marci Burdick, Sr. VP, Schurz Communications, by Cynthia Kennard, FCC (June 2010) (Burdick Interview 6/10).
- 79** Devlin Interview 7/26/10.
- 80** See WPLG—Miami, Ft. Lauderdale, Jeff Weinsler, <http://www.justnews.com/station/269270/detail.html> (describing investigative report and Florida law change) (last visited Mar. 5, 2011).
- 81** Al Tompkins, *What 2011 Holds for Investigative Reporting*, THE POYNTER INSTITUTE, Jan. 3, 2011, <http://www.poynter.org/latest-news/als-morning-meeting/112043/what-2011-holds-for-investigative-reporting-imagine-a-julian-assange-in-every-state-and-major-city-in-the-us/#>.
- 82** DuPont-Columbia University Awards 2000–2010 Columbia School of Journalism, Alfred I. duPont-Columbia University Awards for Excellence in Broadcast Journalism, <http://www.dupontawards.org/year/2001> (last visited Feb. 7, 2011). KBCI-TV of Boise, ID, won in 2004, KNOE-TV of Monroe, LA, won in 2008.
- 83** MARTIN KAPLAN & MATTHEW HALE, LOCAL TV NEWS IN THE LOS ANGELES

MEDIA MARKET: ARE THE STATIONS SERVING THE PUBLIC INTEREST? 4–6 (USC Annenberg School of Communication & Journalism) (2010) (KAPLAN & HALE, LOCAL TV NEWS IN LOS ANGELES), available at <http://www.learcenter.org/pdf/LANews2010.pdf>.

- 84** THOMAS BALDWIN, DANIEL BERGIN, FRED FICO, STEPHEN LACY, & STEVEN WILDMAN, NEWS MEDIA COVERAGE OF CITY GOVERNMENTS IN 2009 4–5 (Michigan State Univ.) (2010) (BALDWIN, ET AL., COVERAGE OF CITY GOVERNMENTS IN 2009), available at [http://quello.msu.edu/sites/default/files/pdf/PEJ\\_City\\_Govt\\_report-final.pdf](http://quello.msu.edu/sites/default/files/pdf/PEJ_City_Govt_report-final.pdf).
- 85** *TV News Ignores Local Political Races*, POLITICS AND SOCIETY: A SPECIAL RESOURCE FOR JOURNALISTS (Univ. of Southern California), Feb. 17, 2005, <http://politicsandsociety.usc.edu/2005/02/tv-news-ignores-local.html>.
- 86** Dennis Chaptman, *Study: Political Ad Time Trumps Election Coverage on the Tube*, UNIV. OF WISCONSIN–MADISON NEWS, Nov. 21, 2006, <http://www.news.wisc.edu/13213>.
- 87** Walter Shapiro, *Nikki Haley and Rand Paul Races: Where Have All the Reporters Gone?*, POLITICSDAILY.COM, June 11, 2010, <http://www.politics-daily.com/2010/06/11/nikki-haley-and-rand-paul-races-where-have-all-the-reporters-go/>.
- 88** Erica Fowler, Martin Kaplan, Kenneth Goldstein, & Matthew Hale, *Does Local News Measure Up?* 18 STAN. LAW. & POL. REV. 411, 419 (2007).
- 89** Prepared Testimony of Tom Rosenstiel, Dir., Pew Research Ctr. Proj. for Excellence in Journalism, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010) (Rosenstiel Prepared Testimony 3/4/10), at 3, available at <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 90** KRISTINE GLORIA & KARA HADGE, AN INFORMATION COMMUNITY CASE STUDY: WASHINGTON, D.C. 10–11 (New American Found.) (2010), available at [http://mediapolicy.newamerica.net/sites/newamerica.net/files/policydocs/DC\\_Policy\\_Paper.pdf](http://mediapolicy.newamerica.net/sites/newamerica.net/files/policydocs/DC_Policy_Paper.pdf).
- 91** Interview with Wally Dean, Dir. Training, Committee of Concerned Journalists, by Cynthia Kennard, FCC (Aug. 2010) (Dean Interview).
- 92** Dean Interview.
- 93** Kathleen Hall Jamieson, Bruce W. Hardy, & David Romer, *The Effectiveness of the Press in Serving the Needs of American Democracy*, in THE ANNENBERG DEMOCRACY PROJECT, INSTITUTIONS OF AMERICAN DEMOCRACY: A REPUBLIC DIVIDED 21–51 (Oxford University Press 2007).
- 94** Interview with Matthew Zelkind, Station Mgr., WKRN-TV, by Steve Waldman, FCC (May 24, 2010) (Zelkind Interview 5/24/10).
- 95** For a decade, the number of contest entries from local TV news operations was consistently averaging around 100; in 2009, they got only 50 submissions. Ten-Year History: Contest Entries for IRE Awards in Local Television News: Year followed by number of entries: 1999: 119; 2001: 82; 2003: 100; 2005: 110; 2007: 100; 2009: 50. Data adapted from Mark Horvit, Exec. Dir., Investigative Reporters and Editors (July 23, 2010).
- 96** At the same time, broadcast membership in IRE dropped to its lowest level in a decade in 2010. Ten-Year History: Broadcast Membership in IRE: Year followed by membership number: 2000: 874; 2002: 750; 2004: 705; 2006: 733; 2008: 800; 2010: 648. Data adapted from Mark Horvit (July 23, 2010).
- 97** Interview with Fred Young, former VP, Hearst Broadcasting, by Cynthia Kennard, FCC (June 2010).

- 98 Lisa Anderson, *Can Local Television Afford Investigations?*, COLUMBIA JOURNALISM REV. (May/June, 2010), [http://www.cjr.org/feature/can\\_local\\_television\\_afford\\_investigations.php](http://www.cjr.org/feature/can_local_television_afford_investigations.php).
- 99 Sheila Gibbons, *News Layoffs Aren't All Bad for Female Veterans*, WOMEN'S ENEWS, Mar. 30, 2009, <http://www.womensenews.org/story/uncovering-gender/090330/news-layoffs-arent-all-bad-female-veterans/> (*News Layoffs*).
- 100 *News Layoffs*.
- 101 Interview with Roberta Baskin by Cater Lee, FCC (July 7, 2010).
- 102 Interview with Bill Lord, Station Mgr., WJLA, by Cater Lee, FCC (July 26, 2010) (Lord Interview 7/26/10). Lord, like other news managers, admits that not having a dedicated investigative unit hurts the quality of a station's news product. "I also think it serves a great public function, to have the world put on notice that if there is corruption, if there is any cutting of corners, if people are not being treated fairly, there's someone that's going to come ask them questions about it." *Id.*
- 103 Zelkind Interview 5/24/10.
- 104 Zelkind Interview 5/24/10.
- 105 Interview with Joe Bergantino, Dir., New England Ctr. for Investigative Reporting, by Cater Lee, FCC (July 2010) (Bergantino Interview 7/10).
- 106 Bergantino Interview 7/10.
- 107 Interview with Byron Harris, Investigative Reporter, WFAA-TV, by Cater Lee, FCC (June 2010).
- 108 Bergantino Interview 7/10.
- 109 Investigative News Network, About INN, <http://investigativenewsnetwork.org/about/> (last visited Feb. 9, 2011).
- 110 Interview with Kevin Davis, CEO, Investigative News Network (INN) by Cater Lee, FCC (July 21, 2010).
- 111 KAPLAN & HALE, LOCAL TV NEWS IN LOS ANGELES at 4.
- 112 PEW PROJ. FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY 6-7 (2010), available at [http://www.journalism.org/sites/journalism.org/files/Baltimore%20Study\\_Jan2010\\_0.pdf](http://www.journalism.org/sites/journalism.org/files/Baltimore%20Study_Jan2010_0.pdf).
- 113 BALDWIN, ET AL., COVERAGE OF CITY GOVERNMENTS IN 2009 at 4-5.
- 114 Rosenstiel Prepared Testimony 3/4/10.
- 115 Interview with Steve Hertzke, former News Dir., KUTV-TV, by Cynthia Kennard, FCC (July 20, 2010).
- 116 Charles Gibson address to the Radio Television News Directors Association, April 24, 2006.
- 117 Tompkins Interview 7/10.
- 118 KAPLAN & HALE, LOCAL TV NEWS IN LOS ANGELES at 4.
- 119 RTDNA Comments at 38-40.
- 120 Interview with Robert Sullivan, VP, Content, Scripps Broadcasting, by Cater Lee, FCC (July 27, 2010) (Sullivan Interview 7/27/10).
- 121 Bracco Interview 7/10.
- 122 Sullivan Interview 7/27/10. While Phase One of the "Newsroom of the Future" initiative was driven by technology, Sullivan says, Phase Two is focused on the content, figuring out what works and what does not in order to create the best possible news product:
- "As the processes get better, then we get back to working on the journalism, the storytelling.... The newsroom of the future, at least for Scripps stations, is a living, breathing, 24/7 entity... that has an insatiable appetite to understand the community they serve, and then use the skills we possess to help them stay informed by using the technologies that are available to us."
- 123 Interview with Susana Schuler, VP, Raycom Media, by Cynthia Kennard, FCC (July 29, 2010).
- 124 Interview with Andrew Vrees, News Dir., WCVB-TV, by Steven Waldman, FCC (Apr. 13, 2010).
- 125 Interview with Ben Winslow, Multimedia Journalist, KTSU-TV, by Cynthia Kennard, FCC (July 19, 2010) (Winslow Interview 7/19/10).
- 126 Interview with Con Psarris, VP, Editorials and Special Projects, KSL-TV, by Cynthia Kennard, FCC (July 20, 2010) (Psarris Interview 7/20/10).
- 127 Interview with Othello Richards, Reporter, KREM-TV, by Cater Lee, FCC (July 19, 2010).
- 128 Interview with Noah Cooper, News Dir., KREM-TV, by Cater Lee, FCC (July 19, 2010).
- 129 Deborah Potter, *How VJs Are Changing TV News*, NEWSLAB, July 22, 2010, <http://www.newslab.org/2010/07/22/how-vjs-are-changing-tv-news/> (*How VJs Are Changing TV News*).
- 130 Interview with Mary Angela Bock, PhD Candidate, Annenberg School of Journalism, Univ. of Penn. & Faculty Member, Kutztown Univ., by Cynthia Kennard, FCC, June 2010.
- 131 *How VJs Are Changing TV News*.
- 132 Interview with Marco Villarreal, Reporter, KNTV ABC Las Vegas, Nevada, by Steven Waldman, FCC (Apr. 13, 2010).
- 133 Interview with Mike Daniels, Reporter, KESQ-TV, by Cater Lee, FCC (Sept. 6, 2010).
- 134 Winslow Interview 7/19/10.
- 135 Interview with Bill Lord, Station Mgr., WJLA-TV, by Cater Lee, FCC (July 25, 2010).
- 136 Interview with Jill Geisler, Sr. Faculty, Leadership and Management, The Poynter Institute, by Steve Waldman, FCC, (Apr. 18, 2010).
- 137 Interview with Stacey Woelfel, former Chair, RTDNA Ethics Committee, by Cynthia Kennard, FCC (Sept. 2010).
- 138 Curtis Brainard, *News Director Quits Over Hospital Deal*, COLUMBIA JOURNALISM REV., Jan. 25, 2008, [http://www.cjr.org/the\\_observatory/news\\_director\\_quits\\_over\\_hospi.php](http://www.cjr.org/the_observatory/news_director_quits_over_hospi.php).
- 139 Interview with Glen Mabie, former News Dir., WEAU-TV, by Cynthia Kennard, FCC (Jan. 2011).
- 140 Trudy Lieberman, *Epidemic: Phony Medical News Is on the Rise, Thanks to Dozens of Unhealthy Deals Between TV Newsrooms and Hospitals*, 45 COLUMBIA JOURNALISM REV. 38, 38 (2007).
- 141 Interview with Trudy Lieberman, Prof., Baruch College City Univ. of NY, by Cynthia Kennard, FCC (Aug. 6, 2010).
- 142 Interview with Pam Vaught, News Dir., KTBC-TV, by Cynthia Kennard, FCC (Jan. 2011).
- 143 Steph Gregor, *And Now a Word from Our Sponsor*, THE OTHER PAPER (Columbus, Ohio), Nov. 29, 2007. Ohio State University Medical Center is no longer doing the "Medical Breakthrough" segment, according to Lori Abshire, senior director of marketing for the OSU Medical Center. However, Abshire says that the medical center still makes agreements with stations to purchase time on the station in Columbus, but now OSU



- supplies the story, talent, and production team. The segments are called “Medical Minutes,” and Abshire says that if the medical center buys time within the newscast then they run during the newscast. Interview with Lori Abshire, Sr. Dir., Marketing, Ohio State Medical Center, by Cynthia C. Kennard, FCC, by telephone, Mar. 18, 2011.
- 144** Interview with Ike Walker, News Dir., WCMH-TV, by Cynthia Kennard, FCC (Jan. 2011).
- 145** Ass’n of Health Care Journalists & Society of Professional Journalists, *Journalism Groups Warn Newsrooms Against Unhealthy Alliances with Hospitals* (press release), Aug. 11, 2008, available at <http://www.health-journalism.org/about-news-detail.php?id=59>.
- 146** Interview with Forest Carr, former Ethics Fellow, The Poynter Institute, by Cynthia Kennard, FCC (Aug. 5, 2010).
- 147** Interview with Steve Hertzke, former News Dir., KUTV-TV, by Cynthia Kennard, FCC (June 20, 2010) (Hertzke Interview 6/20/10).
- 148** Howard Kurtz, *TV Station Cashes in on Interview ‘Guests,’* WASH. POST, Oct. 16, 2003, at C1.
- 149** Email from Tom Rosenstiel, Dir., Pew Proj. on Excellence in Journalism, to Steven Waldman, FCC (Jan. 31, 2011).
- 150** Interview with Tom Rosenstiel by Steven Waldman, FCC, (Jan. 11, 2011).
- 151** James Rainey, *“The news is, that pitch was paid for: When spokespersons for hire promote products on local TV news shows,”* L.A. TIMES, September 15, 2010, <http://articles.latimes.com/2010/sep/15/entertainment/la-et-onthemedial-20100915>.
- 152** Psarris Interview 7/20/10.
- 153** Burdick Interview 6/10.
- 154** See Center for Media and Democracy Comments in re *Sponsorship Identification NOI & NPRM (Sponsorship Identification Rules and Embedded Advertising*, MB Docket No. 08-90, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd 10682 (2008) (*Sponsorship Identification NOI & NPRM*)), filed Sept. 22, 2008, at 2 (citing BOB PAPPER, THE FUTURE OF NEWS: A STUDY BY THE RADIO TELEVISION NEWS DIRECTORS FOUNDATION 32-33 (2006) (Section 7: The business side)).
- 155** See Comments of Fairness and Integrity in Telecommunications Media in re *Sponsorship Identification NOI & NPRM*, filed Sept. 23, 2009, at 10-15.
- 156** See, e.g., The National Association of Broadcasters Reply Comments in re *Sponsorship Identification NOI & NPRM*, filed Nov. 21, 2008, at 18-19; Reply Comments of The Walt Disney Company in re *Sponsorship Identification NOI & NPRM*, filed Nov. 21, 2008, at 14-20.
- 157** Stephanie Clifford, *A Product’s Place is on the Set*, N.Y. TIMES, July 22, 2008, <http://www.nytimes.com/2008/07/22/business/media/22adco.html> (*A Product’s Place*).
- 158** *A Product’s Place*.
- 159** Michael Malone, *Your Ad Here... and Here*, BROADCASTING & CABLE, May 31, 2010 (*Your Ad Here*), [http://www.broadcastingcable.com/article/453179-Your\\_Ad\\_Here\\_And\\_Here.php](http://www.broadcastingcable.com/article/453179-Your_Ad_Here_And_Here.php). KVVU went even further on its 9:00 A.M. live show, *More*, integrating a flat-screen TV sponsored by burger-chain Sonic and announced the sponsored Dasani Green Room. *More* does not feature breaking news. As product integration on *More* became increasingly common, the station “moved the show out of the newsroom and into its own division,” in order to maintain a church-state wall. KVVU continues to develop innovative ways in which advertisers can reach desired markets, and now boasts that advertisers can do so “by integrating KVVU.com web creative, video and content sponsorship with a targeted television schedule on KVVU.” *Your Ad Here*. The station calls this a “convergence campaign” that “will both capture the attention of the marketplace and provide the details and interactivity to create new customers.” FOX 5 News Las Vegas, *Advertise With KVVU*, <http://www.fox5vegas.com/advertise/index.html> (last visited Apr. 18, 2011).
- 160** *Your Ad Here*.
- 161** Robert Pear, *U.S. Videos, for TV News, Come Under Scrutiny*, N.Y. TIMES, Mar. 15, 2004, <http://www.nytimes.com/2004/03/15/us/us-videos-for-tv-news-come-under-scrutiny.html>. Following this initial article, the media continued to report on the Bush administration’s aggressive use of video news releases. At least twenty federal agencies, including the State Department, Transportation Security Administration, the Agriculture Department, the Census Bureau, and the Defense Department, all created and disseminated videos resembling newscasts. Some of these videos included department officials who were posing as reporters and failed to mention that the individuals were in fact employees of government agencies. Of the videos, “many were subsequently broadcast on local stations across the country without any acknowledgement of the government’s role in their production.” David Barstow & Robin Stein, *Under Bush, a New Age of Prepackaged TV News*, N.Y. TIMES, Mar. 13 2005, <http://www.nytimes.com/2005/03/13/politics/13covert.html>. Over the following year, the media focused on examining the lengths to which the administration would go for good press. Eventually, it was reported that the Department of Education paid nearly a quarter of a million dollars to commentator Armstrong Williams for supporting the No Child Left Behind Act in his weekly newspaper column and televised news show. Greg Toppo, *Education Dept. paid commentator to promote law*, USA TODAY, Jan. 7, 2005, [http://www.usatoday.com/news/washington/2005-01-06-williams-whitehouse\\_x.htm](http://www.usatoday.com/news/washington/2005-01-06-williams-whitehouse_x.htm). The FCC’s Enforcement Bureau cited the Graham Williams Group for violating the sponsorship identification rules. *The Graham Williams Group*, Citation, 22 FCC Rcd 18092 (Enf. Bur. 2007).
- 162** D.S. Haus, *Videobiz just gets bigger*, PR WEEK, Jan. 11, 1999, at 19.
- 163** DIANE FARSETTA & DANIEL PRICE, *FAKE TV NEWS: WIDESPREAD AND UNDISCLOSED* (Ctr. for Media and Democracy) (2006), <http://www.prwatch.org/fakenews/execsummary>. As a result, the FCC distributed official Letters of Inquiry to the documented seventy-seven television stations. The Radio-Television News Directors Association, now the Radio Television Digital News Association (RTDNA)—concerned that stations’ First Amendment rights were being infringed upon and that the FCC was moving toward content regulation—filed official comments with the Commission, noting that the FCC instructed stations to “collect and turn over to the agency tapes and transcripts of newscasts, news outtakes, and VNRs; to answer detailed questions concerning the identification, selection, production, editing, and broadcasting of specific news stories; and to submit statements that are descriptive of news department practices and policies.” Letter from Kathleen A. Kirby & Lawrence W. Secret III, Wiley Rein & Fielding LLP, Counsel for the Radio-Television News Directors Ass’n, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 05-171 (filed Oct. 5, 2006), at 1. In their comments, RTDNA pointed out flaws in CMD’s report, noted that the FCC’s actions departed from established precedent, warned of a potential “chilling effect,” and described the adverse effect the FCC’s actions might have on news agencies’ ability to grant anonymity to sources. RTDNA amended their

professional practices and ethics guideline to include stricter clauses about the need for television stations to disclose the creator of any VNR they air. *Id.* at 2, Appendix A (Memorandum from Wiley Rein & Fielding LLP, to RTDNA re: Critique of Center for Media and Democracy’s “Fake TV News: Widespread and Undisclosed” Report (Sept. 29, 2006).

- 164** Harry Martin, *FCC Issues VNR Fines*, BROADCAST ENGINEERING, Dec. 1, 2007, [http://broadcastengineering.com/news/broadcasting\\_fcc\\_issues\\_vnr/#](http://broadcastengineering.com/news/broadcasting_fcc_issues_vnr/#).
- 165** “Fox News Fake News,” by Joseph Loveland, April 5, 2011 <http://thesamerowdycrowd.wordpress.com/2011/04/05/fox-newsfake-news/>
- 166** See Radio-Television News Directors Association Comments in re, *Video News Release PN*, filed June 22, 2005, at 2–3.
- 167** Interview with Stacey Woelfel, News Dir., KOMU-TV (and former Chair, RTDNA Ethics Committee), by Cynthia Kennard, FCC (Aug. 5, 2010).
- 168** *Fox Television Stations, Inc., Licensee of Station KMSP-TV, Minneapolis, MN*, Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3709 (EB rel. Mar. 24, 2011); *Access 1 New Jersey License Company, LLC, Licensee of Station WMGM-TV, Wildwood, NJ*, Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3725 (EB rel. Mar. 24, 2011). <http://www.fcc.gov/eb/Orders/2011/DA-11-521A1.html> Transcripts of the two VNRs: WMGM:

[Reporter] A national survey by Harris Interactive, shows only nine percent of travelers over the age of thirty say they feel very knowledgeable about how to treat the common cold. This is especially important as we begin the cold and flu season and one of the biggest travel times of the year.

[Voiceover] Nearly two-thirds of U.S. travelers [thirty] and over say they are somewhat or not at all knowledgeable about treating the common cold, according to the new Zicam Travel Well Survey conducted by Harris Interactive. Yet [two] out of [five] travelers surveyed say colds have negatively impacted their trips.

Allison Janse wrote *Germ Freak’s Guide to Outwitting Colds & Flu*, she says being a mother of premature twins made her start researching how to avoid germs.

[Caption: Allison Janse, Author] You can do everything I say in my book. You can eat right, exercise, walk around in a bubble suit. But, eventually, you’re gonna get sick. And in m[y] research, I found that homeopathic zinc products can shorten the duration of your illness.

[Voiceover] Travelers are at [an] increased risk of getting sick because of things like greater exposure to viruses, stress and other variables. The survey showed [four] in [five] of the U.S. travelers surveyed believe the worst time to catch the common cold is while traveling. Dr. Mark Siegel of New York University says that obtaining relief is possible, but that it’s important to begin treatment as soon as symptoms occur.

[Caption: Dr. Marc Siegel, New York University] There is no cure for the common cold. But there are some things you can do to get better. Especially in the first 48 hours. You can take an intranasal zinc preparation, like Zicam. To cut down on the severity and duration of symptoms. You can also take a decongestant. Get more rest. Drink some chicken soup. And sleep.

[Voiceover] Nearly [ninety] percent of the U[.][S.][.] travelers survey [sic] say reducing the duration of the common cold would be important or very important for treating the common cold, but only [thirty-three] percent of those travelers who typically use over-the-counter medications to treat the common cold, have used a zinc cold remedy.

[Allison Janse] I think the survey showed me that people really need help figuring out how to treat a common cold when they’re on the go. For instance, most people don’t know that zinc products are available to help them. I mean, yes, we’d like to avoid all germs and never get sick, but that’s not gonna happen. If you do get sick, there are things you can do to fight back.

[Reporter] To see this report again or to find out more about zinc as a treatment for the common cold, go to our website

And KMSP:

Voiceover: Thinking of getting a convertible now that summer is here? Well think fast. The buzz around this year’s convertibles, many brand-new and affordable, means there may not be many left.

[Caption: Bob Lutz, General Motors] “The Solstice is sold out. The Sky is sold out. The Pontiac G6 convertible is sold out.”

Bob Lutz, who has worked at all three domestic manufacturers, is now the head of product development at General Motors. He was hired 5 years ago to revive GM’s much criticized product line – and the hope is that the success he’s had bringing these new convertibles to market will continue across the entire company.

[Caption: Jean Jennings, Automobile Magazine] “Does General Motors have the ability to make cars that people want? Yes they do. It’s absolutely clear. This is the key to their survival and on top of that, I have seen, as many journalists have, cars that are scheduled for the next couple of years and I’ll tell you that if those cars were on the road right now today, I don’t think they’d be in this jam at all.”

But Lutz knows [that] making higher quality automobiles is only part of the equation—changing a generation[’]s worth of less-than-favorable opinions is the real battle.

“What we’re seeing is the old beliefs about General Motors, which we probably earned over twenty, twenty-five years. The old beliefs of all our cars look the same, our quality isn’t very good, the vehicles use a lot of gas, none of that stuff is true anymore but these perceptions linger.”

However[,] the good looking convertibles coming from GM may be changing that perception, as well as the company’s fortunes. America’s largest manufacturing company actually turned a profit in the first quarter of ‘06.

- 169** *Fox Television Stations, Inc., Licensee of Station KMSP-TV, Minneapolis, MN*, Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3709 (EB rel. Mar. 24, 2011); *Access 1 New Jersey License Company, LLC, Licensee of Station WMGM-TV, Wildwood, NJ*, Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3725 (EB rel. Mar. 24, 2011). <http://www.fcc.gov/eb/Orders/2011/DA-11-521A1.html>
- 170** Interview with Fred Young, former VP, Hearst Broadcasting, by Cynthia Kennard, FCC (May 2010).
- 171** Interview with Kevin Benz, News Mgr., News 8 Austin, by Rebecca Shapiro, FCC (July 6, 2010) (Benz Interview 7/6/10).
- 172** Collura Interview 7/22/10.
- 173** Schwaid Interview 6/30/10.
- 174** Bracco Interview 7/10.
- 175** Interview with Renai Bodley, News Director, KSTU-TV, by Cynthia Kennard, FCC (July 19, 2010)
- 176** Synaptic Digital, Our Solutions, <http://www.synapticdigital.com/what-we-do/solutions> (last visited Feb. 10, 2011).

- 177** Interview with Brian Schwartz, Dir., Client Solutions, Synaptic Digital, by Cynthia Kennard, FCC (Sept. 3, 2010).
- 178** Email from Douglas Simon, Pres., D S Simon Productions, to Rebecca Shapiro, FCC (July 16, 2010).
- 179** Interview with Dave McAnally, Partner, Fusion Communications, by Cynthia Kennard, FCC (July 2010).
- 180** Multiple interviews with Robert Papper, Prof., Hofstra Univ., by Cynthia Kennard, FCC (May-Aug. 2010).
- 181** Communications Workers of America, *et al.* Comments in re *FOM PN*, filed May 7, 2010 (Communications Workers of Amer. Comments), at ii.
- 182** Communications Workers of Amer. Comments at 4.
- 183** *In the Matter of Media Council Hawai'i*, "Response to "Complaint and Request for Emergency Relief Regarding Shared Services Agreement," October 16, 2009.
- 184** Independent Network News (INN), What We Do, <http://www.inn-news.net/whatwedo.html> (last visited Apr. 18, 2011).
- 185** Dave McAnally, Owner, Fusion Communications, interview by Cynthia Kennard, FCC (July 15, 2010) (McAnally Interview 7/15/10).
- 186** McAnally Interview 7/15/10.
- 187** McAnally Interview 7/15/10. See also INN, Our History, <http://www.inn-news.net/history.html> (last visited Apr. 18, 2011).
- 188** WLTZ-38 News, News Team, <http://www.wltz.com/Global/category.asp?C=205082> (last visited Apr. 18, 2011). Stefanie Tiso, WLTZ's news director, says the INN agreement has actually enabled the station do local news in an affordable way. Tiso says that they don't mention INN on the station website because WLTZ ABC 38 is a local news product and INN is just helping them with their newscast. Interview with Stefanie Tiso, by Cynthia Kennard, FCC (Mar. 18, 2011).
- 189** RTDNA Comments at 20.
- 190** David Lieberman, *NBC, Fox TV Stations to Share Camera Crews for Local News*, USA TODAY, Nov. 13, 2008 (*NBC, Fox TV Stations to Share Camera Crews*), [http://www.usatoday.com/money/media/2008-11-13-fox-nbc-local-tv-news\\_N.htm](http://www.usatoday.com/money/media/2008-11-13-fox-nbc-local-tv-news_N.htm).
- 191** Communications Workers of Amer. Comments at 11.
- 192** *NBC, Fox TV Stations to Share Camera Crews*.
- 193** Barrington Broadcast Group Comments at 13–14.
- 194** Eyewitness account of Cynthia Kennard, FCC.
- 195** Burdick Interview 6/10.
- 196** Lord Interview 7/26/10.
- 197** Lord Interview 7/26/10.
- 198** Interview with Rebecca Campbell by Steve Waldman, FCC (Apr. 13, 2010).
- 199** Lord Interview 7/26/10.
- 200** Collura Interview.
- 201** Communications Workers of Amer. Comments at iii, 2.
- 202** Communications Workers of Amer. Comments at iii.
- 203** Seventeen news directors noted another TV station that they're running on a second (or third) digital channel. A dozen noted news programming—just not all news. Seven noted weather radar. Four said informational programming, and four noted sports. Three said traffic; two said programming in another language; and one noted movies.
- 204** RTDNA Comments at 20–21.
- 205** Email from Larry Wert, President NBC Local Media, to Ciny Kennard (Apr. 26, 2011); John Eggerton, *NBCU Launching Three New Local News Nets*, Broadcasting & Cable, May 2, 2011, [http://www.broadcastingcable.com/article/467514-NBCU\\_Launching\\_Three\\_New\\_Local\\_News\\_Nets.php](http://www.broadcastingcable.com/article/467514-NBCU_Launching_Three_New_Local_News_Nets.php)
- 206** John Eggerton, *NBCU Launching Three New Local News Nets*, Broadcasting & Cable, May 2, 2011, [http://www.broadcastingcable.com/article/467514-NBCU\\_Launching\\_Three\\_New\\_Local\\_News\\_Nets.php](http://www.broadcastingcable.com/article/467514-NBCU_Launching_Three_New_Local_News_Nets.php)
- 207** Belo Corporation Comments in re *FOM PN*, filed May 7, 2010, at 6.
- 208** Interview with Robert Prather, COO and Dir., Gray Television, by Cynthia Kennard, FCC (July 2010).
- 209** Interview with Ann Arnold, Texas Ass'n of Broadcasters, by Cynthia Kennard, FCC (June 2010).
- 210** Interview with Susanna Schuler, VP, News, Raycom Media, by Cynthia Kennard, FCC (July 29, 2010) (Schuler Interview 7/29/10).
- 211** Schuler Interview 7/29/10.
- 212** FCC staff analysis of data from Tribune Media Services for Nov. 1–Nov. 14, 2009 and May 6–May 12, 2010.
- 213** Data come from Tribune Media Services during the time periods Nov. 1–Nov. 14, 2009 and May 6–May 12, 2010. Data averages include total scheduled news minutes on full-power broadcast television stations over the sample period. Includes all news minutes; no deductions are made for weather, sports, advertising, etc. Programs included in this count are those indicated as "News" or "Newsmagazine" (or their Spanish equivalents) in the "Genre" field, and those indicated by TMS as "Local" in the "Origination" field (possible values in this field are "Local", "Network", or "Syndicated").
- 214** Specifically, the Industry Analysis Division of the Media Bureau looked at week-long television station programming schedules from 12:00 a.m. Monday to 11:59 p.m. Sunday to determine if the station aired any news. The sources used to determine station programming were Zap2It.com, TV Guide, local station websites, and Wikipedia.org.
- If the station broadcast 30 minutes or more of news per week, that station was deemed to broadcast news. Notation was made if the station fell into any of the following categories: airing Local and National News, Local News Only, National News Only, or No News. Regional and Campus News programs were included in the local news category. Broadcasts of state legislature, public affairs, and public interest programs were not considered news.
- Once these determinations were made, percentages were calculated for the total markets. The total number of broadcast stations was 1,632. Of those, 1,239 stations were commercial stations, and 393 were non-commercial educational stations. There were 696 stations that broadcast no local news, and 248 stations did not broadcast news. Of the 393 non-commercial educational stations, 322 did not broadcast local news.
- Calculations were also made for the Top 100 DMAs in those categories. The Top 100 DMAs contained 1,100 stations. Of those, 842 were commercial stations and 258 were noncommercial educational stations. There were 496 stations in the top 100 markets that broadcast no local news, and 207 stations that broadcast no news. Of the 258 noncommercial educational stations, 199 did not broadcast local news.
- 215** This is a survey of news directors at 1,800 TV stations. Email from Bob Papper to Cynthia Kennard, FCC (Sept. 30, 2010). See also RTDNA, *RTDNA/Hofstra Survey Finds TV Doing More with Less, Optimism on*

- Staffing* (press release), Apr. 14, 2010, <http://www.rtdna.org/pages/posts/rtdnahofstra-survey-finds-tv-doing-more-with-less-optimism-on-staffing920.php>.
- 216** JESSICA DURKIN & TOM GLAISYER, AN INFORMATION COMMUNITY CASE STUDY: SCRANTON, 6 (New American Found.) (2010), <http://mediapolicy.newamerica.net/sites/newamerica.net/files/policydocs/Scranton%20Case%20Study.pdf>
- 217** Adam Jones, Sr. VP, NBC News, *The Cosmic Change in the News Business* (presentation at The Columbia Institute for Tele-Information at Columbia Business School), May 21, 2010, available at <http://www4.gsb.columbia.edu/citi/events/transmedia>.
- 218** Frazier Moore, *Legendary CBS Anchor Walter Cronkite Dies at 92*, ASSOCIATED PRESS, July 17, 2009, [http://minnesota.publicradio.org/display/web/2009/07/17/walter\\_cronkite\\_death/](http://minnesota.publicradio.org/display/web/2009/07/17/walter_cronkite_death/).
- 219** MARC GUNTHER, THE TRANSFORMATION OF NETWORK NEWS: HOW PROFITABILITY HAS MOVED NETWORKS OUT OF HARD NEWS (Nieman Found. for Journalism at Harvard) (1999) (GUNTHER, THE TRANSFORMATION OF NETWORK NEWS), <http://www.nieman.harvard.edu/reports/article/102153/The-Transformation-of-Network-News.aspx>.
- 220** GUNTHER, THE TRANSFORMATION OF NETWORK NEWS.
- 221** Emily Guskin, Tom Rosenstiel & Paul Moore, "Network News: Durability & Decline: Evening News Audiences" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/network-essay/#audience>; "Network TV: Audience" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthedia.org/previous-reports/>.
- 222** "Network TV: Audience" in PEW, STATE OF NEWS MEDIA 2010.
- 223** Interview with Andrew Tyndall, The Tyndall Report, by Tamara Smith, FCC (July 23, 2010).
- 224** "As Ratings Fall Over Time, NBC Fairs [sic] Best" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/network-essay/data-page-5/#evening-news-demographics>.
- 225** "Network TV: Audience" in PEW, STATE OF NEWS MEDIA 2010. <http://stateofthedia.org/previous-reports/>.
- 226** "Network News Audience" in PEW, STATE OF NEWS MEDIA 2010.
- 227** "Network News: Durability & Decline: Evening News Audiences" in PEW, STATE OF NEWS MEDIA 2011.
- 228** "Network News: Durability & Decline: Evening News Audiences" in PEW, STATE OF NEWS MEDIA 2011.
- 229** The Walt Disney Co., Notice of *Ex-Parte* Presentation to FCC, GN Docket No. 10-25 (filed Oct. 18, 2010), at 7, available at <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016059149>.
- 230** "Overview" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthedia.org/previous-reports/>.
- 231** Matea Gold, *ABC News President David Westin Promises that Cuts Will Not Impede 'First-Rate Journalism.'* L.A. TIMES: COMPANY TOWN BLOG, Feb. 23, 2010, <http://latimesblogs.latimes.com/entertainmentnews-buzz/2010/02/abc-news-president-david-westin-promises-that-cuts-will-not-impede-firstrate-journalism.html>.
- 232** "Network News: Durability & Decline: PBS: Audience" in PEW, STATE OF NEWS MEDIA 2011.
- 233** 2011 Winners of DuPont-Columbia University Awards for Excellence.
- 234** "TV Summary Essay" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthedia.org/previous-reports/>.
- 235** L.J. DAVIS, THE BILLIONAIRE SHELL GAME: HOW CABLE BARON JOHN MALONE AND ASSORTED CORPORATE TITANS INVENTED A FUTURE NOBODY WANTED 10-12 (Doubleday) (1998) (DAVIS, THE BILLIONAIRE SHELL GAME).
- 236** STEPHEN KEATING, CUTTHROAT: HIGH STAKES AND KILLER MOVES ON THE ELECTRONIC FRONTIER 39 (Big Earth) (1999) (KEATING, CUTTHROAT).
- 237** DAVIS, THE BILLIONAIRE SHELL GAME at 12-13.
- 238** By the late 1980s, Cooke cashed in, selling his entire stake to John Malone for \$380 million. DAVIS, THE BILLIONAIRE SHELL GAME at 17, 116.
- 239** DAVIS, THE BILLIONAIRE SHELL GAME at 18.
- 240** KEATING, CUTTHROAT at 43.
- 241** *Rules and Regulations Relating to the Distribution of Television Broadcast Signals by the Community Antenna Television Systems*, Second Report and Order, 2 FCC 2d 725, 747-756 (1966).
- 242** KEATING, CUTTHROAT at 46.
- 243** KEATING, CUTTHROAT at 47.
- 244** THOMAS STREETER, SELLING THE AIR, 177 n.21 (Univ. of Chicago) (1996) n.21; ROBERT CRANDALL & HAROLD FURCHTOTT-ROTH, CABLE TELEVISION: REGULATION OR COMPETITION 6 (Brookings Press) (1996).
- 245** DAVIS, THE BILLIONAIRE SHELL GAME at 26; KEATING, CUTTHROAT at 48.
- 246** *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Second Report & Order, 11 FCC Rcd 2060, 2069 nn.30-31 (1995) (citing Nat'l Cable Television Ass'n, *Viewing Shares: Broadcast Years 1983/1984-1993/1994*, CABLE TELEVISION DEVELOPMENTS (Spring 1995), at 5; Sixth Annual Report, 15 FCC Rcd 978, 991 nn.47-48 (2000) (citing NIELSEN MEDIA RESEARCH, NIELSEN TELEVISION INDEX: USAGE/VIEWING SOURCE SHARE TRENDS (1999)); Ninth Annual Report, 17 FCC Rcd 26901, 26913-14, nn.41-42 (2002) (citing NIELSEN MEDIA RESEARCH, TOTAL DAY 24 HOURS 6 A.M.-6 A.M.: TOTAL US RATINGS BY VIEWING SOURCE JULY 2000-JUNE 2002 (2002)); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd. 2755, 2772, nn.75-78 (2005) (*Eleventh Annual Report*) (citing NIELSEN MEDIA RESEARCH, BROADCAST CALENDAR (TV SEASON) SHARE OF AUDIENCE REPORT, PRIME TIME AND TOTAL DAY (2004)). According to NCTA, the 2003/2004 TV season (September 2003 to May 2004) was the first time that the combined nonbroadcast networks' share of prime-time viewing was greater than the combined national broadcast networks' share of prime-time viewing. *Eleventh Annual Report*, 20 FCC Rcd. at 2772 n. 80 (citing National Cable Television Association Comments in re *Delivery of Video Programming NOI (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, 19 FCC Rcd 10909 (2004), filed July 23, 2004, at 46).
- 247** BEN BAGDIKIAN, THE NEW MEDIA MONOPOLY 45 (Beacon Press) (2004); Jane Hall, *News Channel Aims to Out-Fox Opponents*, L.A. TIMES-WASH. POST SERVICE, Oct. 5, 1996.
- 248** Microsoft and NBC created MSNBC, using Microsoft's technological expertise and NBC's existing news operations to provide news over multiple platforms. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, First Annual Report, 9 FCC Rcd 7442, 7591-2, App. G, Table 4 (1994).
- 249** KEATING, CUTTHROAT at 18.
- 250** SNL Kagan, SNL Interactive: Briefing Book Search Page, <http://www.snl.com/interactivex/bbsearch.aspx?activeTabIndex=8> (visited Jan. 27, 2011).

- 251** Jesse Holcomb, Amy Mitchell & Tom Rosenstiel, "Cable: By the Numbers: Audience" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemedi.org/2011/cable-essay/>.
- 252** "Cable TV Economics" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemedi.org/previous-reports/>.
- 253** "Cable: By the Numbers: Audience" in PEW, STATE OF NEWS MEDIA 2011.
- 254** "Cable: By the Numbers: Economics" in PEW, STATE OF NEWS MEDIA 2011.
- 255** "Cable TV: Economics" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemedi.org/previous-reports/>, and "Cable Profits Up Across the Board," in PEW PROJ. FOR EXCELLENCE IN JOURNALISM, STATE OF THE NEWS MEDIA (2011) (PEW, STATE OF THE NEWS MEDIA) (citing SNL Kagan, a division of SNL Financial LLC), <http://stateofthemedi.org/2011/cable-essay/data-page-2/>.
- 256** "Cable: By the Numbers: News Investment" in PEW, STATE OF NEWS MEDIA 2011.
- 257** "Cable: By the Numbers: News Investment" in PEW, STATE OF NEWS MEDIA 2011.
- 258** Joe Nocera, *Bland Menu if Cable Goes à la Carte*, N.Y. TIMES, Nov. 24, 2007, [http://www.nytimes.com/2007/11/24/business/media/24nocera.html?\\_r=1&ex=1353560400&en=a362ab94b8687400&ei=5090&partner=rssuserland&emc=rss](http://www.nytimes.com/2007/11/24/business/media/24nocera.html?_r=1&ex=1353560400&en=a362ab94b8687400&ei=5090&partner=rssuserland&emc=rss).
- 259** News 12 Long Island, About News 12, [http://www.news12.com/news/aboutus\\_LI?news\\_type>About%20Us](http://www.news12.com/news/aboutus_LI?news_type>About%20Us) (last visited Jan. 27, 2011).
- 260** George Winslow, *Moving Beyond Local News, Channels Expand Base of Homes, Platforms*, MULTICHANNEL NEWS, June 12, 2006 (*Moving Beyond Local News*), [http://www.multichannel.com/article/123850-Moving\\_Beyond\\_Local\\_News.php](http://www.multichannel.com/article/123850-Moving_Beyond_Local_News.php).
- 261** Adam Lynn, Mark Cooper, & S. Derek Turner, NATIONAL OWNERS DOMINATE LOCAL CABLE NEWS: LOCAL CABLE NEWS CHANNELS DO NOT SIGNIFICANTLY CONTRIBUTE TO SOURCE OR VIEWPOINT DIVERSITY 1, 5 (Free Press) (2006) [http://www.freepress.net/files/study\\_4\\_cable\\_local\\_news.pdf](http://www.freepress.net/files/study_4_cable_local_news.pdf) ("these stations serve about one-fifth of the total population..."). The number could be slightly higher. Our own FCC analysis, based on research in September 2010 by FOM team members Simon Banyai and Ava Seave (Banyai and Seave Research), we previously found there to be approximately 39 local or regional cable news channels that produced their own news. These channels serve subscribers on cable systems in approximately 71 out of the total 210 Designated Market Areas in the country, and many of these DMAs contain large metropolitan regions—New York, Boston, Chicago, or San Francisco—with multiple channels. Using 2010 data, out of the total of 54,335,000 TV households located in 71 DMAs, we found that 52.4 percent or 28,471,540 were cable subscribers. Therefore, we estimated that these 39 cable news channels were available to at least 24.6 percent of the 115.8 million total TV households in the country in 2010. Our cable news channel count incorporates only those channels that continue to utilize journalists to originate local or regional news. While Americans may receive news from a somewhat greater number of cable channels that merely rebroadcast or simulcast network news programming, we have omitted such channels from our tally. The "20 to 30 percent" figure also includes local cable news channels referenced in footnote 264 below.
- 262** Banyai and Seave Research.
- 263** Tribune Co., Business Unites and Websites, [http://corporate.tribune.com/pressroom/?page\\_id=2311](http://corporate.tribune.com/pressroom/?page_id=2311) (last visited Apr. 18, 2011).
- 264** Press Release, "NBC Owned-and-Operated Stations to Expand New Locally Produced News, Information and Public Affairs Programming, May 12, 2011, available at <http://www.nbcuni.com/corporate/newsroom/nbc-owned-and-operated-stations-to-expand-new-locally-produced-news-information-and-public-affairs-programming>. The new local cable news channels will expand the availability of local and regional news to an additional 5,419,208 cable subscribers, or an almost 4.7 additional percent of television households. FCC staff calculation.
- 265** Banyai and Seave Research.
- 266** RADIO & TELEVISION NEWS DIRECTORS FOUND., CABLE NEWS: A LOOK AT REGIONAL NEWS CHANNELS AND STATE PUBLIC AFFAIRS NETWORKS 2 (2004) (RTNDF, CABLE NEWS), available at <http://www.rtdna.org/media/pdfs/bestpractices/cablenews/2004/cable.pdf>. In addition to NY1, Time Warner operates NY1 Noticias, YNN ("Your News Now") Capital Region, YNN Central Region, YNN Southern Region, YNN Western Region, YNN Northern Region, and YNN Hudson Valley. See Banyai and Seave research.
- 267** RTNDF, CABLE NEWS AT 2.
- 268** Kevin Brass, *Can Austin's Little News Station That Could Survive the Grim Reapers at Time Warner?*, THE AUSTIN CHRONICLE, Sept. 3, 2004, <http://www.austinchronicle.com/news/2004-09-03/227255/>.
- 269** Benz Interview 7/6/10.
- 270** New England Cable News, About NECN, <http://www.necn.com/pages/about> (last visited Jan. 28, 2011); RTNDF, CABLE NEWS at 3.
- 271** RTNDF, CABLE NEWS at 4.
- 272** RTNDF, CABLE NEWS at 4–5. Similarly, Chicago-based CLTV had live reports and speeches from five campaign headquarters and, as has been the practice since the news channel was launched, Chicago Tribune writers and editors offered their analysis and insight during interviews from the television stage in the main newsroom of the newspaper. "Many races, especially those that aren't for statewide or congressional offices, are undercovered," says Steve Farber, CLTV's director of news and programming. "We make a difference by highlighting candidates and issues that broadcast stations don't cover." RTNDF, CABLE NEWS at 4–5.
- 273** RTNDF, CABLE NEWS at 8.
- 274** *Moving Beyond Local News*.
- 275** News 12 Long Island, Home Login, [http://www.news12.com/Login/home\\_login](http://www.news12.com/Login/home_login) (last visited Jan. 31, 2011).
- 276** Bay News 9, Tampa News, Weather, Traffic, Entertainment, Politics, <http://www.baynews9.com> (last visited Jan. 31, 2011).
- 277** Telephone interview of Alan Mason, VP and GM, News 14, Carolina, with Steve Waldman and Sherille Ismail (August 12, 2010); interview of Kevin Benz (news manager, News 8 Austin), Rebecca Shapiro, July 6, 2010.
- 278** SNL KAGAN, BROADBAND CABLE FINANCIAL DATABOOK: 2009 EDITION 4 (2009) ("KAGAN 2009 FACTBOOK").
- 279** CRAIG MOFFETT, NICHOLAS DEL DEO, REGINA POSSAVINO, & ANDREW WEISGALL, BERNSTEIN RESEARCH, THE LONG VIEW: BEYOND VIDEO... TAKING THE MEASURE OF THE BROADBAND-CENTRIC CABLE MSO 1 (2010); SNL Kagan, Custom Charts.
- 280** BENJAMIN SWINBURNE, DAVID GOBER, & RYAN FIFTAL, MORGAN STANLEY, CABLE/SATELLITE, BUILT FOR ROUGH WATERS, CONSTRUCTIVE ON GROUP FOR 2H10 1 (2010) (MORGAN STANLEY, CABLE/SATELLITE).

- 281** MORGAN STANLEY, CABLE/SATELLITE at 5. For comparison purposes, cable has over 60 million subscribers.
- 282** MORGAN STANLEY, CABLE/SATELLITE at 6.
- 283** KAGAN 2009 FACTBOOK at 8 (2009).
- 284** STERLING & KITROSS, STAY TUNED at 717.
- 285** *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices, MM Docket No. 92-266, February 14, 2011, at 16.
- 286** KEATING, CUTTHROAT at 107-109.
- 287** *Development of Regulatory Policy in Regard to Direct Broadcast Satellites*, Report & Order, 90 FCC 2d 676, 680 (1982) (*Direct Broadcast Satellites Report*).
- 288** *Direct Broadcast Satellites Report*, 90 FCC 2d at 678-79; 698-706.
- 289** STERLING & KITROSS, STAY TUNED at 573.
- 290** KEATING, CUTTHROAT at 115.
- 291** EDWARD COMOR, COMMUNICATION, COMMERCE, AND POWER 63 (McMillan Press) (1998) (COMOR, COMMUNICATION, COMMERCE, AND POWER).
- 292** COMOR, COMMUNICATION, COMMERCE, AND POWER at 168. Congress created a compulsory license, which permits satellite carriers to deliver network programming to unserved viewers without the copyright owner's permission. STUART BENJAMIN, DOUGLAS LICHTMAN, & HOWARD SHELANSKI, TELECOMMUNICATIONS LAW AND POLICY 549 (Carolina Academic Press) (2001).
- 293** DANIEL L. BRENNER, MONROE PRICE, & MICHAEL MEYERSON, CABLE TELEVISION AND OTHER NONBROADCAST VIDEO: LAW AND POLICY at 15-9 (Clark Boardman Callaghan) (2004).
- 294** KEATING, CUTTHROAT at 137.
- 295** However, a satellite company is not required to carry more than one local broadcast TV station within the DMA that is affiliated with a particular TV network in the same state FCC, Service Options for Satellite Television Subscribers, Fact Sheet, *available at* <http://www.fcc.gov/cgb/consumerfacts/shvera.pdf> (last visited Mar. 6, 2011).
- 296** DirecTV, Annual Report (Form 10-K) for Fiscal Year Ended 12/31/10, at 2 (Jan. 2011) (DirecTV 2010 Annual Report), *available at* <http://www.sec.gov/Archives/edgar/data/1465112/000104746911001443/a2202196z10-k.htm>.
- 297** DISH Network Corp., Quarterly Report for the Quarterly Period Ended 9/30/2010 (Form 10-Q) (Nov. 2010) at 4, *available at* [http://www.sec.gov/Archives/edgar/data/1001082/000110465910056240/a10-19251\\_110q.htm](http://www.sec.gov/Archives/edgar/data/1001082/000110465910056240/a10-19251_110q.htm).
- 298** DISH Network, English Packages, <http://www.dishnetwork.com/packages/detail.aspx?pack=AEP> (last visited Apr. 18, 2011).
- 299** DirecTV 2010 Annual Report at 34.
- 300** DISH Network Corp., Annual Report (Form 10-K) for the Fiscal Year Ended 12/31/10 (Feb. 2011), at 52, *available at* [http://www.sec.gov/Archives/edgar/data/1001082/000110465911009436/a11-3040\\_110k.htm#Item6\\_SelectedFinancialData\\_141543](http://www.sec.gov/Archives/edgar/data/1001082/000110465911009436/a11-3040_110k.htm#Item6_SelectedFinancialData_141543).
- 301** The survey was conducted December 2009 through January 2010. News Leaders and the Future: News Executives, Skeptical of Government Subsidies, See Opportunity in Technology but are Unsure About Revenue

and the Future, Project for Excellence in Journalism, American Society of News Editors (ASNE), Radio Television Digital News Association (RTDNA), 2010, [http://www.journalism.org/analysis\\_report/news\\_leaders\\_and\\_future](http://www.journalism.org/analysis_report/news_leaders_and_future).

## 4 Internet

- 1** W3C, *Tim Berners-Lee Bio*, <http://www.w3.org/People/Berners-Lee/> (last visited Mar. 1, 2011); Tim Berners-Lee, *Weaving the Web*, <http://www.w3.org/People/Berners-Lee/Weaving/Overview.html> (last visited May 20, 2011).
- 2** Tim Berners-Lee, *Long Live the Web: A Call for Continued Open Standards and Neutrality*, SCIENTIFIC AMERICAN, Dec. 2010, <http://www.scientificamerican.com/article.cfm?id=long-live-the-web>.
- 3** ANDREW METRICK & AYAKO YASUDA, VENTURE CAPITAL AND THE FINANCE OF INNOVATION 12 (John Wiley & Sons) (2006) (VENTURE CAPITAL AND THE FINANCE OF INNOVATION).
- 4** John Markoff, *With a Debut, a Test of On-Line Publishing*, N.Y. TIMES, Nov. 13, 1995, at D7 (providing that Salon Magazine was set to launch its first online issue in January 19 at [www.salon1999.com](http://www.salon1999.com)); Laura M. Holson, *Healthon Is Expected to Join Forces With Internet Provider*, N.Y. TIMES, May 15, 1999, at C14 (explaining that WebMd began in October 1998 and later merged with the Healthon Corporation in 1999); Timothy Hanrahan, *CBS News, DBC Online Launch Financial News Web Site*, DOW JONES NEWS SERVICE, Oct. 30, 1997 (announcing the launch of CBS MarketWatch); Beliefnet, *About Beliefnet*, <http://www.beliefnet.com/About-Us/About-Beliefnet.aspx> (noting that Beliefnet was founded in 1999); Slate, *About Us*, <http://www.slate.com/id/2147070/> (last visited Feb. 8, 2011); VENTURE CAPITAL AND THE FINANCE OF INNOVATION at 13.
- 5** See, e.g., Andres Rueda, *The Hot IPO Phenomenon and the Great Internet Bust*, 7 FORDHAM J. CORP. & FIN. L. 21 (2001).
- 6** Ken Doctor, *The Newsonomics of Time-on-Site*, NIEMAN JOURNALISM LAB, Mar. 4, 2010, <http://www.niemanlab.org/2010/03/the-newsonomics-of-time-on-site/>.
- 7** Google News, [http://news.google.com/intl/en\\_us/about\\_google\\_news.html](http://news.google.com/intl/en_us/about_google_news.html) (last visited June 3, 2011); See also, e.g., CrunchBase, *Google News Profile*, <http://www.crunchbase.com/product/google-news> (last visited May 20, 2011); "Nielsen Analysis" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2010), <http://stateofthemediamedia.org/previous-reports/>.
- 8** PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS (2010), *available at* <http://people-press.org/2010/09/12/americans-spending-more-time-following-the-news/>.
- 9** "Main News Source, By Age" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2011) (PEW, STATE OF THE NEWS MEDIA 2011), <http://stateofthemediamedia.org/2011/online-essay/data-page-7/>.
- 10** WordPress.com, *Stats*, <http://en.wordpress.com/stats/> (last visited May 24, 2011).
- 11** CHRIS ANDERSON, THE LONG TAIL: WHY THE FUTURE OF BUSINESS IS SELLING LESS OF MORE (Hyperion) (2006).

- 12 *Newspaper Economics: Online and Offline*, Presentation by Hal Varian, Chief Economist, Google, and Professor, Univ. of California, Berkeley, Federal Trade Commission Workshop, “How Will Journalism Survive The Internet Age?” (Mar. 9, 2010) (Varian, *Newspaper Economics: Online and Offline*), at 3 (Mar. 9, 2010) (Varian, *Newspaper Economics: Online and Offline*), available at <http://www.ftc.gov/opp/workshops/news/mar9/docs/varian.pdf> (showing that, while core costs (promotion, editorial, administrative) and the costs of production, distribution and raw materials accounted for 87 percent of revenue, Internet distribution could cut production costs by at least half).
- 13 Chris Anderson & Michael Wolff, *The Web is Dead: Long Live the Internet*, WIRED MAGAZINE, Aug. 17, 2010, [http://www.wired.com/magazine/2010/08/ff\\_webrip/](http://www.wired.com/magazine/2010/08/ff_webrip/).
- 14 Andrew Sullivan, *Campaign '04: A Blogger's Creed*, TIME, Sept. 27, 2004, <http://www.time.com/time/magazine/article/0,9171,995196,00.html/>.
- 15 *ACLU v. Reno*, 929 F. Supp. 825 (E.D. Pa. 1996), *aff'd*, 521 U.S. 844 (1997): “It is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country—and indeed the world—has yet seen. The plaintiffs in these actions correctly describe the “democratizing” effects of Internet communication: individual citizens of limited means can speak to a worldwide audience on issues of concern to them. Federalists and Anti-Federalists may debate the structure of their government nightly, but these debates occur in newsgroups or chat rooms rather than in pamphlets. Modern-day Luthers still post their theses, but to electronic bulletin boards rather than the door of the Wittenberg Schlosskirche. More mundane (but from a constitutional perspective, equally important) dialogue occurs between aspiring artists, or French cooks, or dog lovers, or fly fishermen.... [T]he Internet may fairly be regarded as a never-ending worldwide conversation. The Government may not, through the CDA, interrupt that conversation. As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion.”
- 16 Reader comments counted on May 30, 2010. The Huffington Post, <http://www.huffingtonpost.com/>.
- 17 PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, HOW NEWS HAPPENS: A STUDY OF THE NEW ECOSYSTEM OF ONE AMERICAN CITY 3 (2010) (PEW, HOW NEWS HAPPENS), available at [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens).
- 18 WASHINGTON POST MEDIA, 2010 CIRCULATION AND HOUSEHOLD COVERAGE (2010), available at [http://www.washingtonpostads.com/adsite/\\_res/files/managed/2010%20Circ%20and%20HHL%20Cov.pdf](http://www.washingtonpostads.com/adsite/_res/files/managed/2010%20Circ%20and%20HHL%20Cov.pdf); Washington Post Digital Ad Center, *Audience Profiles*, [http://advertising.washingtonpost.com/index.php/audience/page/audience\\_profiles#3](http://advertising.washingtonpost.com/index.php/audience/page/audience_profiles#3), (last visited Sept. 30, 2010).
- 19 USA Ultimate, <http://www.usultimate.org/news/default.aspx> (last visited May 20, 2011).
- 20 Geocaching: The Official Global GPS Cache Hunt, <http://www.geocaching.com/press/default.aspx> (last visited May 20, 2011).
- 21 Groundspeak, <http://www.groundspeak.com/> (last visited May 20, 2011).
- 22 Howard Kurtz, *After Blogs Got Hits, CBS Got a Black Eye*, WASH. POST, Sept. 20, 2004, <http://www.washingtonpost.com/ac2/wp-dyn/A34153-2004Sep19?language=printer>.
- 23 AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJ., MOBILE ACCESS 2010 at 2 (2010) (MOBILE ACCESS 2010), <http://pewinternet.org/Reports/2010/Mobile-Access-2010.aspx>.
- 24 SeeClickFix, *Citizens Get Started*, <http://www.seeclickfix.com/citizens> (last visited May 20, 2011).
- 25 Jay Rosen, *A Most Useful Definition of Citizen Journalism*, PRESSTHINK, July 14, 2008, [http://archive.pressthink.org/2008/07/14/a\\_most\\_useful\\_d.html](http://archive.pressthink.org/2008/07/14/a_most_useful_d.html).
- 26 Clay Shirky, *How Cognitive Surplus Will Change the World* (oral presentation), TED: IDEAS WORTH THINKING, June 2010 (*Cognitive Surplus*), <http://www.ted.com/talks/view/id/896>.
- 27 See *Cognitive Surplus*.
- 28 Jason Jones, *End Times* (video excerpt), THE DAILY SHOW, June 10, 2009, <http://www.thedailyshow.com/watch/wed-june-10-2009/end-times>.
- 29 ARLnow.com—Arlington, Va.—Breaking News, Opinions & Community Happenings, <http://www.arlnow.com/> (last visited May 18, 2011).
- 30 Universal Hub, Boston Crime, <http://www.universalhub.com/crime/home.html> (last visited Apr. 13, 2011).
- 31 EveryBlock, <http://www.everyblock.com/>; Topix, <http://www.topix.com/>; Outside.in, <http://www.outside.in/>; Placeblogger, <http://placeblogger.com> (each last visited May 20, 2011).
- 32 Joseph Tartakoff, *AOL's Patch Aims to Quintuple in Size by Year-End*, GUARDIAN, Aug. 17, 2010, <http://www.guardian.co.uk/media/pda/2010/aug/17/aol-patch-local-journalism>.
- 33 Irish Philadelphia, [www.irishphiladelphia.com/](http://www.irishphiladelphia.com/) (last visited Apr. 13, 2011).
- 34 BikePortland, <http://bikeportland.org/> (last visited Jan. 28, 2011).
- 35 HAROLD VOGEL, ENTERTAINMENT INDUSTRY ECONOMICS: A GUIDE FOR FINANCIAL ANALYSIS 343 (Cambridge University Press) (2007).
- 36 LEE RAINIE & KRISTEN PURCELL, PEW INTERNET AND AMERICAN LIFE PROJ., HOW THE PUBLIC PERCEIVES COMMUNITY INFORMATION SYSTEMS (2011), available at <http://www.pewinternet.org/Reports/2011/08-Community-Information-Systems.aspx>.
- 37 Testimony of Bill Allison, Sunlight Found., Federal Trade Commission Workshop, “From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?” (Dec. 2, 2009), Tr. at 176: 17-177:5 (Allison Testimony 12/2/09), available at <http://www.ftc.gov/opp/workshops/news/>.
- 38 Allison Testimony 12/2/09, Tr. at 177:5-8.
- 39 Information and Reporting Services, Data Reporting, [http://www.p12.nysed.gov/irs/data\\_reporting.html](http://www.p12.nysed.gov/irs/data_reporting.html) (last visited Jan. 20, 2011).
- 40 GreatSchools—Public and Private School Ratings, Reviews, and Parent Community, <http://www.greatschools.org/> (last visited Jan. 20, 2011).
- 41 PEW, HOW NEWS HAPPENS.
- 42 PEW, HOW NEWS HAPPENS at 4.
- 43 PEW, HOW NEWS HAPPENS at 2.
- 44 PEW, HOW NEWS HAPPENS at 2.
- 45 THOMAS BALDWIN, DANIEL BERGIN, FRED FICO, STEPHEN LACY, & STEVEN WILDMAN, NEWS MEDIA COVERAGE OF CITY GOVERNMENTS IN 2009 4-5 (Michigan State Univ.) (2010) (BALDWIN, ET AL., COVERAGE OF CITY GOVERNMENTS IN 2009) (detailing a study of 389 news outlets in central cities, which provided 6,042 local stories, and 77 “suburban cities,” which provided 769 local stories), available at [http://quello.msu.edu/sites/default/files/pdf/PEJ\\_City\\_Govt\\_report-final.pdf](http://quello.msu.edu/sites/default/files/pdf/PEJ_City_Govt_report-final.pdf).
- 46 BALDWIN, ET AL., COVERAGE OF CITY GOVERNMENTS IN 2009 at 12.

- 47 BALDWIN, ET AL., COVERAGE OF CITY GOVERNMENTS IN 2009 at 12.
- 48 BALDWIN, ET AL., COVERAGE OF CITY GOVERNMENTS IN 2009 at 12.
- 49 Nate Silver, *A Note to Our Readers on the Times Pay Model and the Economics of Reporting*, FIVETHIRTYEIGHT (N.Y. Times), Mar. 24, 2011, <http://fivethirtyeight.blogs.nytimes.com/2011/03/24/a-note-to-our-readers-on-the-times-pay-model-and-the-economics-of-reporting/>.
- 50 Jan Schaffer, *Exploring a Networked Journalism: Collaborative in Philadelphia: An Analysis of the City's Media Ecosystem with Final Recommendations*, J-LAB: THE INSTITUTE FOR INTERACTIVE JOURNALISM, Apr. 2010 (*Exploring a Networked Journalism*), [http://www.j-lab.org/publications/philadelphia\\_media\\_project#kfb](http://www.j-lab.org/publications/philadelphia_media_project#kfb).
- 51 *Exploring a Networked Journalism*.
- In its analysis, the Institute for Interactive Journalism found “both the number of stories and the space and airtime devoted to public affairs reporting has suffered in both daily newspapers and on commercial television newscasts over the last three years.” It concluded that there were fewer column inches and stories in *The Philadelphia Inquirer* and fewer stories—albeit more column inches—in the *Daily News*. Further, “[p]ublic affairs news coverage on Philadelphia’s four commercial television stations also decreased, but there was not a significant amount of coverage for either period measured.” *Id.*
- For daily news, J-Lab found that the number of stories declined 7.2 percent between August 2006 to August 2009, and yet “the amount of news space given to public affairs journalism increased by 5 percent. . . . This means there were six additional columns of public affairs news in the *Daily News* for August 2009, equivalent to one additional full page plus one additional column for the month.” *Id.*
- Finally, for commercial television newscast, J-Lab found the number of stories and minutes devoted to public affairs stories declined on local Philadelphia evening newscasts from 2006 to 2009, adding “[i]t’s hard to describe this decline as precipitous because there wasn’t a great deal of public affairs reporting to begin with.” *Id.* In conducting its research, J-Lab commissioned time logs and story-subject logs for the nightly newscasts of WCAU, WPVI, WTXF and KYW for May 1–7, 2006 and May 1–7, 2009. “From May 1 to 7, 2006, the four stations aired a total of 46 minutes, 30 seconds of public affairs stories about the broadcast market region during their nightly newscasts. For the same period in 2009 all four stations aired only 38 minutes, 58 seconds, a 16 percent drop. A larger discrepancy occurs for coverage aimed more specifically at Philadelphia and South Jersey. Of the 46.5 minutes devoted to public affairs coverage in May 2006, 32 minutes, or almost 69 percent, focused on local issues. For the same period in 2009, coverage of local issues dropped to 17 minutes, 22 seconds or only 44.5 percent, of the 38 minutes, 58 seconds aired.” *Id.*
- 52 Jonathan Stray, *The Google/China Hacking Case: How Many News Outlets Do the Original Reporting on a Big Story?*, NIEMAN JOURNALISM LAB, Feb. 24, 2010 (*The Google/China hacking case*), <http://www.niemanlab.org/2010/02/the-googlechina-hacking-case-how-many-news-outlets-do-the-original-reporting-on-a-big-story/>.
- 53 *The Google/China Hacking Case*.
- 54 JAN SHAFFER, J-LAB: THE INSTITUTE FOR INTERACTIVE JOURNALISM, NEW VOICES: WHAT WORKS: LESSONS FROM FUNDING FIVE YEARS OF COMMUNITY NEWS STARTUPS (2010), available at [http://www.j-lab.org/about/press\\_releases/newvoices\\_whatworks/](http://www.j-lab.org/about/press_releases/newvoices_whatworks/).
- 55 Steven Waldman, *Why the Huffington Post Can’t Replace the New York Times*, THE HUFFINGTON POST, Jan. 12, 2009, [http://www.huffingtonpost.com/steven-waldman/the-case-against-huffingt\\_b\\_157075.html](http://www.huffingtonpost.com/steven-waldman/the-case-against-huffingt_b_157075.html).
- 56 MinnPost, [www.minnpost.com](http://www.minnpost.com) (last visited May 20, 2011).
- 57 VoiceofSanDiego.org, [www.voiceofsandiego.org](http://www.voiceofsandiego.org) (last visited May 20, 2011).
- 58 Michele McLellan, *Niche News Sites*, DONALD W. REYNOLDS JOURNALISM INSTITUTE (updated June 7, 2010), <http://umrji.prod.acquia-sites.com/news/micheles-list-promising-local-news-sites>.
- 59 MICHELE MCELLELLAN, DONALD W. REYNOLDS JOURNALISM INSTITUTE, BLOCK BY BLOCK: BUILDING A NEW ECOSYSTEM (2010), at Pt. 3 Revenue Streams, <http://www.rjionline.org/fellows-program/mcLellan/block-by-block/part-3.php>.
- 60 Knight Citizen News Network, *Meet the New Media Makers—and the Foundations that Make Their News Sites Possible*, [http://www.kcnn.org/toolkit/funding\\_database](http://www.kcnn.org/toolkit/funding_database) (last visited Mar. 1, 2011).
- 61 Rick Edmonds, *Shrinking Newspapers Have Created \$1.6 Billion News Deficit*, Poynter, Oct. 10, 2009, <http://www.poynter.org/latest-news/business-news/the-biz-blog/98784/shrinking-newspapers-have-created-1-6-billion-news-deficit/>.
- 62 PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM & PEW INTERNET & AMERICAN LIFE PROJECT, THE ECONOMICS OF ONLINE NEWS 4 (2010), available at <http://www.pewinternet.org/-/media/Files/Reports/2010/The-economics-of-online-news.pdf>.
- 63 MICHAEL R. FANCHER, OF THE PRESS: MODELS FOR TRANSFORMING AMERICAN JOURNALISM, A REPORT OF THE 2009 ASPEN INSTITUTE FORUM ON COMMUNICATIONS AND SOCIETY 16 (2009) (quoting Esther Dyson’s statement about investments in new start-ups), available at <http://www.knightcomm.org/wp-content/uploads/2010/04/Of-the-Press-Models-for-Transforming-American-Journalism.pdf>.
- 64 Interview with Esther Dyson by Steven Waldman, FCC (Sept. 3, 2010).
- 65 Brett Pulley, *AOL’s Huffington to Add News Staff in Local Site Revamp*, BLOOMBERG BUSINESSWEEK, Apr. 12, 2011, <http://www.businessweek.com/news/2011-04-12/aol-s-huffington-to-add-news-staff-in-local-site-revamp.html>.
- 66 Interview with Rick Blair, Pres., Examiner.com, by Steven Waldman, FCC (Dec. 17, 2010) (Blair Interview 12/17/10).
- 67 Blair Interview 12/17/10.
- 68 AOL Advertising, <http://advertising.aol.com/environmentmatters/engagement> (last visited May 20, 2011).
- 69 Patch.org, *About Us*, <http://www.patch.com/about> (last visited May 20, 2011).
- 70 Michele McLellan, *Debunking the Replacement Myth*, DONALD W. REYNOLDS JOURNALISM INSTITUTE, July 26, 2010, <http://www.rjionline.org/projects/mcLellan/stories/debunk/index.php>.
- 71 KNIGHT COMMISSION ON THE INFORMATION NEEDS OF COMMUNITIES IN A DEMOCRACY, INFORMING COMMUNITIES, SUSTAINING DEMOCRACY IN THE DIGITAL AGE 15 (2010) (SUSTAINING DEMOCRACY IN THE DIGITAL AGE), available at [http://www.knightcomm.org/wp-content/uploads/2010/02/Informing\\_Communities\\_Sustaining\\_Democracy\\_in\\_the\\_Digital\\_Age.pdf](http://www.knightcomm.org/wp-content/uploads/2010/02/Informing_Communities_Sustaining_Democracy_in_the_Digital_Age.pdf).
- 72 SUSTAINING DEMOCRACY IN THE DIGITAL AGE at 15.
- 73 SUSTAINING DEMOCRACY IN THE DIGITAL AGE at XI-XV.
- 74 See Sarah Ovaska, Joseph Neff, & David Raynor, *Probationers Kill*,



- State Dawdles*, NEWS & OBSERVER, Dec. 7, 2008, <http://www.newsobserver.com/2008/12/07/56083/probationers-kill-state-dawdles.html#storylink=misearch>; Joseph Neff, Sarah Ovaska, & Anne Blythe, *Probation Bungles Raise Alarm*, NEWS & OBSERVER, Dec. 12, 2008, <http://www.newsobserver.com/2008/12/12/58379/probation-bungles-raise-alarm.html#storylink=misearch>; Joseph Neff, Sarah Ovaska, & Anne Blythe, *Probation Vacancies a Boon, a Burden*, NEWS & OBSERVER, Dec. 14, 2008, <http://www.newsobserver.com/2008/12/14/36485/probation-vacancies-a-boon-a-burden.html#storylink=misearch>.
- 75** See Joseph Neff & Anne Blythe, *Perdue Urges \$28 Million Probation Fix*, NEWS & OBSERVER, Mar. 14, 2009, <http://www.newsobserver.com/2009/03/14/58191/perdue-urges-28-million-probation.html#storylink=misearch>; Sarah Ovaska, *Perdue Signs Probation Reform Bill*, NEWS & OBSERVER, July 30, 2009, <http://www.newsobserver.com/2009/07/30/68970/perdue-signs-probation-reform.html#storylink=misearch>.
- 76** See James T. Hamilton, *Subsidizing the Watchdog: What Would it Cost to Support Investigative Journalism at a Large Metropolitan Daily Newspaper?* (lecture) (May 4–5, 2009), available at [http://dewitt.sanford.duke.edu/images/uploads/About\\_3\\_Research\\_A\\_7\\_Hamilton.pdf](http://dewitt.sanford.duke.edu/images/uploads/About_3_Research_A_7_Hamilton.pdf).
- 77** Brian Stetler, *Finding Political News Online, the Young Pass on It*, N.Y. TIMES, Mar. 27, 2008, [http://www.nytimes.com/2008/03/27/us/politics/27voters.html?\\_r=1](http://www.nytimes.com/2008/03/27/us/politics/27voters.html?_r=1).
- 78** Richard Siklos, *Information Wants to be Free...and Expensive*, FORTUNE TECH, July 20, 2009, <http://tech.fortune.cnn.com/2009/07/20/information-wants-to-be-free-and-expensive/>.
- 79** Benjamin Compaine & Brendan Cunningham, *Scholars Help Answer John Wanamaker's Query. Which Half of My Advertising Is Wasted?*, 23 ECON. 1 (2010), <http://www.informaworld.com/smpp/section?content=920015172&fulltext=713240928> (membership required for access).
- 80** See Google, *Google Advertising Programs*, <http://www.google.com/intl/en/ads/> (last visited Apr. 2, 2011).
- 81** Newspaper Association of America, Advertising Expenditures (NAA, Advertising Expenditures), <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx> (last visited May 20, 2011). Between 2009 and 2010, newspaper print advertising revenue dropped again to less than \$22.8 billion. *Id.*
- 82** Newspaper Association of America, Newspaper Websites (NAA, Newspaper Websites per Nielsen), <http://www.naa.org/TrendsandNumbers/Newspaper-Websites-Nielsen.aspx/> (last visited Jan. 20, 2011). Specifically, in May 2009: 69,950,403 different people (“unique visitors”) accessed newspaper websites and 2,995,584,721 pages were viewed by these visitors. In May 2005: 43,704,725 different people accessed newspaper websites and 1,635,119,778 pages were viewed by these visitors.” *Id.*
- 83** NAA, Advertising Expenditures.
- 84** NAA, Advertising Expenditures.
- 85** NAA, Newspaper Websites per Nielsen.
- 86** Catherine P. Taylor, *Newspapers Online Traffic Is Strong, So Why Are Ad Rates Weak?*, BNET, June 29, 2010 (*Newspapers Online Traffic Is Strong*), <http://www.bnet.com/blog/new-media/newspapers-online-traffic-is-strong-so-why-are-ad-rates-weak/5551>.
- 87** comScore, *The New York Times Ranks as Top Online Newspaper According to May 2010 U.S. comScore Media Metrix Data* (press release), June 16, 2010, [http://www.comscore.com/Press\\_Events/Press\\_Releases/2010/6/The\\_New\\_York\\_Times\\_Ranks\\_as\\_Top\\_Online\\_Newspaper\\_According\\_to\\_May\\_2010\\_U.S.\\_comScore\\_Media\\_Metrix\\_Data](http://www.comscore.com/Press_Events/Press_Releases/2010/6/The_New_York_Times_Ranks_as_Top_Online_Newspaper_According_to_May_2010_U.S._comScore_Media_Metrix_Data).
- 88** THE WASHINGTON POST MEDIA, *Daily Circulation and CPM – Lowest Retail Rate CPMs Among Major Dailies*, <http://www.washingtonpostads.com/adsite/why/media/versus/cpm/page1449.html> (last visited Jan. 20, 2011) (stating that the average CPM across the 14 newspapers compared by the *Washington Post* range from \$11.55 to \$27.79, with an average of \$19.72).
- 89** Varian, *Newspaper Economics: Online and Offline* at 20.
- 90** *Newspapers Online Traffic Is Strong*.
- 91** JUPITER RESEARCH, MARKETING & BRANDING FORECAST: ONLINE ADVERTISING AND E-MAIL MARKETING THROUGH 2008 4 (2003) (JUPITER RESEARCH, MARKETING & BRANDING FORECAST), available at [www.pe.com/mediakit/audience/industry\\_research/images/jupiter\\_2.pdf](http://www.pe.com/mediakit/audience/industry_research/images/jupiter_2.pdf).
- 92** JUPITER RESEARCH, MARKETING & BRANDING FORECAST.
- 93** “Online: Key Questions Facing Digital News” in PEW, STATE OF THE NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/online-essay/#digital-adspending>.
- 94** Interactive Advertising Bureau, *Interactive Advertising Bureau (IAB) Reports Full-Year Internet Ad Revenues for 2010 Increase 15% to 26 Billion, a New Record* (press release), Apr. 23, 2011, [http://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/pr-041311](http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-041311).
- 95** *We Knew the Web Was Big...*, OFFICIAL GOOGLE BLOG, July 25, 2008 (*We Knew the Web Was Big*), <http://googleblog.blogspot.com/2008/07/we-knew-web-was-big.html> (last visited Dec. 21, 2010).
- 96** *We Knew the Web Was Big*.
- 97** Interactive Advertising Bureau, *Interactive Advertising Bureau (IAB) Reports \$8.2 Billion Online Ad Revenue in the United States for Year 2000* (press release) (*IAB Reports \$8.2 Billion Online Ad Revenue*), Apr. 23, 2001, [http://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/4422](http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/4422).
- 98** DAVID HALLERMAN, EMARKETER, US AD SPENDING: ONLINE OUTSHINES OTHER MEDIA (2010) (US AD SPENDING: ONLINE OUTSHINES OTHER MEDIA); Interactive Advertising Bureau, *Internet Ad Revenues Break Records, Climb to More than \$12 Billion for First Half of '10 (Internet Ad Revenues Break Records)* (press release), Oct. 12, 2010, [http://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/pr-101210](http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-101210).
- 99** *Internet Ad Revenues Break Records*.
- 100** KATHLEEN ANNE RUANE, CONGRESSIONAL RESEARCH SERVICE, PRIVACY LAW AND ONLINE ADVERTISING: LEGAL ANALYSIS OF DATA GATHERING BY ONLINE ADVERTISERS SUCH AS DOUBLE CLICK AND NEBUAD (2009), available at [http://assets.opencrs.com/rpts/RL34693\\_20090116.pdf](http://assets.opencrs.com/rpts/RL34693_20090116.pdf); FTC STAFF REPORT, SELF-REGULATORY PRINCIPLES FOR ONLINE BEHAVIORAL ADVERTISING, FEB. 2009, available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.
- 101** Google, *Google Privacy: Interest-based Advertising* (video presentation), Mar. 2, 2009, [http://www.youtube.com/watch?v=aUkm\\_gKgdQc&feature=player\\_embedded](http://www.youtube.com/watch?v=aUkm_gKgdQc&feature=player_embedded).
- 102** *IAB Reports \$8.2 Billion Online Ad Revenue*.
- 103** “Online: By the Numbers” in PEW STATE OF THE NEWS MEDIA, 2011,

<http://stateofthedia.org/2011/online-essay/data-page-7/> (citing Kantar Media Display Ad Revenue 2010).

- 104 Varian, *Newspaper Economics: Online and Offline* at 19.
- 105 Robin Wauters, *Report: 44% of Google News Visitors Scan Headlines, Don't Click Through*, TECHCRUNCH, Jan. 19, 2010, <http://techcrunch.com/2010/01/19/outsell-google-news/>.
- 106 Jay Garmon, *Top 10 Google Chrome Extensions for Better, Faster Browsing*, NOTEBOOK REVIEW, Mar. 23, 2010, <http://www.notebookreview.com/default.asp?newsID=5575&review=Top+10+Google+Chrome+Extensions+for+Better+Faster+Browsing>.
- 107 "Nielsen Analysis" in PEW, STATE OF THE NEWS MEDIA 2010.
- 108 Michael Hastings, *The Runaway General*, ROLLING STONE, June 22, 2010, <http://www.rollingstone.com/politics/news/the-runaway-general-20100622>.
- 109 David Carr, *Heedlessly Hijacking Content*, N.Y. Times, June 27, 2010, at B1, available at <http://www.nytimes.com/2010/06/28/business/media/28carr.html>.
- 110 See Demand Media, [www.demandmedia.com](http://www.demandmedia.com); Associated Content, [www.associatedcontent.com](http://www.associatedcontent.com).
- 111 *Demand Media Sets IPO Offering Size, Boosts Traffic*, SOCALTECH.COM, Oct. 19, 2010, [http://www.socaltech.com/demand\\_media\\_sets\\_ipo\\_offering\\_size\\_\\_boosts\\_traffic/s-0031991.html](http://www.socaltech.com/demand_media_sets_ipo_offering_size__boosts_traffic/s-0031991.html).
- 112 Lucian Parfeni, *Yahoo Buys 'Content Farm' Associated Content*, SOFTPEDIA, May 19, 2010, <http://news.softpedia.com/news/Yahoo-Buys-Content-Farm-Associated-Content-142379.shtml>.
- 113 Alex Pham, *Demand Media to Provide Travel Articles and Videos for USA Today Website*, LOS ANGELES TIMES, Apr. 8, 2010, <http://articles.latimes.com/2010/apr/08/business/la-fi-ct-demand8-2010apr08>.
- 114 NELLIE BRISTOL & JOHN DONNELLY, KAISER FAMILY FOUND., *TAKING THE TEMPERATURE: THE FUTURE OF GLOBAL HEALTH JOURNALISM 7* (2011), available at <http://www.kff.org/globalhealth/upload/8135.pdf>.
- 115 NELLIE BRISTOL & JOHN DONNELLY, KAISER FAMILY FOUND., *TAKING THE TEMPERATURE: THE FUTURE OF GLOBAL HEALTH JOURNALISM 7* (2011), available at <http://www.kff.org/globalhealth/upload/8135.pdf>.
- 116 Facebook, *Press Room*, <http://www.facebook.com/press/info.php?statistics> (last visited Nov. 18, 2010).
- 117 Edmund Lee, *Social Networks Sink Online-Ad Pricing: Facebook and Its ilk Might be Reducing Overall Pricing of CPMs*, ADAGEDIGITAL, July 12, 2010, <http://adage.com/article/digital/social-networks-sink-online-ad-pricing/144884/>.
- 118 Attributor, *Success for the Graduated Response Trial* (press release), Nov. 8, 2010 (Attributor Study Press Release), <http://attributor.com/blog/success-for-the-graduated-response-trial/>.
- 119 Attributor Study Press Release. Although the content on these websites was initially unauthorized, 75 percent of the infringing sites agreed to either pursue licensing agreements with the content providers or remove content voluntarily during the first two steps of the "Graduated Response" process, namely after courtesy notices of unlicensed use were sent to the site owner, or after removal notices were sent to the search engines to remove the listing from results and to ad networks to remove ads on the page of the copied content. *Id.*
- 120 Clinton Boulton, *Google Algorithm Change Targets Content Farms*, EWEEK.COM, February 26, 2011, [http://www.eweek.com/c/a/Search-](http://www.eweek.com/c/a/Search-Engines/Google-Algorithm-Change-Targets-Content-Farms-285369/)

[Engines/Google-Algorithm-Change-Targets-Content-Farms-285369/](http://www.eweek.com/c/a/Search-Engines/Google-Algorithm-Change-Targets-Content-Farms-285369/).

- 121 Kent Walker, *Making Copyright Work Better*, GOOGLE PUBLIC POLICY BLOG, Dec. 2, 2010, <http://googlepublicpolicy.blogspot.com/2010/12/making-copyright-work-better-online.html>.
- 122 Email correspondence between Derek Slater, Policy Mgr., Google, and Steven Waldman, FCC (Dec. 2010 & Jan. 2011).
- 123 Based on estimates by Flatiron Media; See also *Newspapers Online Traffic Is Strong*.
- 124 IAB, REVENUE REPORT 2009 FULL YEAR RESULTS at 7-8; INTERACTIVE ADVERTISING BUREAU, IAB INTERNET ADVERTISING REVENUE REPORT, 2010 FIRST HALF-YEAR RESULTS 11 (2010), available at [www.iab.net/media/file/IAB\\_report\\_1H\\_2010\\_Final.pdf](http://www.iab.net/media/file/IAB_report_1H_2010_Final.pdf).
- 125 Debra Aho Williamson, *Facebook Is Closing the Ad Revenue Gap with the Portals*, THE EMARKETER BLOG, June 23, 2010, <http://www.emarketer.com/blog/index.php/facebook-revenue-portals-advertising-aol-google-yahoo/>.
- 126 Nat Ives, *Mounting Web Woes Pummel Newspapers*, ADVERTISING AGE, June 28, 2010, [http://adage.com/mediaworks/article?article\\_id=144684](http://adage.com/mediaworks/article?article_id=144684); David S. Evans, *The Online Advertising Industry: Economics, Evolution, and Privacy*, JOURNAL OF ECONOMIC PERSPECTIVES (forthcoming) (providing history of the online advertising market), available at <http://www.intertic.org/Policy%20Papers/EvansEOAI.pdf>.

## 5 Mobile

- 1 Nielsen has estimated that in 2010, 230 million Americans use mobile phones. See "Television, Internet and Mobile Usage in the US," THE NIELSEN CO., 8 THREE SCREEN REPORT 4 (TABLE 3) (2010). CTIA estimates that in December 2010, 96 percent of the U.S. population has used the devices, and that there were 302.9 million "wireless subscriber connections." CTIA-The Wireless Association, *Wireless Quick Facts: Year-End Figures*, [http://www.ctia.org/media/industry\\_info/index.cfm/AID/10323](http://www.ctia.org/media/industry_info/index.cfm/AID/10323) (last visited May 16, 2011). Pew has estimated that 82 percent of American adults "own a cell phone of some kind," and has concluded that "overall mobile phone ownership has not grown over the last year...." AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJ. MOBILE ACCESS 2010 12 (2010) (PEW, MOBILE ACCESS 2010), <http://pewinternet.org/Reports/2010/Mobile-Access-2010.aspx>. Most of the findings reported in PEW, MOBILE ACCESS 2010 are based on a tracking survey of 2,252 individuals 18 years old or older in the U.S., conducted from April 29 through May 30, 2010. PEW, MOBILE ACCESS 2010, at 2, 4, 5. According to a recent Pew report, 40 percent of all adults in the U.S. "go online" (defined as using the Internet, email, or instant messaging) on mobile devices. *Id.* at 2. Moreover, 38 percent of cell phone owners use their cell phones to access the Internet. *Id.* These figures represent increases of 8 percent and 13 percent, respectively, for the 13-month period from April 2009 to May 2010. *Id.*
- 2 "Survey: Mobile News & Paying Online" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2011) (PEW, STATE OF NEWS MEDIA 2011), <http://stateofthedia.org/2011/mobile-survey/>.
- 3 For a description of 2G technologies, see Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual

- Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fourteenth Report, 25 FCC Rcd. 11407, 11638-40 (2010) (Fourteenth Mobile Wireless Competition Report).
- 4 FCC, CONNECTING AMERICA, THE NATIONAL BROADBAND PLAN 78 (2010) (NATIONAL BROADBAND PLAN), <http://www.broadband.gov>.
  - 5 NATIONAL BROADBAND at 78 (citations omitted).
  - 6 NATIONAL BROADBAND at 76-78.
  - 7 NATIONAL BROADBAND at 84-85 (Exhibit 5-F).
  - 8 NATIONAL BROADBAND at 77.
  - 9 See FCC, Omnibus Broadband Initiative, OBI Technical Paper No. 6, Mobile Broadband: The Benefits of Additional Spectrum, at 9, Exhibit 4 (2010), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db1021/DOC-302324A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db1021/DOC-302324A1.pdf). “35 times” is an average of projections by Cisco Systems, Coda Research, and the Yankee Group.
  - 10 See Internet Access Services: Status as of June 30, 2010, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, 15, 30, March 2011, [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0321/DOC-305296A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305296A1.pdf).
  - 11 Greg Sterling, Google: 50 Percent Of Those Exposed To Mobile Ads Took Action, SEARCHENGINELAND.COM, April 26, 2011 (Google: 50 percent), <http://searchengineland.com/google-50-percent-of-smartphone-users-exposed-to-ads-took-action-74760>.
  - 12 Google: 50 percent.
  - 13 Google: 50 percent.
  - 14 “Survey: Mobile News & Paying Online” in PEW, STATE OF NEWS MEDIA 2011.
  - 15 Fourteenth Mobile Wireless Competition Report at 11495.
  - 16 The distinction between “smartphones” and “feature phones” is not absolute and is blurring as time passes. “[I]n terms of what users can do with their phones, the line between feature phones and smartphones has been blurring for some time. From the perspective of most mobile users, this difference may be becoming less important or meaningful.” Amy Gahran, New Facebook App Shows Why Feature Phones Still Matter, CNNTECH, Jan. 25, 2011, [http://articles.cnn.com/2011-01-25/tech/feature.phone.apps\\_1\\_feature-phones-app-data-charges?\\_s=PM:TECH](http://articles.cnn.com/2011-01-25/tech/feature.phone.apps_1_feature-phones-app-data-charges?_s=PM:TECH) (noting that feature phone users’ preference for “simpler” technology “doesn’t keep feature phone users away from the mobile Internet”).
  - 17 FCC, Chairman Julius Genachowski, Spectrum: American Competitiveness, Opportunity, Dollars and the Cost of Delay, Spectrum Fact Sheet (press release), Mar. 2011, available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0322/DOC-305309A2.doc](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A2.doc).
  - 18 Smartphones to Overtake Feature Phones in U.S. by 2011, NIELSENWIRE, March 26, 2010, <http://blog.nielsen.com/nielsenwire/consumer/smartphones-to-overtake-feature-phones-in-u-s-by-2011/>.
  - 19 comScore, Mobile Internet Becoming a Daily Activity for Many Number of People Accessing News and Information On Their Mobile Device More Than Doubles in a Year (press release), Mar. 16, 2009 (Mobile Internet Becoming Daily Activity), <http://ir.comscore.com/releasedetail.cfm?releaseid=370870>.
  - 20 For purposes of this section, “low-income earners” are defined as individuals who are members of a “family” with an annual household income below \$30,000.
  - 21 See, e.g., PEW, MOBILE ACCESS 2010 at 4; JOHN HARRIGAN, PEW INTERNET & AMERICAN LIFE PROJECT, WIRELESS INTERNET USE 3-4, 15, 18 (2009) (WIRELESS INTERNET USE), <http://www.pewinternet.org/-/media/Files/Reports/2009/Wireless-Internet-Use-With-Topline.pdf>; “Survey: Mobile News & Paying Online” in PEW, STATE OF NEWS MEDIA 2011.
  - 22 See, e.g., Pew Research Ctr. for the People & the Press, Americans Spending More Time Following the News 16, 29, 90 (2010) (Pew 2010 News Consumption Survey), <http://people-press.org/report/652/>; Pew Research Ctr. for the People & the Press, Audience Segments in a Changing News Environment: Key News Audiences Now Blend Online and Traditional Sources, Pew Research Center Biennial News Consumption Survey 64 (2008) (Pew 2008 News Consumption Survey). It is noteworthy, however, that at least one study of which we are aware indicates that print news consumption by African-Americans may not be significantly different from that of white Americans. Pew Research Center’s 2010 News Consumption Survey found that 43 percent of white Americans, and 37 percent of African-Americans, read “a daily newspaper” on a “regular” basis, while 25 percent of white Americans and 34 percent of African-Americans do so “sometimes.” Pew 2010 News Consumption Survey at 90.
  - 23 PEW, MOBILE ACCESS 2010 at 10.
  - 24 PEW, MOBILE ACCESS 2010 at 10-11.
  - 25 PEW, MOBILE ACCESS 2010 at 16.
  - 26 PEW, MOBILE ACCESS 2010 at 18.
  - 27 PEW, MOBILE ACCESS 2010 at 3; WIRELESS INTERNET USE at 3-4, 15, 18.
  - 28 See, e.g., Among Mobile Phone Users, Hispanics, Asians Are Most-Likely Smartphone Owners in the U.S., NielsenWire, Feb. 1, 2011 (Hispanics, Asians Most-Likely Smartphone Owners), <http://blog.nielsen.com/nielsenwire/?p=25901>.
  - 29 WIRELESS INTERNET USE at 4.
  - 30 PEW, MOBILE ACCESS 2010 at 4.
  - 31 James Fallows, How to Save the News, THE ATLANTIC, June 2010 (How to Save the News), quoting Eric Schmidt of Google, <http://www.theatlantic.com/magazine/archive/2010/06/how-to-save-the-news/8095/6/>.
  - 32 How to Save the News, quoting Eric Schmidt of Google.
  - 33 How to Save the News, quoting Eric Schmidt of Google.
  - 34 See, e.g., Dan Nystedt, IDG, Folding Screen for Mobile Phones Unveiled, PC WORLD, Nov. 21, 2008, [http://www.pcworld.com/article/154307/folding\\_screen\\_for\\_mobile\\_phones\\_unveiled.html](http://www.pcworld.com/article/154307/folding_screen_for_mobile_phones_unveiled.html); Richard Darrell, Sony Unveils Genius Roll-Up OLED Screen of the Future!, BIT REBELS, May 28, 2010, <http://www.bitrebels.com/lifestyle/sony-unveils-genius-roll-up-oled-screen-of-the-future/>; Mike Hanlon, Philips Roll-Up Large Screens and Electronic Books on the Way, GIZMAG, <http://www.gizmag.com/go/2548/> (last visited May 16, 2011).
  - 35 Kevin Parish, Verizon Says Smartphones Can Replace PCs, TOM’S HARDWARE, July 15, 2010 (Smartphones Can Replace PCs), <http://www.tomshardware.com/news/Verizon-Smartphone-4G,10878.html>.
  - 36 Smartphones Can Replace PCs.
  - 37 See, e.g., Jason Ankeny, Google Steers Mobile Advertising into Hyperlocal Relevance, FIERCEMOBILECONTENT, Sept. 30, 2010, <http://www.fiercemobilecontent.com/story/google-steers-mobile-advertising-hyperlocal-relevance/2010-09-30/>; Ziploc Debuts Affiliate-Based

- Hyperlocal Mobile Advertising Solution, MOBILEMARKETINGWATCH, Nov. 5, 2010, <http://www.mobilemarketingwatch.com/ziplocal-debuts-affiliate-based-hyperlocal-mobile-advertising-solution-10921/>.
- 38** comScore, Social Networking Ranks as Fastest-Growing Mobile Content Category (press release), June 2, 2010 (Social Networking Ranks), [http://www.comscore.com/Press\\_Events/Press\\_Releases/2010/6/Social\\_Networking\\_Ranks\\_as\\_Fastest-Growing\\_Mobile\\_Content\\_Category](http://www.comscore.com/Press_Events/Press_Releases/2010/6/Social_Networking_Ranks_as_Fastest-Growing_Mobile_Content_Category).
- 39** Social Networking Ranks.
- 40** Stuart Dredge, AP Mobile: 'There's Not a Lot of Money to Be Made from Ad-Supported Apps,' MOBILE ENTERTAINMENT, Nov. 10, 2009, <http://www.mobile-ent.biz/news/read/ap-mobile-there-s-not-a-lot-of-money-to-be-made-from-ad-supporte>.
- 41** In the past, most mobile sites eschewed the "busy" quality of standard websites—their high degree of detail and number of windows and demarcated areas. However, mobile website design is becoming more elaborate as wireless networks are able to provide faster download speeds to mobile users. Mobile websites have far more restrictive text limitations than those of standard websites. The "maximum page size for a mobile page is only 20 kilobytes." How to Design. Thus mobile site builders are advised to "make everything fit and if possibly use less than 10 Kb," keeping "in mind that the users usually get charged per Kb of mobile web data." How to Make a Mobile Website—6 Easy Tips, TEMPLATE MONSTER BLOG, <http://blog.templatemonster.com/2010/05/11/how-make-mobile-website-6-easy-tips/> (last visited May 16, 2011). This limitation can result in design practices that condense content and thus facilitate the quick browsing and scanning of content. Thus, for example, a mobile website consultant advises his readers to "put all the most important information that you want mobile users to see on the top of the page" because "[i]t can be time consuming to browse through a mobile site, not to mention tedious to read through. Make your mobile site design convenient for your consumers." How to Design.
- 42** See, e.g., ABC News, <http://abcnews.go.com/Technology/page?id=6481775>; Associated Press, <http://www.ap.org/mobile/>; CBS News, <http://wap.cbsnews.com/>; CNN, <http://edition.cnn.com/mobile/>; FOX News, <http://www.foxnews.com/mobile/>; MSNBC, <http://news.mobile.msn.com/en-us/>; NPR, <http://www.npr.org/services/mobile/>; The New York Times, <http://www.nytimes.com/services/mobile/index.html>; Newsweek, <http://mobile.newsweek.com/>; Reuters, <http://www.reuters.com/tools/mobile/news>; Time Magazine, <http://mobile.time.com/>; USA Today, <http://www.usatoday.com/mobile/index.htm>; The Wall Street Journal <http://online.wsj.com/public/page/mobile.html>; and The Washington Post, <http://mobile.washingtonpost.com/> (each last visited May 16, 2011).
- 43** AUDIT BUREAU OF CIRCULATIONS, EXECUTIVE SUMMARY: GOING MOBILE: HOW PUBLISHERS ARE SOLIDIFYING STRATEGIES AND ADAPTING TO THE MOBILE MARKET 7-8 (2010) (GOINGMOBILE), <http://www.accessabc.com/pdfs/mobile2010.pdf>.
- 44** GOING MOBILE at 8. Some small and medium city newspapers, and newspapers covering well-populated counties, have developed mobile websites. For example, the following papers have mobile sites: Orange County Register, <http://m.oregister.com/>; Oregonian, <http://www.oregonlive.com/mobile-device/>; Memphis (TN) Commercial Appeal, <http://www.commercialappeal.com/mobile/>; Kansas City Star, <http://www.kansascity.com/mobile/>; Maine Today, <http://m.mainetoday.com/>; Charleston City Paper, <http://m.charlestoncitypaper.com/>; Miami Herald, <http://m.miamiherald.com/>; Sacramento Bee, <http://m.sacbee.com/>; and Sandusky Register, <http://m.sanduskyregister.com/> (each last visited May 16, 2011). Topix, an Internet news aggregator that focuses on providing access to local news, maintains a mobile website that consumers can customize to receive news and information specific to their locale. See <http://www.topix.com/>. In July 2010, 12 percent of Topix's audience came through mobile, compared to one percent in May 2009. Interview with Chris Tolles, CEO, Topix, by Jeffrey Tignor and Irene Wu, FCC (July 23, 2010). Prominent websites offering mobile sites include: the Huffington Post, <http://www.huffingtonpost.com/blackberry/>; Slate, <http://mobile.slate.com/>; the Drudge Report, <http://www.idruggereport.com/MobileFriendly.aspx>; and Google News <http://news.google.com/> (each last visited May 16, 2011). A few maintain a mobile website that limits access to consumers who enter into a subscription agreement. See, e.g., Try the WSJ.com Mobile Reader (concerning BlackBerry version of WSJ Reader software), [http://online.wsj.com/public/page/0\\_0560.html](http://online.wsj.com/public/page/0_0560.html) (last visited May 16, 2011).
- 45** Natasha Lomas, Want to Build a Mobile App? Here's How to Convince the CFO, Silicon.com, Feb. 10, 2010, <http://www.silicon.com/technology/mobile/2010/02/11/want-to-build-a-mobile-app-heres-how-to-convince-the-cfo-39745366/>.
- 46** See Kimberly Hill, FTC May Probe iOS as War Over Mobile Customer Data Heats Up, MACNEWSWORLD, June 11, 2010, <http://www.macnews-world.com/story/70189.html?wlc=1279658396>.
- 47** MORGAN STANLEY, THE MOBILE INTERNET REPORT 37 (2009) (MORGAN STANLEY REPORT), [http://www.morganstanley.com/institutional/techresearch/mobile\\_internet\\_report122009.html](http://www.morganstanley.com/institutional/techresearch/mobile_internet_report122009.html).
- 48** MORGAN STANLEY REPORT at 37. The 13 categories ranked ahead of news were: games, entertainment, books, travel, utilities, education, lifestyle, reference, music, sports, navigation, productivity, and business. Id.
- 49** BlackBerry App World, <http://appworld.blackberry.com/webstore/> (last visited May 16, 2010).
- 50** "Survey: Mobile News & Paying Online" in PEW, STATE OF NEWS MEDIA 2011.
- 51** "Survey: Mobile News & Paying Online" in PEW, STATE OF NEWS MEDIA 2011.
- 52** "Survey: Mobile News & Paying Online" in PEW, STATE OF NEWS MEDIA 2011.
- 53** THE NIELSEN CO., STATE OF MOBILE APPS 2 (2010) (STATE OF MOBILE APPS), <http://blog.nielsen.com/nielsenwire/wp-content/uploads/2010/09/NielsenMobileAppsWhitepaper.pdf>.
- 54** LSN Mobile, LSN Mobile Announces BlackBerry® App for Local Mobile News; First Company to Offer More Than 250 Local TV Mobile Apps (press release), June 3, 2010, [http://www.lsnmobile.com/news\\_events/blackberryapp.html](http://www.lsnmobile.com/news_events/blackberryapp.html).
- 55** DoApp Wants to Dominate Mobile Apps for Local Media, MEDIASHIFT, May 7, 2010, <http://www.pbs.org/mediashift/2010/05/doapp-wants-to-dominate-mobile-apps-for-local-media127.html>.
- 56** "Newspapers: Alternative Weeklies" in Pew Research Ctr.'s Proj. for Excellence in Journalism, The State of the News Media (2010) (Pew, State of News Media 2010), <http://stateofthemediamedia.org/previous-reports/>.
- 57** See, e.g., Here's Your List of Local News Apps, BRAUBLOG, July 8, 2010, [http://www.minnpost.com/braublog/2010/07/08/19546/heres\\_your\\_list\\_of\\_local\\_news\\_apps](http://www.minnpost.com/braublog/2010/07/08/19546/heres_your_list_of_local_news_apps).
- 58** Newsy, Newsy for iPad: Multisource Video News Analysis, June 21,

- 2010, <http://itunes.apple.com/us/app/newsy-for-ipad-multisource/id367718944?mt=8>.
- 59** Francis Scardino, Review: Newsy App for Android, All the Latest News Right to Your Mobile, *GEARDIARY*, Mar. 9, 2010, <http://www.geardiary.com/2010/03/09/review-newsy-app-for-android-all-the-latest-news-right-to-your-mobile/>.
- 60** Josh Lowensohn, Browse the News in Tags with Zen News, *CNET.COM*, Oct. 15, 2009 (Zen News Review), [http://news.cnet.com/8301-27076\\_3-10375909-248.html](http://news.cnet.com/8301-27076_3-10375909-248.html).
- 61** Zen News Review.
- 62** Clyde Bentley, The Road to 2013: A Timeline for Newspapers, *REYNOLDS JOURNALISM INSTITUTE MOBILE BLOG*, Feb. 6, 2010, <http://mobile.rjiblog.org/2010/02/06/the-road-to-2013-a-timeline-for-newspapers/>.
- 63** Jenny Dean, 4. Smartphone User Survey: A Glimpse into the Mobile Lives of College Students, in *DIGITAL MEDIATEST KITCHEN, CU—BOULDER SCHOOL OF JOURNALISM & MASS COMMUNICATION, IN-DEPTH NEWS FOR SMARTPHONES (2010)* (Smartphone User Survey, IN-DEPTH NEWS), <http://testkitchen.colorado.edu/projects/reports/smartphone/smartphone-survey/>.
- 64** Digital Media Test Kitchen, 7. Recommendations: Next Steps Forward with Mobile for News Providers, in *IN-DEPTH NEWS (Recommendations, IN-DEPTH NEWS)*, <http://testkitchen.colorado.edu/projects/reports/smartphone/smartphone-recommendations/>.
- 65** Smartphone User Survey, *IN-DEPTH NEWS*.
- 66** The Poynter Institute, A Note from Dr. Garcia, Eyetracking the News: A Study of Print and Online Reading (Eyetracking the News), <http://eyetrack.poynter.org/note.html> (last visited May 16, 2011) (emphasis added).
- 67** The Poynter Institute, Key Findings, Reading Depth, Eyetracking the News (Poynter Eyetracking), [http://eyetrack.poynter.org/keys\\_01.html](http://eyetrack.poynter.org/keys_01.html) (last visited May 16, 2011). Poynter also “measured whether a story was read from start to finish” and found that participants read to completion a greater percentage (63 percent) of online “story text” selected by subjects than that (40 percent) of the “broadsheet” (i.e., print, non-tabloid newspaper) “story text” similarly selected. Id. It is important to note that other research conducted by the Poynter Institute, and well-known research conducted by others, have established that individuals scan web pages on desktop screens rather than reading them word-for-word or even sentence for sentence. See, e.g., Jakob Nielsen, How Users Read on the Web, Oct. 1, 2010, <http://www.useit.com/alertbox/9710a.html>; The Poynter Institute, Eyetracking the News, Previous Studies, <http://eyetrack.poynter.org/previous.html> (last visited May 16, 2011).
- 68** Pew Internet & American Life Proj., Understanding the Participatory News Consumer: How Internet and Cell Phone Users Have Turned New into a Social Experience 34 (2010) (PEW, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER), <http://www.pewinternet.org/Reports/2010/Online-News.aspx>.
- 69** PEW, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER at 34.
- 70** Recommendations, *IN-DEPTH NEWS*.
- 71** See, e.g., Mitch Radcliffe, Kindle Books Come to the PC—a Nook Counterpunch, *ZDNET*, Oct. 22, 2009, <http://www.zdnet.com/blog/ratcliffe/kindle-books-come-to-the-pc-a-nook-counterpunch/462>.
- 72** PBN Staff, RI.gov goes mobile with iPhone app, *PROVIDENCE BUSINESS-NEWS*, Jul. 2, 2010, <http://www.pbn.com/RIgov-goes-mobile-with-iphone-app,50905>.
- 73** Lauren Katims, Niche Apps Growing More Popular for Service Delivery, *GOVTECH.COM*, Nov. 4, 2010, (Niche Apps), <http://www.govtech.com/e-government/Niche-Apps-Growing-More-Popular-for-Service-Delivery.html>.
- 74** Niche Apps.
- 75** USAJOBS iPhone application, <https://my.usajobs.gov/FeaturedArticle/FeaturedArticleContent.aspx?ArticleID=474&ArticleTypeID=1&count=5>.
- 76** USA.gov Product Recalls application, <http://apps.usa.gov/product-recalls-2/>.
- 77** Smithsonian Institution Collections Search application, <http://collections.si.edu/mobile>.
- 78** FCC Mobile Broadband Test iPhone app, <http://beta.fcc.gov/encyclopedia/measuring-mobile-broadband>.
- 79** FBI's Most Wanted application, <http://apps.usa.gov/fbis-most-wanted/>.
- 80** Tablets and e-readers are distinguished in that tablets can serve as e-readers, but e-readers generally have more limited functionalities than tablets.
- 81** See Amazon.com, Kindle Store, <http://www.amazon.com/kindle-store-ebooks-newspapers-blogs/b?ie=UTF8&node=133141011> (last visited May 16, 2011) (Kindle Store).
- 82** See Kindle Store.
- 83** See Kindle Store.
- 84** See Kindle Store.
- 85** Changewave Research, New ChangeWave Surveys Measure Future Consumer Demand and Reactions of New iPad Owners (press release), May 20, 2010, [http://www.changewaveresearch.com/articles/2010/05/ipad\\_20100520.html](http://www.changewaveresearch.com/articles/2010/05/ipad_20100520.html). The Changewave Survey involved 3,714 owners of e-Readers; 62 percent owned Amazon Kindles; 16 percent owned Apple iPads; 7 percent owned the Sony Reader; 7 percent owned “a smartphone with eBook capability”; 3 percent owned Barnes & Noble Nooks; and 7 percent owned “Other” e-Readers. Id.
- 86** See Digital Publishing Alliance, iPad News Apps May Diminish Newspaper Print Subscriptions in 2011, DONALD W. REYNOLDS JOURNALISM INSTITUTE, Dec. 9, 2010, <http://www.rjionline.org/news/dpa-ipad-research-project>.
- 87** RALUCA BUDIU AND JAKOB NIELSEN, NIELSEN NORMAN GROUP, USABILITY OF IPAD APPS AND WEBSITES 16 (2010), <http://www.nngroup.com/reports/mobile/ipad/ipad-usability.pdf>.
- 88** “Local TV: Good News After the Fall” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/local-tv-essay/>.
- 89** “Local TV: Good News After the Fall” in PEW, STATE OF NEWS MEDIA 2011.
- 90** See LIN TV Corp., GOOGLE FINANCE, <http://www.google.com/finance?q=NYSE:TVL> (last visited May 16, 2011).
- 91** Local TV: Digital: Content” in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/local-tv-summary-essay/digital/>.
- 92** “Local TV: Good News After the Fall” in PEW, STATE OF NEWS MEDIA 2011.
- 93** Stephen Lawson, IDG News, Broadcaster Group Signs on to Mobile TV, Nov. 19, 2010, [http://www.pcworld.com/article/211269/broadcaster\\_group\\_signs\\_on\\_for\\_mobile\\_dtv.html](http://www.pcworld.com/article/211269/broadcaster_group_signs_on_for_mobile_dtv.html).
- 94** Glen Dickson, Mobile DTV Rollout Continues, *BROADCASTING & CABLE*, July 12, 2010 (Mobile DTV), [http://www.broadcastingcable.com/article/454654-Mobile\\_DTV\\_Rollout\\_Continues.php?rssid=20068](http://www.broadcastingcable.com/article/454654-Mobile_DTV_Rollout_Continues.php?rssid=20068).

- 95** See Mobile DTV.
- 96** Lauren Goode, Mobile TV's Uphill Climb, DIGITS (WALL ST. J.), Oct. 11, 2010 (Uphill Climb), <http://blogs.wsj.com/digits/2010/10/11/going-local-with-mobile-tv/>.
- 97** See, e.g., Uphill Climb; Glen Dickson, Special Report: Mobile TV Heats Up, BROADCASTING & CABLE, July 13, 2009, [http://www.broadcasting-cable.com/article/314792-Special\\_Report\\_Mobile\\_DTV\\_Heats\\_Up.php](http://www.broadcasting-cable.com/article/314792-Special_Report_Mobile_DTV_Heats_Up.php) (Mobile TV Heats Up).
- 98** See, e.g., Mobile TV Heats Up.
- 99** See generally The Infinite Dial 2011: Navigating Digital Platforms, Arbitron, Inc./Edison Research (2011), [http://www.arbitron.com/downloads/infinite\\_dial\\_2011\\_presentation.pdf](http://www.arbitron.com/downloads/infinite_dial_2011_presentation.pdf).
- 100** See "Audio: Summary Essay: More Options for Listeners, Less Advertising Dollars for Producers" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthedia.org/2010/audio-summary-essay/>.
- 101** About the Public Radio Player, PUBLICRADIOPLAYER.ORG, Oct. 31, 2008, [http://www.publicradioplayer.org/?page\\_id=2](http://www.publicradioplayer.org/?page_id=2).
- 102** Email from Rekha Murthy, Director of Projects and Partnerships, Public Radio Exchange (PRX), to Siddhartha Menon, FCC (Apr. 29, 2011).
- 103** Mobile Internet Becoming Daily Activity.
- 104** PEW, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER at 44.
- 105** Meeting of FCC staff (including Joel Taubenblatt, Elizabeth Andron, Jeffrey Tignor, Ty Bream, and Leon Jackler) with Tim Sparapani, Dir., Public Policy, and Andrew Noyes, Mgr., Public Policy Communications, Facebook (June 9, 2010) (Facebook Meeting 6/9/10).
- 106** Citizen Tube, <http://www.citizentube.com/> (last visited May 16, 2011).
- 107** Facebook Meeting 6/9/10.
- 108** Email from Professor Harry Dugmore, Rhodes University, to J. Evan Shapiro, FCC (Dec. 7, 2010).
- 109** Anne-Ryan Heatwole, Grocott's Mail, a Local Newspaper Embraces Mobile Phones, MOBILEACTIVE.ORG, July 14, 2010, <http://mobileactive.org/grocotts-mail-newspaper-embraces-mobile-phones>.
- 110** "Survey: Mobile News & Paying Online" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/mobile-survey/>. The survey found that 35 percent of mobile local information consumers say they and others like them can have a "big" impact on their community, compared with 27 percent of those who do not connect with their communities on their mobile devices. Id. Furthermore, nearly two-thirds of mobile information connectors (65 percent) feel that it is easier today than five years ago to keep up with information about their community. Id.
- 111** AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJ., NEIGHBORS ONLINE, ONE IN FIVE AMERICANS USE DIGITAL TOOLS TO COMMUNICATE WITH NEIGHBORS AND MONITOR COMMUNITY DEVELOPMENTS 2 (2010) (NEIGHBORS ONLINE), <http://www.pewinternet.org/Reports/2010/Neighbors-Online.aspx>.
- 112** See Prabhas Pokharel, How Mobile Voices Developed a Citizen Media Platform, MEDIA SHIFT IDEA LAB, Jan. 26, 2010 (Mobile Voices), <http://www.pbs.org/idealab/2010/01/how-mobile-voices-developed-a-citizen-media-platform020.html>.
- 113** VozMob: Voces Móviles, Mobile Voices, About Vozmob, <http://vozmob.net/en/about> (last visited May 16, 2011).
- 114** Mobile Voices.
- 115** A. Adam Glenn, Mobile Phone Gathering Outlines Successful Projects, MEDIA SHIFT IDEA LAB, June 22, 2010, <http://www.pbs.org/idealab/2010/06/mobile-phone-gathering-outlines-successful-projects168.html>.
- 116** See Twitter Vote Report, <http://blog.twittervotereport.com/> (last visited May 16, 2011).
- 117** Jennifer 8. Lee Comments in re FOM PN (FCC Launches Examination of The Future of Media and the Contributions of Public Media to the Information Needs of America, Comment Sought, GN Docket No. 10-25, Public Notice (FOM PN)), filed September 13, 2010 at 5.
- 118** See See ClickFix, How it Works (SeeClickFix), [http://www.seeclickfix.com/how\\_seeclickfix\\_works](http://www.seeclickfix.com/how_seeclickfix_works) (last visited May 16, 2011).
- 119** Kenny Olmstead, Amy Mitchell, & Tom Rosenstiel, "Online: Key Questions Facing Digital News" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/online-essay/>.
- 120** Mobile Ad Spending Up Nearly 80% in 2010, EMARKETER, Oct. 19, 2010, <http://www.emarketer.com/Article.aspx?R=1007992>.
- 121** Interview with Nicole Perrin, Senior Editor, eMarketer, by Siddhartha Menon, FCC (Apr. 27, 2011).
- 122** "Online: Key Questions Facing Digital News" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/online-essay/>.
- 123** Philip Elmer-DeWitt, AdAge: Apple's iAd is 'double dipping,' FORTUNE TECH, May 4, 2010, <http://tech.fortune.cnn.com/2010/05/04/adage-apples-iad-is-double-dipping/>. In May 2010, Fortune reported that "AdMob...charges \$10 to \$15 CPM on average, but doesn't add costs per click," and that advertisers "who want to reach iPhone, iPad and iPod touch users through iAds will have to pay [Apple] \$10 per thousand impressions plus \$2 per click." Id.
- 124** See, e.g., mobiThinking.com, The mobiThinking Guide to Mobile Advertising Networks 2010: Blind Networks, Nov. 2010, <http://www.mobithinking.com/mobile-ad-network-guide/blind>; mobiThinking.com, The Guide to Mobile Advertising Networks 2010: Premium Blind Networks, Nov. 2010, <http://mobithinking.com/mobile-ad-network-guide/premium-blind>; mobiThinking.com, The mobiThinking Guide to Mobile Advertising Networks 2010: Premium Networks, Nov. 2010, <http://mobithinking.com/mobile-ad-network-guide/premium>.
- 125** See, e.g., In iPad, Publishers See Hope for Ad Revenue: Newspapers, Magazines Getting up to 5 Times as Much for Ads Placed in iPad Applications, CBS NEWS, June 3, 2010 (Ads Placed in iPad Apps), <http://www.cbsnews.com/stories/2010/06/03/business/main6543926.shtml>.
- 126** Ads Placed in iPad Apps.
- 127** Research by FCC staff on May 31, 2011, counting and reviewing all iPad apps that appeared within the Apple iTunes App Store's pages displaying "All News iPad Apps—Paid" and "All News iPad Apps—Free."
- 128** GOING MOBILE at 11.
- 129** "Local TV: Good News After the Fall" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/local-tv-essay/>.
- 130** Emily Steel, Apple to Charge a Premium to Put Ads in Mobile Apps, WALL ST. J., Apr. 29, 2010, <http://online.wsj.com/article/SB10001424052748703648304575212411500983040.html>.
- 131** Tony Bradley, Google and AdMob Ready to Take on Apple iAd, PC WORLD, May 30, 2010, [http://www.pcworld.com/businesscenter/article/197559/google\\_and\\_admob\\_ready\\_to\\_take\\_on\\_apple\\_iad.html](http://www.pcworld.com/businesscenter/article/197559/google_and_admob_ready_to_take_on_apple_iad.html).

- 132** See, e.g., Top 200 (Free) in News for iPhone, APPSHOPPER <http://appshopper.com/bestsellers/news/free/?device=iphone>; Top 200 (Paid) in News for iPhone, APPSHOPPER, <http://appshopper.com/bestsellers/news/paid/?device=iphone>; News & Magazines, Top Paid/Top Free, GOOGLE, ANDROID MARKET, [https://market.android.com/apps/NEWS\\_AND\\_MAGAZINES/](https://market.android.com/apps/NEWS_AND_MAGAZINES/) (each last visited May 16, 2011).
- 133** Jason D. O'Grady, My Favorite New Ipad App: Pulse News Reader, THE APPLE CORE (ZDNET), June 11, 2010, <http://www.zdnet.com/blog/apple/my-favorite-new-ipad-app-pulse-news-reader/7163>; See Apple, Pulse News Reader, <http://itunes.apple.com/us/app/pulse-news-reader/id371088673?mt=8> (last visited May 31, 2011).
- 134** See Claire Cain Miller, App to Tailor News Streams Gets Boost, N.Y. TIMES, Nov. 14, 2010, [http://www.nytimes.com/2010/11/15/technology/15pulse.html?\\_r=1&scp=1&sq=pulse%20free&st=cse](http://www.nytimes.com/2010/11/15/technology/15pulse.html?_r=1&scp=1&sq=pulse%20free&st=cse).
- 135** Joel Johnson, Is Flipboard Legal?, GIZMODO, <http://gizmodo.com/5594176/is-flipboard-legal>; Joe Mullin, AP, WaPo, Other Big Media Companies Send Cease & Desist Over Zite App, PAID CONTENT, Mar. 30, 2011, <http://paidcontent.org/article/419-media-companies-send-cease-desist-over-zite-app/>.
- 136** Jenna Wortham, Apps Alter Reading on the Web, N.Y. TIMES, Jan. 31, 2011, [http://www.nytimes.com/2011/02/01/technology/01read.html?\\_r=2&ref=technology](http://www.nytimes.com/2011/02/01/technology/01read.html?_r=2&ref=technology).
- 137** See, e.g., Stuart Dredge, AP Mobile: 'There's Not a Lot of Money to Be Made from Ad-Supported Apps,' MOBILE ENTERTAINMENT, Nov. 10, 2009 (discussing the decision by AP to make its BlackBerry application free following an experiment selling it for \$2.99), <http://www.mobile-ent.biz/news/read/ap-mobile-there-s-not-a-lot-of-money-to-be-made-from-ad-supporte>.
- 138** See BlackBerry App World, <http://appworld.blackberry.com/webstore/> (last visited May 18, 2011).
- 139** Research by FCC staff on May 31, 2011, counting all iPhone apps that appeared within the Apple iTunes App Store's pages displaying "All News iPhone Apps—Paid" and "All News iPhone Apps—Free." At the time, Apple offered 2,719 paid news apps, compared to 6,514 free news apps.
- 140** See, e.g., CNN Mobile (review), APPADVICE, Dec. 5, 2009, <http://appadvice.com/appnn/2009/12/review-cnn-mobile/>.
- 141** CNN Launches New iPad App, CNN, Dec. 14, 2010, <http://cnnpressroom.blogs.cnn.com/2010/12/14/cnn-launches-new-ipad-app/>; See also Apple, iTunes Preview, CNN App for iPhone by CNN Interactive Group, Inc., <http://itunes.apple.com/app/cnn-app-for-iphone-u-s/id331786748>.
- 142** David Sarno, L.A. Times Releases iPhone App for Mobile News Reading, L.A. TIMES, June 21, 2010, <http://latimesblogs.latimes.com/technology/2010/06/la-times-releases-iphone-app-for-real-time-news-reading.html>.
- 143** See Apple, iTunes Preview, LA Times by Tribune Interactive, <http://itunes.apple.com/us/app/la-times/id373238146>.
- 144** Arthur Sulzberger Jr., A Letter to Our Readers: Times Begins Digital Subscriptions, N.Y. TIMES, Mar. 28, 2011 (Times Begins Digital Subscriptions), <http://www.nytimes.com/2011/03/28/opinion/128times.html>.
- 145** See Public Radio Exchange, This American Life iPhone App: For Immediate Distribution! (press release), Feb. 1, 2010, <http://blog.prx.org/2010/02/this-american-life-iphone-app-for-immediate-distribution/>.
- 146** Interview with Wendy Turner, VP, Systems, Chicago Public Media, by J. Evan Shapiro, FCC (Dec. 7, 2010).
- 147** Research by FCC staff on May 31, 2011, counting and reviewing all iPhone apps that appeared within the Apple iTunes App Store's pages displaying "All News iPhone Apps—Paid" and "All News iPhone Apps—Free." At the time, Apple offered 2,719 paid news apps, compared to 6,514 free news apps.
- 148** See, e.g., Gartner, Gartner Says Worldwide Mobile Application Store Revenue Forecast to Surpass \$15 Billion in 2011 (press release), Jan. 26, 2011, <http://www.gartner.com/it/page.jsp?id=1529214>; 80 percent of Developers Say 70 percent Revenue Share is Not Enough, INTOMOBILE, May 12, 2010, <http://www.intomobile.com/2010/05/12/80-of-developers-say-70-revenue-share-is-not-enough/>; Peter Dockrill, Why Developers Should Consider BlackBerry: RIM's Chris Smith Speaks to APC, APCMAG.COM, Jan. 17, 2011, <http://apcmag.com/why-developers-should-consider-blackberry-rims-chris-smith-speaks-to-apc-htm>; John Markoff & Laura M. Holson, Apple's Latest Opens a Developers' Playground, N.Y. TIMES, July 10, 2008, <http://www.nytimes.com/2008/07/10/technology/personaltech/10apps.html>.
- 149** DISTIMO, Insights into Apple's App Ecosystem: Comparing Mac, iPad and iPhone, Mar. 18 2011, at 3 [http://www.distimo.com/blog/2011\\_03\\_insights-into-apple-s-app-ecosystem-comparing-mac-ipad-and-iphone/](http://www.distimo.com/blog/2011_03_insights-into-apple-s-app-ecosystem-comparing-mac-ipad-and-iphone/).
- 150** Research by FCC staff on May 27, 2011, counting all iPad apps that appeared within the Apple iTunes App Store's pages displaying "All News iPad Apps—Paid" and "All News iPad Apps—Free." At the time, Apple offered 537 paid news apps, compared to 2,388 free news apps.
- 151** Apple, iTunes Preview, NPR for iPad by NPR, <http://itunes.apple.com/us/app/npr-for-ipad/id364183644?mt=8>; Apple, iTunes Preview, BBC News by BBC Worldwide, <http://itunes.apple.com/us/app/bbc-news/id364147881?mt=8>; Apple, iTunes Preview, AP News by The Associated Press, <http://itunes.apple.com/us/app/ap-news/id36467107?mt=8>; Apple, iTunes Preview, Reuters News Pro for iPad by Thomson Reuters, <http://itunes.apple.com/us/app/reuters-news-pro-for-ipad/id363274833?mt=8> (each last visited May 27, 2011).
- 152** DISTIMO, Distimo Report, July 2010, [http://www.distimo.com/blog/2010\\_07\\_distimo-report-july-2010/](http://www.distimo.com/blog/2010_07_distimo-report-july-2010/). The popularity of the USA Today iPad app has since declined. In April, 2011, Distimo found the top ten were: (1) Angry Birds Rio HD; (2) Friendly for Facebook; (3) iBooks; (4) Bing for iPad; (5) Terra; (6) Atari's Greatest Hits; (7) The Weather Channel Max; (8) Contract Killer; (9) Crackle; and (10) Flipboard. DISTIMO, In-Depth View on Download Volumes in the Google Android Market, May 2011, <http://www.distimo.com/publications>.
- 153** Apple iTunes Preview, New York Post by NYP Holdings, Inc., <http://itunes.apple.com/us/app/new-york-post/id378590820?mt=8>; Apple iTunes Preview, 60 Minutes for iPad by CBS Interactive, <http://itunes.apple.com/us/app/60-minutes-for-ipad/id403426652?mt=8>;
- 154** Research by FCC staff on May 31, 2011, counting and reviewing all iPad apps that appeared within the Apple iTunes App Store's pages displaying "All News iPad Apps—Paid" and "All News iPad Apps—Free."
- 155** Apple, iTunes Preview, the Oklahoman by Oklahoma Publishing Company, <http://itunes.apple.com/us/app/the-oklahoman/id397754521?mt=8>; Apple, iTunes Preview, the Virginian-Pilot for iPad by Good.iWare Ltd., <http://itunes.apple.com/us/app/the-virginian-pilot-for-ipad/id395579203?mt=8>; Apple iTunes Preview, the Boston Pilot by Pedro Enrique Cifres, <http://itunes.apple.com/us/app/the-boston-pilot/id386253491?mt=8> (each last visited May 27, 2011).
- 156** See Apple, iTunes Preview, Vanity Fair iPad Edition by Conde Naste Digi-

tal, <http://itunes.apple.com/us/app/id427270716?mt=8#> (last visited May 18, 2011).

- 157 Apple, iTunes Preview, TIME Magazine by Time, Inc., <http://itunes.apple.com/us/app/time-magazine/id369021520?mt=8>; Apple, iTunes Preview, Popular Science+ by Bonnier Corp., <http://itunes.apple.com/us/app/popular-science/id364049283?mt=8>; Apple, iTunes Preview, WIRED Magazine by Conde Nast Digital, <http://itunes.apple.com/us/app/wired-magazine/id373903654?mt=8> (each last visited May 18, 2011).
- 158 D8 Conference Interview with Steve Jobs by Kara Swisher and Walt Mossberg, ALL THINGS DIGITAL, June 2, 2010 (Jobs Interview), <http://video.allthingsd.com/video/d8-steve-jobs-on-the-iphone-origin/3BBFA695-DC39-4834-9E39-7097C9CE1243>.
- 159 Times Begins Digital Subscriptions.
- 160 Staci Kramer, New York Times: More Than 100,000 Digital Subs In First Weeks of Paywall, PAIDCONTENT.ORG, Apr. 21, 2011, <http://paidcontent.org/article/419-new-york-times-more-than-100k-digital-subs-in-first-weeks-of-paywall/>.
- 161 See The Daily, <http://www.thedaily.com/>; Erick Schonfeld, One-Click Subscriptions Come to the iPad, TECHCRUNCH, Feb. 2, 2011, <http://techcrunch.com/2011/02/02/one-click-subscriptions-come-to-the-ipad/#>.
- 162 See, e.g., Brett Pulley & Adam Satariano, News Corp.'s Murdoch Unwraps Daily Digital Publication for Apple's iPad, BLOOMBERG, Feb. 2, 2011, <http://www.bloomberg.com/news/2011-02-02/news-corp-unwraps-daily-digital-publication-for-apple-s-ipad.html> (quoting News Corp.'s Rupert Murdoch as saying, "We have license to experiment, the ability to innovate.... We believe the Daily will be the model for how stories are told and consumed.").
- 163 See Kindle Store.
- 164 Interview of L. Gordon Crovitz, co-Founder, Journalism Online, by Steven Waldman, FCC (Oct. 5, 2010).
- 165 See Josh Halliday, No Longer the Apple of Every Publisher's Eye, GUARDIAN.CO.UK, Feb. 21, 2011, <http://www.guardian.co.uk/media/pda/2011/feb/21/apple-newspaper-app-subscriptions> (noting that Apple's new terms of service dictate that the company keeps 30 percent of revenue from the growing number of publishers in its App Store, while Google's One Pass, allows publishers to set their own payment plan, keep 90 percent of the revenue, and all of the lucrative customer information).
- 166 Sarah Rabil, Adam Satariano & Peter Burrows, Apple Said to Negotiate With Publishers Over Digital Newsstand, BLOOMBERG, Sept. 17, 2010, <http://www.bloomberg.com/news/2010-09-17/apple-said-to-negotiate-with-publishers-over-digital-newsstand-for-ipad.html>.
- 167 See Google Moving in on Apple's Digital Newsstand, PHYSORG.COM, Jan. 3, 2011, <http://www.physorg.com/news/2011-01-google-apple-digital-newsstand.html> (last visited May 18, 2011).
- 168 Anita Hamilton, Donating by Text: Haiti Fundraising Goes Viral, TIME, Jan. 13, 2010, <http://www.time.com/time/business/article/0,8599,1953528,00.html>.
- 169 See, e.g., Matt Ritchel, Wireless Companies Speed Up Texted Haiti Donations, BITS: BUSINESS INNOVATION TECHNOLOGY SOCIETY (N.Y. TIMES), Jan. 15, 2010, <http://bits.blogs.nytimes.com/2010/01/15/verizon-speeds-up-text-message-donations-to-haiti/>.
- 170 See, e.g. Stephanie From, Donations Ban on iPhone Apps Irritates Non-profits, N.Y. TIMES, Dec. 8, 2010, <http://www.nytimes.com/2010/12/09/technology/09charity.html>; Jacqui Cheng, Public Radio Pushing iPhone

Donation Requests: OK or Not?, ARS TECHNICA, <http://arstechnica.com/apple/news/2010/05/public-radio-pushing-iphone-donation-requests-ok-or-not.ars>; Jake Shapiro, Apple's No-Donation Policy for Apps is a Cop-Out, ARS TECHNICA, June 4, 2010, <http://arstechnica.com/apple/news/2010/06/nonprofit-developer-apples-no-donation-policy-is-a-cop-out.ars>; (each last visited May 16, 2011).

- 171 CTIA—The Wireless Association, Year-End 2010 Top Line Survey Results, [http://files.ctia.org/pdf/CTIA\\_Survey\\_Year\\_End\\_2010\\_Graphics.pdf](http://files.ctia.org/pdf/CTIA_Survey_Year_End_2010_Graphics.pdf).
- 172 John C. Hodulik, et al., UBS Investment Research, US Wireless 411 (Ver. 38.0) 10 (2010).

## 6 Public Broadcasting

- 1 Ernest J. Wilson, Acceptance as Chair at Corp. for Public Broadcasting (CPB) Board of Directors (Sept. 16, 2009) at 1, *available at* [http://www.ernestjwilson.com/uploads/Chairman\\_Wilsons\\_Remarks\\_-\\_Sept\\_16,\\_2009.pdf](http://www.ernestjwilson.com/uploads/Chairman_Wilsons_Remarks_-_Sept_16,_2009.pdf).
- 2 LEONARD DOWNIE JR. & MICHAEL SCHUDSON, THE RECONSTRUCTION OF AMERICAN JOURNALISM, COLUMBIA JOURNALISM REV. (2009) (DOWNIE & SCHUDSON, RECONSTRUCTION OF AMERICAN JOURNALISM) [http://www.cjr.org/reconstruction/the\\_reconstruction\\_of\\_american.php?page=all](http://www.cjr.org/reconstruction/the_reconstruction_of_american.php?page=all).
- 3 See, e.g., Ellen P. Goodman, *Public Service Media 2.0*, in ... AND COMMUNICATIONS FOR ALL: A POLICY AGENDA FOR A NEW ADMINISTRATION 270 (Amit M. Schejter, ed.) (2009) (*Public Service Media 2.0*, AND COMMUNICATIONS FOR ALL) (arguing for a restructured CPB that is capable of supporting new media and platforms that may be independent of existing broadcasters).
- 4 STEVE COLL, REBOOT: AN OPEN LETTER TO THE FCC ABOUT A MEDIA POLICY FOR THE DIGITAL AGE, COLUMBIA JOURNALISM REV. (Nov/Dec 2010) at 33, [http://www.cjr.org/cover\\_story/reboot.php?page=all](http://www.cjr.org/cover_story/reboot.php?page=all) (COLL, REBOOT: AN OPEN LETTER TO THE FCC); see also, BARBARA COCHRAN, RETHINKING PUBLIC MEDIA: MORE LOCAL, MORE INCLUSIVE, MORE INTERACTIVE (Aspen Institute) (Dec. 2010) (COCHRAN, RETHINKING PUBLIC MEDIA), *available at* [http://www.knightcomm.org/wp-content/uploads/2010/12/Rethinking\\_Public\\_Media.pdf](http://www.knightcomm.org/wp-content/uploads/2010/12/Rethinking_Public_Media.pdf) (proposing that the CPB become the Corporation for Public Media and that public broadcasting take on an expanded role in the production of journalism).
- 5 Randall Davidson, *9XM Talking: The Early History of WHA Radio*, WISCONSIN PUB LIC RADIO, <http://web.archive.org/web/20080508184054/http://www.portalwisconsin.org/9xm.cfm> (last visited Feb. 10, 2011) (explaining that after an experimental "first broadcast" in early 1917, 9XM (which later became WHA) made its first, clear undistorted transmission of human speech in 1999).
- 6 TV Acres: Children's Show Hosts: The Friendly Giant, [http://www.tvacres.com/child\\_friendlygiant.htm](http://www.tvacres.com/child_friendlygiant.htm) (last visited Aug. 25, 2010) (stating that the children's show, The Friendly Giant, debuted in its original format in 1953 on WHA-AM Radio in Madison at the University of Wisconsin).
- 7 JOHN WITHERSPOON & ROSELLE KOVITZ, THE HISTORY OF PUBLIC BROADCASTING 4, 7 (Educational Broadcasting Corp.) (1987) (WITHERSPOON & KOVITZ, PUBLIC BROADCASTING). In the early 1920s, the Secretary of Commerce was the radio industry's sole licensing authority, which was then succeeded by the Federal Radio Commission, established in 1927 by the Dill-White Radio Act, and ultimately the Federal Communications



- Commission in the Communications Act of 1934. *Id.* at 6.
- 8 S.E. FROST, EDUCATION'S OWN STATIONS 178 (Arno Press Inc.) (1971).
  - 9 WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 8.
  - 10 WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 7.
  - 11 WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 8; RALPH ENGELMAN, PUBLIC RADIO AND TELEVISION IN AMERICA: A POLITICAL HISTORY 28-30 (Sage Publications) (1996) (ENGELMAN, PUBLIC RADIO AND TV).
  - 12 ENGELMAN, PUBLIC RADIO AND TV at 36 (*citing* R.W. McChesney, *Free Speech and Democracy: The Debate in the American Legal Community over the Meaning of Free Expression on Radio, 1926-1939* (paper presented at the annual meeting of the Association for Education in Journalism and Mass Communication), 1987, at n. 68). Crane went on to add:
 

“The absurdity passes comprehension when we not only give up our public birthright but tax ourselves to support commissions, to protect private monopoly in the use and control of what belongs to the nation. The absurdity becomes tragic when the total values of radio communication to a democracy are considered.”

ENGELMAN, PUBLIC RADIO AND TV at 36.
  - 13 ENGELMAN, PUBLIC RADIO AND TV at 30-34 (describing the positions of the National Advisory Council on Radio in Education (NACRE), which advocated offering educational programming on commercial stations, and that of the National Committee on Education by Radio (NCER), which supported independent noncommercial stations and systems). These included not only educational groups, such as The National Association of Educational Broadcasters (“NAEB”), but also other citizen groups whose interests were not met by commercial broadcasters: Though not a completely uniform assembly—some of these organizations took diametrically opposed positions on how to respond to commercialization of the airwaves, leading to “separatist” and “col-laborationist” ideologies that persist today.
  - 14 ENGELMAN, PUBLIC RADIO AND TV at 34.
  - 15 It selected channels in the 41-42 MHz band, far above the AM band that commercial stations used. In 1939, the FCC shifted the educational broadcasting allocation to 42-43 MHz, and stations were required to change from AM to the then-new FM mode.
  - 16 See *Allocation of Frequencies to the Various Classes of Non-Governmental Services in the Radio Spectrum from 10 Kilocycles to 30,000,000 Kilocycles*, Report, 39 FCC 226 (1945).
  - 17 See JOHN WITHERSPOON, ROSELLE KOVITZ, ROBERT AVERY, & ALAN G. STAVITSKY, THE HISTORY OF PUBLIC BROADCASTING (Current Publishing) (2000) (HISTORY OF PUBLIC BROADCASTING 2000).
  - 18 See SUSAN L. BRINSON, PERSONAL AND PUBLIC INTERESTS: FRIEDA B. HENNOCK AND THE FEDERAL COMMUNICATIONS COMMISSION 120 (Praeger Publishers) (2002) (BRINSON, PERSONAL AND PUBLIC INTERESTS) (referencing *Notice of Further Proposed Rulemaking*, FCC 49-948, Mimeo 37460, July 11, 1949, which stated that the Notice “should include a provision for the reservation of a specified number of frequencies in the ultra-high frequency band for the establishment of a noncommercial educational television service.”)
  - 19 BRINSON, PERSONAL AND PUBLIC INTERESTS at 120.
  - 20 Geneva Collins, *Public Television Got Its Kickstart 50 Years Ago*, CURRENT, May 12, 2003 (*Public TV Kickstart*), <http://www.current.org/history/hist-0309houston.html>.
  - 21 *Public TV Kickstart*.
  - 22 ENGELMAN, PUBLIC RADIO AND TV at 50; see also *id.* at 44 (explaining that Lewis Hill, father of the Pacifica Radio Network, criticized university radio stations for not purposing to “form a cultural bridge between centers of learning and occupational classes,” adding that station leadership was often “tied either to state legislatures or to boards of trustees which inevitably represent tendencies close to the commercial and conservative part of the community”).
  - 23 ENGELMAN, PUBLIC RADIO AND TV at 59, 65.
  - 24 ENGELMAN, PUBLIC RADIO AND TV at 67.
  - 25 ENGELMAN, PUBLIC RADIO AND TV at 149.
  - 26 ENGELMAN, PUBLIC RADIO AND TV at 145.
  - 27 WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 13.
  - 28 CARNEGIE COMMISSION ON THE FUTURE OF PUBLIC BROADCASTING, THE REPORT AND RECOMMENDATIONS OF THE CARNEGIE COMMISSION ON EDUCATIONAL TELEVISION: PUBLIC TELEVISION, A PROGRAM FOR ACTION 92 (1967) (CARNEGIE I).
  - 29 WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 15 (“No issue was more sensitive than the prospect of a partisan political tilt in public broadcasting programs.... [S]everal members of Congress were determined that any future system should be rigidly neutral”; ENGELMAN, PUBLIC RADIO AND TV at 88 (stating that “The CPB was designed to provide both political insulation and funds for public radio and TV”).
  - 30 ENGELMAN, PUBLIC RADIO AND TV at 159-60; Public Broadcasting Act of 1967, 47 U.S.C. § 396(c) (2000) (describing the functions and duties of the Corporation for Public Broadcasting Board of Directors).
  - 31 Public Broadcasting Act of 1967, 47 U.S.C. § 396.
  - 32 Corporation for Public Broadcasting *et. al* Comments in re *FOM PN (FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*)), filed May 7, 2010 (CPB Comments), at 7.
  - 33 ENGELMAN, PUBLIC RADIO AND TV at 91 (reporting 292 educational FM stations in 1966); WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 13 (reporting 124 educational TV stations in 1965).
  - 34 WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 33.
  - 35 CPB Comments at 7.
  - 36 Vivian Schiller, *Why Online Won't Kill the Radio Star: Vivian Schiller of NPR on How Public Radio Can Thrive in the Digital Age*, WALL ST. J., June 7, 2010, <http://online.wsj.com/article/SB10001424052748704764404575287070721094884.html>.
  - 37 CPB Comments at 11.
  - 38 CPB Comments at 12.
  - 39 Email from Jason Seiken, Sr. V.P., Interactive, PBS, to Ellen P. Goodman, FCC (Oct. 29, 2010) (Seiken Email 10/29/10).
  - 40 Public Broadcasting Service, *New Research Confirms PBS the Most Trusted and Unbiased Source for News Ahead of Fox News Channel, CNN, and Other Commercial Networks* (press release), Feb. 18, 2010, <http://www.pbs.org/roperpoll2010/>.
  - 41 CPB, PUBLIC BROADCASTING REVENUE FISCAL YEAR 2008 6 (2009) (PUBLIC BROADCASTING REVENUE FISCAL YEAR 2008), available at <http://www.cpb.org/stations/reports/revenue/2008PublicBroadcastingRevenue.pdf>. CPB Appropriation does not separate appropriation for

- digital transition or interconnection funds. “Other” includes revenue from subsidiaries, special fundraising activities, passive income, gains (losses) on sales of assets or securities, endowment revenue, and capital campaigns. *Id.* at 7.
- 42** PUBLIC BROADCASTING REVENUE FISCAL YEAR 2008 at 6.
- 43** PUBLIC BROADCASTING REVENUE FISCAL YEAR 2008 at 3.
- 44** PUBLIC BROADCASTING REVENUE FISCAL YEAR 2008 at 3, 6.
- 45** WHY? Financial Statements: A Note from the Senior Vice President and Chief Financial Officer, *available at* <http://www.why.org/about/inside-why/financials.html>.
- 46** WETA Financial Report in Report to the Community at 20, *available at* [http://www.weta.org/files/FY10\\_reportcommunity.pdf](http://www.weta.org/files/FY10_reportcommunity.pdf). These numbers seem to be representative of mid-size to larger stations over the past decade. For example, WMFE in Orlando has depended on individual donations for nearly 50 percent of its funding in the past ten years. WMFE (Orlando, Fla.) (reporting individual donations contributing to between 42 percent and 52 percent since 2000).
- 47** PUBLIC BROADCASTING REVENUE FISCAL YEAR 2008 at 6.
- 48** STATION RESOURCE GROUP (SRG), GROW THE AUDIENCE: CENSUS OF JOURNALISTS IN PUBLIC RADIO AND TELEVISION, DELIVERABLE #3—FINAL REPORT 8 (2010) (CENSUS OF JOURNALISTS IN PUBLIC RADIO AND TELEVISION, DELIVERABLE #3).
- 49** David Sit, NewsHour’s vice president for operations and technology. According to Sit, “most of NewsHour’s funding, about \$12 million for the 2010-11 season, comes from the federal government. . . . Corporate underwriting accounts for roughly \$9 million of the 2010-2011 budget and foundations make up most of the remainder, about \$6.5 million. . . . Despite decreases in funding, staffing levels remained stable at NewsHour in 2010.” Emily *et. al.*, “Network News: Durability & Decline” in PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM, STATE OF THE NEWS MEDIA (2011) (PEW, STATE OF NEWS MEDIA 2011), <http://stateofthemedia.org/2011/network-essay/>.
- 50** “Network News: Durability & Decline” in PEW, STATE OF NEWS MEDIA 2011.
- 51** CORPORATION FOR PUBLIC BROADCASTING, PUBLIC BROADCASTING MEMBERSHIP FISCAL YEAR 2005-2009.
- 52** CORPORATION FOR PUBLIC BROADCASTING, APPROPRIATION REQUEST AND JUSTIFICATION, FY 2011 AND FY 2013 5 (2010) *available at* [http://www.cpb.org/appropriation/justification\\_11-13.pdf](http://www.cpb.org/appropriation/justification_11-13.pdf). “Congress recognized this need by providing to CPB \$25 million worth of station ‘fiscal stabilization’ grants in FY 2010.”
- 53** Memorandum from Public Television CSG Review Panel to Pat Harrison, President & CEO, Corporation for Public Broadcasting, Final Report and Recommendations, Aug. 25, 2010, at 9.
- 54** CORPORATION FOR PUBLIC BROADCASTING, FEDERAL APPROPRIATION HISTORY, *available at* <http://cpb.org/appropriation/history.html>.
- 55** *Budget Agreement Cuts Three CPB Funds, Leaves NPR Intact*, Current (Apr. 12, 2011), <http://currentpublicmedia.blogspot.com/2011/04/budget-agreement-cuts-three-cpb-funds.html>
- 56** CORPORATION FOR PUBLIC BROADCASTING, FY2010 RADIO COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA 4-10 (2010), *available at* [http://www.cpb.org/stations/grants/radio/2010/cpb\\_10RadioCSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/radio/2010/cpb_10RadioCSG_GeneralProvisions.pdf); CORPORATION FOR PUBLIC BROADCASTING, FY2010 TELEVISION COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA 4-6 (2010), *available at* [http://www.cpb.org/stations/grants/tv/2010/cpb\\_10TV\\_CSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/tv/2010/cpb_10TV_CSG_GeneralProvisions.pdf).
- 57** CORPORATION FOR PUBLIC BROADCASTING, APPROPRIATION REQUEST AND JUSTIFICATION FY 2011 AND FY 2013, 12, 14 (2010), *available at* [http://www.cpb.org/aboutcpb/financials/appropriation/justification\\_11-13.pdf](http://www.cpb.org/aboutcpb/financials/appropriation/justification_11-13.pdf). *See also*, *Ex parte* letter of Ellen P. Goodman to Blair Levin in FCC GN Docket No. 09-51, A National Broadband Plan for Our Future (Jan. 15, 2010) (discussing mandatory public broadcasting investments in broadcast infrastructure at the expense of broadband content and infrastructure investments).
- 58** *Budget Agreement Cuts Three CPB Funds, Leaves NPR Intact*, Current (Apr. 12, 2011), <http://currentpublicmedia.blogspot.com/2011/04/budget-agreement-cuts-three-cpb-funds.html>. *See also* U.S. OFFICE OF MANAGEMENT & BUDGET, FISCAL YEAR 2012 BUDGET OF THE U.S. GOVERNMENT (2011) (President’s Proposed Budget for FY 2012), *available at* <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf>.
- 59** An Act To Prohibit Federal Funding of National Public Radio and the Use of Federal Funds To Acquire Radio Content, H.R. 1076, 112th Cong., *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1076h/pdf/BILLS-112hr1076h.pdf>.
- 60** Economic theories for public service media have traditionally been rooted in public good theory and market failure. From an economic perspective, consumers lack the incentive to demand, and commercial media producers lack the market incentives to produce, the optimal amounts of socially valuable news, information, and content. This is particularly common in the case of public goods, which are by definition non-rivalrous (where consumption of the good does not diminish the good itself) and nonexclusive (with no exclusive rights of consumption). Because consumers know that they can benefit (“free ride”) from the good without having to purchase them, they are not optimally motivated to demand them, and because producers cannot always control the consumption of public good products, they are not optimally motivated to produce them.
- This mismatch between market production and public needs, the rationale goes, leads to an under-production of content that is valuable for democratic and civic purposes—increasing political accountability, social solidarity, educational levels, or imaginative and expressive freedom, for example. Thus, the market may not provide socially optimal amounts of content that would produce positive externalities—social benefits that result from private transactions. Public subsidies and other forms of government support can, and do, therefore serve to motivate the production of public service media.
- 61** WITHERSPOON & KOVITZ, PUBLIC BROADCASTING at 3.
- 62** CPB Comments at 6–7; *See also* Corporation for Public Broadcasting, *Goals and Objectives*, [http://www.cpb.org/aboutcpb/goals/goalsandobjectives/goalsandobjectives\\_full.html](http://www.cpb.org/aboutcpb/goals/goalsandobjectives/goalsandobjectives_full.html) (last visited July 11, 2010).
- 63** *See, e.g.*, Ellen P. Goodman & Anne H. Chen, *Modeling Policy for New Public Media Networks*, 24 HARV. J. LAW & TECH. 112, 136-163 (2010), *available at* <http://jolt.law.harvard.edu/articles/pdf/v24/24HarvJLTech111.pdf>; Ellen P. Goodman & Anne H. Chen, Digital Public Media Networks to Advance Broadband and Enrich Connected Communities, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, filed Nov. 7, 2009 (Goodman & Chen, Digital Public Media Networks), at 5, *available at* <http://ssrn.com/author=333377>.

- 64 HISTORY OF PUBLIC BROADCASTING 2000 at 70.
- 65 JOHN SILVER, CANDACE CLEMENT, CRAIG AARON, & S. DEREK TURNER, FREE PRESS, NEW PUBLIC MEDIA: A PLAN FOR ACTION 10 (2010) (FREE PRESS, NEW PUBLIC MEDIA), *available at* [http://www.freepress.net/files/New\\_Public\\_Media.doc.pdf](http://www.freepress.net/files/New_Public_Media.doc.pdf).
- 66 PBS Children's Media, *available at* <http://www.pbs.org/about/pbskids/> (last visited May 31, 2011).
- 67 CHILDREN NOW, EDUCATIONALLY/INSUFFICIENT? AN ANALYSIS OF AVAILABILITY & EDUCATIONAL QUALITY OF CHILDREN'S E/I PROGRAMMING 9 (2008) (CHILDREN NOW, EDUCATIONALLY/INSUFFICIENT?), *available at* [http://pbskids.org/lions/parentsteachers/pdf/childrennow\\_report.pdf](http://pbskids.org/lions/parentsteachers/pdf/childrennow_report.pdf).
- 68 PBS Kids, The Ready to Learn Initiative, <http://pbskids.org/read/about/> (last visited Feb. 22, 2011).
- 69 Email from Jason Seiken, PBS, to Ellen P. Goodman, FCC (Feb. 21, 2011) (relying on Google analytics).
- 70 Email from Jason Seiken, PBS, to Ellen P. Goodman, FCC (Feb. 21, 2011) (relying on comScore's Video Metrix data from January 2011).
- 71 PBS, Program HH Demo Profile (reporting 29 percent viewership for *Clifford* from families with income less than \$20,000 and 33 percent from families with an income above \$60,000).
- 72 PBS, Program HH Demo Profile (reporting 11 percent viewership from families whose head of household has less than a four-year high school education but 34 percent viewership from families whose head of household has more than four years of college, and 24 percent viewership from families with less than \$20,000 of family income but 38 percent with more than \$60,000).
- 73 CPB, PUBLIC TELEVISION STATIONS: A TRUSTED SOURCE FOR EDUCATING AMERICA 9 (2008) (PUBLIC TELEVISION STATIONS), *available at* <http://www.cpb.org/aboutpb/education/services2008/2008TVEducationReport.pdf>.
- 74 PBS Educational Services, *About PBS*, [http://www.pbs.org/aboutpbs/aboutpbs\\_corp\\_education.html](http://www.pbs.org/aboutpbs/aboutpbs_corp_education.html) (last visited June 29, 2010). *See also* Teacher's Domain, *About Teacher's Domain*, <http://www.teachersdomain.org/about.html> (last visited June 29, 2010). Teacher's Domain, created by WGBH Boston, is a free collection of over 1,000 standards-based multimedia resources for both students and teachers.
- 75 PBS, *PBS Programming Tops the List of Teacher Favorites for Second Consecutive Year* (press release), Aug. 25, 2004, [http://www.pbs.org/aboutpbs/news/20040825\\_teacherfavorite.html](http://www.pbs.org/aboutpbs/news/20040825_teacherfavorite.html).
- 76 PBS Digital Learning Library, <http://www.pbsdigitallearninglibrary.org/> (last visited Sept. 2, 2010); PBS Teachers, *Introducing the PBS Digital Learning Library*, <http://www.pbs.org/teachers/dll> (last visited Sept. 2, 2010).
- 77 Email from Robert M. Lippincott, Sr. V.P., Education, Public Broadcasting Service, to Ellen P. Goodman, FCC (Aug. 30, 2010). Seven leading local stations began testing the Library in September 2010, with a focus on assessing the teacher's experience and the value of digital media in instruction. PBS anticipates providing DLL resources and other educational services through state portals, some supported by recent Department of Education "Race to the Top" grants. It has already entered agreements with Pennsylvania and Texas to deliver DLL resources.
- 78 Richard Somerset-Ward, *American Public Television: Programs—Now, and in the Future* in PUBLIC TELEVISION IN AMERICA 100 (Bertelsmann Foundation Publishers) (1999). *See also* PUBLIC TELEVISION STATIONS at 8 (reporting 68 percent of surveyed stations with an established partnership with universities; 61 percent with services for college or university students, and 52 percent with college or university instructors), *available at* <http://www.cpb.org/aboutpb/education/services2008/2008TVEducationReport.pdf>.
- 79 CHILDREN NOW, EDUCATIONALLY/INSUFFICIENT?.
- 80 FREE PRESS, NEW PUBLIC MEDIA at 9.
- 81 PBS Video, Austin City Limits, <http://video.pbs.org/program/1273976454/> (last visited Mar. 15, 2011) (Austin City Limits).
- 82 Austin City Limits. PBS's forthcoming Arts Showcase is an online portal that will allow art enthusiasts to directly engage with young and established artists of all art genres.
- 83 *See* Chris Johnson, *Federal Support of Public Broadcasting: Not Quite What LBJ Had in Mind*, 8 COMMLAW CONSPICUOUS 135, 138-40 (2000) (criticizing public television for political bias and a failure to garner a larger audience); Howard White, *Fine Tuning the Federal Government's Role in Public Broadcasting*, 46 FED. COMM. L.J. 491, 501-03, 513 (1994) (discussing Congressional attempts to eliminate funding for public television and criticizing public broadcastings' overreliance on its most popular programming). The same critique has been leveled against public radio. *See also* Bill McKibben, *All Programs Considered*, N.Y. REV. OF BOOKS, Nov. 11, 2010, <http://www.nybooks.com/articles/archives/2010/nov/11/all-programs-considered/>.
- 84 Letter from Gregory A. Lewis, Assist. Gen. Counsel, National Public Radio, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 10-25 (filed Dec. 3, 2010) (NPR *Ex Parte* 12/3/10), at 2.
- 85 FREE PRESS, NEW PUBLIC MEDIA at 9.
- 86 National Public Radio Comments in re *FOM PN*, filed May 7, 2010 (NPR Comments), at 12.
- 87 NPR Comments at 15.
- 88 NPR Comments at 14. American Public Media is the largest producer and distributor of classical music programming in the country.
- 89 From the Top, <http://www.fromthetop.org/content/top>, last visited (May 27, 2011).
- 90 Ellen P. Goodman, *Media Policy Out of the Box: Content Abundance, Attention Scarcity, and the Failures of Digital Markets*, 19 BERKELEY TECH. L.J. 1389, 1406 (2004) ("The hallmark of a civic republic, also known as a deliberative democracy, is rational deliberation among citizens, resulting in a consensus that drives public policy"). For a more in-depth discussion of theoretical rationales underlying public broadcasting, *see id.* at 1400-19. Scholarly works, as early as Alexander Meiklejohn's FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (Harper Brothers Publishers) (1948) and into Jürgen Habermas' THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE (MIT Press)(1989), provided a theoretical framework for public broadcasting that called for a greater exchange of this sort of public and "counterpublic" discourse. *See also*, Patricia Aufderheide & Jessica Clark, American University School of Communication Center for Social Media Comments in re *FOM PN*, filed May 6, 2010 (American University Comments) at 3-4.
- 91 CARNEGIE I at 95.
- 92 THE CENTURY FOUNDATION, QUALITY TIME? REPORT OF THE TASK FORCE ON PUBLIC TELEVISION 14 (Century Press Found.) (1993).
- 93 Public Broadcasting Service News, *New Research Confirms PBS the Most Trusted and Unbiased Source for News Ahead of Fox News Channel, CNN,*

- and Other Commercial Networks (press release), Feb. 18, 2010, <http://www.pbs.org/roperpoll2010>.
- 94** Public Broadcasting System Comments in re *FOM PN*, filed May 7, 2010 (PBS Comments), at 14.
- 95** PBS Comments at 14.
- 96** FCC staff analysis of Tribune Media Services data, April 2011.
- 97** Data come from Tribune Media Services during the time periods Nov. 1–Nov.14, 2009 and May 6–May 12, 2010. Data averages include total scheduled news minutes on full-power broadcast television stations over the sample period. Includes all news minutes; no deductions are made for weather, sports, advertising, etc. Programs included in this count are those indicated as “News” or “Newsmagazine” (or their Spanish equivalents) in the “Genre” field, and those indicated by TMS as “Local” in the “Origination” field (possible values in this field are “Local”, “Network”, or “Syndicated”).
- 98** Christopher Ali, *The Second Day Story: Re-imagining Public Broadcasting Through Community*, RIPE@2010 (Univ. of Tampere, Finland), 2010, at 15, n.2, available at <http://ripeat.org/wp-content/uploads/tdomf/1281/Ali.pdf>. Going state-by-state, the author looked at every listed station’s website for mention of news and public affairs programs (examining program descriptions and program guides for everyday of a given week). For the 170 stations listed on PBS.org, the results were (not accounting for overlap): “77 stations produced no local newscasts; 79 stations produced a weekly newsmagazine; 6 stations produced a newscast that aired 1–3 times per week; and 14 stations produced a nightly local newscast (5 times per week or more)”. *Id.* at n. 2. Determining local news programming was based on two criteria: local production and a focus on local issues. Here, the most obvious programs were the nightly local newscasts, as some newsmagazines may have been produced in house, but retained a national focus. In a more general study of local newscasts, the Commission drew data from secondary sources, such as the BIA/Kelsey database, Zap2It.com, and TV websites, to determine levels of local news programming on all 390 noncommercial educational (NCE) TV stations (not just PBS member stations). It found that 17 stations (4.3 percent) aired both national and local news, and 11 stations (2.8 percent) aired only local news. In total, just 28 stations (7.2 percent) out of the 390 examined aired some form of local news.
- 99** UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, TELECOMMUNICATIONS ISSUES RELATED TO FEDERAL FUNDING FOR PUBLIC TELEVISION BY THE CORPORATION FOR PUBLIC BROADCASTING 47 (GAO-04-284) (2004) (GAO, REPORT TO CONGRESSIONAL REQUESTERS 2004), available at <http://www.gao.gov/new.items/d04284.pdf>.
- 100** PBS Comments at 15; see also GAO, REPORT TO CONGRESSIONAL REQUESTERS 2004 at 46, available at <http://www.gao.gov/new.items/d04284.pdf>.
- 101** William F. Baker & Evan Leatherwood, *Back to the Future: Here’s A Way Public TV Can Ramp Up Local News*, CURRENT, Dec. 14, 2009, <http://www.current.org/news/news0923pmmag.shtml>.
- 102** COCHRAN, RETHINKING PUBLIC MEDIA at 32; *Public TV Kickstart*.
- 103** PBS Comments at i.
- 104** The Radio Television Digital News Association Comments in re *FOM PN*, filed May 7, 2010 (RTDNA Comments), at 8.
- 105** COCHRAN, RETHINKING PUBLIC MEDIA at 32.
- 106** PBS, Not in Our Town, <http://www.pbs.org/niot/> (last visited June 29, 2010).
- 107** CPB, St. Louis is Facing the Mortgage Crisis, <http://www.stlmortgagecrisis.org/> (last visited June 29, 2010).
- 108** CPB, Facing the Mortgage Crisis Final Report, <http://www.fmcimpact.org/> (last visited June 29, 2010).
- 109** COCHRAN, RETHINKING PUBLIC MEDIA at 32.
- 110** Interview with Amy Shaw, Sr. V.P., Community Engagement, Nine Network of Public Media, by Cynthia Kennard, FCC (Jan.14, 2011).
- 111** Interview with Lynda Clarke, Dir., Television Programming Projects, PBS, by Cynthia Kennard, FCC (Jan. 21, 2011).
- 112** Interview with Amy Burkett, V.P., Production, WLVT, by Cynthia Kennard, FCC (Jan. 2011).
- 113** Email from Debbi Hinton, former CFO of KCET, to Cynthia Kennard, FCC (May 31, 2011).
- 114** Walker Interview 7/13/10.
- 115** ENGELMAN, PUBLIC RADIO AND TV at 205–06.
- 116** COCHRAN, RETHINKING PUBLIC MEDIA at 32.
- 117** PAT AUFDERHEIDE & JESSICA CLARK, PUBLIC BROADCASTING & PUBLIC AFFAIRS: OPPORTUNITIES AND CHALLENGES FOR PUBLIC BROADCASTING’S ROLE IN PROVISIONING THE PUBLIC WITH NEWS AND PUBLIC AFFAIRS 4 (Berkman Ctr. for Internet and Society at Harvard Univ.) (2008), available at [http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Public%20Broadcasting%20and%20Public%20Affairs\\_MR.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Public%20Broadcasting%20and%20Public%20Affairs_MR.pdf).
- 118** David Lumb & Patt Morrison, *KCET drops PBS, risks viewer loyalty to avoid \$6.8M yearly dues*, 89.3 KPCC, Oct. 8, 2010, <http://www.scpr.org/news/2010/10/08/kcet-drops-pbs-risks-viewer-loyalty-avoid-68-milli>.
- 119** NPR’s 2010 listenership was 3 percent higher than the 2009 total of 26.4 million. “Audio: Medium on the Brink of Major Change” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/audio-essay/>.
- 120** NPR *Ex Parte* 12/3/10 at 5–6.
- 121** Samuel G. Freedman, ‘Listener Supported’ and ‘NPR’: All Things Considered, N.Y. TIMES, July 17, 2005, [http://www.nytimes.com/2005/07/17/books/review/17FREEDMA.html?\\_r=1&scp=1&sq=%22all%20things%20considered%22&st=cse](http://www.nytimes.com/2005/07/17/books/review/17FREEDMA.html?_r=1&scp=1&sq=%22all%20things%20considered%22&st=cse); Bill Virgin, ‘Morning Edition’ Starts the Day Strong for NPR, SEATTLE PI, Mar. 31, 2005, [http://www.seattlepi.com/tv/218155\\_radiobeat31.html](http://www.seattlepi.com/tv/218155_radiobeat31.html); JACK W. MITCHELL, LISTENER SUPPORTED: THE CULTURE AND HISTORY OF PUBLIC RADIO 175 (Praeger Publishing) (2005) (mentioning *Morning Edition* and *All Things Considered* as the second and third most listened-to radio programs in the United States).
- 122** CPB, PUBLIC RADIO IN THE NEW NETWORK AGE: WIDER USE, DEEPER VALUE, COMPELLING CHANGE—REPORT AND RECOMMENDATIONS OF THE PUBLIC RADIO AUDIENCE GROWTH TASK FORCE 22 (2010) (PUBLIC RADIO IN THE NEW NETWORK AGE), available at [http://www.srg.org/GTA/Public\\_Radio\\_in\\_the\\_New\\_Network\\_Age.pdf](http://www.srg.org/GTA/Public_Radio_in_the_New_Network_Age.pdf).
- 123** NPR Comments at 2.
- 124** Of these 335, 314 were full time and 21 were part time. “Audio: Medium on the Brink of Major Change” in PEW, STATE OF NEWS MEDIA 2011.
- 125** NPR Comments at 3.
- 126** “Audio: Medium on the Brink of Major Change” in PEW, STATE OF NEWS MEDIA 2011.
- 127** CPB Comments at 12. “NPR also seems to have bucked the trend on

- podcasts, which showed just the smallest audience growth overall for the year. It has created more ways for users to consume its audio content online from streaming audio to podcasts. In December 2010, NPR reported 23.3 million downloads of its podcasts each month. That figure is up 58 percent from 2009.” “Audio: Medium on the Brink of Major Change” in PEW, STATE OF NEWS MEDIA 2011.
- 128** “Audio: Medium on the Brink of Major Change” in PEW, STATE OF NEWS MEDIA 2011.
- 129** NPR Comments at 4.
- 130** NPR Comments at 5.
- 131** NPR Comments at 26.
- 132** Interview with Tom Thomas, C.E.O., Station Resource Group, by Cynthia Kennard, FCC (Jan. 2011) (Thomas Interview Jan. 2011).
- 133** NPR Comments at 7.
- 134** NPR Comments at 2, 6, 7, 8.
- 135** NPR Comments at 8.
- 136** Station Resource Group (SRG), *About Station Group*, <http://www.srg.org/about.html> (last visited Feb. 22, 2011).
- 137** Thomas Interview Jan. 2011.
- 138** NPR Comments at 8.
- 139** For more examples of local news and information programming produced by public radio stations, see NPR Comments at 8–11.
- 140** Local News Initiative, *Local News Station Survey: Executive Summary*, <http://www.localnewsinitiative.org/executive.cfm> (Local News Station Survey) (last visited Mar. 13, 2011).
- 141** Local News Station Survey.
- 142** Colorado Public Radio, *Schedules & Links*, <http://www.cpr.org/article/legacy-cpr-86> (last visited Jan. 4, 2011).
- 143** Email from Erik Nycklemoe, Dir., Radio, Content & Media, American Public Media, to Ellen P. Goodman, FCC (Feb. 2, 2011).
- 144** NPR Comments at 18–19; see also Corporation for Public Broadcasting, *NPR Launches New Online Local Journalism Venture with CPB and Knight Foundation Funding* (press release), Oct. 2, 2009, <http://www.cpb.org/pressroom/release.php?prn=776>.
- 145** NPR Comments at 19.
- 146** For a complete list of examples, see NPR Comments at 19.
- 147** Email from Eric Newton, Knight Foundation, to Siddhartha Menon, FCC (May 11, 2011). The *Takeaway* was designed to attract a more diverse audience and has succeeded. It is syndicated in 60 markets, many of which are urban centers with diverse populations. The *Takeaway* has more African-American listeners, for example, than the national *Morning Edition*. COCHRAN, RETHINKING PUBLIC MEDIA at 36.
- 148** Elizabeth Jensen, *With Grant, NPR to Step Up State Government Reporting*, N.Y. TIMES, Oct. 17, 2010, <http://www.nytimes.com/2010/10/18/business/media/18npr.html>.
- 149** Karen Everhart, *Goal for Several Big-City Pubradio Newsrooms: 100 Reporters Each*, CURRENT, Oct. 20, 2010, <http://www.current.org/news/news1019newsrooms.shtml>.
- 150** Walker Interview 7/13/10; COCHRAN, RETHINKING PUBLIC MEDIA at 26.
- 151** “Audio: Traditional Broadcast & Broadcast Online, NPR” in PEW PROJ. FOR EXCELLENCE IN JOURNALISM, STATE OF THE NEWS MEDIA (2010) (PEW, STATE OF NEWS MEDIA 2010), <http://stateofthemedias.org/2010/audio-summary-essay/traditional-broadcast/>.
- 152** “Audio: Traditional Broadcast & Broadcast Online, NPR” in PEW, STATE OF NEWS MEDIA 2010.
- 153** New America Foundation *et al.* Comments in re *FOM PN*, filed May 7, 2010 (New America Found. Comments) at 64. While New America Foundation applauded the CPB for funding projects designed to expand local reporting, describing a “new commitment to journalism” from public broadcasting leadership, it notes that such initiatives are still not enough, and will not come close to filling the gap left by loss of nearly 13,500 newspaper jobs in the past three years. *Id.* at 93–94. Moreover, in their comments to the Commission, New America Foundation *et al.* recommend a “trust fund seeded with a large endowment and operated by the Corporation for Public Broadcasting (or better yet, a newly mandated Corporation for Public Media).” *Id.* at 95.
- 154** PBS Comments at 15; see also Karen Everhart, *CPB to Aid 7 ‘Local Journalism Centers:’ About 50 New Employees Will Staff Stations’ Specialized Regional Teams*, CURRENT, April 5, 2010, <http://www.current.org/news/news1006localcenters.shtml> (*CPB to Aid 7 Local Journalism Centers*).
- 155** *CPB to Aid 7 Local Journalism Centers*.
- 156** Native Public Media Comments in re *FOM PN*, filed May 7, 2010 (Native Public Media Comments) at 21; Healthy State Collaborative, <http://healthystate.org/about> (last visited Feb. 22, 2011); PBS Comments at 15.
- 157** Healthy State Collaborative, <http://healthystate.org/about> (last visited Feb. 22, 2011).
- 158** CPB Comments at 4. See also Native Public Media Comments at 21 (noting potential of the LJC’s as collaborative partners with Native-owned stations and the National Native News, which airs from the Koahnic Broadcast Corporation and potential in expanding LJC’s to include the Native American Journalism Association and Native American Public Telecommunications).
- 159** Katie Donnelly, *While Others Shrink, KQED Expands Cross-Platform News*, PBS MEDIA SHIFT, Aug. 25, 2010, <http://www.pbs.org/media-shift/2010/08/while-others-shrink-kqed-expands-cross-platform-news237.html> (*While Others Shrink*).
- 160** *While Others Shrink*.
- 161** In fact, in 2000, the Benton Foundation’s report *Connecting Communities* observed that one the best practices for a public broadcaster was to partner with high-quality universities, bringing together “high-tech intellectual resources...with the digital firepower and community reach of experienced public broadcasters.” BENTON FOUNDATION, *CONNECTING COMMUNITIES 20* (2000), available at [http://benton.org/sites/benton.org/files/archive\\_files/publibrary/pubmedia.pdf](http://benton.org/sites/benton.org/files/archive_files/publibrary/pubmedia.pdf).
- 162** NPR Comments at 17.
- 163** CPB Comments at 10.
- 164** NPR Comments at 18.
- 165** STATION RESOURCE GROUP, PUBLIC RADIO AUDIENCE GROWTH TASK FORCE, *PUBLIC RADIO IN THE NEW NETWORK AGE: WIDER USE, DEEPER VALUE, COMPELLING CHANGE 6* (2010) (PUBLIC RADIO IN THE NEW NETWORK AGE), available at [http://www.srg.org/GTA/Public\\_Radio\\_in\\_the\\_New\\_Network\\_Age.pdf](http://www.srg.org/GTA/Public_Radio_in_the_New_Network_Age.pdf).
- 166** The Progress and Freedom Foundation Comments in re *FOM PN*, filed May 5, 2010, at 11.

- 167** Interview with Bill Davis, Pres. Southern California Public Radio, by Cynthia Kennard, FCC (Jan. 14, 2011).
- 168** See generally *Public Service Media 2.0*.
- 169** ALAN G. STAVITSKY & JEFFREY DVORKIN, OBJECTIVITY AND BALANCE: CONCEPTUAL AND PRACTICAL HISTORY IN AMERICAN JOURNALISM 18-19 (2008) (STAVITSKY & DVORKIN, OBJECTIVITY AND BALANCE, [http://www.cpb.org/aboutcpb/goals/objectivity/whitepapers/cpb\\_ConceptualHistory\\_DvorkinStavitsky.pdf](http://www.cpb.org/aboutcpb/goals/objectivity/whitepapers/cpb_ConceptualHistory_DvorkinStavitsky.pdf)).
- 170** STAVITSKY & DVORKIN, OBJECTIVITY AND BALANCE at 18-19.
- 171** Lauren J. Strayer, *Corporation for Public Broadcasting: Building a Digital Democracy Through Public Media*, CTR. FOR AM. PROGRESS ACTION FUND 3, <http://www.americanprogressaction.org/issues/2008/change-foramerica/pdf/pbs.pdf>.
- 172** In setting forth the purposes and activities of CPB, Section 396(g)(1)(A) of the Public Broadcasting Act provides that CPB “is authorized to — (A) facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.” (emphasis added) In 1992, Congress adopted measures to make CPB more accountable for advancing these goals. It directed CPB’s Board to “review [its] existing efforts to meet its responsibility under section 396(g)(1)(A)” and, “after soliciting the views of the public, establish a comprehensive policy and set of procedures” to inform itself about the quality, diversity, creativity, excellence, innovation, objectivity, and balance of public broadcasting programming, as well as any needs not met by such programming. Pub. L. 102-356 §19. If that information reveals an unmet programming need or other area in which the programming falls short of the goals enumerated in Section 396(g)(1)(A), CPB should “take such steps in awarding programming grants . . . that it finds necessary to meet [its] responsibility under section 396(g)(1)(A), including facilitating objectivity and balance in programming of a controversial nature.” *Id.*
- The courts have held that the terms “objectivity and balance” must be viewed as “a guide to Congressional oversight policy and as a set of goals to which the Directors of CPB should aspire[,] . . . not a substantive standard, legally enforceable by agencies or courts.” *Accuracy in Media, Inc. v. FCC*, 521 F.2d 288, 297 (D.C. Cir. 1975). In other words, Congress did not in 1992 make CPB a content police. Such a move would have been constitutionally suspect. Instead, it imposed procedural and reporting requirements designed to make it much harder for producers to make, and the networks to distribute, programming that is arguably not objective and balanced.
- 173** ENGELMAN, PUBLIC RADIO AND TV at 113.
- 174** Jeremy Egner, *The Probe: Unilateral Actions Exceeded Chair’s Authority*, CURRENT, Nov. 21, 2005, <http://www.current.org/cpb/cpb0521ig.shtml> (*Unilateral Actions Exceeded Chair’s Authority*). A six-month internal investigation found that Tomlinson had inappropriately meddled in programming decisions, made hiring decisions based on political considerations, and ignored contracting guidelines in his efforts to expunge a perceived liberal bias from public broadcasting.
- 175** Laura Leslie, *UNC-TV, Alcoa, and “The Don”*, NORTH CAROLINA PUBLIC RADIO—WUNC, Aug. 17, 2010, <http://wunc.org/programs/news/Isaac-Hunters-Tavern/unc-tv-alcoa-and-the-don>; See, e.g., Dru Sefton, *Pubcasters Keep Funds in Some State Budgets*, CURRENT, June 21, 2010, <http://www.current.org/funding/funding1011state.shtml>.
- 176** See, e.g., Reed Irvine, *Give Up On Public Broadcasting*, WALL ST. J., Mar. 28, 1986 (“The entire public broadcasting bureaucracy is so insulated from the market, from public opinion and even from the legislators who vote its funding that there is little chance that it will be depoliticized”); STARR, AIR WARS at 30-31 (recounting significant pressure and criticism for the “liberal bias” of PBS programming); ENGELMAN, PUBLIC RADIO AND TV, at 110-11 (describing heated criticisms during the Reagan administration accusing NPR of being too liberal); LAURENCE JARVIK, PBS: BEHIND THE SCREEN 198-201 (1997) (recounting criticisms in the 1980s that PBS programs had a liberal bias and were not open to other perspectives).
- 177** Bill O’Reilly, *Why is NPR Getting Our Money?*, BILLOREILLY.COM, Oct. 328, 2010, <http://www.billoreilly.com/newslettercolumn?pid=30459>.
- 178** David Brooks, *Campaign Cash*, PBS NEWSHOUR, Oct. 22, 2010 (transcript), [http://www.pbs.org/newshour/bb/politics/july-dec10/shields-brooks\\_10-22.html](http://www.pbs.org/newshour/bb/politics/july-dec10/shields-brooks_10-22.html).
- 179** Steve Coll, *Why Fox News Should Fund NPR*, WASH. POST, Oct. 29, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/29/AR2010102904336.html>.
- 180** Prepared Testimony of Randolph J. May, Pres., The Free State Foundation, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010), at 2, available at [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=4df8b6fe-52a2-4a05-916c-fc74f4a9d7ec&groupId=101236](http://reboot.fcc.gov/c/document_library/get_file?uuid=4df8b6fe-52a2-4a05-916c-fc74f4a9d7ec&groupId=101236).
- 181** CENSUS OF JOURNALISTS IN PUBLIC RADIO AND TELEVISION, DELIVERABLE #3 at 12.
- 182** PBS Comments at 14.
- 183** PBS Comments at 5.
- 184** PBS Comments at 14; “Network News: Durability & Decline” in PEW, STATE OF NEWS MEDIA 2011 NewsHour’s website received an average of 669,000 unique monthly views in 2009. “In addition, NewsHour creates about 140 monthly podcasts that 1.1 million people download.” *Id.*
- 185** PBS Comments at 19.
- 186** Seiken Email 10/29/10.
- 187** CPB Comments at 11.
- 188** CPB Comments at 4-5.
- 189** CPB Comments at 11.
- 190** PBS Comments at 19.
- 191** See, e.g., New America Found. Comments (describing how the Commission’s current decision not to include multicast signals in digital must-carry provisions will discourage investment on content, and dampen creative and innovative uses over, these secondary programming streams).
- 192** PBS Comments at 20.
- 193** NPR Comments at 36-37.
- 194** CPB Comments at 12.
- 195** NPR Comments at 22.
- 196** Public Insight Network, American Public Media, <http://www.publicinsightnetwork.org/> (last visited May 11, 2011).

- 197** Testimony of William H. Kling, Pres. and C.E.O., American Public Media, Workshop on the Future of Media & Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010) (transcript), at 384:15-22; 385:1-7, *available at* [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=5272966f-441c-48dd-9c66-a6c8b1f8cc5d&groupId=101236](http://reboot.fcc.gov/c/document_library/get_file?uuid=5272966f-441c-48dd-9c66-a6c8b1f8cc5d&groupId=101236).
- 198** Email from William H. Kling to Ellen P. Goodman and Steve Waldman, FCC (June 3, 2010).
- 199** Email from Roger LaMay, General Manager, WXPB Public Radio, to David Cohen, FCC (June 23, 2010) (LaMay Email 6/23/10).
- 200** LaMay Email 6/23/10.
- 201** Email from Jon C. Brendsel, V.P., Product Development, PBS Interactive, to Ellen P. Goodman, FCC (June 14, 2010). Brendsel estimates that the average visitor to COVE, the PBS video streaming portal, watches approximately 3 videos per month, with an average viewing time of 1 hour per month. This translates to approximately 1.39-cents/hour in streaming costs incurred by PBS. For the month of May 2010, approximately 1.3 million hours of video were streamed, amounting to roughly \$20,000 for video streaming.
- 202** Memorandum Summary of Trends in Online Delivery Costs, from Eric Wolf, Project Executive, PBS, to Jason Seiken, Sr. V.P., Interactive, PBS & John McCoskey, Chief Technology Officer, PBS (July 26, 2010) (Summary of Trends in Online Delivery Costs), at 3.
- 203** Summary of Trends in Online Delivery Costs at 3.
- 204** Summary of Trends in Online Delivery Costs at 2-3.
- 205** For discussion of these potential practices, see *Preserving the Open Internet*, Report & Order, 25 FCC Rcd 17905 (2010). As a general matter, it is unlikely that pay for priority [by a fixed broadband provider] would satisfy the 'no unreasonable discrimination' standard under the Commission's Open Internet Order. *Id.* at 76.
- 206** See, e.g., Letter from William H. Kling, Pres. & C.E.O., American Public Media, to Julius Genachowski, Chairman, FCC, GN Docket No. 09-191 (filed Sept. 16, 2010), at 3-5.
- 207** See Stephanie Strom, *Donations Ban on iPhone Apps Irritates Non-profits*, N.Y. TIMES, Dec. 8, 2010, <http://www.nytimes.com/2010/12/09/technology/09charity.html>; Jake Shapiro, *Apple's No-Donation Policy for Apps is a Cop-Out*, ARS TECHNICA, June 4, 2010, <http://arstechnica.com/apple/news/2010/06/nonprofit-developer-apples-no-donation-policy-is-a-cop-out.ars>.
- 208** CPB APPROPRIATION REQUEST AND JUSTIFICATION at 18-22.
- 209** CPB-defined multi-provider markets:  
Atlanta, Georgia Public Broadcasting\*, WPBA Philadelphia, WHY\*  
WYBEChicago, WTTW\*, WYCC, WYIN Salt Lake City, KUEN\*, KBYU, KUED  
Denver, KRMA\*, KBDI San Francisco, KQED\*, KCSM, KRCB Los Angeles,  
KCE\*  
KLCs, KOCE, KVCR San Juan, WIPR\*, WMTJ, Miami, WPBT\*,  
WLRN Seattle/Tacoma, KCTS\*, KBTC New Orleans, WYES\*, WLAE Tampa,  
WEDU\*, WUSF New York, WNET/WLIW\*, WNYE Washington D.C.,  
WETA\*, WHUT, Orlando, WMFE\*, WBCC, WCEU\*Primary station
- 210** Email from Michael Levy, Exec. V.P., Corporate & Public Affairs, CPB, to Ellen P. Goodman, FCC staff (Jan. 11, 2010) (Levy Email 1/11/10).
- 211** Public Radio Capital Comments in re *FOM PN*, filed May 7, 2010 (Public Radio Capital Comments) at 2.
- 212** Email from William H. Kling, Pres. and C.E.O., American Public Media, to Ellen P. Goodman, FCC (July 28, 2010).

**213** Levy Email 1/11/10.

**214** CPB BOARD OF DIRECTORS, 2010 CSG REVIEW MANAGEMENT RECOMMENDATIONS AS REVISED BY THE CPB BOARD (2010), *available at* [http://www.cpb.org/aboutcpb/leadership/board/resolutions/100922\\_TV\\_2010CSG\\_Recommendations.pdf](http://www.cpb.org/aboutcpb/leadership/board/resolutions/100922_TV_2010CSG_Recommendations.pdf).

**215** Public Radio Capital Comments at 3.

**216** COCHRAN, RETHINKING PUBLIC MEDIA at 46.

**217** FCC analysis based on FCC database of license holders:

| TELEVISION      |           |          |          |
|-----------------|-----------|----------|----------|
|                 | Licensees | Grantees | Stations |
| Community       | 87        | 87       | 145      |
| Local Authority | 8         | 8        | 8        |
| State           | 19        | 19       | 121      |
| University      | 57        | 57       | 94       |
| Total           | 171       | 171      | 368      |

| RADIO           |           |          |          |
|-----------------|-----------|----------|----------|
|                 | Licensees | Grantees | Stations |
| Community       | 160       | 171      | 367      |
| Local Authority | 29        | 29       | 46       |
| State           | 12        | 15       | 79       |
| University      | 187       | 199      | 442      |
| Total           | 388       | 414      | 934      |

**218** Email from Michael Levy, Exec. V.P., Corporate & Public Affairs, CPB, to Ellen P. Goodman, FCC (Feb. 2, 2011).

**219** UNC-TV, licensed to the University of North Carolina, complied with a legislative request for reporters' notes, footage, etc. rather than use the state's journalist "shield law." See, e.g., Greg Collard, *UNC-TV Endures Month of Controversy*, WFAE 90.7 FM, July 26, 2010, [http://www.wfae.org/wfae/1\\_87\\_316.cfm?action=display&id=6336](http://www.wfae.org/wfae/1_87_316.cfm?action=display&id=6336). Update: Mississippi Public Broadcasting made a controversial decision to remove (and then restore) *Fresh Air*. See Jim Romenesko, *Update: MPB Says It Dropped 'Fresh Air' Over Interviews of 'Explicit Sexual Nature'*, THE POYNTER INSTITUTE, July 15, 2010, <http://www.poynter.org/column.asp?id=45&aid=186959>.

**220** STATION RESOURCE GROUP, GOVERNANCE: A FIRST REPORT (2002) (SRG, GOVERNANCE), <http://www.srg.org/governance/report1.html>; COCHRAN, RETHINKING PUBLIC MEDIA at 43-44.

**221** See, e.g., Email from Terry Clifford, Co-C.E.O., Station Resource Group (SRG), to Ellen P. Goodman, FCC (July 28, 2010) (Clifford Email 7/28/10) ("We know there are problems at many institutional licensees that consistently hold public media back. Personnel structures that are out of sync with media pay scales and do not allow for competitive hiring, union requirements designed for schools or other state agencies, bosses who place a much higher priority on the other departments they oversee, the unpredictability of new presidents and vice-presidents, and the challenge of providing a mass media community service inside of an institution whose core business is serving a very specific and limited demographic group.").

- 222 Public Radio News Directors Incorporated, PRNDI Awards, <http://www.prndi.org/prndiWinners.html> (last visited Apr. 10, 2011).
- 223 See, e.g., SRG, GOVERNANCE (identifying the characteristics of good governance for NCE licensees). See also Email from Steven Bass, Pres., Oregon Public Broadcasting, to Ellen P. Goodman, FCC (July 28, 2010) (citing examples of governance changes that significantly improved performance at Nashville Public Television, which moved from school board to community licensee, and WNYC, which moved from municipal New York City ownership to community licensee).
- 224 Clifford Email 7/28/10.
- 225 Letter from William H. Kling, Pres. and C.E.O., American Public Media, to Steven Waldman, FCC (Nov. 1, 2010).
- 226 Interview with Rod Bates, General Manager, Nebraska Educational Telecommunications Network, by Ellen P. Goodman, FCC (Feb. 21, 2011).
- 227 PUBLIC RADIO IN THE NEW NETWORK AGE at 20.
- 228 BENTON FOUND., WHAT'S GOING ON IN COMMUNITY MEDIA 9 (2007) (BENTON, WHAT'S GOING ON), available at <http://benton.org/sites/benton.org/files/CMReport.pdf>.
- 229 CPB, National Minority Consortia, <http://www.cpb.org/aboutpb/consortia.html> (last visited Apr. 10, 2011).
- 230 FREE PRESS, NEW PUBLIC MEDIA at 34–38.
- 231 PUBLIC RADIO IN THE NEW NETWORK AGE at 13.
- 232 MICHAEL P. MCCAULEY, NPR: THE TRIALS AND TRIUMPHS OF NATIONAL PUBLIC RADIO 115 (Columbia University Press) (2005) (based on the *NPR Profile 2004* from the Mediamark Research Doublebase 2003/Spring 2003/Fall 2003 MRI studies).
- 233 “Audio: Traditional Broadcast & Broadcast Online, NPR” in PEW, STATE OF NEWS MEDIA 2010.
- 234 PBS, What you Need to Know, Sept. 22, 2010, available at <http://www.pbs.org/about/corporate-information/mission>
- 235 See PBS, An Overview, July 2008, available at [www.tc.pbs.org/teacher-line/media/pdf/.../pbs\\_corporate\\_overview.pdf](http://www.tc.pbs.org/teacher-line/media/pdf/.../pbs_corporate_overview.pdf).
- 236 Email from Jason Seiken, PBS, to Ellen P. Goodman, FCC, (Sept. 2, 2010) (based on Quantcast data from May 2010, reporting an index of 118 and 141 for African-Americans visiting PBS.org and PBSkids.org, and an index of 122 and 210 for Hispanics visiting PBS.org and PBSkids.org, where 100 equals the average for U.S. web sites).
- 237 Quantcast, May 2010.
- 238 CENSUS OF JOURNALISTS IN PUBLIC RADIO AND TELEVISION, DELIVERABLE #3 at 10 (2010).
- 239 U.S. CENSUS BUREAU, 2010 CENSUS DATA, available at <http://2010.census.gov/2010census/data/index.php>. We came up with this figure by subtracting the “White alone” population count from 100 percent.
- 240 National Federation of Community Broadcasters Comments in re *FOM PN*, filed May 10, 2010 (NFCB Comments) at iv, 12.
- 241 NFCB Comments at 2, 12.
- 242 Corporation for Public Broadcasting, 47 U.S.C. Sec. 396 (6) (“it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities”); see also 47 U.S.C. Sec. 396 (8) (“public television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs”).
- 243 Association of Independents in Radio (AIR) & Jessica Clark of American University Center for Social Media Comments, *Spreading the Zing: Reimagining Public Media Through the Makers Quest 2.0*, in re *FOM PN*, filed May 11, 2010 (*Spreading the Zing*) at 1.
- 244 *Public Service Media 2.0*, AND COMMUNICATIONS FOR ALL at 270 (citing Chris Johnson, *Federal Support of Public Broadcasting: Not Quite What LBJ Had in Mind*, 8 COMMLAW CONSPPECTUS 135, 138–40 (2000) (criticizing public television for political bias and a failure to garner a larger audience); Howard White, *Fine Tuning the Federal Government’s Role in Public Broadcasting*, 46 FED. COMM. L.J. 491, 501–03, 513 (1994)).
- 245 *Spreading the Zing* at 1.
- 246 *Spreading the Zing* at 2. The Center for Social Media has said that these methods can only be developed with iterative and broad stakeholder input. It recommends that the Commission help develop standards for use by federal agencies involved in public service media work.
- Public service media entities are currently working with Silicon Valley technologists to develop a dashboard that would map the transmission of public service media content, via social and other networks in the cloud. Some believe metrics should go farther to capture what further steps users take with content to measure engagement.
- 247 JESSICA CLARK & TRACY VAN SLYKE, INVESTING IN IMPACT: MEDIA SUMMITS REVEAL PRESSING NEEDS, TOOLS FOR EVALUATING PUBLIC INTEREST MEDIA 1(2010), available at [http://www.centerforsocialmedia.org/sites/default/files/documents/pages/Investing\\_in\\_Impact.pdf](http://www.centerforsocialmedia.org/sites/default/files/documents/pages/Investing_in_Impact.pdf) (quoting Vince Lampona, *Listeners Take Action Based on What They Hear on NPR Stations*, Go Figure Blog (April 1, 2011, 9:00 AM), <http://www.npr.org/blogs/gofigure/2010/03/31/125422530/listeners-take-action-based-on-what-they-hear-on-npr/>); See also Media Consortium Comments in re *FOM PN*, filed May 6, 2010, at 1.
- 248 CPB, Facing the Mortgage Financial Crisis, [http://www.fmcimpact.org/?page\\_id=63](http://www.fmcimpact.org/?page_id=63) (last visited Feb. 17, 2011).
- 249 CHARLES P. GOLDFARB, CONGRESSIONAL RESEARCH SERVICE, PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CABLE TELEVISION CHANNELS: ISSUES FOR CONGRESS 1 (2008), available at <http://www.millervaneaton.com/00142081.pdf> (PEG CHANNELS: ISSUES FOR CONGRESS); American Community Television, Inc. Comments in re *FOM PN*, filed May 7, 2010 (Amer. Community TV Comments) at i, 3.
- 250 Email from Paul Giguere, Pres., NAPAN/President and C.E.O., The Connecticut Network, to Simon Banyai, FCC (Sept. 14, 2010) (Giguere Email 9/14/10). NAPAN identifies 16 states as having an “independent” SPAN in the sense that a distinct operating unit manages the network: Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Michigan, Montana, Nebraska, Ohio, Oregon, Pennsylvania, South Carolina, Washington, and Wisconsin. NAPAN identifies 12 of these SPANs as receiving state funding. These 12 SPANs are located in Alaska, Arizona, Colorado, Connecticut, Florida, Illinois, Montana, Nebraska, Ohio, Oregon, South Carolina, and Washington. *Id.*
- Research by the FCC staff found that, as of December 20, 2010, 23 states and the District of Columbia—24 jurisdictions overall—broadcast/multicast or cablecast varying amounts of live coverage of their branches of government—with a primary focus on the legislative branch. In addition to the District of Columbia, the states in which such services



are provided are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Washington, and Wisconsin. As noted above, NAPAN counts entities in only 16 of these states as SPANs.

- 251 National Association of Public Affairs Networks Comments in re *FOM PN*, filed June 30, 2010 (NAPAN Comments) at 14.
- 252 Interview with Paul Giguere by FCC staff (Sept. 7, 2010) (Giguere Interview 9/7/10).
- 253 See, e.g., Goodman, *Public Service Media 2.0*, AND COMMUNICATIONS FOR ALL at 270; Goodman & Chen, Digital Public Media Networks (proposing amendment of Public Broadcasting Act to become Public Media Act); DOWNIE & SCHUDSON, RECONSTRUCTION OF AMERICAN JOURNALISM; COCHRAN, RETHINKING PUBLIC MEDIA; COLL, REBOOT: AN OPEN LETTER TO THE FCC at 33.
- 254 Testimony of Dr. Ernest Wilson III, Chair, CPB, Workshop on the Future of Media & Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010), Tr. at 32:8-17, available at [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=5272966f-441c-48dd-9c66-a6c8b1f8cc5d&groupId=101236](http://reboot.fcc.gov/c/document_library/get_file?uuid=5272966f-441c-48dd-9c66-a6c8b1f8cc5d&groupId=101236).

## 7 PEG Access

- 1 N.E. FELDMAN, CABLE TELEVISION: OPPORTUNITIES AND PROBLEMS IN LOCAL PROGRAM ORIGINATION 10 (1970) (FELDMAN, CABLE TELEVISION), available at [www.rand.org/pubs/reports/2006/R570.pdf](http://www.rand.org/pubs/reports/2006/R570.pdf).
- 2 FELDMAN, CABLE TELEVISION at 28-30.
- 3 Donna L. King & Christopher Mele, *Making Public Access Television: Community Participation, Media Literacy and the Public Sphere*, 43 J. OF BROADCASTING & ELECTRONIC MEDIA 608 (1999) (*Making Public Access Television*).
- 4 LAURA R. LINDER, PUBLIC ACCESS TELEVISION: AMERICA'S ELECTRONIC SOAPBOX 5 (Praeger) (1999) (LINDER, PUBLIC ACCESS TELEVISION).
- 5 LINDER, PUBLIC ACCESS TELEVISION at 5.; *Making Public Access Television*.
- 6 *Denver Area Educational Telecommunications Consortium v. FCC*, 518 U.S. 727, 788 (1996), citing Wally Mueller, Note, *Controversial Programming on Cable Television's Public Access Channels: The Limits of Governmental Response*, 38 DEPAUL L. REV. 1051, 1061 (1989).
- 7 PATRICIA AUFDERHEIDE, THE DAILY PLANET: A CRITIC ON THE CAPITALIST CULTURE BEAT 121-72 (Univ. of Minnesota Press) (2000) (AUFDERHEIDE, THE DAILY PLANET); Email from Bunnie Riedel, Exec. Dir., Alliance for Community Media to Christopher Ali, FCC (June 15, 2010).
- 8 PEG CHANNELS: ISSUES FOR CONGRESS at 1.
- 9 Alliance for Community Media Comments in re *FOM PN*, filed May 21, 2010 (Alliance for Community Media Comments), at 14-17.
- 10 Interview with Rob McCausland, Dir., Information and Organizing Services, Alliance for Community Media, by Ellen P. Goodman, FCC (June 24, 2010).
- 11 Mapping Access, <http://mappingaccess.org/> (last visited Apr. 10, 2011). Alabama does report two government access channels in Brewton and Gadsden, and Mississippi reports one, TV23, in Vicksburg.
- 12 Amer. Community TV Comments at 3, n.1 (explaining that because Massachusetts state law requires most of the franchises be used for PEG, there are about 106 access centers and 250 access channels in the state).
- 13 See, e.g., Letter from John A. Rocco, Pres., American Community Television, Inc., to Marlene Dortch, Secretary, FCC, MB Docket No. 09-13 (filed Sept. 28, 2010).
- 14 Amer. Community TV Comments at 3 (including both capital and operating expenses, such as equipment and salaries, into the total budget).
- 15 See, e.g., LINDER, PUBLIC ACCESS TELEVISION at 35 ("Most often public access television is managed in one of three ways: by the local government, by the cable operator, or by a nonprofit agency created for that purpose."). The governing New York State law, for example, requires that all "cable television franchisee[s] ... designate channel capacity for PEG access" and defines a "public access channel" as "a channel designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis" provided prospective programmers meet certain competency and eligibility requirements. N.Y. COMP.CODES R. & REGS. tit. 9, §§ 595.4(b), 595.4(a)(1).
- 16 H.R. REP. NO. 98-934, as reprinted in 1984 U.S.C.C.A.N. 4655, 4667 (1984).
- 17 Amer. Community TV Comments at 3-5.
- 18 Alliance for Community Media Comments at 15.
- 19 In fact, Salem is reportedly the largest state capital community without local broadcast TV. Capital Community Television Comments in re *FOM PN*, filed May 5, 2010 (Capital Community TV Comments) at 2.
- 20 Capital Community TV Comments at 7.
- 21 Interview with Linda K. Ain, The Law Firm of Linda K. Ain (for Pikeville, KY), by FCC Staff (July 13, 2010).
- 22 Alliance for Communications Democracy Comments in re *FOM PN*, filed April 23, 2010 (Alliance for Communications Democracy Comments) at 4.
- 23 See BENTON FOUNDATION 17.
- 24 Saint Paul Neighborhood Network Comments in re *FOM PN*, filed May 7, 2010 (St. Paul Network Comments) at 9.
- 25 Cambridge Community Television Comments in re *FOM PN*, filed Apr. 28, 2010 at 2.
- 26 Media Bridges Cincinnati, Inc. Comments in re *FOM PN*, filed May 6, 2010 (Media Bridges Cincinnati Comments) at 3.
- 27 Amer. Community TV Comments at 7.
- 28 Amer. Community TV Comments at 20; Interview with Laurie Cirivello, Exec. Dir., Grand Rapids Community Media Center, by FCC staff (July 27, 2010) (Cirivello Interview 7/27/10).
- 29 Cirivello Interview 7/27/10; Reentry Resource Center, <http://www.reentryhelp.org/> (last visited Feb. 11, 2010). Programs such as "Verified Resume" teach urban teens video production skills and "soft skills" such as responsibility, working with cultural diversity, acquiring and evaluating information, creativity, listening, and teamwork.
- 30 BENTON, WHAT'S GOING ON at 23; see also Grand Rapids Community Media Center, What is MoLLIE?, <http://www.grcmc.org/education/mollie.php> (last visited Feb. 11, 2010).
- 31 Media Bridges Cincinnati Comments at 1.
- 32 Email from Tom Bishop, Exec. Dir., Media Bridges Cincinnati, Inc., to Christopher Ali, FCC staff (July 29, 2010) (Bishop Email 7/29/10).
- 33 Alliance for Communications Democracy Comments at 2.

- 34 St. Paul Network Comments at 5; see also BENTON, WHAT'S GOING ON at 17.
- 35 Alliance for Communications Democracy Comments at 8.
- 36 Lewisboro (NY) Community Television Comments in re *FOM PN*, filed May 7, 2010, at 5.
- 37 Amer. Community TV Comments at 9.
- 38 Josh Goodman, *Unscripted Ending: The Picture Gets Blurry for Public Access Television*, GOVERNING, Jan. 31, 2008, <http://www.governing.com/topics/technology/Unscripted-Ending.html> (*Unscripted Ending*); see also *Making Public Access Television* at 604.
- 39 See, e.g., LINDER, PUBLIC ACCESS TELEVISION at 11. The Klan subsequently sued the city for violating the First Amendment, with the court ruling in their favor. See *Missouri Knights of the Ku Klux Klan v. Kansas City, Mo.*, 723 F.Supp. 1347 (W.D. Mo. 1989).
- 40 Alliance for Communications Democracy Comments at 6. Many public access operations across the country require potential producers to attend courses and pay membership dues in order to have their programs aired by the station. While public access programming is protected under the First Amendment, most PEG programmers require that programs adhere to local standards and that adult material is properly labeled and can be scheduled from 10 p.m. to 6 a.m. and meet technical requirements such as tape or DVD formatting, length, sound quality, etc.
- 41 These bulletin boards provide information on such topics as school closings and lunch menus; local transportation alerts; health screenings; local resources for assistance (such as food banks and senior services); jobs postings; nonprofit services and events; government meeting schedules; recycling; and community sponsored events. Amer. Community TV Comments at 6–7.
- 42 For instance, the Charlotte, NC access center airs the local Radio Reading Service during its bulletin board programming from 2 p.m. to 3:30 p.m. on weekdays. Amer. Community TV Comments at 19.
- 43 See, e.g., LINDER, PUBLIC ACCESS TELEVISION at 37.
- 44 Amer. Community TV Comments at 6–7.
- 45 Alliance for Communications Democracy Comments at 5.
- 46 City of Dallas, Texas, General Fund: Statement of Revenues and Expenditures 2009-2010, available at <http://www.dallascityhall.com/Budget/adopted0910/FinancialSummaries.pdf>; Prepared Testimony of Carole Post, Commissioner, Department of Information Technology and Telecommunications, New York City, before the New York City Council Committees on Land Use and Technology (Mar. 11, 2010), at 3, available at [http://www.nyc.gov/html/doitt/downloads/pdf/doitt\\_prelim\\_budget\\_testimony\\_fy2011.pdf](http://www.nyc.gov/html/doitt/downloads/pdf/doitt_prelim_budget_testimony_fy2011.pdf). These fees include fees from other retail services such as telephone and gas and electricity. General franchise fees were projected to raise more than \$500 million in FY 2008 among Texas's 10 largest cities. BILL PEACOCK, TEXAS POLICY FOUND., FRANCHISE FEES: 2009-2010 LEGISLATOR'S GUIDE TO THE ISSUES 1 (2008), available at <http://www.texaspolicy.com/pdf/2008-LegeEntry-FranchiseFees-bp.pdf>.
- 47 47 U.S.C. § 542(h)(2)(i) (“Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section.”).
- 48 Alliance for Communications Democracy Comments at 11 (describing reduced support for public access from franchise fees, which can go instead to cities).
- 49 City and County of San Francisco Comments in re *FOM PN*, filed May 7, 2010 (San Francisco Comments) at 6–7; The Digital Infrastructure and Video Competition Act of 2006, CAL. PUB. UTIL. CODE § 5800 *et seq.* (2009). The Act codified local government authority to require operators to provide PEG channels and support fees, but adds no provisions for funding operating costs, such as salaries and benefits, and states only that those fees must be used in a way “consistent with federal law.” CAL. PUB. UTIL. CODE § 5870(n). The provision thus reduces franchise fees only for capital costs, such as facilities and equipment.
- 50 Email from Jennifer Gilomen, Dir., Public Media Strategies, Bay Area Video Coalition, to Ellen P. Goodman, FCC (July 1, 2010). The number is based on a revenue of \$700,000 for capital costs and \$170,000 for operating costs to public access, out of roughly \$10 to \$12 million of franchise fees per year to the City of San Francisco.
- 51 Alliance for Communications Democracy Comments at 12.
- 52 See, e.g., Reed Johnson, *Cable Flips Channel on Public Access TV*, L.A. TIMES, Jan. 5, 2009, <http://articles.latimes.com/2009/jan/05/entertainment/et-publicaccess5> (*Cable Flips Channel*) (reporting the closing of 12 public access studios in Los Angeles as a bellwether of future PEG closings across the nation); *Unscripted Ending* (stating that in the aftermath of statewide franchises PEG channels are losing funding, studio space, or being shut down altogether, and adding that the future of public access TV as “more uncertain... than at any time since its inception in the 1970s”).
- 53 THE BUSKE GROUP, ANALYSIS OF RECENT PEG ACCESS CENTER CLOSURES, FUNDING CUTBACKS AND RELATED THREATS 2 (2011) (prepared for the Alliance for Communications Democracy), available at [http://theacd.org/uploaded\\_docs/2011\\_PEG\\_Access\\_study.pdf](http://theacd.org/uploaded_docs/2011_PEG_Access_study.pdf).
- 54 Amer. Community TV Comments at 15.
- 55 The Digital Infrastructure and Video Competition Act of 2006, CAL. PUB. UTIL. CODE § 5800 (2009); *Cable Flips Channel*.
- 56 Alliance for Communications Democracy Comments at 13.
- 57 PEG CHANNELS: ISSUES FOR CONGRESS at 6.
- 58 *Petition for Declaratory Ruling of the Alliance for Community Media et al.*, MB Docket No. 09-13 (filed Jan. 30, 2009), at 11–12.
- 59 Letter from James K. Smith, Assistant Vice President, Federal Regulatory, AT7T, to Marlene Dortch, FCC, June 11, 2009.
- 60 Amer. Community TV Comments at 10.
- 61 In January 2008, several Michigan communities filed a lawsuit against Comcast for its plan to move PEG channels from analog basic to digital basic. The parties settled the lawsuit, and Comcast will continue delivering PEG channels in Michigan in analog format on its basic cable package until the system goes all digital, or a particular community agrees to allow PEG channels to be provided in a digital programming tier. See Motion to Withdraw Petition For Declaratory Ruling of Dearborn, Michigan, *et al.*, in *Petition for Declaratory Ruling Regarding Primary Jurisdiction Referral in City of Dearborn et al. v. Comcast of Michigan III, Inc et al.*, MB Docket No. 09-13, filed Feb. 24, 2010, at 1–2.
- 62 Email from Jan Schaffer, Exec. Dir., J-lab, to Ellen P. Goodman, FCC (Nov. 2, 2010).
- 63 In Georgia, Texas and Michigan, PEG channels are required to provide at least eight hours of non-repeat programming content daily. PEG operators are concerned that cable operators will seize on these requirements to reallocate PEG channels and withhold funding. Indeed, in Texas, with the reduction of funding, some PEG channels “have dipped below the 8

- hour programming requirement and were taken off the air.” For instance, in 2006 Time Warner stopped airing San Antonio Public Access because the channel could no longer meet the 8-hour non-repeat daily programming requirement. CTR. FOR SCIENCE TECHNOLOGY & PUBLIC POLICY, HUBERT H. HUMPHREY INSTITUTE OF PUBLIC AFFAIRS, UNIV. OF MINNESOTA, STATEWIDE VIDEO FRANCHISING LEGISLATION: A COMPARATIVE STUDY OF OUTCOMES IN TEXAS, CALIFORNIA AND MICHIGAN 13, 21 (2009).
- 64** See BENTON, WHAT’S GOING ON at 12, 21 (noting the strategy of collaboration as a way to engage the breadth and diversity of a local community); see also RICHARD SOMERSET-WARD, BENTON FOUND., CONNECTING COMMUNITIES 18 (2000) (CONNECTING COMMUNITIES), available at [http://www.benton.org/sites/benton.org/files/archive\\_files/publibrary/pubmedia.pdf](http://www.benton.org/sites/benton.org/files/archive_files/publibrary/pubmedia.pdf) (noting how alliances between community media providers and community institutions can create platforms of service to their communities).
- 65** Media Bridges Cincinnati Comments at 4.
- 66** Letter from Tom Glaisyer and Jessica Clark to Steven Waldman, FCC (October, 2010).
- 67** Interview with Gretjen Clausing, Exec. Dir., PhillyCAM by FCC staff (Aug. 6, 2010); Bishop Email 7/29/10; Cirivello Interview 7/27/10; Email from Bunnie Riedel, Exec. Dir., American Community Television to FCC (July 8, 2010); Interview with Rob McCausland, Dir., Information and Organizing Svcs., Alliance for Community Media, by FCC staff (June 24, 2010); Interviews with Bunnie Riedel; John Rocco, Exec. Dir., TV Access21 (Charlotte, NC); Mauro DePasquale, Exec. Dir. and Station Manager, WCCA-TV (Worcester, MA); Kathie Pohl, Director of Marketing and Community Relations Manager, Mentor Channel (Mentor, OH); Dennis Riggs, Dir., HEC-TV (St. Louis, MO); Barry Verrill, Exec. Dir., KLTW (Cowlitz County, WA); and Frank Bluestein, Exec. Producer, GHS-TV (Germantown, TN) by Christopher Ali, FCC (May 20, 2010).
- 68** See, e.g., MARTHA FUENTES-BAUTISTA, BEYOND TELEVISION: THE DIGITAL TRANSITION OF PUBLIC ACCESS (2009); *Unscripted Ending*; PEG CHANNELS: ISSUES FOR CONGRESS; BENTON, WHAT’S GOING ON; S. Braman, *The Ideal vs. the Real in Media Localism: Regulatory Implications*, 12 COMM. LAW & POLICY 231 (2007); Kevin Howley, *Manhattan Neighborhood Network: Community Access Television and the Public Sphere in the 1990s*, 25 HISTORICAL JOURNAL OF FILM, RADIO & TELEVISION 119 (2005); Hillel Nossek, *Active Research as a Bridge between Theory and Practice: A Suggested Model for Playing an Active Role in Organizing Community Television as a Tool of Empowerment in the Community*, 28 EUROPEAN J. OF COMM. RESEARCH 305 (Sept. 2003); Elinor Rennie, *“Trespassers are Welcome”: Access and Community Television Policy*, 10 JAVNOST-THE PUBLIC 49 (2003); Thomas Werner, *A Round “PEG” for a Round Hole: Advocating for the Town of Oyster Bay’s Public Access Channel Restrictions*, 56 FED. COMM. L. J. 239 (2003); Anita Gallucci, *Making the Most of the Cable Television Franchise Renewal Process*, THE MUNICIPALITY 122, 126 (2002); Seung Kwan Ryu, *Reassessing Cable Access Channel Requirements Under Deregulation*, 24 COMM. & THE LAW Sept. 2002 at 47; John W. Higgins, *Community Television and the Vision of Media Literacy, Social Action and Empowerment*, 43 J. OF BROADCASTING & ELECTRONIC MEDIA 624 (1999); Randy Jacobs & William Yousman, *Understanding Cable Television Community Access Viewership*, 16 COMM. RESEARCH REPORTS 305 (1999); *Making Public Access Television*.
- 69** Grand Rapids Community Media Center, The Rapidian, <http://therapidian.org/about> (last visited Feb. 15, 2011).
- 70** Cirivello Interview 7/27/10.
- 71** Bay Area Video Coalition (BAVC), Proposal for Renaissance Journalism Center’s Media Greenhouse Grant Program: n3 (neighborhood news network), Jan. 8, 2010 (Neighborhood News Network), at 2.
- 72** Neighborhood News Network at 2.
- 73** St. Paul Network Comments at 3.
- 74** Alliance for Communications Democracy Comments at 2.
- 75** Interview with Norris Chumley, Chair, and Dan Coughlin, Exec. Dir., Manhattan Neighborhood Network, by Steven Waldman, FCC (Sept. 28, 2010).
- 76** Alliance for Community Media Comments at 13.
- 77** J.H. SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY: THE GROWTH OF GOVERNMENT ACCESS TV 4, 19 (1998) (SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY), <http://www.jhsnider.net/MyWritings/98-04-MPSA-NewMediaAndDemocraticAccountability-GrowthOfGovernmentAccessTV.pdf>.
- 78** SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY at 1.
- 79** NAPAN Comments at 6; Jessica Durkin, Tom Glaisyer & Kara Hadge, AN INFORMATION COMMUNITY CASE STUDY: SEATTLE 2.1 (Media Policy Initiative, New America Found.) (2010), available at <http://mediapolicy.newamerica.net/sites/newamerica.net/files/policydocs/SeattleCaseStudy.pdf> (SEATTLE CASE STUDY).
- 80** SEATTLE CASE STUDY.
- 81** Email from Bunnie Riedel, Exec. Dir., American Community Television to Christopher Ali, FCC (July 23, 2010); see also Alliance for Community Media Comments at 4.
- 82** SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY at 21–22.
- 83** Howard Troxler, *With Less Cable Access, Door to Open Government Closes*, ST. PETERSBURG TIMES, Jan. 3, 2006, [http://www.sptimes.com/2006/01/03/Columns/With\\_less\\_cable\\_access.shtml](http://www.sptimes.com/2006/01/03/Columns/With_less_cable_access.shtml) (*With Less Cable Access*).
- 84** *With Less Cable Access*.
- 85** SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY at 21.
- 86** SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY at 19.
- 87** SNIDER, NEW MEDIA AND DEMOCRATIC ACCOUNTABILITY at 33 n.10.
- 88** Alliance for Communications Democracy Comments at 12.
- 89** Alliance for Communications Democracy Comments at 12.
- 90** San Francisco Comments at 8.

## 8 SPANs

- 1** *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 710 n.4 (2009).
- 2** See, e.g., David Corn, *Happy Birthday, C-SPAN!*, THE NATION, Mar. 11, 2004, <http://www.thenation.com/blog/156075/happy-birthday-c-span>.
- 3** C-SPAN, Frequently Asked Questions, [http://legacy.c-span.org/about/viewer\\_info/faq.asp?code=ABOUT#funded](http://legacy.c-span.org/about/viewer_info/faq.asp?code=ABOUT#funded) (last visited May 24, 2011).
- 4** PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AMERICANS SPEND-

- ING MORE TIME FOLLOWING THE NEWS 87 (2010), available at <http://people-press.org/files/legacy-pdf/652.pdf>.
- 5 C-SPAN, *C-SPAN at 30: Who's Watching? New Survey Details a Politically Active Audience Estimated at more than 39 Million Adults* (press release), Mar. 18, 2009, <http://legacy.c-span.org/30Years/media-release.aspx>. C-SPAN's mission from the beginning has been simply stated: "To provide C-SPAN's audience access to the live gavel-to-gavel proceedings of the U.S. House of Representatives and the U.S. Senate, and to other forums where public policy is discussed, debated and decided—all without editing, commentary or analysis and with a balanced presentation of points of view." C-SPAN, Company/Corporate Information: The C-SPAN Mission, <http://legacy.c-span.org/about/company/index.asp> (last visited Mar. 15, 2011).
  - 6 American Historical Ass'n, 2004 Theodore Roosevelt–Woodrow Wilson Award Winner: Brian Lamb, C-SPAN, Aug. 13, 2007, <http://www.historians.org/prizes/AWARDED/RooseveltWilsonWinner/04Lamb.cfm>.
  - 7 Research by FCC staff found that, as of December 20, 2010, 23 states and the District of Columbia—24 jurisdictions overall—broadcast/multicast or cablecast varying amounts of live coverage of their branches of government—with a primary focus on the legislative branch. In addition to the District of Columbia, the states in which such services are provided are: Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Washington, and Wisconsin. As noted above, NAPAN counts entities in only 16 of these states as SPANs. (Research by FOM staff); Email from Paul Giguere, Pres., NAPAN/Pres. and C.E.O., The Connecticut Network, to Simon Banyai, FCC (Sept. 14, 2010) (Giguere Email 9/14/10). NAPAN identifies 16 states as having an "independent" SPAN in the sense that a distinct operating unit manages the network: Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Michigan, Montana, Nebraska, Ohio, Oregon, Pennsylvania, South Carolina, Washington, and Wisconsin. *Id.*
  - 8 National Conference of State Legislatures, Broadcasts and Webcasts of Legislative Floor Proceedings and Committee Hearings, <http://www.ncsl.org/Default.aspx?TabId=13479> (last visited Mar. 15, 2011).
  - 9 Research by FOM staff.
  - 10 Giguere Email 9/14/10.
  - 11 Meeting of National Association of Public Affairs Networks staff with FCC staff (Nov. 4, 2010) (NAPAN Meeting 11/4/10).
  - 12 Connecticut Network, *Supreme Court Arguments on Rowlands Subpoena to Air Live on Connecticut Network* (press release), June 17, 2004, [http://www.ctn.state.ct.us/press\\_2004.asp?pressID=12](http://www.ctn.state.ct.us/press_2004.asp?pressID=12) (last visited Feb. 17, 2011).
  - 13 As a result of these efforts, the base was kept open. See State of Connecticut, *BRAC Commission Votes 8/24/05 to Keep Sub Base Open* (press release), Aug. 24, 2005, <http://www.ct.gov/governorrell/cwp/view.asp?a=1809&q=292820>. CT-N has been honored with the 2007 Helen M. Loy Freedom of Information Award, the 2007 national Sunshine Award from the Society of Professional Journalists and the 2009 Open Government Award from the Connecticut Foundation for Open Government.
  - 14 NAPAN Meeting 11/4/10.
  - 15 Wisconsin, 2009 Assembly Joint Resolution 76, at 2, available at [legis.wisconsin.gov/2009/data/AJR-76.pdf](http://legis.wisconsin.gov/2009/data/AJR-76.pdf).
  - 16 See Washington State Public Affairs TV Network, Engaged: Students Becoming Citizens, <http://www.tvw.org/modules/Articles/engaged.cfm?bhcp=1> (last visited Feb. 17, 2010).
  - 17 Editorial, *TVW: Window to Washington*, THE SEATTLE TIMES, July 30, 2006, [http://seattletimes.nwsourc.com/html/editorialsopinion/2003159673\\_tvwed30.html](http://seattletimes.nwsourc.com/html/editorialsopinion/2003159673_tvwed30.html).
  - 18 NAPAN Meeting 11/4/10.
  - 19 NAPAN Meeting 11/4/10.
  - 20 Email from Christopher Long, President and CEO, WisconsinEye, to FCC staff (Sept. 16, 2010) (WisconsinEye Email 9/16/10).
  - 21 Interview with Brian Lamb, Founder, C-SPAN by Steven Waldman, FCC (June 18, 2010) (Lamb Interview 6/18/10).
  - 22 Giguere Email 9/14/10.
  - 23 Giguere Email 9/14/10 (the 12 SPANs identified are in Arizona, Alaska, Colorado, Connecticut, Florida, Illinois, Montana, Nebraska, Ohio, Oregon, South Carolina, and Washington).
  - 24 NAPAN Meeting 11/4/10.
  - 25 National Association of Public Affairs Networks Comments in re *FOM PN*, filed June 30, 2010 (NAPAN Comments) at 4, 15.
  - 26 NAPAN Comments at 4.
  - 27 NAPAN Comments at 15.
  - 28 NAPAN Comments at 4.
  - 29 NAPAN Comments at 16.
  - 30 NAPAN Comments at 4.
  - 31 Interview with Lois Ewen, Office Manager, MGTV, by FCC staff (Sept. 9, 2010).
  - 32 Interview with Dan Shellenbarger, Exec. Dir., The Ohio Channel, and Jerry Wareham, Pres. and C.E.O., ideastream/WVIZ by FCC staff (Sept. 10, 2010) (Shellenbarger/Wareham Interview).
  - 33 Presently, ideastream—a multimedia partnership between Cleveland public television (WVIZ) and public radio (WCPN)—has been chosen by other Ohio PBS affiliates to administer these contracts in partnership with Ohio Government Telecommunication, the parent company of the Ohio Channel. Shellenbarger/Wareham Interview. See also Ideastream, [http://www.ideastream.org/ideastream/about/about\\_ideastream/](http://www.ideastream.org/ideastream/about/about_ideastream/) (last visited Feb. 17, 2011).
  - 34 Shellenbarger/Wareham Interview.
  - 35 NAPAN Comments at 16.
  - 36 WisconsinEye Email 9/16/10.
  - 37 Email from Christopher Long, President and CEO, WisconsinEye, to FCC staff (Nov. 23, 2010) (WisconsinEye Email 11/23/10).
  - 38 WisconsinEye Email 11/23/10; WisconsinEye Email 9/16/10.
  - 39 NAPAN Comments at 15; see also 360 North, About 360 North, <http://www.360north.org/about.php> (last visited Feb. 17, 2011).
  - 40 NAPAN Comments at 15.
  - 41 WisconsinEye Email 9/16/10.
  - 42 On July 7, 2005 at 2:00 am, the Pennsylvania General Assembly passed pay increases for state lawmakers, judges, and top executive-branch officials in a vote without public review or commentary. See Wikipedia, 2005 Pennsylvania General Assembly Pay Raise Controversy, [http://en.wikipedia.org/wiki/2005\\_Pennsylvania\\_General\\_Assembly\\_pay\\_](http://en.wikipedia.org/wiki/2005_Pennsylvania_General_Assembly_pay_)

raise\_controversy (last visited Feb. 17, 2011). In the ensuing public controversy, one state judge's retention and several state legislators' primary elections were affected, and on November 16, 2005, Governor Rendell signed a repeal of the pay raise after a near unanimous vote for repeal. See *id.*

- 43 Interview with Brian Lockman, Pres. and C.E.O., Pennsylvania Cable Network by FCC staff (Nov. 19, 2010).
- 44 Interview with Paul Giguere by FCC staff (Sept. 10, 2010).
- 45 Email from Paul Giguere to Simon Banyai, FCC (Nov. 18, 2010) (Giguere Email 11/18/10).
- 46 Giguere Email 9/14/10. NAPAN identifies 16 states as having an "independent" SPAN in the sense that a distinct operating unit manages the network. The 16 SPANs identified as independent are: Arizona, Alaska, California, Colorado, Connecticut, Florida, Illinois, Michigan, Montana, Nebraska, Ohio, Pennsylvania, Oregon, South Carolina, Washington, and Wisconsin.
- 47 Meeting with NAPAN members with FCC staff (June 7, 2010).
- 48 Giguere Email 11/18/10.
- 49 Giguere Email 9/14/10.
- 50 47 U.S.C. § 335(b).
- 51 47 C.F.R. § 25.701(f).
- 52 47 C.F.R. § 25.701(f).
- 53 Giguere Email 11/18/10.
- 54 NAPAN Meeting 11/4/10.
- 55 NAPAN Meeting 11/4/10.
- 56 WisconsinEye Email 9/16/10.
- 57 Email from Paul Giguere to Simon Banyai, FCC (Sept. 7, 2010).

## 9 Satellite

- 1 See *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligation*, Second Order on Reconsideration of First Report & Order, 19 FCC Rcd 5647 (2004).
- 2 *Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, Report & Order, 13 FCC Rcd 23254, 23285 (1998) ("We choose four percent, instead of a higher number, because we find it in the public interest to put the minimum burden on this industry that currently has relatively little market power."). The FCC further added that "imposing the maximum set-aside percentage now might hinder DBS in developing as a viable competitor in the MVPD market and that this factor outweighs possible benefits in establishing a higher percentage." *Id.*
- 3 See 47 U.S.C. § 335(b); 47 C.F.R. § 25.701(f)(2).
- 4 Letter from Jeffrey Blum, Sr. V.P. and Deputy Gen. Counsel, DISH Network L.L.C. and Stacy Fuller, V.P., Regulatory Affairs, DIRECTV, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 10-25 (filed Aug. 19, 2010) (DISH and DIRECTV *Ex Parte* 8/19/10), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020709221>.
- 5 DISH and DIRECTV *Ex Parte* 8/19/10.
- 6 DISH and DIRECTV *Ex Parte* 8/19/10.
- 7 For example, in addition to Almaxvision Hispanic Network, Brigham Young University Channel (BYU-TV), and the Catholic Eternal World Television Network (EWTN), Dish Network also carries self-designated Christian channels such as Christian Television Network, Kids & Teen Television, Three Angels Broadcasting Network, and Trinity Broadcasting Network. DIRECTV carries many of the same programmers, as well as World Harvest Television, National Religious Broadcasters, The Word, Word of God Fellowship, GEM TV, the Hope Channel, and Jewish Life TV. DISH and DIRECTV *Ex Parte* 8/19/10.
- 8 Brigham Young University, BYUtv, <http://www.byutv.org/> (last visited Feb. 17, 2011); Eternal World Television Network, <http://www.ewtn.com/> (last visited Feb. 17, 2011).
- 9 OnceTV México, [http://www.oncemexico.tv/oncemexico/i\\_index.php](http://www.oncemexico.tv/oncemexico/i_index.php) (OnceTV México) (last visited Feb. 17, 2011).
- 10 OnceTV México.
- 11 DISH Network, English Packages, <http://www.dishnetwork.com/packages/channel.aspx?channel=52107> (last visited Feb. 17, 2011).
- 12 Florida Education Channel, <http://www.fec.tv/> (last visited Feb. 17, 2011).
- 13 Northern Arizona Univ., University House, <http://extended.nau.edu/TelevisionServices.aspx> (last visited Feb. 18, 2011). Similarly, the University of California Channel offers programming on "a broad spectrum of subjects of interest to a general audience including science, health and medicine, public affairs, humanities, arts and music, education issues and even gardening and agriculture." Univ. of California, University of California Television, <http://www.ucltv.tv/about/> (last visited Feb. 18, 2011).
- 14 *PRISA to Take Major Stake in V-me Media, Inc.: World's Largest Spanish-Language Media Company Joins With One of The Biggest US Hispanic Networks*, BLOOMBERG, Oct. 20, 2009, <http://www.bloomberg.com/apps/news?pid=conewsstory&tkr=PRS%3ASM&sid=alqizMQHboyY>.
- 15 V-me, [http://www.vmetv.com/english\\_info](http://www.vmetv.com/english_info) (last visited Feb. 18, 2011).
- 16 CoLours TV, <http://colourstv.org/> (last visited Feb. 18, 2011).
- 17 Free Speech TV, <http://www.freespeech.org/> (last visited Feb. 18, 2011).
- 18 Link TV, <http://www.linktv.org/> (last visited Feb. 18, 2011).
- 19 MHz Networks, <http://www.mhznetworks.org/mhzworldview/programming/> (last visited Feb. 18, 2011).
- 20 DISH Network, Channels & Packages, <http://www.dishnetwork.com/downloads/Channel-Lineup/StandardHDChannelGuide.pdf> (last visited Feb. 18, 2011).
- 21 DIRECTV, The Guide, <http://www.directv.com/entertainment/guide> (last visited Feb. 18, 2011).
- 22 These included God TV, El Sembrador Ministries, TCT Ministries, TV Japan (NHK) and Russia Today. See DISH and DIRECTV *Ex Parte* 8/19/10.
- 23 See DISH and DIRECTV *Ex Parte* 8/19/10.
- 24 "Ongoing" contracts were awarded only to those programmers who had been programming on Dish Network since 1996. These include only C-SPAN and NASA TV. See DISH and DIRECTV *Ex Parte* 8/19/10, Appendix A, 3.
- 25 Prepared Testimony, Jose Luis Rodriguez, Founder and C.E.O., Hispanic Information and Telecommunications Network, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010)

(Rodriguez Testimony), at 2, *available at* <http://reboot.fcc.gov/futureof-media/public-and-other-noncommercial-media-in-the-digital-era>.

- 26 American University Comments, at 7–8 (*citing* AUFDERHEIDE, THE DAILY PLANET at 99–172).
- 27 Rodriguez Testimony at 1.
- 28 DISH and DIRECTV *Ex Parte* 8/19/10 at 1, 2.
- 29 DISH and DIRECTV *Ex Parte* 8/19/10 at 3.
- 30 *Implementation of the Satellite Home Viewer Improvement Act of 1999*, Report and Order, 16 FCC Rcd 1918, 1926 (2000).
- 31 See DISH Network, [www.dishnetwork.com](http://www.dishnetwork.com) and DirecTV, [www.directv.com](http://www.directv.com).
- 32 Operators send up new satellites to expand capacity or to replace old ones. DirecTV has launched thirteen satellites since its inception in 1993 at the rate of one satellite every year or two. The newest DirecTV satellite, “DIRECTV 12,” was launched on December 12th, 2009. DISH Network has launched a total of 12 satellites, starting with “EchoStar 1” on December 28, 1995. Like DirecTV, DISH Network has launched one satellite every year or two, with its latest, EchoStar14, having launched on March 20, 2010. Data provided by International Bureau, FCC.
- 33 47 U.S.C. § 335(b).
- 34 Giguere Interview 9/7/10; *see also* Email from Greg Lane, Pres. & C.E.O., TVW, to FCC staff (Aug. 13, 2010).

## 10 Low Power FM

- 1 *See Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2211–13 (2000). In the ten years since its inception, the Commission has revisited and revised the LPFM Rules in light of the experiences of LPFM applicants and licensees. *See Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8028 (2001); *Creation of Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912 (2007).
- 2 *See* 47 C.F.R. § 73.811. The approximate service range of a 100-watt LPFM station is a 3.5 mile radius.
- 3 Prometheus Radio Project Comments in re *FOM PN*, filed June 8, 2010 (Prometheus Comments) at 4, 7.
- 4 Prometheus Comments at 3.
- 5 Prometheus Comments at 2.
- 6 WCIW-LP offers programming in Spanish, Haitian Creole and Mayan languages, providing human rights resources, social services, and a forum for civic dialogue. Prometheus Comments at 3.  
  
Farm workers in Southwest Florida also depend on WCTI-LP, which offers music, information, and local women’s rights shows in Spanish, Mexican, and Guatemalan languages. Free Press, Low Power FM Success Stories, <http://www.freepress.net/lpfm/success> (Low Power FM Success Stories) (last visited Feb. 18, 2011).
- 7 Prometheus Comments at 3.
- 8 Prometheus Radio Project, Low Power FM, *available at* [http://www.prometheusradio.org/media/lpfm\\_factsheet\\_FP.pdf](http://www.prometheusradio.org/media/lpfm_factsheet_FP.pdf).
- 9 Prometheus Comments at 5.

- 10 Prometheus Comments at 4.
- 11 Prometheus Radio Project, Low Power FM.
- 12 Prometheus Comments at 6.
- 13 Prometheus Comments at 7.

## 11 Religious Broadcasting

- 1 BIA/Kelsey (listing 1,287 stations operating with a “religion” format).
- 2 Prepared Testimony of Craig Parshall, Sr. V.P. & Gen. Counsel of National Religious Broadcaster Association, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010) (Parshall Testimony), at 1, *available at* <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>.
- 3 47 C.F.R. § 73.621 (2002).
- 4 *Applications of WQED Pittsburgh, Assignor, and Cornerstone TeleVision, Inc., Assignee*, Order, 15 FCC Rcd 202, 214 (1999) (*WQED Order I*).
- 5 *WQED Order I*, 15 FCC Rcd at 225 (citations omitted).
- 6 *Applications of WQED Pittsburgh, Assignor, and Cornerstone TeleVision, Inc., Assignee*, Order, 15 FCC Rcd. 2534, 2535 (2000). The “additional guidance” generated criticism from broadcasters, religious groups, and Members of Congress with respect to viewpoint discrimination and content regulation. In response, the FCC vacated the “additional guidelines” language and returned to a policy of deference to the editorial judgment of the licensee.
- 7 Parshall Testimony at 2.
- 8 Parshall Testimony at 3.
- 9 CORPORATION FOR PUBLIC BROADCASTING, RADIO COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA 10 (2010), *available at* [http://www.cpb.org/stations/grants/radio/2010/cpb\\_10RadioCSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/radio/2010/cpb_10RadioCSG_GeneralProvisions.pdf); CORPORATION FOR PUBLIC BROADCASTING, TELEVISION COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA 6 (2010), *available at* [http://www.cpb.org/stations/grants/tv/2010/cpb\\_10TV\\_CSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/tv/2010/cpb_10TV_CSG_GeneralProvisions.pdf).
- 10 Parshall Testimony at 8.
- 11 *See* 47 C.F.R. §§ 73.503(d), 73.621(e). *See also* Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Memorandum Opinion and Order, 90 FCC 2d 895, 907 (1982).

## 12 Nonprofit News Websites

- 1 Ken Doctor, *The Newsonomics of a Single Investigative Story*, Nieman Journalism Lab, April 21, 2011, <http://www.niemanlab.org/2011/04/the-newsonomics-of-a-single-investigative-story/>.
- 2 Jim Romenesko, *Religion News Service becomes a nonprofit on June 1*, May 19, 2011, <http://www.poynter.org/latest-news/romenesko/133091/newhouse-familys-religion-news-service-becomes-a-nonprofit-on-june-1>.

- 3 Email from Michele McLellan, 2009-10 Reynolds Journalism Fellow at the Univ. of Missouri School of Journalism and Consultant, to Steven Waldman, FCC (Mar. 2, 2011).
- 4 Michele McLellan, *New Traditional News Sites*, UNIV. OF MISSOURI DONALD W. REYNOLDS JOURNALISM INSTITUTE, Apr. 9, 2010, <http://www.rjionline.org/projects/mcellan/stories/community-news-sites/new-traditionals.php> (*New Traditional Sites*).
- 5 MinnPost, *The Best of MinnPost.com*, <http://www.minnpost.com/best/> (last visited Feb. 18, 2011).
- 6 Eric Schoenborn, *NJ Spotlight is Off to a Remarkable, Muckraking Start*, KNIGHT BLOG, May 18, 2010, <http://www.knightblog.org/nj-spotlight-is-off-to-a-remarkable-muckraking-start>.
- 7 Michele McLellan, *Community News Sites*, UNIV. OF MISSOURI DONALD W. REYNOLDS JOURNALISM INSTITUTE, June 8, 2010, <http://www.rjionline.org/community-news-sites> (*Community News Sites*).
- 8 *Community News Sites*.
- 9 *Community News Sites*; see also VT Digger, <http://vtdigger.org/> (last visited Feb. 22, 2011).
- 10 David Cohn (digidave), Comment to *The Pacific Garbage Patch: Published*, BLOG.SPOT.US (Nov. 10, 2009, 4:50 AM), <http://blog.spot.us/2009/11/10/the-pacific-garbage-patch-published>.
- 11 Email from David Cohn, Founder and Director, Spot.U.s, to J. Evan Shapiro, FCC (Dec. 8, 2010).
- 12 See Spot.U.s, *Examples: Pioneering Community-Funded Reporting*, <http://spot.us/pages/examples> (last visited Feb. 22, 2011).
- 13 Sunlight Foundation, *Congress For Your Android Phone!*, <http://sunlight-foundation.com/android/congress/> (last visited Feb. 22, 2011).
- 14 Sunlight Foundation, *The Fifty State Project*, <http://sunlightlabs.com/projects/FiftyStates/> (last visited Feb. 22, 2011); Sunlight Foundation, *National Data Catalog*, <http://sunlightlabs.com/projects/datacatalog/> (last visited Feb. 22, 2011).
- 15 Interview with John Hood by Steven Waldman, FCC (Apr. 2011)
- 16 Interview with Michael Stoll, Exec. Dir., SF Public Press, by Irene Wu, FCC (July 16, 2010).
- 17 Interview with Margaret Wolf Freivogel, Editor, St. Louis Beacon, by Irene Wu, FCC (July 16, 2010).
- 18 Email from Eric Newton, Knight Foundation, to Steven Waldman, FCC (Aug. 31, 2010) (Newton Email 8/31/10).
- 19 Mary Walton, *Investigative Shortfall*, AMER. JOURNALISM REV., Sept. 2010, <http://www.ajr.org/article.asp?id=4904>.
- 20 MINNPOST.COM 2010 YEAR END REPORT: A BREAKTHROUGH YEAR FOR MINNPOST (2010), [http://www.minnpost.com/\\_asset/twc3tw/2010-End-of-Year-Report.pdf](http://www.minnpost.com/_asset/twc3tw/2010-End-of-Year-Report.pdf).
- 21 Interview with Jennifer Benka, VP Development, The Bay Citizen by FCC (Dec. 8, 2010).
- 22 Chris Rauber, *Bay Citizen Nonprofit News Producer Launches, Nabs \$3.7M*, SF BUSINESS TIMES, May 26, 2010, <http://www.bizjournals.com/sanfrancisco/stories/2010/05/24/daily39.html>.
- 23 Staci D. Kramer, *Texas Tribune Raised Nearly \$4 Million In 2009 But Can't Rest*, PAID CONTENT, Jan. 25, 2010, [http://paidcontent.org/article/419-texas-tribune-raised-nearly-4-million-in-2009-but-cant-rest/\\$4m-in-2009](http://paidcontent.org/article/419-texas-tribune-raised-nearly-4-million-in-2009-but-cant-rest/$4m-in-2009).
- 24 Jim Barnett, *Nonprofits With a Perspective Hiring Journalists: A Sign of Things to Come?*, NIEMAN JOURNALISM LAB, Sept. 10, 2009, <http://www.niemanlab.org/2009/09/nonprofits-with-a-perspective-hiring-journalists-a-sign-of-things-to-come/>.
- 25 Rick Edmonds, *Shrinking Newspapers Have Created \$1.6 Billion News Deficit*, THE POYNTER INSTITUTE, Oct. 10, 2009, <http://www.poynter.org/column.asp?id=123&aid=171536>.
- 26 Knight Citizen News Network, Project Archive, [http://www.kcnn.org/toolkit/funding\\_database/](http://www.kcnn.org/toolkit/funding_database/) (last visited Feb. 22, 2011).
- 27 American Society of Newspaper Editors, *Newsroom Employment Census, 2011*, [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx); "Newspapers: News Investment" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemedias.org/2010/newspapers-summary-essay/news-investment/>.
- 28 Newton Email 8/31/10.
- 29 JAN SCHAFFER, *NEW VOICES: WHAT WORKS, LESSONS FROM FUNDING FIVE YEARS OF COMMUNITY NEWS STARTUPS*, 20 (Net Citizen News Network) (2010), *available at* [http://www.kcnn.org/nv\\_whatworks/pdf](http://www.kcnn.org/nv_whatworks/pdf).
- 30 Email from Joel Kramer, Editor and CEO, MinnPost, to Steven Waldman, FCC (Oct. 5, 2010) (Kramer Email 10/5/10).
- 31 Email from Nicole Hollway, General Manager, St. Louis Beacon, to J. Evan Shapiro, FCC (Dec. 9, 2010).
- 32 Kramer Email 10/5/10.

## 13 Foundations

- 1 Public Broadcasting Management Association (PBMA), *State of the System Public Broadcasting Reporting FY2009* (presentation), June 2010, *available at* <http://www.pbma.org/2010/Downloads/PBMA%20State%20of%20System%20Reporting%20Results%20Session%20-%20v6%2018%202010%20vFinal%20Presentation%20with%20Appendix.pdf>.
- 2 PETER B. KAUFMAN & MARY ALBON, *INTELLIGENT TELEVISION, FUNDING MEDIA, STRENGTHENING DEMOCRACY: GRANTMAKING FOR THE 21ST CENTURY (THE GFEM MEDIA FUNDING TRACKER) 4* (Grantmakers in Film + Electronic Media) (2010) (FUNDING MEDIA, STRENGTHENING DEMOCRACY), *available at* <http://gfem.org/node/873>.
- 3 FUNDING MEDIA, *STRENGTHENING DEMOCRACY* at 20, 36.
- 4 Knight Citizen News Network, Project Archive, [http://www.kcnn.org/toolkit/funding\\_database/](http://www.kcnn.org/toolkit/funding_database/) (last visited Feb. 22, 2011). That figure does not take into account public broadcasting grants, grants for documentary production, or support for student news services and journalism training.
- 5 STEVEN LAWRENCE & REINA MUKAI, *FOUNDATION GROWTH AND GIVING ESTIMATES: CURRENT OUTLOOK* (Found. Ctr.) (2010), *available at* <http://foundationcenter.org/gainknowledge/research/pdf/fgge10.pdf>. That figure does not take into account public broadcasting grants, grants for documentary production, or support for student news services and journalism training.
- 6 JAN SCHAFFER, *NEW MEDIA MAKERS: A TOOLKIT FOR INNOVATORS IN COMMUNITY MEDIA AND GRANT MAKING 4* (J-Lab) (2009) (SCHAFFER,

- NEW MEDIA MAKERS), available at [http://www.j-lab.org/new\\_media\\_makers.pdf](http://www.j-lab.org/new_media_makers.pdf).
- 7 DOWNIE & SCHUDSON, RECONSTRUCTION OF AMERICAN JOURNALISM.
  - 8 Newton Email 8/31/10.
  - 9 Newton Email 8/31/10.
  - 10 John S. and James L. Knight Found., Knight's Media Innovation Initiative, <http://www.knightfoundation.org/mii/index.dot> (last visited Feb. 22, 2011).
  - 11 Newton Email 8/31/10.
  - 12 FUNDING MEDIA, STRENGTHENING DEMOCRACY AT 27, 29.
  - 13 Community Foundations, A Brief History, <http://www.communityfoundations.net/page14094.html> (last visited Feb. 22, 2011).
  - 14 Dave Peters, *Who Tells the Story of a Place?*, MINNESOTA PUBLIC RADIO NEWS, Mar. 3, 2010, <http://minnesota.publicradio.org/collections/special/columns/ground-level/archive/2010/03/who-tells-the-story-of-a-place.shtml>.
  - 15 SCHAFFER, NEW MEDIA MAKERS at 8–9.
  - 16 Knight Citizen News Network: Introduction, <http://www.kcnn.org/WhatWorks/introduction/> (last visited Feb. 22, 2011).
  - 17 Interview with Kevin Harold, Publisher, New Jersey Spotlight, by Paige Gold, FCC (July 10, 2010).
  - 18 JOHN S. AND JAMES L. KNIGHT FOUND. & FSG SOCIAL IMPACT ADVISORS, REPORT OF FINDINGS: THE STATE OF FUNDING TO ADDRESS COMMUNITY INFORMATION NEEDS AMONG COMMUNITY FOUNDATIONS 2 (2010) (STATE OF FUNDING TO ADDRESS COMMUNITY INFORMATION NEEDS), available at <http://www.knightfoundation.org/dotAsset/376424.pdf>.
  - 19 STATE OF FUNDING TO ADDRESS COMMUNITY INFORMATION NEEDS at 3.
  - 10 Liza Eckert, *Community Garden Rally Tomorrow Morning*, THE LOCAL, Aug. 3, 2010, <http://fort-greene.thelocal.nytimes.com/2010/08/03/community-garden-rally-tomorrow-morning>; Soraya Batista, *Locals Confused by Bus Route Changes*, THE LOCAL, Aug. 3, 2010, <http://fort-greene.thelocal.nytimes.com/2010/08/03/locals-confused-by-bus-route-changes>.
  - 11 See *Crowdsourcing: Broken Car Windows*, THE LOCAL, July 6, 2010, <http://fort-greene.thelocal.nytimes.com/2010/07/06/crowdsourcing-broken-car-windows>.
  - 12 Lee B. Becker, Tudor Vlad & Devora Olin, *2008 Enrollment Report: Slow Rate of Growth May Signal Weakening of Demand*, JOURNALISM AND MASS COMMUNICATION EDUCATOR, (Autumn 2009), [http://findarticles.com/p/articles/mi\\_7644/is\\_200910/ai\\_n55484758/?tag=content;col1](http://findarticles.com/p/articles/mi_7644/is_200910/ai_n55484758/?tag=content;col1).
  - 13 Lee B. Becker, Tudor Vlad, Paris Desnoes & Devora Olin, ANNUAL SURVEY OF JOURNALISM & MASS COMMUNICATIONS GRADUATES 15 (James M. Cox Jr. Ctr. for Int'l Mass Communication Training and Research, Grady College of Journalism & Mass Communication, Univ. of Georgia) (2009), [http://www.grady.uga.edu/annualsurveys/Graduate\\_Survey/Graduate\\_2009/Grad2009MergedB&W.pdf](http://www.grady.uga.edu/annualsurveys/Graduate_Survey/Graduate_2009/Grad2009MergedB&W.pdf).
  - 14 Steve Kolowich, *J-Schools to the Rescue?*, INSIDE HIGHER ED, Mar. 1, 2010, [http://www.insidehighered.com/news/2010/03/01/journalism\(J-Schools to the Rescue?\)](http://www.insidehighered.com/news/2010/03/01/journalism(J-Schools%20to%20the%20Rescue?)).
  - 15 *J-Schools to the Rescue?*.
  - 16 Interview with Stephen Shepard, Dean, CUNY Graduate School of Journalism, by Tamara Smith, FCC (July 2010) (Shepard Interview July 2010).
  - 17 Interview with George Stanley, Managing Editor, Milwaukee Journal Sentinel by Tamara Smith, FCC staff (May 2010).
  - 18 Shepard Interview July 2010.
  - 19 Callahan Interview Aug. 2010.
  - 20 Faculty supervisors are critical to maintaining the program's relationships with the professional news outlets and serve as the hinge between them and the J schools. For example, stories from Northeastern's Walter V. Robinson investigative journalism class have run on the front page of the *Boston Globe*. Robinson who spent much of his career as a reporter for the *Globe* explained, "I have a very good association with the editor of the paper... You have to have that. There's gotta be trust. The newspaper has to have confidence that a journalism faculty has the experience and oversight capacity to make certain that students get it right." Elliot Interview.

## 14 Journalism Schools

- 1 Letter from Deans of Journalism Schools to Julius Genachowski, FCC Chairman (Apr. 30, 2010).
- 2 Memo from Michael Schudson to Nick Lemann and Bill Grueskin (May 25, 2010).
- 3 Interview with Christopher Callahan, Founding Dean, Walter Cronkite School of Journalism and Mass Communication, Arizona State Univ., by Tamara Smith, FCC (Aug. 2010) (Callahan Interview Aug. 2010).
- 4 Christine Rogel, *As Economy Topped, Seven AZ Congressmen Paid Staff Bonuses*, CRONKITE NEWS SERVICE, Dec. 21, 2009, [http://www.tucson-sentinel.com/local/report/122109\\_cong\\_bonuses](http://www.tucson-sentinel.com/local/report/122109_cong_bonuses).
- 5 Callahan Interview Aug. 2010.
- 6 Interview with Steve Elliott, Dir. of Digital News, Cronkite News Service, by Tamara Smith, FCC (July 2010) (Elliott Interview July 2010).
- 7 KOMU, About, <http://www.komu.com/about-komu-8> (last visited May 25, 2011).
- 8 Jennifer Epstein, *Reviving Local News*, INSIDE HIGHER ED, Oct. 7, 2009, <http://www.insidehighered.com/layout/set/print/news/2009/10/07/berkeley>.
- 9 CUNY Graduate School of Journalism, THE LOCAL, <http://fort-greene.thelocal.nytimes.com> (last visited Feb. 22, 2011).
- 21 Interview with Neil Henry, Dean, Graduate School of Journalism, Univ. of California at Berkeley, by Tamara Smith, FCC (August 2010) (Henry Interview Aug. 2010).
- 22 Callahan Interview Aug. 2010.
- 23 Jay Rosen, *Explaining The Local: East Village, NYU's collaboration with the New York Times*, PRESS THINK, Feb. 23, 2010, [http://archive.press-think.org/2010/02/23/the\\_local.html](http://archive.press-think.org/2010/02/23/the_local.html).
- 24 *Cronkite Lab's iPhone App Connects Citizens, Officials*, ARIZONA STATE UNIV. NEWS, June 3, 2010, [http://asunews.asu.edu/20100601\\_newapp](http://asunews.asu.edu/20100601_newapp).
- 25 CRAIG NEWMAN, WHY LAW AND JOURNALISM SCHOOLS NEED TO WORK TOGETHER, COLUMBIA JOURNALISM REVIEW, (2011) May 16, 2011 [http://www.cjr.org/behind\\_the\\_news/why\\_law\\_and\\_journalism\\_schools.php](http://www.cjr.org/behind_the_news/why_law_and_journalism_schools.php).
- 26 Amy Dunkin, *J-school Takes On Expanded Role On The Local Web Site With NYTimes.com*, CUNY GRADUATE SCHOOL OF JOURNALISM, Jan. 8,



2010, <http://www.journalism.cuny.edu/2010/01/08/cuny-j-school-to-take-over-nytimes-coms-the-local-community-web-site>.

**27** Doug MacEachern, *ASU's Cash-Infused Cronkite Journalism School in Elite Company*, THE ARIZONA REPUBLIC, Aug. 24, 2008, <http://www.azcentral.com/arizonarepublic/viewpoints/articles/2008/08/24/20080824vip-cronkite0824.html>.

**28** Henry Interview Aug. 2010.

## 15 Nonprofit Media Discussion

**1** See FREE PRESS, CHANGING MEDIA: PUBLIC INTEREST POLICIES FOR THE DIGITAL AGE 221, 267 (2009), available at [http://www.freepress.net/files/changing\\_media.pdf](http://www.freepress.net/files/changing_media.pdf); SHAWN POWERS, Public Service Broadcasting: An Overview (Univ. of So. California Annenberg Center on Communication Leadership & Policy Public Policy & Funding the News Proj.) (2009), available at [http://fundingthenews.usc.edu/related\\_research/3\\_Carnegie\\_PublicServiceBroadcasting.pdf](http://fundingthenews.usc.edu/related_research/3_Carnegie_PublicServiceBroadcasting.pdf).

**2** David McCandless, *Information is Beautiful: The BBC-O-Gram*, GUARDIAN DATA BLOG, Mar. 1, 2010, <http://www.guardian.co.uk/news/datablog/2010/mar/01/information-beautiful-bbc-o-gram-spending>. The BBC had an operating expenditure of £4.26 billion in 2009-10. BBC, Financial Statements, [http://www.bbc.co.uk/annualreport/exec/financial/fin\\_overview.shtml](http://www.bbc.co.uk/annualreport/exec/financial/fin_overview.shtml) (last visited May 25, 2011).

**3** *Why Online Won't Kill the Radio Star: Vivian Schiller of NPR on How Public Radio Can Thrive in The Digital Age*, WALL ST. J., June 7, 2010, <http://online.wsj.com/article/SB10001424052748704764404575287070721094884.html>.

**4** Email from Michele McLellan to Steven Waldman, FCC (Mar. 1, 2011).

## 16 Government Transparency

**1** KNIGHT COMMISSION ON THE INFORMATION NEEDS OF COMMUNITIES IN A DEMOCRACY, INFORMING COMMUNITIES: SUSTAINING DEMOCRACY IN THE DIGITAL AGE 37-38 (Aspen Institute) (2009).

**2** LEONARD DOWNIE JR. & MICHAEL SCHUDSON, THE RECONSTRUCTION OF AMERICAN JOURNALISM (Columbia Law Rev.) (2009), [http://www.cjr.org/reconstruction/the\\_reconstruction\\_of\\_american.php](http://www.cjr.org/reconstruction/the_reconstruction_of_american.php).

**3** See, e.g., Progress & Freedom Foundation Comments in re *FOM PN (FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*)), filed May 5, 2010, at 75.

**4** Now codified at 5 U.S.C. § 552.

**5** Under FOIA, 5 U.S.C. § 552, government records are presumptively open to the public unless they fall within one of nine exempt categories. One of these categories, however—the so-called (b)(3) exemption—removes from mandatory disclosure any document authorized to be withheld

under a statute other than FOIA. ProPublica recently reported that, over the last decade, federal agencies have relied on over 240 other statutes to withhold records under the (b)(3) exemption. In 2008-2009, for example, statutes other than FOIA were used to shield information about “watermelon handlers, avocado importers and caves.” Jennifer LaFleur, *FOIA Eyes Only: How Buried Statutes Are Keeping Information Secret*, PROPUBLICA (Mar. 14, 2011), <http://www.propublica.org/article/foia-exemptions-sunshine-law>.

**6** The Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (1976) (codified at 5 U.S.C. § 552b) (*Sunshine Act*).

**7** President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies re: Transparency and Open Government (Jan. 21, 2009), [http://www.whitehouse.gov/the\\_press\\_office/Transparency\\_and\\_Open\\_Government](http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government) (Presidential Memo on Transparency and Open Government 1/21/09).

**8** Memorandum from Peter R. Orszag, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies re: Open Government Directive (Dec. 8, 2009) (OMB Open Government Directive Memo 12/8/09), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

**9** OMB Open Government Directive Memo 12/8/09.

**10** OMB Open Government Directive Memo 12/8/09.

**11** See DC.gov, eServices—Searchable Databases, [http://app.dc.gov/more\\_services.asp?pagenum=1&tab=0&category=db](http://app.dc.gov/more_services.asp?pagenum=1&tab=0&category=db) (last visited Jan. 21, 2011).

**12** NYC Stat enables users to connect easily to:

CPR, the Citywide Performance Reporting System, an interactive dashboard designed for user-friendly access to the most critical performance indicators for every City agency, with monthly updates and automatic evaluation of trends within specified program areas; The Mayor's Management Report, the public report card on City agency performance published twice a year;

The NYC\*SCOUT web page, which maps street conditions such as potholes and catch basin defects, and allows users to track the progress of repairs;

My Neighborhood Statistics (MNS), which maps comparative performance data at the neighborhood level for approximately 50 selected performance measures;

Scorecard Cleanliness Ratings, updated monthly for streets and sidewalks throughout the five boroughs;

311 CustomerServiceCenter data, including basic operational statistics and community-level reports on the City's response to service requests from 311 callers;

Citywide Customer Survey Results, from the 2008 survey of New Yorkers' opinions on the delivery of city services;

NYCity Map, which lets users find information on transportation, education, public safety, resident services, neighborhood information, and City life;

Additional performance measures at the websites of 12 key City agencies.

See New York City Government, NYC Stat, <http://www.nyc.gov/html/ops/nycstat/html/home/home.shtml> (last visited Jan. 21, 2011).

Other examples of municipal data sites include:

Boston, MA—<http://hubmaps1.cityofboston.gov/datahub/>

Chicago, IL—<http://opengovchi.pbworks.com/> and <http://is.gd/d0XMI>

- San Francisco, CA—<http://datasf.org/index.php>
- Portland, OR—<http://www.civiccapps.org/>
- Ann Arbor, Michigan—<http://www.a2gov.org/data/Pages/default.aspx>
- Texas Tribune—<http://www.texastribune.org/>
- Seattle—<http://data.seattle.gov>
- Greater New Orleans—<http://www.gnocdc.org/>
- New Orleans' Pre-Katrina Archive, broken down by neighborhood <http://www.gnocdc.org/prekatrinasite.html>.
- 13** PUBLIC TECHNOLOGY INSTITUTE, LOCAL GOVERNMENT USE OF WEB 2.0 AND SOCIAL NETWORKING TOOLS: TECHNOLOGY TRENDS IN LOCAL GOVERNANCE 2 (2009), *available at* <http://www.pti.org/index.php/ptieel/inside/C27> (PTI membership required for access to full report).
- 14** Dr. Alan R. Shark, *Turning Citizen Enragement into Citizen Engagement—Managing Expectations with Web 2.0 and Social Media* (Draft).
- 15** Michael Levenson, *Residents Use iPhone Application to Alert Officials of Street-Level Problems in the City's Neighborhoods*, BOSTON GLOBE, Feb. 2, 2010, [http://www.boston.com/news/local/massachusetts/articles/2010/02/02/residents\\_use\\_iphone\\_to\\_report\\_street\\_level\\_woes/](http://www.boston.com/news/local/massachusetts/articles/2010/02/02/residents_use_iphone_to_report_street_level_woes/).
- 16** Mesa, Arizona, Capital Improvement Projects, <http://gis.mesaaz.gov/CIP/> (last visited Jan. 21, 2011).
- 17** *More Than 8,000 People Using Pittsburgh's 'iBurgh' App*, WPXI.COM, Jan. 6, 2010, <http://www.wpxi.com/news/22163491/detail.html>.
- 18** San Jose Mobile City Hall, <http://itunes.apple.com/us/app/san-jose-mobile-city-hall/id338029133?mt=8> (last visited Jan. 21, 2011).
- 19** Abbe Smith, *SeeClickFix Celebrates 50G Issues Reported*, NEW HAVEN REGISTER, Aug. 7, 2010, [http://www.nhregister.com/articles/2010/08/07/news/aa3\\_neseeclickfix080710.txt](http://www.nhregister.com/articles/2010/08/07/news/aa3_neseeclickfix080710.txt).
- 20** Daniel E. Slotnik, *News Sites Dabble With a Web Tool for Nudging Local Officials*, N.Y. TIMES, Jan. 3, 2010, <http://www.nytimes.com/2010/01/04/business/media/04click.html>.
- 21** The researchers initially performed regressions of corruption scores against other measures of accountability, including various measures of democracy, media, and judicial independence. They found: "With the exception of government ownership of television, which is high in many developed countries, all the other measures of accountability influence corruption. Countries that are more democratic, have proportional representation, have party-specific voting, low government ownership of the press, and independent judiciaries all have lower levels of corruption." Then, controlling for these variables, they determined whether there was a correlation between corruption and the transparency variables. The one variable that made a significant difference—once other factors were controlled—was the public availability of financial disclosures. In other words, there was no evidence that the mandate for disclosure or its scope made a difference. Those countries that mandate disclosure to government agencies, but in which the disclosures remain inaccessible to the public, did not see any positive impact on their corruption levels. Likewise, assuming that the disclosure forms were identifiable to the public by the name of the legislator in question, it does not appear to make much difference how comprehensive the disclosure is, i.e., whether the disclosure is comprehensive as to personal assets, liabilities, expenditures, income, gifts, and potential conflicts of interest. What did appear to be significant was whether the public could see what was being disclosed. SIMEON DJANKOV, RAFAEL LA PORTA, FLORENCIO LOPEZ-DE-SILANES, & ANDREI SHLEIFER, TRANSPARENCY AND ACCOUNTABILITY 11-14 (EDHEC Risk Instit., EDHEC Bus. School) (2008), [http://www.edhec-risk.com/edhec\\_publications/all\\_publications/RISKReview.2008-07-01.0355/attachments/EDHEC Working Paper Transparency and accountability.pdf](http://www.edhec-risk.com/edhec_publications/all_publications/RISKReview.2008-07-01.0355/attachments/EDHEC%20Working%20Paper%20Transparency%20and%20accountability.pdf).
- 22** The remaining sets in the top 10 are viewable. Data.gov (U.S. Government), Top 10 Most Downloaded Data Sets in the Last 30 Days, <http://www.data.gov/metric/visitorstats/top10datasetreport/Mostdownloaded30Days> (last visited Jan. 21, 2011). Information on the top 10 visiting states in May 2010 may also be viewed. Data.gov, Top 10 Visiting States (May 2010), <http://www.data.gov/metric/visitorstats/statestatistics/May-2010>.
- 23** DataSF (San Francisco and San Francisco County, California), <http://datasf.org> (last visited Jan. 21, 2011).
- 24** Data.Seattle.gov (Seattle, Washington), <http://data.seattle.gov/> (last visited Jan. 21, 2011).
- 25** DC.gov (Washington, DC), Data Catalog, <http://data.dc.gov/> (last visited Jan. 21, 2011).
- 26** City of Ann Arbor, Michigan, Government Data Catalog, <http://www.a2gov.org/data/Pages/default.aspx> (last visited Jan. 21, 2011).
- 27** AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJ., GOVERNMENT ONLINE: THE INTERNET GIVES CITIZENS NEW PATHS TO GOVERNMENT SERVICES AND INFORMATION 10 (2010) (PEW, GOVERNMENT ONLINE, *available at* [http://www.pewinternet.org/-/media/Files/Reports/2010/PIP\\_Government\\_Online\\_2010.pdf](http://www.pewinternet.org/-/media/Files/Reports/2010/PIP_Government_Online_2010.pdf). *Id.* at 13-14.
- 28** PEW, GOVERNMENT ONLINE at 26.
- 29** DARRELL M. WEST & JENNY LU, BROOKINGS INSTITUTION, COMPARING TECHNOLOGY INNOVATION IN THE PRIVATE AND PUBLIC SECTORS 10-11 (2009), *available at* [http://www.brookings.edu/-/media/Files/rc/papers/2009/06\\_technology\\_west/06\\_technology\\_west.pdf](http://www.brookings.edu/-/media/Files/rc/papers/2009/06_technology_west/06_technology_west.pdf).
- 30** John Horrigan, "Wireless Internet Use" (Pew Internet and American Life Project, July 2009), <http://pewinternet.org/Reports/2009/12-Wireless-Internet-Use.aspx>.
- 31** NYC.gov (New York, New York), *Mayor Bloomberg Announces Winners of Inaugural NYC Bigapps Competition* (press release), Feb. 4, 2010, *available at* <http://www.nyc.gov/portal/site/nycgov/> (follow links for Press Releases—Events Feb. 2010).
- 32** PEW, GOVERNMENT ONLINE at 9.
- 33** Apps for Democracy Community Edition, Application Directory, <http://www.appsfordemocracy.org/application-directory> (last visited Jan. 24, 2011).
- 34** <http://sunlightlabs.com/about/>.
- 35** <http://sunlightlabs.com/blog/2009/and-winners-are/>; <http://sunlightfoundation.com/blog/2009/09/10/apps-for-america-2-winners/>.
- 36** <http://www.filibusted.us/>.
- 37** <http://legistalker.org/>.
- 38** <http://www.datamasher.org/>.
- 39** <http://govpulse.us/>.
- 40** Clay Johnson, "Apps for Communities," FCC Blog (Apr. 11, 2011), <http://www.fcc.gov/blog/apps-communities>.
- 41** "Apps for Communities," Challenge.Gov, <http://appsforcommunities.challenge.gov/>.

- 42 Brad Bauman, Why You Need to Download the Real Time Congress App for iPhone now, Sunlight Found., Jan. 13, 2010, <http://sunlightfoundation.com/blog/2010/01/13/why-you-need-to-download-the-real-time-congress-app-for-iphone-now/>.
- 43 <http://www.texastribune.org/library/data/>.
- 44 Society of Professional Journalists, Open Doors, <https://www.spj.org/opendoors5.asp> (last visited Jan. 24, 2011).
- 45 Investigative Reporters and Editors, Database Library, <http://data.nicar.org/node/61> (last visited Feb. 22, 2011).
- 46 Testimony of David M. Blazkowsky, Dir., Office of Interactive Disclosure, U.S. Securities and Exchange Commission, Federal Trade Commission Workshop, “How Will Journalism Survive The Internet Age?” (Mar. 10, 2010), Tr. at 94: 5–13, available at <http://www.ftc.gov/opp/workshops/news/>; *Better Data, Better Reporting? How Interactive Data Might Affect Business Journalism . . . And Beyond*, Prepared Testimony of David M. Blazkowsky, Federal Trade Commission Workshop, “How Will Journalism Survive The Internet Age?”, Mar. 10, 2010, available at <http://www.ftc.gov/opp/workshops/news/mar9/docs/blazkowsky.pdf>.
- 47 Interview with Gar Joseph, City Editor, Philadelphia Daily News, by Tamara Smith, FCC (May 2010).
- 48 J. Todd Foster, *Reporter Daniel Gilbert’s Natural Gas Series Underscores Vital Watchdog Role of Newspapers*, TRICITIES.COM, Dec. 6, 2009, [http://www2.tricities.com/news/2009/dec/0w6/reporter\\_daniel\\_gilberts\\_natural\\_gas\\_series\\_unders-ar-239885/](http://www2.tricities.com/news/2009/dec/0w6/reporter_daniel_gilberts_natural_gas_series_unders-ar-239885/).
- 49 The capacity of reporters to exploit data for effective journalism is being fostered by new programs of professional training, including journalism-school courses for newly minted reporters and continuing education programs for mid-career journalists. The nonprofit Investigative Reporters and Editors, for example, holds conferences on computer-assisted journalism and offers short courses in statistics and the use of particular datasets, such as the census. Investigative Reporters and Editors, IRE and CAR Conferences, <http://www.ire.org/training/conference/> (last visited Feb. 22, 2011).
- 50 Michael Powell, *Leery of Washington, Alaska Feasts on Its Dollars*, N.Y. TIMES, Aug. 18, 2010, <http://www.nytimes.com/2010/08/19/business/19stimulus.html>; Brian Naylor, *Political Pedigree No Longer Protects S.D. Rep.*, NATIONAL PUBLIC RADIO, Sept. 5, 2010, <http://www.npr.org/templates/story/story.php?storyId=129662772>; Tony Semerad, *Utah Takes in More Than \$3B in Federal Stimulus Money*, SALT LAKE TRIBUNE, Sept. 28, 2010, <http://www.sltrib.com/sltrib/news/50085161-78/stimulus-utah-state-money.html.csp>; Lauren Russell, *Is It Working?*, BOZEMAN DAILY CHRONICLE, Aug. 22, 2010, [http://www.bozemandaily-chronicle.com/news/article\\_1156d4b4-aca9-11df-897e-001cc4c03286.html](http://www.bozemandaily-chronicle.com/news/article_1156d4b4-aca9-11df-897e-001cc4c03286.html).
- 51 Sunlight Foundation, Congrelate Alpha, <http://congrerate> (last visited Jan. 24, 2011).
- 52 Sunlight Foundation, Transparency Data, <http://transparencydata.org/#> (last visited Jan. 24, 2011).
- 53 Sunlight Foundation, Poligraft, <http://poligraft.com/> (last visited Jan. 24, 2011).
- 54 Sunlight Foundation, Politiwidgets, <http://politiwidgets.com/> (last visited Feb. 22, 2011).
- 55 Testimony of Bill Buzenberg, Exec. Dir., Center for Public Integrity, Federal Trade Commission Workshop, “How Will Journalism Survive The Internet Age?” (Dec. 2, 2009) (Buzenberg Testimony 12/2/09), Tr. at 158:1–10, available at <http://www.ftc.gov/opp/workshops/news/index.shtml>. Examples of stories using the CPE study include: Tom Abate, *California Had Most Subprime Loans, Study Says*, SAN FRANCISCO CHRONICLE, May 7, 2009, [http://articles.sfgate.com/2009-05-07/news/17203711\\_1\\_subprime-lenders-mortgages](http://articles.sfgate.com/2009-05-07/news/17203711_1_subprime-lenders-mortgages); Neal St. Anthony, *Wells Fargo Listed Among Top Subprime Loan Makers; The Bank Is One of 25 Mortgage Originators a Report Blames As the Biggest Players in the Mortgage and Financial Mess*, STAR TRIBUNE, May 7, 2009; Robert Trigaux, *A Closer Look at Who Made This Mess*, ST. PETERSBURG TIMES, May 7, 2009, <http://www.tampabay.com/news/business/banking/article998753.ece?ref=housingbubblenews.com>.
- 56 Center for Public Integrity, Who’s Behind the Financial Meltdown? [http://www.publicintegrity.org/investigations/economic\\_meltdown/](http://www.publicintegrity.org/investigations/economic_meltdown/) (last visited Feb. 4, 2011); Buzenberg Testimony 12/2/09, Tr. at 158:11–17. The top five lenders were Countrywide Financial Corp., Ameriquest Mortgage Co., New Century Financial Corp., First Franklin Corp., and Long Beach Mortgage Co. Newspapers used these data to carry the story forward, drawing competing points of view from industry. For example, Scott Talbott, chief lobbyist for the Financial Services Roundtable, which represents some of the nation’s largest lenders, was quoted by the Washington Post saying: “The report oversimplifies the problem and ignores the complexities of the market. To say we are victims is understating, and to say we are enablers is overstating.” Dina ElBoghdady, *Major Banks Receiving Federal Aid Backed Subprime Lenders, Report Says*, WASH. POST, May 7, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/06/AR2009050603365.html>.
- 57 Exec. Order No. 13,489, 74 Fed. Reg. 4669 (Jan. 26, 2009).
- 58 Presidential Memo on Transparency and Open Government 1/21/09.
- 59 Pres. Barack Obama, Memorandum to the Heads of Executive Departments and Agencies re: Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (Presidential Memo on FOIA 1/21/09).
- 60 Presidential Memo on FOIA 1/21/09.
- 61 U.S. Attorney General Eric Holder, Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009) (Attorney General’s FOIA Guidelines 3/19/09), available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf>.
- 62 Attorney General’s FOIA Guidelines 3/19/09.
- 63 Martin Sieff, *Photo Ban on Iraq War Dead Lifted*, UPI.COM, Feb. 27, 2009, <http://www.upi.com/news/issueoftheday/2009/02/27/Photo-ban-on-iraq-war-dead-lifted/UPI-33241235755703/>.
- 64 Executive Office of the President, *White House Voluntary Disclosure Policy Visitor Access Records* (press release), Sept. 4, 2009, <http://www.whitehouse.gov/VoluntaryDisclosure>.
- 65 Exec. Order No. 13,526, 75 Fed. Reg. 1013 (Jan. 8, 2010).
- 66 Alissa J. Rubin & Sangar Rahimi, *Bagram Detainees Named by U.S.*, N.Y. TIMES, Jan. 16, 2010, <http://www.nytimes.com/2010/01/17/world/asia/17afghan.html>.
- 67 See, e.g., Clint Hendler, *Report Card: Obama’s Marks at Transparency U.*, COLUMBIA JOURNALISM REV., Jan. 5, 2010, [http://www.cjr.org/transparency/report\\_card.php](http://www.cjr.org/transparency/report_card.php).
- 68 Pub. L. No. 109-282, §§ 2(a)(2) and (b)(1), 120 Stat. 1186-87 (2006).
- 69 U.S. GOVERNMENT ACCOUNTABILITY OFFICE, ELECTRONIC GOVERNMENT: IMPLEMENTATION OF THE FEDERAL FUNDING ACCOUNTABILITY AND

- TRANSPARENCY ACT OF 2006 (GAO 10-365) (2010) (GAO, ELECTRONIC GOVERNMENT), available at <http://www.gao.gov/products/GAO-10-365>.
- 70** See GAO, ELECTRONIC GOVERNMENT at 5. GAO randomly sampled 100 awards from the website and compared the data to information from the awarding agencies. Numerous inconsistencies were found. The most common discrepancies included the purpose of the award and the city where the award work was to be performed. The GAO also found that nine agencies had not reported awards to [www.USAspending.gov](http://www.USAspending.gov). The GAO made several recommendations to the OMB to improve the website and the quality of available information. See *id.*
- 71** 5 U.S.C. § 552(a)(6)(A)(1).
- 72** THE SUNSHINE IN GOVERNMENT INITIATIVE, THE WAIT FOR A FOIA RESPONSE, 2008 AND 2009 (2010) (SUNSHINE IN GOVERNMENT INITIATIVE, THE WAIT FOR A FOIA RESPONSE), available at <http://www.sunshineingovernment.org/stats/2009/29agencies.pdf>. The Sunshine in Government Initiative, a coalition of media groups including ASNE, the AP, and the NAB, among others, analyzed the 2008 and 2009 reports of the 29 largest federal agencies, which account for 97 percent of all FOIA requests. Data on average response time was available for 26 of those agencies. The Sunshine in Government Initiative, Waiting For Freedom of Information: Some Progress (2010) (Sunshine in Government Initiative, Some Progress 2010), <http://www.sunshineingovernment.org/index.php?cat=224>.
- 73** Sunshine in Government Initiative, Some Progress 2010.
- 74** SUNSHINE IN GOVERNMENT INITIATIVE, THE WAIT FOR A FOIA RESPONSE.
- 75** The reports are compiled at <http://www.justice.gov/oip/reports-fy2011.html>.
- 76** <http://www.broadbandmap.gov/summarize>.
- 77** Examples are easily found in the best online archive of Congressional Research Service reports, which is maintained by the Center for Democracy and Technology and appears at Open CRS, <http://openocrs.com/> (last visited Feb. 4, 2011).
- 78** SOCIETY OF PROFESSIONAL JOURNALISTS, SUNSHINE WEEK 2009 SURVEY OF STATE GOVERNMENT INFORMATION ONLINE (2009) (SPJ, SURVEY OF STATE GOVERNMENT INFORMATION ONLINE), available at <http://www.spj.org/pdf/sw09-surveyreport.pdf>.
- 79** SPJ, SURVEY OF STATE GOVERNMENT INFORMATION ONLINE.
- 80** See The Pew Center on the States, Grading the States 2008 (Pew, Grading the States 2008), <http://www.pewcenteronthestates.org/uploaded-Files/Information%20Performance.pdf>.
- 81** Pew, Grading the States 2008.
- 82** Pew, Grading the States 2008.
- 83** Pew, Grading the States 2008.
- 84** Pew, Grading the States 2008.
- 85** Sunshine Review, States With Spending Online, [http://sunshinereview.org/index.php/States\\_with\\_spending\\_online](http://sunshinereview.org/index.php/States_with_spending_online) (last visited Feb. 4, 2011).
- 86** Sunshine Review, States With Spending Online.
- 87** Sunshine Review, Transparency Checklist, [http://sunshinereview.org/index.php/The\\_Best\\_State\\_and\\_Local\\_Government\\_Websites\\_For\\_Transparency\\_Recognized,\\_March\\_10,\\_2010](http://sunshinereview.org/index.php/The_Best_State_and_Local_Government_Websites_For_Transparency_Recognized,_March_10,_2010) (last visited Apr. 26, 2011).
- 88** See, e.g., Sunshine Review, Sunny Awards recognize state, local governments with perfect transparency scores, [http://sunshinereview.org/index.php/Best\\_transparency\\_scores](http://sunshinereview.org/index.php/Best_transparency_scores) (last visited Apr. 26, 2011).
- 89** See, e.g., Sunshine Review, Sunny Awards recognize state, local governments with perfect transparency scores, [http://sunshinereview.org/index.php/Best\\_transparency\\_scores](http://sunshinereview.org/index.php/Best_transparency_scores) (last visited Apr. 26, 2011).
- 90** David Cuillier, *Day 10: Police Agencies the Biggest Problem*, SOCIETY OF PROFESSIONAL JOURNALISTS ACCESS ACROSS AMERICA BLOG, May 7, 2010, <http://blogs.spjnetwork.org/aaa/?p=184>.
- 91** PACER, <http://www.pacer.gov/> (last visited Jan. 24, 2011).
- 92** Reporters Committee For Freedom Of The Press, Electronic Access to Court Records, Spring 2007, <http://www.rcfp.org/ecourt/index.html>.
- 93** National Center for State Courts, Privacy/Public Access to Court Records FAQs, <http://www.ncsc.org/topics/access-and-fairness/privacy-public-access-to-court-records/faq.aspx> (last visited Feb. 4, 2011).
- 94** Duke Univ. School of Law Library & Technology, Court Records and Briefs, [http://www.law.duke.edu/lib/researchguides/records\\_briefs](http://www.law.duke.edu/lib/researchguides/records_briefs) (last visited Feb. 8, 2011).
- 95** The Reporters Committee for Freedom of the Press has created a summary of public access laws for police records in each state. The summaries include state policies on disclosing accident reports, the police blotter, 911 tapes, investigatory records, arrest records, criminal histories, victims, confessions, informants, police techniques and mug shots. See The Reporters Committee For Freedom of the Press, A Reporter's State-By-State Access Guide to Law Enforcement Records, <http://www.rcfp.org/policerecords/index.html> (last visited Jan. 24, 2011). The Society of Professional Journalists has created a similar database of state policies on accessing prison records, containing information on state policies governing media access, rules governing reporting tools, visitation list rules and execution witness policies. See The Society of Professional Journalists, Freedom of Information Covering Prisons, <http://www.spj.org/prisonaccess.asp> (last visited Jan. 24, 2011).
- 96** Sarah Klaper, *The Sun Peeking Around the Corner: Illinois' New Freedom of Information Act as a National Model*, 10 CONN. PUB. INT. L.J. 63 (Fall-Winter 2010) (*Sun Peeking Around the Corner*). As Sarah Klaper, an Instructor at DePaul University College of Law, explains:
- "Pursuant to Section 9.5 of the Act, public requestors now have a new avenue of redress when a public body denies a request pursuant to FOIA, other than going straight into a lengthy and expensive court battle. Upon denial, a requestor may file a 'request for review' with the PAC within sixty days of the denial. The PAC will then determine whether further action is warranted on the case. The PAC will then either advise the requestor that the alleged violation is unfounded and take no further action or forward a copy of the request for review to the public body within seven days of receipt and request specific documents or records that the public body is required to furnish for the review. Both the public body and the requestor are also permitted to answer each other's claims in writing or supplement the review with additional affidavits or records.
- "Within sixty days of the receipt of request for review, the PAC must take one of three actions: mediate the situation between the parties; issue a non-binding opinion; or make findings of fact and conclusions of law, and issue a binding opinion to resolve the matter. This binding opinion is considered to be a final decision of an administrative agency pursuant to Illinois' Administrative Review Law. If the PAC determines that a public body has violated FOIA, the public body is required to either immediately comply with the opinion, or to initiate administrative review." 10 CONN. PUB. INT. L.J. at 73 (citations omitted). Klaper further notes that:

“Only ten other states in the country, and the District of Columbia, have established public access counselors, or their equivalent, to review potential FOIA violations and issue binding opinions on these issues. However, Illinois is one of only three states in the country in which the PAC, or its equivalent, can issue binding decisions regarding FOIA violations and also seek enforcement of those binding decisions with the trial court.”

*Id* at 76 (citations omitted).

97 *Sun Peeking Around the Corner*.

98 *Sun Peeking Around the Corner*.

99 Interview with Bill Girdner, Editor and Publisher, Courthouse News Service, by Kathleen Struck, FCC (July 2, 2010) (Girdner Interview 7/2/10).

100 Girdner Interview 7/2/10.

101 The suggestion has been made that law schools could help the cause of journalism by creating legal clinics through which students could assist in the pursuit of FOIA claims. Peter M. Shane, Statement at Ohio State Univ. Mortiz College of Law Symposium on Informing Communities: Sustaining Democracy in the Digital Age (Nov. 20, 2009). It appears that, as of late 2010, only the Georgetown University Law Center supports such a clinic. *Id*.

102 See, e.g., Thomas Hargrove, *Sloppy Accounting Prevails for America's Unsolved Homicides*, SCRIPPSNEWS, June 7, 2010, <http://www.scrippsnews.com/content/sloppy-accounting-prevails-americas-unsolved-homicides>; *Homicide Rate, Police Procedures Questioned*, WBAL-TV, Feb. 14, 2006, <http://www.wbalv.com/news/7056945/detail.html>.

103 Interview with Doug Guthrie, Court Reporter, Detroit News, by Kathleen Struck, FCC (July 1, 2010).

104 Interview with Kerry O'Brien, Dir., NYC School Survey, by Peter M. Shane, FCC (Aug. 31, 2010) (O'Brien Interview 8/31/10).

105 O'Brien Interview 8/31/10.

106 Email from Ira Chinoy, Assoc. Professor, Univ. of Maryland Philip Merrill College of Journalism, to Peter M. Shane, FCC (July 2, 2010).

107 Some grounds for resistance are appropriately built into the law. Under federal FOIA, categories of records exempt from mandatory disclosure include classified information, information relating to the pre-decisional processes of government agencies, records related to internal agency personnel practices, and certain records compiled for law enforcement purposes. The Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (1976) (codified at 5 U.S.C. § 552b).

108 U.S. Dep't of Transportation, Safety Complaints Search Engine, <http://www.odi.nhtsa.dot.gov/complaints/index.cfm> (last visited Feb. 22, 2011).

109 Similarly, Professor James T. Hamilton of Duke University has written about a variety of techniques available to journalists who want to use publicly available toxic release data to generate stories on pollution. For instance, to see which polluters report identical toxic information year after year—suggesting they are investing little time in actually monitoring their pollution. See James T. Hamilton, *Tracking Toxics When the Data Are Polluted: How Computational Journalism Can Uncover What Polluters Would Prefer to Hide*, NIEMAN REPORTS, Spring 2009, <http://www.nieman.harvard.edu/reportsitem.aspx?id=100933>.

110 Lawrence Lessig, *Against Transparency: The Perils of Openness in Government*, THE NEW REPUBLIC, Oct. 9, 2009, <http://www.tnr.com/article/books-and-arts/against-transparency>.

111 See, e.g., Sharon Otterman & Robert Gebeloff, *Triumph Fades on Racial Gap in City, Schools*, N.Y. TIMES, Aug. 15, 2010, [http://www.nytimes.com/2010/08/16/nyregion/16gap.html?\\_r=1&scp=1&sq=triumph%20fades&st=cse](http://www.nytimes.com/2010/08/16/nyregion/16gap.html?_r=1&scp=1&sq=triumph%20fades&st=cse).

112 AARON SMITH, PEW RESEARCH CTR.'S INTERNET & AMERICAN LIFE PROJ., GOVERNMENT ONLINE: THE INTERNET GIVES CITIZENS NEW PATHS TO GOVERNMENT SERVICES AND INFORMATION 17 (2010), available at [http://www.pewinternet.org/-/media/Files/Reports/2010/PIP\\_Government\\_Online\\_2010.pdf](http://www.pewinternet.org/-/media/Files/Reports/2010/PIP_Government_Online_2010.pdf).

## 17 Emergency Information

- 1 National Association of Broadcasters Comments in re *FOM PN (FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*)), filed May 7, 2010, at 23–26.
- 2 WORKING GROUP ON NATURAL DISASTER INFORMATION SYSTEMS SUBCOMMITTEE ON NATURAL DISASTER REDUCTION & NATIONAL SCIENCE AND TECHNOLOGY COUNCIL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES, EFFECTIVE DISASTER WARNINGS 29 (2000), available at [http://www.sdr.gov/NDIS\\_rev\\_Oct27.pdf](http://www.sdr.gov/NDIS_rev_Oct27.pdf).
- 3 See, e.g., Federal Communications Commission, “Emergency Communications” (The FCC and its federal partners are working towards a comprehensive alerting system that utilizes multiple communications technologies to reach the public quickly and effectively.), <http://www.fcc.gov/topic/emergency-communications> (last visited May 27, 2011); Federal Emergency Management Agency, Integrated Public Alert and Warning System (IPAWS) (Transforming the national alert and warning system to enable rapid dissemination of authenticated alert information over as many communications channels as possible), <http://www.fema.gov/emergency/ipaws/> (last visited May 27, 2011).
- 4 The precursor to the EAS was CONELRAD (Control of Electromagnetic Radiation), the first national emergency broadcasting system, established in 1951 by President Harry S. Truman, to warn the public of enemy attacks and supply emergency information. See Exec. Order No. 10,312, 51 Fed. Reg. 14,769 (Dec. 10, 1951). Under CONELRAD, designated AM radio stations operated on 640 or 1240 kHz during an emergency alert to prevent enemy missiles or bombers from using broadcast transmissions as a homing guide to enemy targets. *Id*. In 1963, President John F. Kennedy replaced CONELRAD with the Emergency Broadcast System (EBS), an analog transmission system that allowed all broadcast stations to continue operating on their assigned frequencies during an emergency. See Exec. Order No. 11,092, 63 Fed. Reg. 2216 (1963).
- 5 State and local emergency operations managers utilize local EAS entry points, such as the State Primary (SP) stations or LP-Is to relay local emergency messages to local areas. Local Primary sources also are responsible for coordinating the carriage of messages from the NWS or local emergency management offices as specified in EAS local area plans. The manner in which state and local EAS transmission systems vary from state to state, but can include over-the-air, telephone, links between emergency operations centers and broadcast facilities. A single station can play more than one role in the EAS, e.g. SP stations also monitor specifically-designated PEP stations and re-transmit the Presidential-level alert.

- At present, the United States is divided into approximately 550 local EAS areas, each of which contains at least two Local Primary stations, designated “Local Primary One” (LPI), “Local Primary Two” (LP2), and so on. The LP stations must monitor at least two EAS sources for Presidential messages (including State Primary stations and in some cases a regional PEP station), and serve as the point of contact for state and local authorities and NWS to activate the EAS for localized events such as severe weather alerts. All other EAS Participants are designated Participating National (PN) stations and must monitor at least two EAS sources, including an LPI and an LP2 station as specified in the state’s EAS plan.
- 6 Jennifer Nislow, *The Wrong Time to Find Out That Emergency Alert System Doesn’t Work*, SLATE, Mar. 15 & 31, 2003 (reprinted with permission from Law Enforcement News), <http://www.slate.com/id/2157395/sidebar/2157437/>.
  - 7 KCJB was designated as the emergency broadcast station, but had no one on site at the time. Jack Shafer, *What Really Happened in Minot, N.D.?*, SLATE, Jan. 10, 2007, <http://www.slate.com/id/2157395/>. See also Eric Klinenberg, *Air Support*, N.Y. TIMES, Jan. 28, 2007, [http://www.nytimes.com/2007/01/28/magazine/28WWLN\\_IdeaLab.t.html](http://www.nytimes.com/2007/01/28/magazine/28WWLN_IdeaLab.t.html).
  - 8 NAT’L TRANSPORTATION SAFETY BOARD, RAILROAD ACCIDENT REPORT: DERAILMENT OF CANADIAN PACIFIC RAILWAY FREIGHT TRAIN 292-16 AND SUBSEQUENT RELEASE OF ANHYDROUS AMMONIA NEAR MINOT, NORTH DAKOTA (RAILROAD ACCIDENT REPORT NTSB/RAR-04/01) 75 (2002) (NTSB MINOT ACCIDENT REPORT), available at <http://www.ntsb.gov/publictn/2004/rar0401.pdf>.
  - 9 “Part VII Conclusions and Recommendations” in DR. M. MUSTOE, THE EMERGENCY ALERT SYSTEM: ITS VIABILITY IN THE NEW LOCALISM OF COMMERCIAL RADIO (2005), <http://www.eou.edu/~mmustoe/easpaper.html>.
  - 10 NTSB MINOT ACCIDENT REPORT at 10.
  - 11 *A synopsis of commercial radio’s potential for delivering the EAS*, Memorandum from M. Mustoe, Geographer and Ph.D., Eastern Oregon Univ., to Paige Gold, FCC (Oct. 12, 2010).
  - 12 M. Marion Mustoe, *Commentary: Reconsidering Minot and EAS*, RADIOWORLD, Jan. 18, 2006 (*Reconsidering Minot and EAS*), <http://www.radioworld.com/article/2718>; Interview with M. Marion Mustoe, Geographer and Ph.D., Eastern Oregon Univ., by Paige Gold, FCC (Oct. 2010) (Mustoe Interview Oct. 2010). Even in the incident where EAS was activated, that activation did not occur until about four hours after the incident. *Reconsidering Minot and EAS*; Mustoe Interview Oct. 2010.
  - 13 See Jay Liotta, *You Can’t Show Favoritism, Obviously, in This Industry*, KATRINA AND EMERGENCY RADIO BROADCASTING BLOG, Jan. 21, 2008, <http://katrinaradioelon.wordpress.com>.
  - 14 Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006) (Exec. Order 13407).
  - 15 Exec. Order 13407.
  - 16 The IPAWS is being developed by FEMA, pursuant to Exec. Order 13407. According to FEMA, IPAWS objectives include to (1) “ensure that alert and warning messages can reach the public before, during and after a disaster, through as many means as possible”; (2) “diversify, and modernize the Emergency Alert System”; (3) “create an interoperability framework by establishing or adopting standards such as the Common Alert Protocol”; (4) “enable alert and warning to those with disabilities and those who do not understand the English language”; (5) “provide federal state and local alert and warning emergency communications officials access to multiple broadcast and other communications networks as a means for creating and activating alert and warning messages”; and (6) “partner with National Oceanic and Atmospheric Administration (NOAA) to enable seamless integration of message transmission through National Weather Radio (NWR) networks”. Federal Emergency Management Agency, Integrated Public Alert and Warning System (IPAWS), <http://www.fema.gov/emergency/ipaws/> (last visited Apr. 3, 2011).
  - 17 Sixty-three percent of those responding to a 2010 Red Cross online survey said they use TV to get information about an emergency; 44 percent use radio and 37 percent use online news sites, far more than look at Facebook (14 percent) or Twitter (6 percent). See AMERICAN RED CROSS, SOCIAL MEDIA IN DISASTERS AND EMERGENCIES 5 (2010) (SOCIAL MEDIA IN DISASTERS AND EMERGENCIES), available at <http://www.redcross.org/www-files/Documents/pdf/other/SocialMediaSlideDeck.pdf>.
  - 18 CAP employs an open, interoperable standard that incorporates XML (Extensible Markup Language), a language developed and widely used for web documents. The digital system is capable of incorporating links to voice, audio or data files, images, and multilingual translations of an alert, along with links to further information. ORGANIZATION FOR THE ADVANCEMENT OF STRUCTURED INFORMATION STANDARDS (OASIS), COMMON ALERTING PROTOCOL VERSION 1.2 (2010), <http://docs.oasis-open.org/emergency/cap/v1.2/CAP-v1.2-os.html>. See also COMMUNICATIONS SECURITY, RELIABILITY AND INTEROPERABILITY COUNCIL (CSRIC), WORKING GROUP 5A, CAP INTRODUCTION—FINAL REPORT (2010) available at <http://www.fcc.gov/pshs/docs/csric/CSRIC%205A%20Working%20Group.pdf>.  
It is responsive to the requirement in Executive Order 13407 that DHS adopt a protocol to enable an interoperable alert system capable of delivering alerts to multiple communications pathways. CAP provides an alert initiator with a uniform manner of sending an alert to multiple media. CAP also is necessary for separate media to decode the alert targeted to them, without having to alter the substance of the alert to fit their format. CAP allows great flexibility in the construction of alerts (text, data, multi-media), geo-targeting of alerts, and the media to which alert are directed (TV, radio, mobile devices, highway signs).
  - 19 *Review of the Emergency Alert System*, Third Further Notice of Rulemaking, May 26, 2011, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0526/FCC-11-82A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0526/FCC-11-82A1.pdf).
  - 20 Warning, Alert, and Response Network Act, Pub. L. No. 109-347, tit. VI, § 602(a), 120 Stat. 1936 (2006) (codified at 47 U.S.C. §1201(a)).
  - 21 *The Commercial Mobile Alert System*, First Report and Order, 23 FCC Rcd 6144, 6177 (2008).
  - 22 “*New York City Unveils First-in-the-nation Public Safety System; Enabled Mobile Devices Will Receive Emergency Alerts at Critical Moments With Potentially Life-Saving Messages*,” FCC News release, May 10, 2011, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-306417A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306417A1.doc).
  - 23 E-mail from Art Botterell, Founding Trustee, Partnership for Public Warning and Research Associate, Centre for Policy Research in Science and Technology, Simon Fraser Univ., to Paige Gold, FCC (Oct. 4, 2010).
  - 24 SOCIAL MEDIA IN DISASTERS AND EMERGENCIES at 15-18.
  - 25 U.S. DEP’T OF HOMELAND SECURITY, HOMELAND SECURITY ADVISORY COUNCIL HSAS TASK FORCE STAKEHOLDER FEEDBACK (2009) (HOMELAND SECURITY ADVISORY COUNCIL HSAS TASK FORCE STAKEHOLDER FEEDBACK), available at [http://www.dhs.gov/xlibrary/assets/hsas\\_task\\_](http://www.dhs.gov/xlibrary/assets/hsas_task_)

force\_stakeholder\_feedback.pdf. The report was the result of a 2009 Homeland Security Advisory System Task Force survey of a wide range of constituencies—state, local and tribal governments and community groups; federal agencies; the private sector; first responders; academics in the field of communications, and others working in media—concerning the effectiveness of present emergency warning systems.

- 26 HOMELAND SECURITY ADVISORY COUNCIL HSAS TASK FORCE STAKEHOLDER FEEDBACK at 43-44.
- 27 HOMELAND SECURITY ADVISORY COUNCIL HSAS TASK FORCE STAKEHOLDER FEEDBACK at 19, 25.
- 28 HOMELAND SECURITY ADVISORY COUNCIL HSAS TASK FORCE STAKEHOLDER FEEDBACK at 44.
- 29 American Red Cross, *Social Media in Disasters and Emergencies* (press release), Aug. 9, 2010, <http://www.redcross.org/portal/site/en/menuitem.94aae335470e233f6cf911df43181aa0/?vgnnextoid=6bb5a96d0a94a210VgnVCM10000089f0870aRCRD>.
- 30 AMERICAN PUBLIC HEALTH ASS'N ET. AL, EXPERT ROUND TABLE ON SOCIAL MEDIA AND RISK COMMUNICATION DURING TIMES OF CRISIS: STRATEGIC CHALLENGES AND OPPORTUNITIES 4 (2009), available at <http://www.apha.org/NR/rdonlyres/47910BED-3371-46B3-85C2-67EFB80D88F8/0/socialmedreport.pdf>.
- 31 Jeanette Sutton, *Social Media Brings Together Resources, Creates More Resilient Communities*, EMERGENCY MANAGEMENT, July 31, 2009, <http://www.emergencymgmt.com/training/Social-Media-Brings-Together-Resources.html>.
- 32 Clay Shirky, *How Cognitive Surplus Will Change the World* (oral presentation), TED: IDEAS WORTH THINKING, June 2010, <http://www.ted.com/talks/view/id/896>.
- 33 Station Action for Emergency Readiness, About Us, <http://saferstations.org/content/about.html> (last visited Feb. 9, 2011). The site also notes that only one-third of all public radio stations in the U.S. have a functioning, tested, emergency readiness plan. See *id.* The project builds on the knowledge of stations in areas that have experienced disasters such as hurricanes, ice storms, floods, and wildfires. See *id.*
- 34 FCC, NATIONAL BROADBAND PLAN at 323 (2010) (NATIONAL BROADBAND PLAN).

## 18 Libraries

- 1 ADRIENNE CHUTE AND P. ELAINE KROE, U.S. NAT'L CTR. FOR EDUCATION STATISTICS, PUBLIC LIBRARIES IN THE UNITED STATES: FISCAL YEAR 2005 3 (2007), available at <http://nces.ed.gov/pubs2008/2008301.pdf>.
- 2 AMERICAN LIBRARY ASS'N, THE STATE OF AMERICA'S LIBRARIES 20 (2009), available at [http://www.ala.org/ala/newspresscenter/mediapresscenter/presskits/2009stateofamericaslibraries/State%20draft\\_04.10.09.pdf](http://www.ala.org/ala/newspresscenter/mediapresscenter/presskits/2009stateofamericaslibraries/State%20draft_04.10.09.pdf).
- 3 SAMANTHA BECKER, MICHAEL D. CRANDALL, KAREN E. FISHER, BO KINNEY, CAROL LANDRY & ANITA ROCHA, OPPORTUNITY FOR ALL: HOW THE AMERICAN PUBLIC BENEFITS FROM INTERNET ACCESS AT U.S. LIBRARIES 186 (Institute of Museum and Library Sciences) (2010) (OPPORTUNITY FOR ALL), available at <http://www.gatesfoundation.org/learning/Pages/us-libraries-report-opportunity-for-all.aspx>.

- 4 OPPORTUNITY FOR ALL at 186.
- 5 OPPORTUNITY FOR ALL at 186.
- 6 OPPORTUNITY FOR ALL at 4.
- 7 OPPORTUNITY FOR ALL at 4.
- 8 OPPORTUNITY FOR ALL at 2.
- 9 OPPORTUNITY FOR ALL at 186.
- 10 DENISE M. DAVIS, JOHN CARLO BERTOT & CHARLES R. MCLURE, LIBRARIES CONNECT COMMUNITIES 3: PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY 47-48 (American Library Ass'n) (revised 2010) (PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY), available at <http://www.ala.org/ala/research/initiatives/plftas/previousstudies/0809/librariesconnectcommunities3.pdf>.
- 11 OPPORTUNITY FOR ALL at 64.
- 12 Catherine Ngai, *Chicago Job Seekers Move 'Offices' From Coffee Shops To Libraries*, MEDILL REPORTS—CHICAGO (Northwestern Univ.), Aug. 11, 2010 (*Chicago Job Seekers*), <http://news.medill.northwestern.edu/chicago/news.aspx?id=168110>.
- 13 FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 176 (2010) (NATIONAL BROADBAND PLAN), available at <http://download.broadband.gov/plan/national-broadband-plan-chapter-9-adoption-and-utilization.pdf>.
- 14 KATE WILLIAMS, THE CYBERNAVIGATORS OF CHICAGO PUBLIC LIBRARY AND THE 'INFORMATICS MOMENT': ON A BUDGET, DEMOCRATIZING INFORMATION FLOWS IN LOW-INCOME NEIGHBORHOODS 4 (Univ. of Illinois at Urbana Champaign) (2010), available at <http://www.ifla.org/files/hq/papers/ifla76/140-williams-en.pdf>.
- 15 *Chicago Job Seekers*.
- 16 OPPORTUNITY FOR ALL at 6.
- 17 PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY at 34, 45.
- 18 PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY at 33.
- 19 PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY at 44.
- 20 PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY at 44.
- 21 See 47 U.S.C. § 254 (h).
- 22 Universal Service Administrative Co., Questions and Answers About the E-rate, <http://eratehotline.org/facts/quest.html> (last visited Jan. 26, 2011) (Q & A re: E-rate Program). The discounts range between 20 and 90 percent, depending upon the poverty level of the community served.
- 23 Q & A re: E-rate Program. The E-rate program is governed by the rules provided in subpart F of 47 CFR 54, 47 C.F.R. §§ 54.500-54.523.
- 24 47 C.F.R. § 54.501(b).
- 25 Of those that did not apply, about a quarter found the process too complicated, more than 22 percent said the amount they would receive was not worth the effort and nearly 22 percent did not want to be subject to the CIPA filtering requirement. PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY at 53.
- 26 See Universal Service Administrative Co., Schools and Libraries, <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last visited Jan. 26, 2011). Libraries and library consortium have received commitments representing about 3 percent of the amounts granted annually under the E-rate program. Combining the dollar totals for 2000-2009 with about 3 percent of the additional amount committed to consortiums that include both schools and libraries, produces a total of about \$70 million/yr for libraries.

- 27 PUBLIC LIBRARY FUNDING & TECHNOLOGY ACCESS STUDY at 42.
- 28 JOHN WINDHAUSEN, JR. & MARIJKE VISSER, FIBER TO THE LIBRARY: HOW PUBLIC LIBRARIES CAN BENEFIT FROM USING FIBER OPTICS FOR THEIR BROADBAND INTERNET CONNECTION 3 (ALA Office For Information Technology Policy) (2009), *available at* [http://www.pla.org/ala/aboutala/offices/oitp/PDFs/fiber%20brief\\_%20published.pdf](http://www.pla.org/ala/aboutala/offices/oitp/PDFs/fiber%20brief_%20published.pdf).

## 19 Schools

- 1 RENEE HOBBS, DIGITAL AND MEDIA LITERACY: A PLAN OF ACTION (Aspen Institute) (2010) (DIGITAL AND MEDIA LITERACY), *available at* [http://www.knightcomm.org/wp-content/uploads/2010/12/Digital\\_and\\_Media\\_Literacy\\_A\\_Plan\\_of\\_Action.pdf](http://www.knightcomm.org/wp-content/uploads/2010/12/Digital_and_Media_Literacy_A_Plan_of_Action.pdf).
- 2 Seb Chan, *Siva Vaidyanathan on the "Generational Myth,"* FRESH + NEW, Sept. 16, 2008, <http://www.powerhousemuseum.com/dmsblog/index.php/2008/09/16/siva-vaidyanathan-on-the-generational-myth/>.
- 3 DIGITAL AND MEDIA LITERACY at 25, 32.
- 4 DIGITAL AND MEDIA LITERACY at 25, 32 (*citing* Debora Cheney, Jeffrey Knapp, Robert Alan & Pamela Czaplá, *Convergence in the Library's Newsroom: Enhancing News Collections and Services in Academic Libraries 1*, 67 COLLEGE AND RESEARCH LIBRARIES 395-417 (2006), *available at* <http://crl.acrl.org/content/67/5/395.full.pdf>).
- 5 DIGITAL AND MEDIA LITERACY at 40-41.
- 6 Sherri Hope Culver, Renee Hobbs & Amy Jensen, *Media Literacy in the United States*, INT'L MEDIA LITERACY RESEARCH FORUM, <http://www.imlrf.org/united-states> (last visited 02/08/11).
- 7 Center for Media Literacy, About CML, <http://www.medialit.org/about-cml> (last visited Apr. 4, 2011).
- 8 Nat'l Ass'n for Media Literacy Education, Expanding and Inspiring the Practice of MLE in the USA, <http://namle.net/about-namle/vision-mission/> (last visited Jan. 26, 2011).
- 9 Univ. of Southern California Annenberg School for Communication and Journalism, Project New Media Literacies, <http://www.newmedialiteracies.org/our-methods.php> (last visited Jan. 26, 2011).
- 10 Temple Univ. School of Communications and Theater, Media Education Lab, <http://mediaeducationlab.com/curriculum/materials> (last visited Jan. 27, 2011).
- 11 U.S. Senators Jay Rockefeller, Olympia Snowe & John Kerry, *S. 1029—The 21st Century Skills Incentive Fund* (press release), June 10, 2009, *available at* [http://www.p21.org/documents/2009-21st%20Century%20Skills%20PIFfactsheet\\_06-10.pdf](http://www.p21.org/documents/2009-21st%20Century%20Skills%20PIFfactsheet_06-10.pdf).
- 12 National Association for Media Literacy Education Comments in re *Protecting Children in an Evolving Media Landscape NOI (Empowering Parents and Protecting Children in an Evolving Media Landscape*, Notice of Inquiry, 24 FCC Rcd 13171 (2009) (*Protecting Children in an Evolving Media Landscape NOI*), filed Feb. 3, 2010 (NAMLE Comments in re *Protecting Children in an Evolving Media Landscape NOI*), at 12.
- 13 NAMLE Comments in re *Protecting Children in an Evolving Media Landscape NOI* at 12.
- 14 NAMLE Comments in re *Protecting Children in an Evolving Media Landscape NOI* at 12.
- 15 DIGITAL AND MEDIA LITERACY at 27.
- 16 DIGITAL AND MEDIA LITERACY at viii.
- 17 American Academy of Pediatrics, AAP News Room, <http://www.aap.org/advocacy/releases/mediaeducation2010.htm> (last visited Jan. 27, 2011).
- 18 American Academy of Pediatrics, *Media Education*, 104 PEDIATRICS 341-343 (1999).
- 19 COMMON SENSE MEDIA, DIGITAL LITERACY AND CITIZENSHIP IN THE 21ST CENTURY (2009) (DIGITAL LITERACY AND CITIZENSHIP), *available at* <http://www.common sense media.org/sites/default/files/DigitalLiteracy-andCitizenshipWhitePaper-Oct2009.pdf>.
- 20 DIGITAL LITERACY AND CITIZENSHIP at 2.
- 21 Stony Brook Univ. School of Journalism, The Center for News Literacy at Stony Brook University Presents News Literacy: Setting a National Agenda, [http://www.news literacy conference.com/content/?page\\_id=2](http://www.news literacy conference.com/content/?page_id=2) (last visited Jan. 27, 2011).
- 22 PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS 18 (2010), *available at* <http://people-press.org/report/?pageid=1792>.
- 23 Megan Garber, *Leap of Faith*, COLUMBIA JOURNALISM REV. (July-Aug. 2009), [http://www.cjr.org/feature/leap\\_of\\_faith\\_1.php](http://www.cjr.org/feature/leap_of_faith_1.php).
- 24 Howard Schneider, *It's the Audience, Stupid!*, NIEMAN REPORTS, Fall 2007, <http://www.nieman.harvard.edu/reports/article/100169/its-the-emAudienceem-Stupid.aspx>.
- 25 DIGITAL AND MEDIA LITERACY at 23-34.
- 26 DIGITAL AND MEDIA LITERACY at 34.
- 27 Jack Dvorak, *ERIC Digest D145—Journalism Student Performance In Language Arts*, Nov. 1999, <http://www.ericdigests.org/2000-3/arts.htm>.
- 28 CLARK, MARTIRE & BARTOLOMEO, INC., GROWING LIFELONG READERS: A STUDY OF THE IMPACT OF STUDENT INVOLVEMENT WITH NEWSPAPERS ON ADULT READERSHIP (The Newspaper Ass'n of America Found.) (2004), <http://www.nieworld.com/lifelongreaders.htm> (reprinted with permission).
- 29 Alan C. Miller, *Nieman Reports: News Literacy Project: Students Figure Out what News and Information to Trust*, THE NEWS LITERACY PROJECT, [http://www.thenewsliteracyproject.org/press/news/nieman\\_reports\\_news\\_literacy\\_project\\_students\\_figure\\_out\\_what\\_news\\_and\\_info/](http://www.thenewsliteracyproject.org/press/news/nieman_reports_news_literacy_project_students_figure_out_what_news_and_info/) (last visited Mar. 14, 2011).
- 30 American Society of News Editors, News Literacy Resources, [http://www.hsj.org/News\\_Literacy/index.cfm?menu\\_id=4](http://www.hsj.org/News_Literacy/index.cfm?menu_id=4) (last visited Jan. 28, 2011).
- 31 American Society of News Editors, About Us, <http://www.hsj.org/content.cfm?CmsPagesID=192> (last visited Jan. 28, 2011).
- 32 NAMLE Comments in re *Protecting Children in an Evolving Media Landscape NOI* at 19.
- 33 NAMLE Comments in re *Protecting Children in an Evolving Media Landscape NOI* at 19.
- 34 CECIL J. PICARD, GUIDELINES FOR LIBRARY MEDIA PROGRAMS IN LOUISIANA SCHOOLS 69-70 (Louisiana State Dep't of Education) (2004), *available at* <http://www.louisianaschools.net/Ide/uploads/15303.pdf>.
- 35 SUSAN ROGERS, MEDIALITERACY.COM, MEDIA LITERACY EDUCATION: WHERE TO INTEGRATE IT WITHIN MISSOURI STATE GRADE LEVEL EXPECTATIONS IN COMMUNICATION ARTS, HEALTH EDUCATION AND SOCIAL STUDIES (Nat'l Ass'n of Media Literacy Educators) (2004) (MEDIA LITERACY



EDUCATION), available at <http://medialiteracy.com/documents/MissouriGradeLevelExpectationsreMLE.pdf>.

### 36 MEDIA LITERACY EDUCATION.

**37** The Common Core Standards are a state-led effort to devise common public education standards, coordinated by the National Governors Association Center for Best Practices and the Council of Chief State School Officers (the highest-level public school administrators). The standards were developed in collaboration with teachers, school administrators, and experts, to provide a clear and consistent framework to prepare our children for college and the workforce. Individual states choose whether or not to adopt these standards. The Common Core Standards declare that students ought to be able to:

“Gather relevant information from multiple print and digital sources, assess the credibility and accuracy of each source, and integrate the information while avoiding plagiarism.”

“Explore a variety of digital tools to produce and publish writing, including in collaboration with peers.”

“Make strategic use of digital media and visual displays of data to express information and enhance understanding of presentations.”

“Evaluate the advantages and disadvantages of using different mediums (e.g., print or digital text, video, multimedia) to present a particular topic or idea.”

“Make strategic use of digital media (e.g., textual, graphical, audio, visual, and interactive elements) in presentations to enhance understanding of findings, reasoning, and evidence and to add interest.”

COUNCIL OF CHIEF STATE SCHOOL OFFICERS & THE NAT'L GOVERNORS ASS'N COMMON CORE STATE STANDARDS INITIATIVE, COMMON CORE STATE STANDARDS FOR ENGLISH LANGUAGE ARTS & LITERACY IN HISTORY/ SOCIAL STUDIES, SCIENCE, AND TECHNICAL SUBJECTS 18, 19, 22, 39 (2010), available at [http://www.corestandards.org/assets/CCSSI\\_ELA%20Standards.pdf](http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf).

**38** Common Core State Standards Initiative, Frequently Asked Questions, <http://www.corestandards.org/frequently-asked-questions> (last visited Jan. 28, 2011).

## 20 News Consumption

**1** ROBERT E. BOHN & JAMES E. SHORT, HOW MUCH INFORMATION? REPORT ON AMERICAN CONSUMERS 7 (Global Information Industry Ctr., Univ. of California San Diego) (2009), available at [http://hmi.ucsd.edu/pdf/HMI\\_2009\\_ConsumerReport\\_Dec9\\_2009.pdf](http://hmi.ucsd.edu/pdf/HMI_2009_ConsumerReport_Dec9_2009.pdf).

**2** PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AMERICANS SPENDING MORE TIME FOLLOWING THE NEWS 2 (2010) (PEW 2010 NEWS CONSUMPTION SURVEY), <http://people-press.org/files/legacy-pdf/652.pdf>.

**3** PEW 2010 NEWS CONSUMPTION SURVEY at 2.

**4** PEW 2010 NEWS CONSUMPTION SURVEY at 2.

**5** PEW 2010 NEWS CONSUMPTION SURVEY at 19.

**6** PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, AUDIENCE SEGMENTS IN A CHANGING NEWS ENVIRONMENT: KEY NEWS AUDIENCES NOW BLEND ONLINE AND TRADITIONAL SOURCES, PEW RESEARCH CTR. BIENNIAL NEWS CONSUMPTION SURVEY 5 (2008) (PEW 2008 NEWS CONSUMP-

TION SURVEY), available at <http://people-press.org/reports/pdf/444.pdf> (1998, 2008 data); PEW 2010 NEWS CONSUMPTION SURVEY at 14.

**7** James G. Webster, *Cable television's impact on audience for local news*, 61 JOURNALISM QUART. 419, 419-22 (1984).

**8** MARKUS PRIOR, POST-BROADCAST DEMOCRACY: HOW MEDIA CHOICE INCREASES INEQUALITY IN POLITICAL INVOLVEMENT AND POLARIZES ELECTIONS 34-35 (Cambridge Univ. Press) (2007).

**9** Prepared Testimony of Paul Starr, Woodrow Wilson School, Princeton Univ., FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010) at 3-4, available at [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=9d2b16ad-3bfb-4255-bdab-d6dcd4bad7d6&groupId=101236](http://reboot.fcc.gov/c/document_library/get_file?uuid=9d2b16ad-3bfb-4255-bdab-d6dcd4bad7d6&groupId=101236).

**10** PEW 2010 NEWS CONSUMPTION SURVEY analysis. Among those going online to get news every day, 87 percent report coming across news when going online for a purpose other than to get the news. In contrast, among those going online to get the news less than once every few weeks, only 61 percent report coming across news when going online for a purpose other than to get the news. *Id.* at 28, 119.

**11** U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011 at 711 (U.S. CENSUS BUREAU STATISTICAL ABSTRACT 2011), available at <http://www.census.gov/compendia/statab/2011/tables/11s1130.pdf>.

**12** When adjusted for inflation, using the 2003 BLS Inflation Calculator, media spending increased 1.8 percent while consumer spending for apparel declined 6.2 percent. The elements that make up this figure are: TV (mainly cable or satellite TV), home video, consumer books, pure-play internet services, recorded music, newspapers, consumer magazines, box office, video games, pure-play mobile, and broadcast and satellite radio. The adjustment for inflation is based on a Bureau of Labor Statistics Inflation Calculator (BLS Inflation Calculator), [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm). Other consumer spending figures are from Bureau of Labor Statistics, “Table 4. Size of consumer unit: Average annual expenditures and characteristics” for 2003 (2003 BLS Consumer Unit Table), available at Bureau of Labor Statistics, Consumer Expenditure Survey, Expenditure Tables, <http://www.bls.gov/cex/csxstnd.htm#2003>.

**13** U.S. CENSUS BUREAU STATISTICAL ABSTRACT 2011 at 711, available at <http://www.census.gov/compendia/statab/2011/tables/11s1130.pdf>. “Adults 18 and older were the basis for estimates for newspapers, consumer books, consumer magazines, in-flight entertainment, out-of-home media, yellow pages and home video. Persons 12 and older were the basis for the estimates for box office, broadcast TV, cable TV Internet, mobile, radio, recorded music and videogames.” TV and radio” includes cable and satellite TV, broadcast TV, and broadcast and satellite radio. “Entertainment” includes home video, recorded music, box office, and videogames. “Print” includes consumer books, newspapers, and magazines.

**14** JOHN B. HERRIGAN, BROADBAND ADOPTION AND USE IN AMERICA (OMNIBUS BROADBAND INITIATIVE PAPER SERIES NO. 1) 3, 24 (2010) (HERRIGAN, BROADBAND ADOPTION AND USE IN AMERICA), available at <http://online.wsj.com/public/resources/documents/FCCsurvey.pdf>.

**15** NATALIE JOMINI STROUD, NICHE NEWS: THE POLITICS OF NEWS CHOICE (Oxford Univ. Press) (2011) (STROUD, NICHE NEWS); Diana C. Mutz & Paul S. Martin, *Facilitating Communication across Lines of Political Difference: The Role of Mass Media*, 95 AMER. POLIT. SCI. REV., 107 (2001), available at [www.polisci.upenn.edu/faculty/bios/Pubs/mutzAPSR2001.pdf](http://www.polisci.upenn.edu/faculty/bios/Pubs/mutzAPSR2001.pdf). Shanto

Iyengar & Kyu S. Hahn, *Red Media, Blue Media: Evidence of Ideological Selectivity in Media Use*, 59 J. COMMUNICATION 19 (2009), available at <http://pcl.stanford.edu/research/2009/iyengar-redmedia-bluedmedia.pdf>.

- 16 Based on analysis of online surfing habits, Gentzkow and Shapiro conclude that “the data clearly reject the view that liberals only get news from a set of liberal sites and conservatives only get news from a set of conservative sites.” MATTHEW GENTZKOW & JESSE M. SHAPIRO, IDEOLOGICAL SEGREGATION ONLINE AND OFFLINE 17 (Chicago Booth and Nat’l Bureau of Econ. Research) (2010), available at [http://faculty.chicagobooth.edu/jesse.shapiro/research/echo\\_chambers.pdf](http://faculty.chicagobooth.edu/jesse.shapiro/research/echo_chambers.pdf). R. Kelly Garrett argues that “individuals are using control over their political information environment to increase their exposure to opinion-reinforcing information, but ... they are not using this control to systematically screen out other opinions.” R. Kelly Garrett, *Politically Motivated Reinforcement Seeking: Reframing the Selective Exposure Debate*, 59 J. COMMUNICATION 676, 692 (2009); see also R. Kelly Garrett, *Echo Chambers Online? Politically Motivated Selective Exposure among Internet Users*, 14 J. COMPUTER-MEDIATED COMMUNICATION 265, 265-285 (2009).

The evidence of exposure to the other side, however, should not be overstated. Gentzkow and Shapiro’s data do not let them examine (a) whether multiple users use the same computer, (b) how visitors perceive the sites they visit—perhaps Beck is more likely to direct readers to the New York Times to illustrate a ridiculous claim. Sunstein (2007) reviews research conducted by Eszter Hargittai and her colleagues: “On the ‘blogrolls’ referring readers to other blogs, conservatives are far more likely to list other conservatives, and liberals are far more likely to list other liberals. When blogs refer to discussions by other bloggers, they usually cite likeminded others. To be sure, there is a significant amount of cross-citation as well. But—and here is perhaps the most striking finding—a plurality of cross-citations simply cast contempt on the views that are being cited! Only a quarter of cross-ideological posts involve genuine substantive discussion.” (p. 149). Although there is evidence to suggest that citizens are not repelled by information incongruent with their beliefs, more research is needed. CASS R. SUNSTEIN, *REPUBLIC.COM 2.0* (Princeton Univ. Press) (2009) (citing Eszter Hargittai, Jason Gallo and Matt Kane, *Mapping the Political Blogosphere: Analysis of Large-Scale Online Political Discussion*, Unpublished manuscript, Northwestern University, 2006).

## 21 Types of News

- 1 Interview with Robert Papper, Dir., RTDNA/Hofstra Univ. Annual Survey, by Cynthia Kennard, FCC (Sept. 30, 2010) (Papper Interview 9/30/10).
- 2 MICHELE MCLELLAN, *COMMUNITY NEWS SURVEY PART THREE—REVENUE STREAMS* (Donald W. Reynolds Journalism Institute) (2010), <http://www.rjionline.org/fellows-program/mcLellan/block-by-block/part-3.php>.
- 3 Michele McLellan, *Debunking the Replacement Myth*, DONALD W. REYNOLDS JOURNALISM INSTITUTE, July 26, 2010, <http://www.rjionline.org/projects/mcellan/stories/debunk/index.php>.
- 4 BILL GRUESKIN, AVA SEAVE, AND LUCAS GRAVES, *THE STORY SO FAR: WHAT WE KNOW ABOUT THE BUSINESS OF JOURNALISM*, COLUMBIA JOURNALISM REV 37 (2011), [http://cjrchive.org/img/posts/report/The\\_Story\\_So\\_Far.pdf](http://cjrchive.org/img/posts/report/The_Story_So_Far.pdf) (BILL GRUESKIN, AVA SEAVE, AND LUCAS GRAVES,

THE STORY SO FAR). The Columbia Journalism School report stated: “TBD.com ran into trouble right from the start. In February 2011, just six months after going live, the Washington, D.C. area’s high-profile experiment in local online journalism announced that it would lay off half of its editorial staff, detach its site from its TV-station partner and reinvent itself as a culture-and-lifestyle site.” *Id.*

- 5 Ken Doctor, *The Newsonomics of Less Is More, More or Less*, NEWSONOMICS, Sept. 3, 2010, <http://newsonomics.com/the-newsonomics-of-less-is-more-more-or-less/>.
- 6 Marion Geiger, *The AP and Ohio newspapers*, EDITORSWEBLOG, Apr. 22, 2009, [http://www.editorsweblog.org/newspaper/2009/04/ap\\_and\\_ohio\\_newspapers.php](http://www.editorsweblog.org/newspaper/2009/04/ap_and_ohio_newspapers.php).
- 7 Carole Wurzelbacher, *Ohio Newspapers Collaborate to Expose State Pension Scandal*, EDITORSWEBLOG, Jun. 22, 2010, [http://www.editorsweblog.org/newsrooms\\_and\\_journalism/2010/06/ohio\\_newspapers\\_collaborate\\_to\\_expose\\_st.php](http://www.editorsweblog.org/newsrooms_and_journalism/2010/06/ohio_newspapers_collaborate_to_expose_st.php).
- 8 See PEW RESEARCH CTR’S INTERNET & AMER. LIFE PROJ., *HOW THE PUBLIC PERCEIVES COMMUNITY INFORMATION SYSTEMS* (2011), <http://www.pewinternet.org/Reports/2011/08-Community-Information-Systems.aspx> under “Explore Survey Questions.”
- 9 RACHEL MERSEY, VIVIAN VAHLBERG, & BOB LEBAILLY, *NEWS THAT MATTERS: AN ASSESSMENT OF CHICAGO’S INFORMATION LANDSCAPE* 10, 14-15, 19 (Chicago Community Trust) (2010), <http://www.cct.org/impact/partnerships-initiatives/expanding-information-access/community-news-matters/summit>.
- 10 PEW RESEARCH CTR’S INTERNET & AMER. LIFE PROJ., *UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER* (2010) (PEW, *UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER*), <http://www.pewinternet.org/Reports/2010/Online-News.aspx>; Email from Kristen Purcell, Pew, to Steven Waldman, FCC (May 3, 2010).
- 11 **Analysis of News and Information Web Traffic in Sample Markets:**  
To conduct our analysis, we started with comScore’s “Local Market Internet Site Visitation April 2010” data. To create this dataset, comScore tracks web usage among its local market research groups along a number of different categories. Whereas the conventional definition of “News and Information” may be broadly defined to include such topics as business and finance, community interest, conversational media such as blogs, directories and resources, entertainment, government, sports, or other periodical reports or announcements of broad interest, we decided to restrict our analysis to comScore’s narrowly defined category entitled “News/Information” which comScore defines as “Sites that provide news and information regarding domestic and international issues. This category also contains sites with articles and periodicals on current events and weather. Examples: New York Times Digital, About.com.”  
Starting with the entirety of comScore’s dataset for the top 100 markets, we separated the markets into thirds and selected one market at random from each third. We then extracted out the web traffic data for just the News/Information category. For each of the websites visited by six or more study participants, comScore provided the raw data (actual traffic metrics for the group), and projected data (traffic metrics scientifically weighted by comScore to project market-wide estimates of traffic) as well as their own measures of local and national “reach.” For our base analysis, we sorted by various traffic metrics and observed the patterns. For our ownership analysis, we overlaid comScore’s data with our own original research, identifying the highest-level parent company to own

each website or web entity. We then developed a categorization mechanism, to separate the websites and web entities into discernable and analytically useful groups pertaining to national versus local ownership, traditional media versus Internet-based media and private, public, or non-profit ownership. We counted the number of parent companies in each category and observed the patterns.

For our local filter analysis we took the universe of News and Information websites and filtered out the websites with a disproportionately national reach based on comScore's measurement called "Reach Index." This yielded a list of websites with a particularly local appeal, and thus more likely, though not exclusively, to fall into the local news category. It is possible that some of websites on this list are of national interest, but may have been of particular interest to the observed locale in the sample month. We observed this once in one of our sample markets. To analyze this list, we then sorted list by the measure comScore calls "Local Reach" to get an ordered list of the most popular News and Information websites within the local market. We observed the patterns in the resulting list.

It should be noted, that because of the way in which comScore collects and reports its granular-level website data, in order to avoid double counting of the traffic metrics for the universe of all News and Information websites visited by six or more comScore market-based research participants at some point during the month of April 2011, we actually look at the universe of all News and Information parent web entities with one or more websites each visited by six or more market-based research subjects at some point during the month of April 2010 and consider each group of websites owned by the same parent web entity, a single website.

- 12 If we take the universe of all News and Information websites visited by the Toledo research group and filter out the websites with a disproportionately national reach, we can get closer to identifying the websites with a particularly local appeal, and thus more likely, though not exclusively, fall into the local news category.
- 13 "Nielsen Analysis" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/online-summary-essay/nielsen-analysis/>.
- 14 ADAM LYNN, S. DEREK TURNER, & MARK COOPER, NEW MEDIA AND LOCALISM: ARE LOCAL CABLE CHANNELS AND LOCALLY FOCUSED WEBSITES SIGNIFICANT NEW AND DIVERSE SOURCES OF LOCAL NEWS AND INFORMATION? AN EMPIRICAL ANALYSIS 13 (Freepress) (2007), available at <http://www.policyarchive.org/handle/10207/bitstreams/8002.pdf>.
- 15 Jeremy W. Peters, *Newspaper Circulation Falls Broadly but at Slower Pace*, N.Y. TIMES, Oct. 25, 2010, <http://mediadecoder.blogs.nytimes.com/2010/10/25/newspaper-circulation-falls-broadly-but-at-slower-pace/> (explaining *The New York Times*' circulation was 876,638 from April through September, 2010, down 5.5 percent from 927,851 during the same time the year before); See also NEWSPAPER ASS'N OF AMERICA, TOTAL PAID CIRCULATION—NEWSPAPER CIRCULATION VOLUME (2010), <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx> (stating the overall weekday paid circulation in the U.S. in 2009 was 45,653,000).
- 16 Mary Walton, *Investigative Shortfall*, AMER. JOURNALISM REV. (Sept. 2010) (*Investigative Shortfall*), <http://www.ajr.org/article.asp?id=4904>.
- 17 *Investigative Shortfall*.
- 18 *Investigative Shortfall*.
- 19 National Public Radio Comments in re *FOM PN (FCC Launches Examination of The Future of Media and the Contributions of Public Media to the Information Needs of America, Comment Sought*, GN Docket No. 10-25, Public Notice (*FOM PN*)), filed May 7, 2010 (NPR Comments), at 3.
- 20 National Public Radio (NPR), *About NPR: Audience*, <http://www.npr.org/about/aboutnpr/audience.html> (last visited May 24, 2011).
- 21 "Magazines: Audience" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2010) (PEW, STATE OF THE NEWS MEDIA 2010), <http://stateofthemediamedia.org/2010/magazines-summary-essay/audience/>.
- 22 "Magazines: News Investment" in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/magazines-summary-essay/news-investment/>.
- 23 Brett Pulley, *U.S. News to Discontinue Monthly Print Magazine, Shift Focus to Digital*, BLOOMBERG, Nov. 5, 2010, <http://www.bloomberg.com/news/2010-11-06/u-s-news-to-discontinue-monthly-print-magazine-shift-focus-to-digital.html>; Tanzina Vega & Jeremy W. Peters, *Audio Pioneer Buys Newsweek*, N.Y. TIMES, Aug. 3, 2010, at B1, available at <http://www.nytimes.com/2010/08/03/business/media/03newsweek.html>.
- 24 See "Magazines: By the Numbers" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2011) (PEW, STATE OF THE NEWS MEDIA 2011), <http://stateofthemediamedia.org/2011/magazines-essay/data-page-4/>. Data drawn from Audit Bureau of Circulation, FAS-FAX reports.
- 25 See "Magazines: By the Numbers" in PEW, STATE OF THE NEWS MEDIA 2011. Numbers prior to 2009 are rounded.
- 26 Interview with Alexis Gelber, Editorial Consultant, Adjunct Professor at New York Univ. Arthur L. Carter J. Institute, by M.K. Guzda Struck, FCC (Oct. 6, 2010).
- 27 Jeffrey Kluger, *How Haditha Came to Light*, TIME, June. 4, 2006, <http://www.time.com/time/magazine/article/0,9171,1200780,00.html> (stating "The Haditha killings occurred last November, but it wasn't until January that TIME first heard whispers about them. The initial account of the incident was published in March in the magazine and on TIME.com.").
- 28 See, e.g., Alex Kuczynski, *Media Talk: Reporters Square Off Over Clinton Scandal*, N.Y. TIMES, Feb. 7, 2000, <http://www.nytimes.com/2000/02/07/business/media-talk-reporters-square-off-over-clinton-scandal.html> (calling Michael Isikoff "a scrappy reporter whose work ushered in the story about President Clinton's relationship with Monica S. Lewinsky").
- 29 Jeff Bercovici, *Number Crunch: Downsizing at the Newsweeklies*, MIXED MEDIA, Nov. 8, 2008, <http://www.portfolio.com/views/blogs/mixed-media/2008/11/18/number-crunch-downsizing-at-the-newsweeklies>.
- 30 "Magazines: News Investment" in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/magazines-summary-essay/news-investment/> (noting that TIME's staff decreased from 362 in 1983 to 147 in 2009, while Newsweek's staff decreased from 348 to 150 in the same time period).
- 31 MPA—THE ASSOCIATION OF MAGAZINE MEDIA, PUBLISHERS INFORMATION BUREAU MAGAZINE AD REPORT: Q3 2010 (2010), [http://www.magazine.org/advertising/revenue/by\\_ad\\_category/pib-3q-2010.aspx](http://www.magazine.org/advertising/revenue/by_ad_category/pib-3q-2010.aspx).
- 32 Rachel Smolkin, *Finding a Niche*, AMER. JOURNALISM REV. (April/May 2007), <http://www.ajr.org/article.asp?id=4297>.
- 33 Katerina-Eva Matsa, Tom Rosenstiel & Paul Moore, "Magazines: A Shake-Out for News Weeklies: News Magazines" in PEW, STATE OF THE NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/magazines-essay/>.

- 34 Jodi Enda, *Capital Flight*, AMER. JOURNALISM REV. (June/July 2010), <http://www.ajr.org/Article.asp?id=4877> (Enda, *Capital Flight*).
- 35 Enda, *Capital Flight*.
- 36 Enda, *Capital Flight*.
- 37 Understanding Government, Preventive Journalism, <http://understandinggov.org/?cat=21> (last visited May 24, 2011).
- 38 The Pulitzer Prize, International Reporting, available at <http://www.pulitzer.org/bycat/International-Reporting> (last visited Feb 08, 2011); Pew Research Center's Project for Excellent Journalism, *The Changing Newsroom: Changing Content*, JOURNALISM, July 21, 2008, available at <http://www.journalism.org/node/11963>.
- 39 Peter Arnett, *State of The American Newspaper Goodbye, World*, AMERICAN JOURNAL REVIEW (1998).
- 40 These 2010 figures were obtained by a telephone survey of the newspapers listed in Arnett, *State of The American Newspaper: Goodbye, World*.
- 41 Priya Kumar, *Shrinking Foreign Coverage*, AM. JOURNALISM REV. (Dec./Jan. 2011), <http://www.ajr.org/article.asp?id=4998>.
- 42 "The Changing Newspaper Newsroom" in PEW, STATE OF THE NEWS MEDIA 2008, <http://stateofthemediamedia.org/2008/special-reports-the-future-of-advertising/the-changing-newspaper-newsroom/>.
- 43 Diana Saluri Russo, *Is the Foreign News Bureau Part of the Past?*, GLOBAL JOURNALIST, Jan. 30, 2010, <http://www.globaljournalist.org/stories/2010/01/30/is-the-foreign-news-bureau-part-of-the-past/>.
- 44 "The Changing Newspaper Newsroom" in PEW, STATE OF THE NEWS MEDIA 2008, <http://stateofthemediamedia.org/2008/special-reports-the-future-of-advertising/the-changing-newspaper-newsroom/>.
- 45 See "The Changing Newspaper Newsroom" in PEW, STATE OF THE NEWS MEDIA 2008, <http://stateofthemediamedia.org/2008/special-reports-the-future-of-advertising/the-changing-newspaper-newsroom/>.
- 46 iCasualties.org: Iraq Coalition Casualty Count, <http://icasualties.org/> (last visited May 31, 2011).
- 47 "War Coverage Declines in 2010" in PEW, STATE OF THE NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/network-essay/data-page-5/>.
- 48 See "Network TV: News Investment, in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2008/network-tv-intro/news-investment/>.
- 49 Email from Andrew Tyndall, The Tyndall Report, to Tamara Smith, FCC (July 23, 2010).
- 50 See "Network TV: News Investment" in PEW, STATE OF THE NEWS MEDIA 2008, <http://stateofthemediamedia.org/2008/network-tv-intro/news-investment/>.
- 51 Bloomberg, *Bloomberg Markets Magazine Relaunches with November 2010 Issue* (press release), October 4, 2010, <http://www.businesswire.com/news/home/20101004006912/en/Bloomberg-Markets-Magazine-Relaunches-November-2010-Issue>.
- 52 Jodi Enda, *Retreating from the World*, AMER. JOURNALISM R. (Dec./Jan. 2011) (*Retreating from the World*), <http://www.ajr.org/Article.asp?id=4985>.
- 53 "Content Analysis: A Year in the News" in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/online-summary-essay/content-analysis/>.
- 54 *Retreating from the World*.
- 55 *Foreign Correspondents: Who Covers What*.
- 56 See "Cable TV: News Investment" in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/cable-tv-summary-essay/news-investment/>.
- 57 *Retreating from the World*.
- 58 Global Voices, <http://globalvoicesonline.org/about/>, last visited (May 25, 2011).
- 59 Global Post, <http://www.globalpost.com/>, last visited (May 25, 2011).
- 60 James T. Hamilton, *The (Many) Markets for International News: How News from Abroad Sells at Home*, 11 (5) JOURNALISM STUDIES 650, 657 (2010).
- 61 "Network TV: News Investment, in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2008/network-tv-intro/news-investment/>; "Cable TV: News Investment" in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/cable-tv-summary-essay/news-investment/>.
- 62 ROY GUTMAN, HOW WE MISSED THE STORY: OSAMA BIN LADEN, THE TALIBAN, AND THE HIJACKING OF AFGHANISTAN xii, 261 (U.S. Institute of Peace) (2008).
- 63 International Crisis Group, <http://www.crisisgroup.org/en/about.aspx> (last visited May 25, 2011).
- 64 Andrew Stroehlein, *Without Foreign Coverage We Miss More Than News*, INT'L CRISIS GROUP, May 18, 2009, <http://www.crisisgroup.org/en/publication-type/commentary/without-foreign-coverage-we-miss-more-than-news.aspx>.
- 65 "Network TV: News Investment" in PEW RESEARCH CTR.'S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2004) (PEW, STATE OF NEWS MEDIA 2004), <http://stateofthemediamedia.org/2004/network-tv-intro-2/news-investment/>.
- 66 Alex Weprin, *Al Jazeera English Leads Egypt Coverage, But Most Americans Still Can't Watch It*, TVNEWSER, Jan. 31, 2011, [http://www.mediabistro.com/tvnewser/al-jazeera-english-leads-egypt-coverage-but-most-americans-still-cant-watch-it\\_b50751#](http://www.mediabistro.com/tvnewser/al-jazeera-english-leads-egypt-coverage-but-most-americans-still-cant-watch-it_b50751#).
- 67 "Online Essay", in PEW, STATE OF THE NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/online-essay/data-page-7/>.
- 68 Haider Rizvi, *Foreign News Channels Drawing U.S. Viewers*, INTER PRESS SERVICES NEWS AGENCY, Jan. 29, 2010, <http://ipsnews.net/news.asp?idnews=50157>.
- 69 LEE C. BOLLINGER, UNINHIBITED, ROBUST, AND WIDE-OPEN-A FREE PRESS FOR A NEW CENTURY 85 (Oxford Univ. Press) (2010).

## 22 The Media Food Chain

- 1 ALEX JONES, LOSING THE NEWS: THE FUTURE OF THE NEWS THAT FEEDS DEMOCRACY 1 (Oxford Univ. Press) (2009).
- 2 Lee Rainie, *The Future of Public Relations*, PRESS LIFT, Aug. 22, 2010, at 23, <http://blog.presslift.com/post/1043498152/the-pew-research-centers-pew-internet-american>.
- 3 See "Part 5: News gets personal, social, and participatory: The 'Daily Me' and the 'Daily Us'" in PEW, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER, <http://www.pewinternet.org/Reports/2010/Online-News/Part-5/3-Daily-Me-and-Daily-Us.aspx>.

- 4 Daniel Terdiman, *Study: Wikipedia as Accurate as Britannica*, CNET NEWS, Dec. 15, 2005, [http://news.cnet.com/Study-Wikipedia-as-accurate-as-Britannica/2100-1038\\_3-5997332.html](http://news.cnet.com/Study-Wikipedia-as-accurate-as-Britannica/2100-1038_3-5997332.html).
- 5 See PEW RESEARCH CTR'S INTERNET & AMER. LIFE PROJ., HOW NEWS HAPPENS: A STUDY OF THE NEWS ECOSYSTEM OF ONE AMERICAN CITY (2011), [http://www.journalism.org/analysis\\_report/how\\_news\\_happens](http://www.journalism.org/analysis_report/how_news_happens).
- 6 Interview with Mark Thompson, Time Magazine, by M.K. Guzda Struck, FCC (July 15, 2010).
- 7 Interview with Bill Girdner, Editor and Publisher, Courthouse News Service, by M.K. Guzda Struck, FCC (July 2, 2010).
- 8 Interview with Doug Guthrie, Court Reporter, Detroit News, by M.K. Guzda Struck, FCC (July 1, 2010).
- 9 Enda, *Capital Flight*.
- 10 Interview with Wally Dean, Dir., Training, Committee of Concerned Journalists, by Cynthia C. Kennard, FCC (Aug. 2010).
- 11 Ryan Chittum, *Free Tunes! Not: Business Press Stampedes into Qtrax Blunder*, COLUMBIA JOURNALISM REV., Feb. 7, 2008, [http://www.cjr.org/the\\_audit/free\\_tunes\\_not.php](http://www.cjr.org/the_audit/free_tunes_not.php).
- 12 Jeremy Porter, *Journalists Find Some News Releases Useful*, JOURNALISTICS, July 14, 2010, <http://blog.journalistics.com/2010/journalists-find-some-news-releases-useful/>.
- 13 ROBERT MCCHESENEY & JOHN NICHOLS, THE DEATH AND LIFE OF AMERICAN JOURNALISM (Nation Books) (2010).
- 14 *What Type of Multimedia Content Will Broaden the Appeal of a Press Release*, ALLBUSINESS.COM, Jan. 20, 2010, <http://www.allbusiness.com/technology/software-services-applications-internet-social/13762388-1.html>.
- 15 *PRNews and PRWeb, Study Shows Big Shift in PR Pros' Perceptions and Use of Releases*, PR WEB, Dec. 10, 2009, <http://www.prweb.com/releases/prweb3322454.htm>.
- 16 Interview with Mark Silverman, Editor, Nashville Tennessean by Steven Waldman, FCC (May 24, 2010).
- 17 Testimony of David Simon, former Baltimore Sun reporter and Creator, HBO series The Wire, Hearing on the Future of News and Journalism, U.S. Senate Subcommittee on Communications, Technology and the Internet (May 8, 2009), *available at* <http://www.onthemediamedia.org/transcripts/2009/05/08/01>.
- 18 MARINA GUSEVA, ET AL., PRESS FREEDOM AND DEVELOPMENT: AN ANALYSIS OF CORRELATIONS BETWEEN FREEDOM OF THE PRESS AND THE DIFFERENT DIMENSIONS OF DEVELOPMENT, POVERTY, GOVERNANCE AND PEACE 15 (Ctr. for Peace and Security at Sciences Po Univ. & United Nations Educational Scientific and Cultural Organization) (2008) (PRESS FREEDOM AND DEVELOPMENT), *available at* <http://unesdoc.unesco.org/images/0016/001618/161825e.pdf>.
- 19 See PRESS FREEDOM AND DEVELOPMENT at 108–111. The study also found a correlation between press freedom and higher ratings on scales of good governance. *Id.* That was consistent with the earlier discussion in this paper of the importance of the press to government accountability.
- 20 KNIGHT COMMISSION ON THE INFORMATION NEEDS OF COMMUNITIES IN A DEMOCRACY, INFORMING COMMUNITIES: SUSTAINING DEMOCRACY IN THE DIGITAL AGE 12 (Aspen Institute) (2009) (KNIGHT COMMISSION, INFORMING COMMUNITIES), *available at* [http://www.knightcomm.org/wp-content/uploads/2010/02/Informing\\_Communities\\_Sustaining\\_Democracy\\_in\\_the\\_Digital\\_Age.pdf](http://www.knightcomm.org/wp-content/uploads/2010/02/Informing_Communities_Sustaining_Democracy_in_the_Digital_Age.pdf).
- 21 KNIGHT COMMISSION, INFORMING COMMUNITIES at 14.
- 22 Alicia Adserà, Carles Boix & Mark Payne, *Are You Being Served? Political Accountability and Quality of Government*, 19 J. LAW, ECON. & ORGANIZATIONS 445, 457-469 (2003). For a similar conclusion resting on measures of press freedom, see Aymo Brunetti & Beatrice Weder, *A Free Press is Bad News for Corruption*, 87 J. PUBLIC ECON. 1801 (2003).
- 23 FELIX OBERHOLZER-GEE & JOEL WALDFOGEL, MEDIA MARKETS AND LOCALISM: DOES LOCAL NEWS EN ESPAÑOL BOOST HISPANIC VOTER TURNOUT? 12 (2006), *available at* <http://www.hbs.edu/research/pdf/07-062.pdf>.
- 24 JESSICA TROUNSTINE, INCUMBENCY AND RESPONSIVENESS IN LOCAL ELECTIONS 15, 23 (2010), *available at* [http://faculty.ucmerced.edu/jtrounstine/low\\_info\\_draft4.pdf](http://faculty.ucmerced.edu/jtrounstine/low_info_draft4.pdf).
- 25 SAM SCHULHOFER-WOHL & MIGUEL GARRIDO, DO NEWSPAPERS MATTER? EVIDENCE FROM THE CLOSURE OF THE CINCINNATI POST (Nat'l Bureau of Economic Research) (2009), *available at* <http://www.nber.org/papers/w14817.pdf>.
- 26 Jackie Filla & Martin Johnson, *Local News Outlets and Political Participation*, 45 URBAN AFFAIRS REV. 688 (2010).
- 27 Matthew Gentzkow, *Television and Voter Turnout*, 121 QUART. J. ECON. 931 (2006), *available at* [http://faculty.chicagobooth.edu/matthew.gentzkow/research/tv\\_turnout.pdf](http://faculty.chicagobooth.edu/matthew.gentzkow/research/tv_turnout.pdf).
- 28 Sheila Grissett, *Shifting Federal Budget Erodes Protection from Levees; Because of Cuts, Hurricane Risk Grows*, TIMES PICAYUNE, June 4, 2004, at 1. In a quote from the *Times-Picayune* article Al Naomi, a Senior Project Manager at the Army Corps of Engineers, said, "I can't tell you exactly what that could mean this hurricane season if we get a major storm... It would depend on the path and speed of the storm, the angle that it hits us. But I can tell you that we would be better off if the levees were raised,... and I think it's important and only fair that those people who live behind the levee know the status of these projects." *Id.*
- 29 KNIGHT COMMISSION, INFORMING COMMUNITIES at 12.

## 23 Diversity

- 1 LOUIS CANTOR, WHEELIN' ON BEALE: HOW WDIA-MEMPHIS BECAME THE NATION'S FIRST ALL-BLACK RADIO STATION AND CREATED THE SOUND THAT CHANGED AMERICA (Pharos) (1992).
- 2 Auburn Avenue Research Library on African-American Culture and History, WERD Oral History Interviews, <http://aafa.galileo.usg.edu/aafa/view?docId=ead/aar190-008-ead.xml;query=&brand=default> (last visited MAY 25, 2011).
- 3 Donna L. Halper, *The First African-American Radio Station Owner: Jesse B. Blayton Sr.*, LWF NETWORK & AFRICAN-AMERICAN RADIO, 2008, [http://www.lwfaah.net/aaradio/1staa\\_radio.htm](http://www.lwfaah.net/aaradio/1staa_radio.htm).
- 4 *Radio: New Net*, TIME, Dec. 28, 1953, [www.time.com/time/magazine/article/0,9171,858419,00.html](http://www.time.com/time/magazine/article/0,9171,858419,00.html); See also World News Network, *National Negro Network*, [http://wn.com/National\\_Negro\\_Network](http://wn.com/National_Negro_Network) (last visited May 25, 2011).
- 5 NAT'L ADVISORY COMM'N ON CIVIL DISORDER, KERNER PLUS 40 REPORT 83 (Univ. of Pennsylvania Annenberg School for Communication and Ctr. for Africana Studies & The Institute for Advanced Journalism Studies

- at North Carolina A&T State Univ.) (2008), *available at* <http://www.ifajs.org/events/spring08/Kerner40/Report.pdf>.
- 6 See, e.g., *Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices*, 13 FCC 2d 766 (1968); see also *Strategies for Advancing Minority Ownership Opportunities in Telecommunications* (The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission (“*Rivera Report*”); *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982); *Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices*, 23 FCC 2d 430 (1970).
  - 7 ARBITRON INC., *BLACK RADIO TODAY 2* (2010) (BLACK RADIO TODAY), *available at* [http://www.arbitron.com/downloads/BlackRadioToday\\_2010.pdf](http://www.arbitron.com/downloads/BlackRadioToday_2010.pdf). The report tracks several radio formats, including Urban Adult Contemporary, Urban Contemporary, Rhythmic Contemporary Hit Radio (“CHR”), News/Talk/Information, Pop Contemporary Hit Radio, All Sports, Religious and Adult Contemporary. *Id.* at 5.
  - 8 BLACK RADIO TODAY at 11.
  - 9 Interview with James Winston, Executive Director, Nat’l Ass’n of Black Owned Broadcasters by FCC (Mar. 2010) (Winston Interview 3/10). Indeed, a recent Pew study noted that only 9 percent of African-Americans used radio to get their national and international news, as compared to 18 percent of whites and 12 percent of Hispanics. See “African-American Media: Evolving in the New Era” in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/african-american/> (citing PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, INTERNET GAINS ON TELEVISION AS PUBLIC’S MAIN NEWS SOURCE (2011), *available at* <http://people-press.org/2011/01/04/internet-gains-on-television-as-publics-main-news-source/>).
  - 10 Winston Interview 3/10. NABOB and others advocated for Commission action to address concerns about discriminatory conduct in advertising on broadcast radio and television that impacted the flow of advertising revenue to minority owned broadcast stations. As part of a broader ownership diversity rulemaking proceeding, the Commission in 2007 adopted a ban on discrimination in advertising sales contracts designed to avoid “no Urban/no Spanish” dictates in broadcast advertising contracts. *Promoting Diversification of Ownership in the Broadcasting Services*, 2006 Quadrennial Review, 23 FCC Rcd 5922, 5941-42 (2008) (*Broadcast Diversity Order*).
  - 11 American Urban Radio Networks, <http://www.aurn.com/> (last visited May 25, 2011).
  - 12 American Urban Radio Networks, <http://www.aurn.com/> (last visited May 25, 2011).
  - 13 FCC, *Sirius XM Implements Merger Condition That Provides Leased Channels to Diverse Programmers* (press release), Apr. 18, 2011, [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0418/DOC-305856A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0418/DOC-305856A1.pdf).
  - 14 Testimony of Lisa Fager Bediako, Pres. & Co-founder, Industry Ears, FCC Hearing on Localism (Oct. 31, 2007), Tr. at 80:21-81:6, at 30, *available at* <http://www.fcc.gov/localism/>.
  - 15 Univision Presentation 12/13/10. Those trends are consistent among Hispanic viewers that watch the 11:00 pm newscast in those markets. *Id.* at 46.
  - 16 UNIV. OF NORTH TEXAS CTR. FOR SPANISH LANGUAGE MEDIA, THE STATE OF THE SPANISH LANGUAGE MEDIA ANNUAL 2010 REPORT 1 (2011) (THE STATE OF THE SPANISH LANGUAGE MEDIA ANNUAL 2010 REPORT), *available at* <http://www.spanishmedia.unt.edu/english/downloads/annualreport/Sofslm2010.pdf>
  - 17 ARBITRON INC., *HISPANIC RADIO TODAY 4* (2010) (HISPANIC RADIO TODAY 2010), *available at* [http://www.arbitron.com/downloads/hisp\\_radio\\_today\\_10.pdf](http://www.arbitron.com/downloads/hisp_radio_today_10.pdf).
  - 18 HISPANIC RADIO TODAY 2010 at 6.
  - 19 HISPANIC RADIO TODAY 2010 at 40-41. Time spent listening is an estimate of the amount of time the average listener spent with a station (or total radio) during a particular daypart. *Id.* at 9.
  - 20 HISPANIC RADIO TODAY 2010 at 42.
  - 21 Interview with Loris Ann Taylor, Exec. Dir., Native Public Media, by Jamila Bess Johnson, FCC (Mar. 11, 2010) (Taylor Interview 3/11/10). “The term ‘Indian Tribe[s]’ or ‘Federally-Recognized Indian Tribes’ means any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.” *Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080 (2000) (citing The Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (1994) (codified at 25 U.S.C. § 479a)).
  - 22 Taylor Interview 3/11/10.
  - 23 Native Voice One, <http://www.nv1.org/about.html> (last visited May 25, 2011).
  - 24 Koahnic Broadcast Corp., National Native News: News for All Americans, <http://www.nativenews.net/> (last visited May 25, 2011).
  - 25 Koahnic Broadcast Corp., [www.koahnicbroadcast.org/index.html](http://www.koahnicbroadcast.org/index.html) (last visited May 25, 2011); See also Koahnic Broadcast Corp., Native America Calling: The National Electronic Talking Circle, [www.nativeamericacalling.com/nac\\_about.shtml](http://www.nativeamericacalling.com/nac_about.shtml) (last visited May 25, 2011). The 52 stations that air Native America Calling are in Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. Koahnic Broadcast Corp., Native America Calling Affiliates, [http://www.nativeamericacalling.com/nac\\_affiliates.shtml](http://www.nativeamericacalling.com/nac_affiliates.shtml) (last visited May 25, 2011). The program is available online. *Id.*; See also Native Voice One, [www.nv1.org/](http://www.nv1.org/) (last visited May 25, 2011).
  - 26 Corporation for Public Broadcasting, Indian Country News Bureau, <http://www.cpb.org/programs/program.php?id=429> (last visited May 25, 2011); Taylor Interview 3/11/10.
  - 27 Native Public Media Comments in re *FOM PN (Comment Sought On FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age*, GN Docket No. 10-25, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*)), filed May 7, 2010 (Native Public Media Comments), at 21-22.
  - 28 Black Entertainment Television Networks, Presentation to FCC’s Advisory Committee on Diversity re: African-American Media Consumption Trends, June 15, 2010, (BET Networks Presentation to FCC Advisory Comm. on Diversity 6/15/10), at 8, *available at* <http://www.fcc.gov/DiversityFAC/061510/bet-trends-presentation-061510.ppt>.
  - 29 THE STATE OF THE SPANISH LANGUAGE MEDIA ANNUAL 2010 REPORT at 10; See also Melissa Guthrie, *Nielsen: Hispanic TV Homes Jump to*

- 40% *This Season*, BROADCASTING & CABLE, Sept. 3, 2010, [http://www.broadcastingcable.com/article/456686-Nielsen\\_Hispanic\\_TV\\_Homes\\_Jump\\_to\\_40\\_This\\_Season.php](http://www.broadcastingcable.com/article/456686-Nielsen_Hispanic_TV_Homes_Jump_to_40_This_Season.php).
- 30 ADVERTISING AGE, HISPANIC FACT PACK: 2009 EDITION 33 (2009) (HISPANIC FACT PACK 2009), *available at* <http://adage.com/images/random/0709/HisFP2009.pdf>.
- 31 Univision, Presentation to FCC, GN Docket No. 10-25 (Dec. 13, 2010) (Univision Presentation 12/13/10), at 27.
- 32 Univision press release, 2006 [http://corporate.univision.com/corp/en/pr/Los\\_Angeles\\_06042006-1.html](http://corporate.univision.com/corp/en/pr/Los_Angeles_06042006-1.html)
- 33 Joe Mathews, *Switch to Español*, WASHINGTON POST, MAY 11, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/09/AR2008050902540.html?hpid=opinionsbox1>.
- 34 Seventy-seven percent of the parents of second generation Asian Americans, also referred to as the “1.5” generation, prefer to speak English. See SIMMONS MARKET RESEARCH BUREAU, TEENS AND ADULT NATIONAL CONSUMER SURVEYS: PACKAGED FACTS 18 (2005).
- 35 Asian American Journalists Ass’n, Report to FCC Future of Media Team, GN Docket No. 10-25 (Dec. 6, 2010).
- 36 Interview with Peter Mathes, Chairman, AsianMedia Group, LLC, by FCC (July 15, 2010) (Mathes Interview 7/15/10).
- 37 Mathes Interview 7/15/10.
- 38 AsianMedia is financed with private equity resources, according to Mathes. Mathes Interview 7/15/10.
- 39 Mathes adds that he attempted to stream his TV signals online but found the enterprise too costly and with the lack of sufficient Internet-based advertising was forced to discontinue online streaming. Mathes Interview 7/15/10. Other commenters also raised concerns about the ability of the Internet to address the information needs of their communities. The Communications Workers of America states, “[w]hile the Internet continues to offer exciting new possibilities for dissemination of news and information, it is no substitute for print and broadcast media.” Communications Workers of America Comments in re *FOM PN*, filed May 7, 2010 (Communications Workers of Amer. Comments), at 4.
- 40 New America Media, <http://newamericamedia.org/> (last visited May 25, 2011).
- 41 In addition to aggregating news stories, NAM works to expand the creation of content for underserved populations through its partnership with journalism schools. New America Media, *About Us*, <http://newamericamedia.org/about/> (last visited May 25, 2011). Additionally, the Asian American Justice Center (AAJC) advocates for media diversity on behalf of Asian Americans. As part of that effort, AAJC works with other media advocacy groups to achieve parity in the representation of Asian Americans on television and other media. See, e.g., AAJC, The 2010 Asian Pacific American Media Coalition Report Card on Television Diversity & Statement by Karen K. Narasaki (President, AAJC and Chair, Asian Pacific American Media Coalition), <http://advancingequality.org/2010-diversity-report-card/>.
- 42 Alliance for Women in Media, Inc. surmises that women-owned stations account for only approximately five percent of full power television stations and six percent of radio stations. See Alliance for Women in Media, Inc. Comments in re *FOM PN*, filed May 7, 2010, at 2.
- 43 Reply of National Association of Black Owned Broadcasters in re *Comcast/NBC PN (Application of Comcast Corp., General Electric and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licenses, Comment Sought*, MB Docket No. 10-56, Public Notice, 25 FCC Rcd 4407 (2010) (*Comcast/NBC PN*)), filed July 21, 2010, at 2. According to recent Commission data, there are 1,774 commercial and educational television stations and 14,728 commercial and educational radio stations in the U.S. as of March 31, 2011. FCC, *Broadcast Station Totals as of March 31, 2011* (press release), May 6, 2011, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-302349A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302349A1.pdf).
- 44 National Hispanic Media Coalition *et al.* Comments in re *FOM PN*, filed May 7, 2010 (Nat’l Hisp. Media Coalition Comments) at 13–14 (citing S. DEREK TURNER & MARK COOPER, OUT OF THE PICTURE: MINORITY & FEMALE TV STATION OWNERSHIP IN THE UNITED STATES 3, 10 (Free Press) (2006) (TURNER & COOPER, OUT OF THE PICTURE), *available at* [http://www.freepress.net/files/out\\_of\\_the\\_picture.pdf](http://www.freepress.net/files/out_of_the_picture.pdf); See also CATHERINE J.K. SANDOVAL, MINORITY COMMERCIAL RADIO OWNERSHIP IN 2009: FCC LICENSING AND CONSOLIDATION POLICIES, ENTRY WINDOWS, AND THE NEXUS BETWEEN OWNERSHIP, DIVERSITY AND SERVICE IN THE PUBLIC INTEREST 5 (2009) (MINORITY COMMERCIAL RADIO OWNERSHIP IN 2009), *available at* <http://law.scu.edu/faculty/file/Minority%20Commercial%20Radio%20Broadcasters%20Sandoval%20MMTC%202009%20final%20.pdf>. According to Sandoval’s study, 139 stations were Latino-owned. *Id.* at 8.
- 45 TURNER & COOPER, OUT OF THE PICTURE at 2.
- 46 TURNER & COOPER, OUT OF THE PICTURE at 4.
- 47 TURNER & COOPER, OUT OF THE PICTURE at 4.
- 48 *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rulemaking, 24 FCC Rcd 5239, 5248 (2009) (*Rural Radio NPRM*) (noting “the problem is most acute in the case of tribal lands that are near large Urbanized Areas, or where the suburbs of such Urbanized Areas have begun to encroach upon areas adjacent to tribal lands. In such instances, spectrum scarcity may limit the opportunities for new radio service.”).
- 49 *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583 (2010).
- 50 *Rural Radio NRPM*, 24 FCC Rcd at 5247–48.
- 51 In March 2011, the Commission adopted a further Report and Order that enhances opportunities for Tribal entities to provide broadcast radio service to Native communities. See FCC, *FCC Takes Action to Help Strengthen and Expand Broadband and Other Communications Services in Native Nations* (press release), Mar. 3, 2011, [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0303/DOC-304981A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0303/DOC-304981A1.pdf).
- 52 Taylor Interview 3/11/10.
- 53 FCC staff compiled the data on bankruptcies. Although the data do not reveal whether the owners were minority, anecdotal evidence suggests that minority broadcasters have been hit hard by the recent financial crisis. For example, Amador Bustos, former president and CEO of Bustos Media LLC filed applications to transfer control of 28 Spanish language television and radio stations to NAP Broadcast Holdings LLC. Bustos attempted to work through his financial difficulties brought on by a lack of advertising revenue, but was in default to his lenders. NAP stands for the initials of the three senior lenders, NewStart, Atalaya and Prudential. *Bustos Media Files to Transfer All Stations*, RADIO INK MAGAZINE, June 30, 2010, <http://www.radioink.com/article.asp?id=1860408&spid=24698>; See generally MINORITY COMMERCIAL RADIO OWNERSHIP IN 2009.

- 54** Interview with Francisco Montero, Co-Managing Partner, Fletcher, Heald & Hildreth, P.L.C., by FCC staff (May 25, 2010); S. Jennell Trigg, a Washington D.C. lawyer representing small- and minority-owned telecommunications businesses, believes that the U.S. Treasury should encourage community banks and financial institutions to provide small and micro-loans to local minority-owned communications firms. This type of financial lifeline, “can help keep the lights on” at minority firms and avoid job losses in local communities. Interview with S. Jennell Trigg, Chair, Intellectual Property and New Technology Group, Lerman Senter PLLC, by FCC staff (May 2010).
- 55** Communications Workers of America & Media Council Hawaii Comments in re *FOM PN*, filed May 7, 2010, at 4–7; Minority Media and Telecommunications Council Comments in re *FOM PN*, filed May 7, 2010 at 6–7.
- 56** Elena Shore, *Attention NBC Telemundo: Latinos Need Local News Too*, NEW AMERICA MEDIA, Nov. 1, 2006, [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=1d7944d313122e7ca7f9262bc4dcdb61](http://news.newamericamedia.org/news/view_article.html?article_id=1d7944d313122e7ca7f9262bc4dcdb61). Iván Román, Executive Director of the National Association of Hispanic Journalists (NAHJ) states that not long after the consummation of the NBC/Telemundo merger, NBC eliminated Telemundo’s local newscasts in five of the top 10 Hispanic markets—Houston, Dallas, San Antonio, San Jose and Phoenix—and replaced them with a regionally-produced newscast hub out of Fort Worth, Texas. NBC’s action resulted in 700 employees being laid off, including NAHJ members. See *id.*
- 57** FCC, *FCC Grants Approval of Comcast-NBCU Transaction* (press release), Jan. 18, 2011, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-304134A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304134A1.pdf).
- 58** See, e.g., KOFI ASIEDU OFORI, WHEN BEING NO. 1 IS NOT ENOUGH: THE IMPACT OF ADVERTISING PRACTICES ON MINORITY-OWNED AND MINORITY-FORMATTED BROADCAST STATIONS (Civil Rights Forum on Communications Policy) (1999); see also FCC Commissioner Robert M. McDowell, Remarks at FCC Diversity Advisory Committee Meeting (Dec. 2, 2010), at 20 (referring to the BMW-Mini Cooper “no urban” incident in the summer of 2009), <http://www.fcc.gov/DiversityFAC/meeting120210.html>.
- 59** *Broadcast Diversity Order*, 23 FCC Rcd at 5941–42. Another key issue in minority media: Ratings and audience measurement dictate the advertising rates that broadcasters are able to charge. Minority broadcasters have raised concerns about recent modifications to ratings methodologies that impact their ability to attract advertising. The PPM Coalition, a group of minority-owned broadcast entities and trade associations (consisting of the National Association of Black Owned Broadcasters, Spanish Radio Association, Minority Media and Telecommunications Council, American Hispanic Advertising Association, Border Media Partners, Entravision Communications Corporation, ICBC Broadcast Holdings, Inc., Spanish Broadcasting System, Inc., and Univision Communications Inc.) filed an Emergency Petition on September 2, 2008, asking the Commission to conduct a Section 403 inquiry into the PPM methodology, using its investigatory authority to issue subpoenas for the production of documents and to take testimony. Arbitron, Inc., a nationally recognized radio audience research firm that provides ratings data for radio stations, has been replacing its diary-based radio ratings with PPM-based ratings in major markets. The Portable People Meter (“PPM”) is a mobile phone-sized device that consumers wear throughout the day. It automatically detects inaudible identification codes that are embedded in certain radio station programming to which the consumer is exposed. In May 2009, the Commission released a Notice of Inquiry which sought comment on allegations that PPMs undercount minority audiences and that such undercounting particularly affects the ratings of urban-formatted stations targeted to minority audiences, undermining the financial viability of those stations, and thereby potentially affecting diversity on the airwaves. *Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters*, MB Docket 08-187, Notice of Inquiry, 24 FCC Rcd 6141 (2009). On April 22, 2010, Arbitron and PPMC announced that they had settled their outstanding disputes. On May 3, 2011, the Commission granted PPMC’s request to withdraw its emergency petition. See *Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters Order*, MB Docket 08’187, FCC 11-70) *rel.* May 3, 2011. However concerns about ratings technologies and methodologies and their impact on minority audiences continues.
- 60** See Public Notice, *Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S*, DA No. 11-489 (MB *rel.* Mar. 14, 2011). See also FCC Enforcement Advisory, *Non-Discrimination in Broadcast Advertising*, DA 11-500 (Enf. Bur. *rel.* Mar. 22, 2011).
- 61** Wisconsin Historical Society, *African-American Newspapers and Periodicals: Freedom’s Journal*, Volume 1, <http://www.wisconsinhistory.org/libraryarchives/aanp/freedom/volume1.asp> (last visited May 25, 2011). *Freedom’s Journal* was founded and edited by Samuel E. Cornish and John B. Russworm, free Black men, who envisioned the newspaper as a platform for the approximately 500,000 free persons of color in the U.S., stating, “From the press and the pulpit we have suffered much by being incorrectly represented.” Several years later, the noted journalist and statesman Frederick Douglas continued the evolution of the Black press with his founding of the *The North Star* newspaper in December 1847. Public Broadcasting Service, *Biographies: Frederick Douglass*, [http://www.pbs.org/blackpress/news\\_bios/douglass.html](http://www.pbs.org/blackpress/news_bios/douglass.html) (last visited May 25, 2011).
- 62** National Newspaper Publishers Association (NNPA), <http://www.nnpa.org/> (last visited May 25, 2011); Interview with Danny Bakewell, Chairman, National Newspaper Publishers Association, by FCC (Sept. 2010). Many Black papers publish once or several times a week (but seldom daily); and are available in public locations in neighborhoods populated by their readership or by subscription delivery. Included among NNPA’s membership are such notable papers as *New York Amsterdam News*, *Afro-American* (Washington) and the *Chicago Defender*. For a listing of other Black-owned newspapers, See NNPA, *NNPA Member Papers*, [http://www.nnpa.org/index.php?option=com\\_content&task=view&id=16&Itemid=45](http://www.nnpa.org/index.php?option=com_content&task=view&id=16&Itemid=45) (last visited May 25, 2011).
- 63** NNPA, <http://www.nnpa.org/> (last visited Feb. 14, 2011); Interview with Danny Bakewell, Chairman, National Newspaper Publishers Association, by FCC (Sept. 2010) (Bakewell Interview 9/10).
- 64** These consumers, Bakewell asserts, have been disproportionately “de-valued” because the Black-owned newspapers that support the information needs of African-Americans do not traditionally receive the advertising revenue from companies seeking to reach that readership. Bakewell Interview 9/10. Other industry stakeholders have noted that “advertisers and agencies do not perceive a need” to spend their ad dollars with ethnic media when they assume that a general market buy will cover these consumers. See, e.g., AMY KORZICK GARMER, UNMASSING AMERICA: ETHNIC MEDIA AND THE NEW ADVERTISING MARKETPLACE 15 (The Aspen Institute) (2006), available at <http://www.aspeninstitute.org/sites/default/files/content/docs/communications%20and%20society%20program/C&SUnmassingAmerica.pdf>.



- 65** Sally Lehrman, *The Danger of Losing the Ethnic Media*, BOSTON GLOBE, Mar. 5, 2009, [http://www.boston.com/bostonglobe/editorial\\_opinion/oped/articles/2009/03/05/the\\_danger\\_of\\_losing\\_the\\_ethnic\\_media/](http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2009/03/05/the_danger_of_losing_the_ethnic_media/) (“[D]ay after day, the various branches of ethnic media follow some of the most important and contentious issues, ones that grab the attention of the mainstream media only sporadically.”).
- 66** Interview with Anibal Torres Jr., Publisher, *MundoHispanico*, by FCC staff (Sept. 2010) (Torres Interview 9/10). Torres states that his newspaper has a wide readership, but its content is primarily aimed at dominant Spanish-speaking consumers. He adds that Hispanics that are more acculturated to the U.S. tend to read English language newspapers
- 67** Torres Interview 9/10.
- 68** Torres Interview 9/10.
- 69** “Hispanic Media” in PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA (2009) (PEW, STATE OF THE NEWS MEDIA 2009), <http://stateofthedia.org/2009/ethnic-intro/hispanic/>.
- 70** See “Hispanic Media” in PEW, STATE OF THE NEWS MEDIA 2009. Pew cites as examples of this trend *Hoy New York*, a Spanish-language daily paper, which published its final print edition in December 2009 (*Id.*); *Asian-Week*, an English-language weekly that caters to Asian Americans and that published its last print edition in January 2009 (“Asian American Media” in PEW, STATE OF THE NEWS MEDIA 2009, <http://stateofthedia.org/2009/ethnic-intro/asian-american/>); and *San Francisco Bay View*, which ceased publishing its weekly print version during the summer of 2009 (see “African-American Media” in PEW, STATE OF THE NEWS MEDIA 2009, <http://stateofthedia.org/2009/ethnic-intro/african-american/>).
- 71** PAMELA NEWKIRK, *WITHIN THE VEIL: BLACK JOURNALISTS, WHITE MEDIA* (NYU Press) (2002).
- 72** Communications Workers of Amer. Comments at 3.
- 73** See PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM & SOCIAL AND DEMOGRAPHIC TRENDS, MEDIA, RACE AND OBAMA’S FIRST YEAR: A STUDY OF AFRICAN-AMERICANS IN U.S. NEWS COVERAGE 1–2 (2010) (PEW, OBAMA’S FIRST YEAR), *available at* <http://www.journalism.org/sites/journalism.org/files/African%20American%20Coverage%20FINAL.pdf>. Pew’s year-long study covered mainstream media outlets, including newspapers, cable and network television, radio and news websites. Pew’s measurement is based on the news hole, which is the total time and space a story takes, not the number of stories.
- 74** PEW, OBAMA’S FIRST YEAR at 13.
- 75** PEW, OBAMA’S FIRST YEAR at 13–14.
- 76** PEW, OBAMA’S FIRST YEAR at 13–14.
- 77** PEW, OBAMA’S FIRST YEAR at 26.
- 78** *Hispanics in the News: Events Drive the Narrative*, PEW RESEARCH CTR.’S PROJ. FOR EXCELLENCE IN JOURNALISM, December 7, 2009, [http://www.journalism.org/analysis\\_report/hispanics\\_news](http://www.journalism.org/analysis_report/hispanics_news).
- 79** Nat’l Hisp. Media Coalition Comments at 15, 18. NHMC in its filed comments refers to various studies and analyses on the disparity in coverage of Latinos and issues of interest to that community. NHMC notes that of the estimated 12,600 stories aired on ABC, CBS and NBC network evening newscasts in 2005 only 105 or 0.83 percent were exclusively about Latinos. *Id.* at 16; *See also* NETWORK BROWNOUT REPORT 2006 at 19 (noting that, of 115 stories examined, four were exclusively about Latinos and two featured Latinos as news sources)..
- 80** Nat’l Hisp. Media Coalition Comments at 19–21.
- 81** Nat’l Hisp. Media Coalition Comments at 18.
- 82** *Newsroom Employment Up Slightly, Minority Numbers Plunge for Third Year*, AMERICAN SOCIETY OF NEWS EDITORS, April 7, 2011 (*Newsroom Employment Up Slightly*), [http://asne.org/article\\_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx](http://asne.org/article_view/articleid/1788/newsroom-employment-up-slightly-minority-numbers-plunge-for-third-year.aspx).
- 83** Letter from Unity: Journalists of Color to Julius Genachowski, Chairman, FCC, GN Docket No. 10-25 (filed Mar. 5, 2010).
- 84** Radio Television Digital News Ass’n, *RTDNA/Hofstra University Survey: Number of Minority Journalists Down in 2009; Story Mixed for Female Journalists* (press release) (RTDNA, Minority Journalists Survey Press Release), Sept. 22, 2010, <http://www.rtdna.org/pages/posts/rtdnahofstra-survey-number-of-minority-journalists-down-in-2009-story-mixed-for-female-journalists1083.php>. Kathy Chow, Executive Director of the Asian American Journalists Association (AAJA), notes that the number of Asian American journalists is shrinking, with membership declining from over 2,000 to 1,400 members over the past year. Interview with Kathy Chow by FCC staff (June 29, 2010).
- 85** RTDNA, Minority Journalists Survey Press Release.
- 86** BOB PAPPER, NUMBER OF MINORITY JOURNALISTS DOWN IN 2009: STORY MIXED FOR FEMALE JOURNALISTS 1 (Radio Television Digital News Association/Hofstra Univ.) (2009), *available at* [http://www.rtdna.org/media/women\\_minorities\\_survey\\_final.pdf](http://www.rtdna.org/media/women_minorities_survey_final.pdf). Papper has observed that since the FCC discontinued collecting employment data from broadcast licensees several years ago, the overall percentages in radio have dropped steadily, but less so in television. *Id.*; *See also* RTDNA, Minority Journalists Survey Press Release.
- 87** NHMC, *Over Three Dozen Diverse Organizations Urge the FCC to Reinstate Collection of Equal Employment Opportunity Data* (press release), Oct. 21, 2010 (NHMC, *Collection of Equal Employment Opportunity Data*), <http://www.nhmc.org/content/media-ownership>; *see also* Letter from NHMC, *et al.* to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-103 (filed Oct. 21, 2010). According to the U.S. Bureau of Labor Statistics (BLS), annual data collected in 2009 show a disparity among minorities as compared to the overall population in media-related fields. For example, in 2009 BLS reported that 80,000 Americans worked as news analysts, reporters and correspondents, of which 93.8 percent are White, 1.8 percent are Black or African-American, .9 are Asian and 4.0 are Hispanic or Latino. *See* U.S. DEP’T OF LABOR & U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY 17 (Office of Employment and Unemployment Statistics, Division of Labor Force Statistics) (2009), *available at* <http://www.bls.gov/cps/cpsrace2009.pdf>.
- 88** *See* NHMC, *Collection of Equal Employment Opportunity Data*.
- 89** Testimony of Wade Henderson, Pres. & C.E.O., Leadership Conference for Civil Rights, FCC Hearing on Localism, Oct. 31, 2007, Tr. at 95:17–96:4, at 35, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-278750A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278750A1.pdf).
- 90** *Petition for Rulemaking to Require Broadcast Licenses to Show Non-discrimination in Their Employment Practices*, Report and Order, 18 FCC 2d 240 (1969); *see also* *Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 54 FCC 2d 354 (1975) (adopting a Model EEO Program to ensure that minorities and women are given equal and full consideration for job opportunities). *See* 47 C.F.R. §

- 73.2080 (broadcast EEO rule). EEO regulations for cable television operators stem from a 1972 proceeding. See *Report and Order*, 34 F.C.C. 2d 186 (1972). [Cable rules started with this 1972 ruling.] The Commission's EEO rules for multichannel video program distributors ("MVPDs"), 47 C.F.R. § 76.71, *et seq.*, were implemented pursuant to Section 634 of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), that applied to cable operators, and the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), that extended the rules to other MVPDs. See also 47 C.F.R. §§ 21.920, 25.601, 74.996, 76.1702, 76.1802, and 100.51.
- 91** *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, MM Docket No. 98-204, 17 FCC Rcd 24018 (adopted new broadcast and MVPD rules).
- 92** *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Third Report and Order and Fourth Notice of Proposed Rule Making, MM Docket No. 98-204 19 FCC Rcd 9973, 9975-77 ¶¶ 4-9 (2004) (*Third Report and Order*).
- 93** 47 C.F.R. § 73.2080 (c). The Commission's current EEO rules stem from its efforts to comply with the court decisions in *Lutheran Church* decision and subsequent court decisions regarding the constitutionality of provisions of its EEO rules, including *Lutheran Church—Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998), and *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, (D.C. Cir. 2001), *cert. denied*, 122 S.Ct. 920 (2002)). See also *Suspension of the Broadcast and Cable Equal Employment Opportunity Program Requirements*, 16 FCC Rcd 2872, n.1 (2001).
- 94** *Third Report and Order*.
- 95** The Commission sought public comment on, among other things, the impact of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) on the collection and public availability of its employment reporting forms. See Pub. L. 107-347, 116 Stat 2962, Dec. 17, 2002, codified in note to 44 U.S.C. § 3501; see also *Third Report and Order*, 19 FCC Rcd 9973, 9978 ¶14. Although the 2004 Order re-instated the annual employment report Forms 395-A and 395-B, the filing requirement remains suspended until a final order is released concerning the confidentiality of the forms. 73 FR 62992, October 22, 2008.
- 96** See JON P. GANT, NICOL E. TURNER-LEE, YING LI & JOSEPH S. MILLER, NATIONAL MINORITY BROADBAND ADOPTION: COMPARATIVE TRENDS IN ADOPTION, ACCEPTANCE AND USE (Joint Ctr. for Political and Economic Studies) (2010) available at [http://www.jointcenter.org/publications/publication-PDFs/MTI\\_BROADBAND\\_REPORT\\_2.pdf](http://www.jointcenter.org/publications/publication-PDFs/MTI_BROADBAND_REPORT_2.pdf) (examining the activities of African-Americans who utilize broadband technology). The Joint Center Report notes that a higher percentage of African-Americans (78 percent) and Hispanics (64 percent) use the Internet to look online for information about jobs as compared to 48 percent of White Internet users. *Id.* at 20. Additionally, African-American Internet users are also more likely than White and Hispanic users to look online for religious or spiritual information (52 percent) and ideas about starting an online business (28 percent). *Id.*
- 97** BET Networks Presentation to FCC Advisory Comm. on Diversity 6/15/10.
- 98** BET Networks Presentation to FCC Advisory Comm. on Diversity 6/15/10, at 8.
- 99** BET Networks Presentation to FCC Advisory Comm. on Diversity 6/15/10, at 7-9; See also "African-American Media: Evolving in the New Era" in PEW, STATE OF THE NEWS MEDIA 2011.
- 100** "African-American Media: Evolving in the New Era" in PEW, STATE OF THE NEWS MEDIA 2011.
- 101** "African-American Media: Evolving in the New Era" in PEW, STATE OF THE NEWS MEDIA 2011.
- 102** Web 2.0/Power Users are those proficient among the top three rungs of their Social Technographics Ladder: Critics, Conversationalists, & Critics.
- 103** TOM WEBSTER, EDISON RESEARCH, TWITTER USAGE IN AMERICA 4 (2010) (TWITTER USAGE IN AMERICA), [http://www.edisonresearch.com/home/archives/2010/04/twitter\\_usage\\_in\\_america\\_2010\\_1.php](http://www.edisonresearch.com/home/archives/2010/04/twitter_usage_in_america_2010_1.php). See also "African-American Media: Evolving in the New Era" in PEW, STATE OF THE NEWS MEDIA 2011 (citing a Pew Internet & American Life study released in December 2010 which found that non-Hispanic Blacks are more than twice as likely to use Twitter compared to White Internet users).
- 104** Farhad Manjoo, *How Black People Use Twitter*, SLATE, Aug. 10, 2010 (*How Black People Use Twitter*), <http://www.slate.com/id/2263462/>; Virginia Heffernan, *Making a Hashtag of It*, N.Y. TIMES, MAY 22, 2011, <http://opinionator.blogs.nytimes.com/2011/05/22/making-a-hashtag-of-it/?hp>.
- 105** PEW 2010 NEWS CONSUMPTION SURVEY at 93.
- 106** PEW 2010 NEWS CONSUMPTION SURVEY at 93.
- 107** Michel Martin, *Can I Just Tell You? Missing Girls Shouldn't Be Missing From The Media*, NATIONAL PUBLIC RADIO, Jan. 24, 2011, <http://www.npr.org/2011/01/24/133182895/The-Media-And-The-Missing-Does-Race-Influence-Coverage>.
- 108** See JOHN HARRIGAN, PEW RESEARCH CTR.'S INTERNET & AMERICAN LIFE PROJ., WIRELESS INTERNET USE 4 (2009) (PEW, WIRELESS INTERNET USE), available at <http://www.pewinternet.org/-/media/Files/Reports/2009/Wireless-Internet-Use-With-Topline.pdf>.
- 109** PEW, WIRELESS INTERNET USE at 19. Handheld Internet use on the average day grew by 73 percent for the general population from the end of 2007 to the beginning of 2009. *Id.* Pew's figures indicate that Hispanics in the U.S. were more likely to have been early adopters of mobile Internet access than other racial/ethnic demographics. In 2007, 18 percent of Hispanic Americans stated that they accessed the Internet on their mobile device on the average day—compared with 9 percent of White Americans, and 12 percent of African-Americans. PEW, WIRELESS INTERNET USE at 18.
- 110** AARON SMITH, PEW RESEARCH CTR.'S INTERNET & AMERICAN LIFE PROJ., TECHNOLOGY TRENDS AMONG PEOPLE OF COLOR (2010) (PEW, TECHNOLOGY TRENDS AMONG PEOPLE OF COLOR), <http://www.pewinternet.org/Commentary/2010/September/Technology-Trends-Among-People-of-Color.aspx>.
- 111** PEW, TECHNOLOGY TRENDS AMONG PEOPLE OF COLOR.
- 112** Taylor Interview 3/11/10. Taylor indicated that there was no 911-Emergency access on reservations and tribal lands.
- 113** Native Public Media Comments in *FOM PN* at 2, 6, 7, 23-24 (stating "increasing the access of Native terrestrial radio stations to digital communications and technology, while at the same time making it possible for stations to enhance the already vital programming and services provided to their respective communities would provide an enormous opportunity to begin to bridge the historical, yet persistent, digital and media divide").
- 114** "African-American Media: Evolving in the New Era" in PEW, STATE OF THE NEWS MEDIA 2011.

- 115** TV One is a venture of Radio One, Inc., the largest minority-controlled radio broadcast firm primarily targeting African-American and urban listeners, and Comcast Corporation, the largest cable operator in the U.S. along with Bear Stearns, Constellation Ventures, Syndicated Communications and Opportunity Capital Partners. TV One, Inside TV One, [http://www.tvoneonline.com/inside\\_tvone/](http://www.tvoneonline.com/inside_tvone/) (last visited May 26, 2011).
- 116** News One for Black America, <http://newsone.com/> (last visited May 26, 2011).
- 117** The Root, <http://www.theroot.com/> (last visited May 26, 2011).
- 118** BlackAmericaWeb.com, <http://www.blackamericaweb.com/> (last visited May 26, 2011).
- 119** AOL Black Voices, <http://www.blackvoices.com/> (last visited May 26, 2011).
- 120** Maynard Institute, Richard Prince's Journal-isms, <http://mije.org/richard-prince> (last visited May 26, 2011).
- 121** Interview with David Wilson, Managing Editor, theGrio.com, by Jeffrey Tignor and J. Evan Shapiro, FCC (Aug. 2010) (Wilson Interview).
- 122** Wilson Interview.
- 123** Interview with Sharon Pian Chan, Nat'l Pres., Asian American Journalists Ass'n, by FCC staff (November 30, 2010) (Pian Chan Interview 11/30/10).
- 124** Email from Sharon Pian Chan to Jeffrey Tignor, FCC (Dec. 6, 2010); Interview with Sharon Pian Chan by FCC staff (Dec. 6, 2010) (Pian Chan Interview 12/6/10).
- 125** Pian Chan Interview 12/6/10.
- 126** Interview with Cleveland Spears, General Manager/Program Director, im4radio.com, by FCC staff (May 21, 2010) (Spears Interview 5/21/10).
- 127** Spears Interview 5/21/10.
- 128** Interview with Cleveland Spears by FCC staff (March 8, 2011).
- 129** HISPANIC CYBERSTUDY, MARKETING TO THE WEB'S MOST RAPIDLY GROWING POPULATION 15 (AOL Advertising & Cheskin) (2009) (HISPANIC CYBERSTUDY, WEB MARKETING), *available at* <http://advertising.aol.com/sites/default/files/HispanicCyberStudy-2010.pdf>.
- 130** HISPANIC CYBERSTUDY, WEB MARKETING at 27-29 (citing Internet World Stats, *World Languages by Country*, <http://www.internetworldstats.com/stats7.htm> (last visited May 26, 2011)). Additionally, the U.S. Hispanic population is very diverse in terms of income, national origin and English fluency, thus, it is difficult to reach broad conclusions about media and information needs and consumption. See, e.g., GRETCHEN LIVINGSTON, PEW HISPANIC CTR., THE LATINO DIGITAL DIVIDE: THE NATIVE BORN VERSUS THE FOREIGN BORN (2010) (PEW, THE LATINO DIGITAL DIVIDE), *available at* <http://pewhispanic.org/reports/report.php?ReportID=123> (noting "[t]echnology use among foreign-born Latinos continues to lag significantly behind that of their U.S.-born counterparts" and that "nativity differences are especially pronounced when it comes to internet use.").
- 131** HISPANIC CYBERSTUDY, WEB MARKETING 2009 at 34.
- 132** ADVERTISING AGE, HISPANIC FACT PACK: 2010 EDITION 26 (2010) (HISPANIC FACT PACK 2010), *available at* <http://www.adagewhitepapers.com/adage/hispanicfactpack2010#pg1>.
- 133** Univision, <http://www.univision.com/portal.jhtml> (last visited May 26, 2011).
- 134** Terra, <http://www.terra.com/> (last visited May 26, 2011).
- 135** Yahoo! en Espanol, <http://espanol.yahoo.com/> (last visited May 26, 2011).
- 136** MSN Latino, <http://latino.msn.com/> (last visited May 26, 2011).
- 137** Batanga, <http://www.batanga.com/es/?nolang=true> (last visited May 26, 2011).
- 138** TWITTER USAGE IN AMERICA at 23; See also HISPANIC FACT PACK 2010 at 27. Advertising Age also notes the Hispanics comprise 17.6 percent of MySpace users. *Id.*
- 139** PEW, THE LATINO DIGITAL DIVIDE.
- 140** PEW, THE LATINO DIGITAL DIVIDE.
- 141** The Jon Garrido Network, Hispanic News, <http://hispanic.cc/> (last visited May 26, 2011).
- 142** Latino News, <http://mylatinonews.com/latinonews.php> (last visited May 26, 2011).
- 143** El Diario, <http://www.impre.com/eldiariory/> (last visited May 26, 2011).
- 144** La Prensa, <http://www.laprensaledo.com/> (last visited May 26, 2011).
- 145** Hoy Nueva York, <http://www.impre.com/hoynyc/home.php> (last visited May 26, 2011).
- 146** La Opinión, <http://www.impre.com/laopinion/> (last visited May 26, 2011).
- 147** El Nuevo Herald, <http://www.elnuevoherald.com/> (last visited May 26, 2011).
- 148** Impremedia, <http://www.impredia.com/> (last visited May 26, 2011).
- 149** Wikipedia, *La Opinión*, [http://en.wikipedia.org/wiki/La\\_Opinion](http://en.wikipedia.org/wiki/La_Opinion) (last visited May 26, 2011).
- 150** La Opinión, <http://www.impre.com/laopinion/> (last visited May 26, 2011).
- 151** ASNE Completes Second Census of Online-Only News Sites, Finds Increasing Diversity, AMERICAN SOCIETY OF NEWS EDITORS, July 29, 2010, [http://asne.org/article\\_view/articleid/833/asne-completes-second-census-of-online-only-news-sites-finds-increasing-diversity.aspx](http://asne.org/article_view/articleid/833/asne-completes-second-census-of-online-only-news-sites-finds-increasing-diversity.aspx). ASNE is aiming for better response rates for future surveys and stated that some of the largest online-only news sites, such as Yahoo! News and The Huffington Post, failed to return the diversity questionnaire. *Id.*
- 152** Chris L. Jenkins, *With Rent Strike Settled, Raft of Changes in Store for Marbury Plaza in Anacostia*, WASH. POST., Sept. 19, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/18/AR2010091803235.html> (noting "[a] handful of community bloggers regularly chide [Anacostia] city leaders about quality-of-life issues.").
- 153** Interview with Nikki Peele, East of the River Blog, by FCC staff (Peele Interview 12/8/10) (Dec. 8, 2010); See River East D.C. Blogs, <http://www.redcblogs.com/> (last visited May 26, 2011).
- 154** Peele Interview 12/8/10.
- 155** Rowdy Orbit, <http://www.rowdyorbit.com/> (last visited May 26, 2011). Interviews with Jonathan Moore by FCC staff (July 2010; Oct. 2010) (Moore Interview 2010).
- 156** MiGente is the Hispanic website hosted by Black Planet. MiGente.com, <http://www.migente.com/> (last visited May 26, 2011). Black Planet is owned by Radio One, a minority-controlled media firm. See Radio One, *Fact Sheet*, [http://www.radio-one.com/properties/fact\\_sheet.asp?ID=9](http://www.radio-one.com/properties/fact_sheet.asp?ID=9) (last visited May 26, 2011).
- 157** CB INSIGHTS, VENTURE CAPITAL HUMAN CAPITAL REPORT: VENTURE CAPITAL ACTIVITY REPORT (Part 1) 5 (Jan.—June 2010) (VENTURE CAPITAL ACTIVITY REPORT), *available at* <http://www.cbinsights.com/blog/venture-capital/venture-capital-human-capital-report>.

- 158 VENTURE CAPITAL ACTIVITY REPORT at 5.
- 159 VENTURE CAPITAL ACTIVITY REPORT at 8.
- 160 Interview with Retha Hill, Dir., New Media Innovation Lab, Walter Cronkite School of Journalism and Mass Communication, Arizona State Univ., by Jamila Bess Johnson, FCC (Mar. 9, 2011.)

## 24 People with Disabilities

- 1 MATTHEW W. BREault, AMERICANS WITH DISABILITIES: 2005 3 (U.S. Dep't of Commerce, U.S. Census Bureau) (2008) (AMERICANS WITH DISABILITIES), available at <http://www.census.gov/prod/2008pubs/p70-117.pdf>. "People with disabilities" is an umbrella term to include people who are blind or have low vision, people who are deaf, hard of hearing or have speech disabilities, those with physical or cognitive disabilities, and persons with multiple disabilities.
- 2 AMERICANS WITH DISABILITIES at 4. Census data from 2005 indicates that the chances of having a disability increase significantly with age. By 2030, 20 percent of the population will be over 65 years old. Frank B. Hobbs, The Elderly Population, U.S. Census Bureau, <http://www.census.gov/population/www/pop-profile/elderpop.html> (noting "[a]bout 1 in 8 Americans were elderly in 1994, but about 1 in 5 would be elderly by the year 2030.")
- 3 Centers for Disease Control and Prevention, Disability and Functioning (Adults), <http://www.cdc.gov/nchs/fastats/disable.htm> (last visited Feb. 4, 2011) (citing U.S. Dep't of Health and Human Services Centers for Disease Control and Prevention & National Center, *Health Statistics Summary Health Statistics for U.S. Adults: National Health Interview Survey, VITAL HEALTH STATISTICS SERIES 10, NO. 242* (2008) (*Health Statistics for U.S. Adults 2008*), at 36 (Table 11) and 38 (Table 12), available at [http://www.cdc.gov/nchs/data/series/sr\\_10/sr10\\_242.pdf](http://www.cdc.gov/nchs/data/series/sr_10/sr10_242.pdf)); See also AMERICANS WITH DISABILITIES 2008 at 5–7.
- 4 See *Health Statistics for U.S. Adults 2008* at 124 (TABLE IX).
- 5 See *Health Statistics for U.S. Adults 2008* at 124 (TABLE IX).
- 6 Radio Reading Services and FM Subcarriers, SCA History and Technical Details (*SCA History and Technical Details*), <http://reader.ku.edu/oldsite/scatech.htm> (last visited May 26, 2011). A subcarrier, also known as a Subsidiary Communications Authority (SCA), is a separate broadcasting radio signal that allows the carriage of additional voice or data information to be carried on the extra space available on FM signals, typically at 67 kHz and 92 kHz. In order to access radio reading services broadcast over a subcarrier, an individual needs a specially equipped receiver that is pre-tuned to pick up the closed circuit broadcast. See *id.* These services were facilitated by a Commission policy that required any noncommercial educational FM station utilizing subcarrier channels to provide one channel to a radio reading service upon request. 47 C.F.R. § 73.593 (1983). See generally *In re Allowable Costs for Noncommercial FM Licensees to Charge Radio Reading Services*, Policy Statement, 3 FCC Rcd 6323 (1988) (for a discussion on the permissible costs for the provision of station subcarriers for this purpose).
- 7 See generally *SCA History and Technical Details*. Radio Reading Services is one form of Audio Information Services, the latter being the umbrella term for audio access to print media such as newspapers and magazines.
- 8 National Fed'n of the Blind, NFB-Newsline, [http://www.nfb.org/nfb/Newspapers\\_by\\_Phone.asp](http://www.nfb.org/nfb/Newspapers_by_Phone.asp) (last visited May 26, 2011). This is accomplished using the DAISY (Digital Accessible Information System) digital format, which enables people who cannot access regular printed media to read and navigate printed information. See DAISY Consortium, <http://www.daisy.org/> (last visited May 26, 2011).
- 9 *SCA History and Technical Details*; The Int'l Ass'n of Audio Information Services, <http://iaais.org/findservices.html> (last visited Feb. 4, 2011) (providing comprehensive information on the availability of these services).
- 10 Interview with David Noble, Chair, Government Relations & HD Radio Taskforce, Int'l Ass'n of Audio Information Svcs., by Karen Peltz Strauss, FCC (Aug. 18, 2010) (Noble Interview). There are currently no Commission policies or regulations prohibiting digital carriers from causing damage to analog SCA channels as these are generally self-imposed.
- 11 In the analog world, the Commission required non-commercial FM radio stations to provide a subcarrier channel to radio reading services upon request, but there is no similar policy for digital channels. See generally *SCA History and Technical Details*. As a result, the digital radio stations are turning down these requests without any consequences. Noble Interview.
- 12 The only existing radio reading service being broadcast over digital audio broadcasting is Sun Sounds of Arizona. Sun Sounds has four broadcast outlets in Arizona (Tempe, Tucson, Flagstaff, and Yuma) and serves approximately 49,000 people across the state. This service is atypical, in that most reading services do not have the ongoing and stable support of a college-owned public radio station. An Illinois subcarrier is expected to also begin providing radio reading services later this year. See Noble Interview; Email from David Noble to FCC staff (September 8, 2010) (Noble Email 9/8/10).
- 13 Video description is a service for people who are blind and visually impaired that employs narratives in the natural pauses of video programming to fill in the gaps when a program has no audio.
- 14 Noble Email 9/8/10.
- 15 KAREN PELTZ STRAUSS, A NEW CIVIL RIGHT: TELECOMMUNICATIONS EQUALITY FOR DEAF AND HARD OF HEARING AMERICANS 208 (Gallaudet Univ. Press) (2006).
- 16 Television Decoder Circuitry Act of 1990, 47 U.S.C. § 303(u). In 2010, the language of § 303(u) was amended to state that, where technically feasible, all televisions must come equipped with built-in closed caption decoder circuitry, but that televisions smaller than 13 inches must meet the requirements "only if the requirements of such subparagraphs are achievable." *Id.*; See also 47 U.S.C. § 330b ("No person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States, any apparatus described in section 303(u) ... except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.").
- 17 *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Report and Order, MM Docket No. 95-176, 13 FCC Rcd 3272 (1997), *recon. granted in part*, Order on Reconsideration, 13 FCC Rcd 19973 (1998).
- 18 47 C.F.R. § 79.1(b) (1997). For example, the effective date for all nonexempt, new programming to be captioned was January 1, 2006 for English language programming, and January 1, 2010 for Spanish language programming. 47 C.F.R. § 79.1(b)(1)(iv) (English); 47 C.F.R. § 79.1(b)(3)(iv) (Spanish).

- 19 Certain programs, as listed at 47 C.F.R. § 79.1(d), are exempted from the captioning rules.
- 20 Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (CCVA).
- 21 CVAA § 202(b), 124 Stat. at 2770, 2771 (amending 47 U.S.C. § 613(c)) (“Not later than 6 months after the submission of the report to the Commission required by subsection (e)(1) of the Twenty-First Century Communications and Video Accessibility Act of 2010, the Commission shall revise its regulations to require the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations.”).
- 22 Specifically under existing rules, all local television stations must provide captions on their news programming, but most may meet this obligation by using a captioning method called “electronic newsroom technique” (ENT). 47 C.F.R. § 79.1(e)(3) (2010). Only the major national broadcast television networks (ABC, NBC, CBS and Fox), the affiliates of these networks in the top 25 television markets, and the national non-broadcast networks serving at least 50 percent of all homes subscribing to video programming services must use real-time captioning for such live news programming.
- 23 The lack of full captions on local news prompted consumer groups representing persons with hearing loss to file a petition in 2004 asking the Commission to re-evaluate the benefits of allowing the use of ENT as a captioning option in favor of requirements for real-time captioning of all local live news programming. See *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc.*, Petition for Rulemaking, Notice of Proposed Rulemaking, 20 FCC Rcd 13211 (2005) (*Closed Captioning NPRM*). The Commission responded with a notice of proposed rulemaking, still pending, to address this issue along with other captioning-related concerns. *Id.* In addition, some advocates have charged that certain exemptions to the Commission’s captioning rules may be restricting the ability of people with hearing disabilities to access other information provided over television. These include exemptions for advertisements that are shorter than five minutes, including political advertisements (47 C.F.R. § 79.1(a)(1) (2009)); for certain programming involving candidates for public office (*Id.* at (e)(9)); and for certain commercial leased access, public access, and governmental and educational access programming (*Id.*). Advocates claim that such exemptions hinder the ability of deaf and hard of hearing individuals to fully participate in civic affairs, and suggest that the Commission give these exemptions a fresh look in light of the transition to media in a digital age. Coalition of Organizations for Accessible Technology Comments in re *FOM PN*, filed May 4, 2010 (COAT Comments) at 7; See also Rehabilitation Engineering Research Center on Telecommunications Access Comments in re *FOM PN*, filed March 31, 2010 (Rehabilitation Engineering Comments), at 3. Other commenters have urged making television and radio license renewals contingent in part on the extent to which these licensees make their programming accessible to people with disabilities. See Rehabilitation Engineering Comments at 3.
- 24 47 C.F.R. § 79.2(b)(1)(iii) (2005).
- 25 COAT Comments at 4; Rehabilitation Engineering Comments at 2–3.
- 26 CVAA § 203, 124 Stat. at 2772 (amending 47 U.S.C. § 303(u)(1)(C)) (stating the Commission shall require that, if technically feasible, “apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size . . . have the capability to decode and make available emergency information . . . in a manner that is accessible to individuals who are blind or visually impaired”).
- 27 *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230 (2000), *recon. granted in part and denied in part*, 16 FCC Rcd 1251 (2001) (codified at 47 C.F.R. § 79.3(a)(3) (2009) (defining “video description” as “insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue”).
- 28 *Motion Picture Ass’n of Am. v. FCC*, 309 F.3d 796, 805–07 (D.C. Cir. 2002).
- 29 CVAA, Title II, § 202(a), 124 Stat. at 2767–70 (amending 47 U.S.C. § 713(f)). See also *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MM Docket No. 11-43, Notice of Proposed Rulemaking, 76 Fed. Reg. 14856 (Mar. 18, 2011).
- 30 CVAA § 204, 124 Stat. at 2773–74 (adding subsection (aa) after subsection (z) to 47 U.S.C. § 303).
- 31 CVAA § 205(a), 124 Stat. at 2774–75 (adding subsection (bb) after subsection (aa) to 47 U.S.C. § 303) (stating the Commission shall require that, “if achievable (as defined in section 716), that the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement”); See also 47 C.F.R. 76.1200(c) (2010) (defining “navigation devices” as “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.”).
- 32 *NPR Pioneers Captioned Radio*, HEARING SPARKS, Aug. 2, 2010, <http://hearingsparks.blogspot.com/2010/08/npr-pioneers-captioned-radio.html>.
- 33 The driver cannot see the passenger’s screen view for safety reasons. On July 19, 2010, a live demonstration of this technology, using a prototype car dashboard containing a digital captioned-radio display, was presented in honor of the 20th anniversary of the Americans with Disabilities Act at an event jointly coordinated by the White House, the Commission, and the Department of Commerce. See National Public Radio, *NPR to Demonstrate New Technologies at Celebration of the 20th Anniversary of the Americans with Disabilities Act* (press release), July 19, 2010 (*NPR New Technologies*), <http://www.npr.org/about/press/2010/071910.CaptionedRadioDemo.html>; *Captioned-Radio Initiative Paves Way for Deaf to Experience Radio*, ABILITY MAGAZINE, <http://www.abilitymagazine.com/news/npr.html> (last visited May 26, 2011).
- 34 *NPR New Technologies*. The technology uses XML tags that are capable of being transmitted in the comment title field of an HD radio channel. *Id.*
- 35 COAT Comments at 9.
- 36 WEB ACCESSIBILITY IN MIND, SCREEN READER USER SURVEY RESULTS (Utah State Univ. Ctr. for Persons With Disabilities) (2009) (WEB ACCESSIBILITY IN MIND), <http://www.webaim.org/projects/screenreadersurvey2/>.

- 37** WEB ACCESSIBILITY IN MIND.
- 38** WEB ACCESSIBILITY IN MIND.
- 39** WEB ACCESSIBILITY IN MIND.
- 40** WEB ACCESSIBILITY IN MIND, SURVEY OF PREFERENCES OF SCREEN READERS USERS (Utah State Univ. Ctr. for Persons With Disabilities) (2009). The question asked “What are a few web sites or types of web sites that you would like to visit, but avoid because of accessibility issues?” The top ten were: (1) Flash-based sites; (2) Shopping sites; (3) Amazon; (4) Facebook; (5) News sites; (6) MySpace; (7) Yahoo; (8) eBay; (9) YouTube; and (10) Travel sites.
- 41** See Web Accessibility Initiative, WAI Guidelines and Techniques, <http://www.w3.org/wai/> (last visited May 26, 2011).
- 42** 47 U.S.C. § 255(c) (1996) (codified at 47 C.F.R. Parts 6 and 7).
- 43** See generally Nuance Communications, *Nuance Talks: Convenient Audio Access to Mobile Phones*, <http://www.nuance.com/talks/> (last visited May 26, 2011) (providing overview of the Nuance TALKS&ZOOMS software application); CodeFactory, *Introducing Mobile Speak*, <http://www.codefactory.es/en/products.asp?id=316> (last visited May 26, 2011) (describing the Mobile Speak software application). On July 19, 2010, the Wireless Telecommunications Bureau and the Consumer and Governmental Affairs Bureau issued a Public Notice seeking comment on the extent to which mobile phones are accessible to people who are blind, deaf-blind, and have low vision in order to examine this problem in more depth. *Wireless Telecommunications Bureau and Consumer and Government Affairs Bureau Seek Comment on Accessible Mobile Phone Options for People who are Blind, Deaf-blind, or Have Low Vision*, CG Docket No. 10-145, Public Notice, 25 FCC Rcd 9228 (2010).
- 44** CVAA § 104, 124 Stat. at 2755–62; *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Notice of Proposed Rulemaking, 76 Fed. Reg. 13800 (rel. Mar. 3, 2011).
- 45** Lawsuits brought by the National Federation of the Blind and the American Council of the Blind against universities intending to use Amazon’s Kindle DX in their classes first resulted in U.S. Department of Justice intervention, and eventually prompted Amazon to release a Kindle with audible menus, text-to-speech, tactile bumps on certain buttons, and extra large fonts for people who are blind or have low vision, in July, 2010. See Leslie Katz, *DOJ, Schools Settle Over Kindle’s Blind Access*, CNET NEWS CRAVE, Jan. 13, 2010, [http://news.cnet.com/8301-17938\\_105-10434512-1.html](http://news.cnet.com/8301-17938_105-10434512-1.html); Rachel Pryzgod, *Amazon Debuts Blind-Accessible Kindle*, MARYLAND BUSINESS, July 30, 2010, <http://mddailyrecord.com/maryland-business/2010/07/30/amazon-debuts-blind-accessible-kindle/>; *Kindle Blind Accessible in 2010—Audible Menu, Supersize Font*, KINDLE REVIEW, Dec. 7, 2009, <http://ireaderreview.com/2009/12/07/kindle-blind-accessible-in-2010-audible-menu-supersize-font/>.
- 46** For example, long form video programming imported to the web from TV will be required to carry closed captioning, though videos created originally for the web will not.
- 47** YouTube, *Automatic Captions in YouTube Demo*, <http://www.youtube.com/watch?v=kTvHIDKLFqc> (last visited May 26, 2011).
- 48** Cloud computing is now being discussed as an exciting new prospect to enable people with vision disabilities to obtain accessibility features on any computer or Internet-connected device. Potentially this could allow such users to access screen reader, text-to-speech, or large print appli-

cations from the web in order to make Internet-based content accessible to them whenever and wherever they need it. In September 2010, the Interagency Committee on Disability Research brought together more than 65 researchers, government representatives, and industry participants in a symposium to explore the potential of cloud computing to enable “auto-personalization,” a term used to describe the automatic adaptation of interfaces and materials to meet individual user needs. See COAT, *COAT Affiliates Look At Cloud Computing to Facilitate Accessibility*, <http://www.coataccess.org/node/9849> (last visited Mar. 18, 2011).

- 49** See generally *Nondiscrimination on the Basis of Disability in State and Local Government Services*, 28 C.F.R. Part 35 (July 23, 2010), and *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 28 C.F.R. Part 36 (July 23, 2010), both available at <http://www.ada.gov/regs2010/ADAregs2010.htm>.

## 25 How Big Is the Gap?

- 1** *Newsroom Employment Up Slightly*, Rick Edmonds, Emily Guskin & Tom Rosenstiel, *Newspapers: By the Numbers* in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthedia.org/2011/newspapers-essay/data-page-6>.
- 2** See “Newspapers: News Investment” in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthedia.org/2010/newspapers-summary-essay/news-investment>.
- 3** In brief, the numbers were developed by tracking down information about hiring and firing in the following news operations: newspaper newsrooms, new media news foundation projects, local TV news, AOL and other local news websites, public broadcast radio, ABC, NBC, CBS, national cable news, regional cable systems’ news operations, and news magazines. We then made broad estimates about how much these translated into.
- 4** U.S. Census Bureau, *Local Governments and Public School Systems by Type and State: 2007*, <http://www.census.gov/govs/cog/GovOrgTab03ss.html>. For a description of special district functions by state, see U.S. CENSUS BUREAU, *GOVERNMENTS—INDIVIDUAL STATE DESCRIPTIONS*, available at [http://www2.census.gov/govs/cog/all\\_ind\\_st\\_descr.pdf](http://www2.census.gov/govs/cog/all_ind_st_descr.pdf) (last visited Feb. 17, 2011).
- 5** Proposing an “ideal” number of full-time reporters to cover these beats is utterly subjective. But as a thought experiment, one could imagine that a reasonable minimum might look something like:
- an average of one full-time journalist watching over any county, municipal, and township government—whose beat would include city hall and the courts
  - an average of one half-time reporter per school system
  - an average of one reporter per 10 special districts
  - a national average of 11 full-time journalists per state capitol (with large states having more, and smaller states having fewer)
- Calculated as such, the minimum number of full-time reporters covering these beats would be about 50,000. That number does not include dedicated reporters for entertainment, sports, local business affairs, health care, or the capacity to investigate business matters and financial institutions.
- 6** George and Waldfogel estimate based on 1993 and 1999 Burrelle data that the share of reporters and editors at local newspapers working on

particular beats was 18 percent for local news, 14 percent for business, 12 percent for entertainment, and 12 percent for special issues and features. See Lisa M. George & Joel Waldfoegel, *The "New York Times" and the Market for Local Newspapers*, 96(1) AMER. ECON. REV. 435, 446 (Mar. 2006). In another article using data from *Burrelle's Media Directory 2000*, they estimate that, on average, about 60 percent of newspaper reporters and editors in a local newspaper market worked on hard news beats such as news, business, and government. See Lisa George & Joel Waldfoegel, *Who Affects Whom in Daily Newspaper Markets?*, 111 J. OF POLITICAL ECONOMY 765, 769 (2003).

- 7 Note that 20 percent of the 2009 newspaper newsroom workforce of 41,500, and of the 27,000 total local television newsroom employment in 2009, yields 14,000 accountability journalists on local beats. See "Newspapers: Summary" in PEW, STATE OF THE NEWS MEDIA 2010; BOB PAPPER, STAFFING AND PROFITABILITY—TV AND RADIO NEWS STAFFING AND PROFITABILITY SURVEY (Radio Television Digital News Association & Hofstra Univ.) (2010), available at [http://www.rtdna.org/pages/media\\_items/2010-tv-and-radio-news-staffing-and-profitability-survey1943.php?id=1943](http://www.rtdna.org/pages/media_items/2010-tv-and-radio-news-staffing-and-profitability-survey1943.php?id=1943). Adding in 355 reporters covering state capitols, and including other reporters likely covering local and state government at non-daily newspapers (which number more than 7,000) publications, radio, online, wire, and business media yields a generous estimate of 20,000 reporters covering local and state governments in 2009. National Newspaper Association, Facts and Figures, <http://www.nnaweb.org/?/nnaweb/community02/87> (last visited Feb. 7, 2011). If 50,000 were an ideal figure, then 30,000 additional reporters would ideally be on these beats. Using an average salary of \$44,000 (based on \$43,270 2009 Bureau of Labor Statistics mean annual salary estimate for reporters and correspondents) and an added benefits factor of 20 percent, you arrive at a figure of (\$44,000 per journalist\*1.2 (benefits factor)\* 30,000 journalists) \$1.6 billion. U.S. Bureau of Labor Statistics, Occupational Employment and Wages May 2009, <http://www.bls.gov/oes/2009/may/oes273022.htm> (last visited May 27, 2011). To estimate those working on accountability beats in 2000, we used a similar methodology, with a newspaper newsroom workforce number of 56,400, total local television TV news employment figure of 35,061 and a state capitol reporting total of 543. See *Newspapers: Summary* in PEW, STATE OF NEWS MEDIA 2010; BOB PAPPER & MICHAEL GERHARD, NEWS, STAFF AND MAKING MONEY 1 (Radio Television News Directors Association/Ball State Univ.) (2000), available at [http://www.bobpapper.com/attachments/File/RTDNA\\_reports/staff2001.pdf](http://www.bobpapper.com/attachments/File/RTDNA_reports/staff2001.pdf); See *AJR's 2009 Count of Statehouse Reporters*, AMER. JOURNALISM REV., Apr./May 2009, <http://www.ajr.org/article.asp?id=4722>. This yielded an estimate of 25,000 journalists working on accountability beats in 2000. To hire 25,000 additional reporters to close the gap would cost \$1.3 billion. To hire 5,000 additional reporters to bring up today's accountability reporting ranks to the level in 2000, it would cost (5,000\*\$44,000\*1.2)=\$264 million.
- 8 Total expenditures for public elementary and secondary education, by function and state or jurisdiction: 2006-07, Digest of Education Statistics, [http://nces.ed.gov/programs/digest/d09/tables/dt09\\_178.asp](http://nces.ed.gov/programs/digest/d09/tables/dt09_178.asp) (last visited May 18, 2011).
- 9 A half-time reporter covering each of the 14,561 public school systems would yield a need for 7,281 journalists. At an average salary of \$44,000 and benefits of 20 percent, this would mean the cost of starting from scratch would be (7,281\*\$44,000\*1.2) = \$384,436,800. However, since our estimates indicate that roughly 40 percent of the nation's needed

accountability reporting is already provided, the incremental cost to reach adequate coverage of the public schools would be 60 percent of that total—or \$ 231 million.

- 10 David Kaplan, *BIA/Kelsey: Local Online Ad Revenues Will Double By 2015*, PAID CONTENT, Mar. 21, 2011, <http://paidcontent.org/article/419-biakelsey-local-online-ad-revenues-will-double-by-2015->.
- 11 See Michele McLellan, "Emerging Economics of Community News" in PEW, STATE OF NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/mobile-survey/economics-of-community-news> (McLellan, *Emerging Economics of Community News*).
- 12 BILL GRUESKIN, AVA SEAVE, AND LUCAS GRAVES, THE STORY SO FAR.
- 13 Michele McLellan, "Emerging Economics of Community News" in PEW, STATE OF THE NEWS MEDIA 2011, <http://stateofthemediamedia.org/2011/mobile-survey/economics-of-community-news/>.
- 14 See, e.g., *In iPad, Publishers See Hope for Ad Revenue*, June 3, 2010, <http://www.cbsnews.com/stories/2010/06/03/business/main6543926.shtml> (*Ads Placed in iPad Apps*).
- 15 *Ads Placed in iPad Apps*.
- 16 See Joe Pompeo, *The Wall Street Journal's iPad App Is Killing It, So Far*, THE WIRE (Business Insider), June 2, 2010, <http://www.businessinsider.com/the-wall-street-journals-ipad-app-is-killing-it-so-far-2010-6>.
- 17 Panelist Presentation of Lem Lloyd, Vice President, Channel Sales, Yahoo!, U.S. Federal Trade Comm. (FTC) Workshop, "From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?" (Dec. 1, 2009) (Yahoo FTC Presentation 12/1/09), at 4, available at <http://www.ftc.gov/opp/workshops/news/index.shtml>.
- 18 Miguel Helft, *Yahoo Teams with Newspapers to Sell Ads*, N.Y. TIMES, Feb. 27, 2009, <http://www.nytimes.com/2009/02/28/technology/internet/28yahoo.html>.
- 19 Yahoo FTC Presentation 12/1/09 at 7.
- 20 David Carr, *For Murdoch, It's Try, Try Again*, N.Y. TIMES, Aug. 10, 2009, <http://www.nytimes.com/2009/08/10/business/media/10carr.html>.
- 21 Joseph Tartakoff, *Taking the Plunge: How Newspaper Sites That Charge Are Faring*, PAID CONTENT, Sept. 2, 2009, <http://paidcontent.org/article/419-taking-the-plunge-how-newspaper-sites-that-charge-are-faring/>; Jeff Sonderman, *Newspapers: 180 Years of Not Charging for Content*, NEWS FUTURIST, July 18, 2009, <http://www.newsfuturist.com/2009/07/newspapers-180-years-of-not-charging.html>.
- 22 See Ongo..., Ongo Is..., <http://www.ongo.com> (last visited Apr. 7, 2011).
- 23 Lucia Moses, *Next Issue Consortium Falls Down to Earth*, ADWEEK, Feb. 13, 2011, <http://www.adweek.com/news/press/next-issue-consortium-falls-down-earth-126595>.
- 24 Alan Mutter, *Paper Erects Pay Wall—and Traffic Goes Up!*, REFLECTIONS OF A NEWSOSAUR, Mar. 14, 2011, <http://newsosaur.blogspot.com/2011/03/paper-erects-pay-wall-and-traffic-goes.html> (*Paper Erects Pay Wall—and Traffic Goes Up!*).
- 25 Ken Doctor, *Nine Question on the Dallas Morning News' New Paywall*, KEN DOCTOR'S INSTABLOG, Mar. 23, 2011, <http://seekingalpha.com/instablog/391381-ken-doctor/148010-nine-questions-on-the-dallas-morning-news-new-paywall?source=kizur>.
- 26 The Arizona Guardian, *Subscription Plans*, [http://www.arizonaguardian.com/azg/index.php?option=com\\_jcs&view=jcs&layout=form&Itemid=108](http://www.arizonaguardian.com/azg/index.php?option=com_jcs&view=jcs&layout=form&Itemid=108) (last visited Apr. 7, 2011).

- 27 See, e.g., Kenneth Li & Andrew Edgecliffe-Johnson, *NY Times Eyes Local Editions in WSJ Clash*, FINANCIAL TIMES, Apr. 25, 2010, <http://www.ft.com/cms/s/0/7aca2caa-5080-11df-bc86-00144feab49a.html#axzz1NZxTLbfr>.
- 28 Brett Pulley, *AOL's Huffington to Add News Staff in Local Site Revamp*, BLOOMBERG BUSINESSWEEK, Apr. 12, 2011, <http://www.businessweek.com/news/2011-04-12/aol-s-huffington-to-add-news-staff-in-local-site-revamp.html>.
- 29 Interview with Rick Blair, President, Examiner.com by Steven Waldman, FCC (Dec. 17, 2010).
- 30 Curt Hopkins, *Major Newspaper Chain Goes Open Source*, READWRITEWEB, July 4, 2010, [http://www.readwriteweb.com/archives/major\\_newspaper\\_chain\\_goes\\_open\\_source.php](http://www.readwriteweb.com/archives/major_newspaper_chain_goes_open_source.php).
- 31 Timothy B. Lee, *Online News As Disruptive Technology*, BOTTOM UP, Mar. 30, 2011, <http://timothyblee.com/2011/03/30/online-news-as-a-disruptive-technology>.
- 32 Dan Gillmor, *Mediactive*, 2010, <http://mediactive.com/8-1-a-prescient-warning-and-unheeded-advice>.
- 33 Testimony of Jeff Jarvis, Assoc. Professor & Director of the Interactive Program, CUNY Graduate School of Journalism, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), Tr. at 213:15-17, available at [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=57c2b1d8-4ecb-49b8-ad8e-bb30d794b784&groupid=19001](http://reboot.fcc.gov/c/document_library/get_file?uuid=57c2b1d8-4ecb-49b8-ad8e-bb30d794b784&groupid=19001) (Jarvis Testimony 3/4/10).
- 34 Email from Michele McLellan to Steven Waldman, FCC (Mar. 1, 2011).
- 35 The Huffington Post Investigative Fund, *About Us*, <http://huffpostfund.org/about-us> (last visited Feb. 3, 2011).
- 36 Interview with Eric Hippeau, former CEO of Huffington Post, by Steven Waldman, FCC (Nov. 22, 2010).
- 37 Interview with Alan Murray, Wall Street Journal's executive editor, by Steven Waldman, FCC (Mar. 21, 2011).
- 38 See, e.g., Richard Pérez-Peña, *Naming Leaders, a Nonprofit News Outlet Takes Shape in San Francisco*, N.Y. TIMES, Jan. 10, 2010, <http://www.nytimes.com/2010/01/22/business/media/22bay.html>.
- 39 Alan Mutter, *The State of Play for Paid Content, 2011*, Jan. 11, 2011, EDITOR & PUBLISHER, <http://www.editorandpublisher.com/Headlines/ep-exclusive-the-state-of-play-for-paid-content-2011-64184.aspx>.
- 40 *Local and Metro Newspapers With Pay Walls*, PAID CONTENT, <http://paid-content.org/table/whos-charging> (last visited Mar. 17, 2011).
- 41 *Paper Erects Pay Wall—and Traffic Goes Up!*
- 42 Email from Jovonda Howard, News Service of Florida to Steven Waldman, FCC (Mar. 14, 2011).
- 43 See Jack Meyers, *Legacy Media's Slice of the Social Commerce Economy*, MEDIA ADVISORY GROUP, Mar. 21, 2011, <http://www.jackmyers.com/commentary/jackmyers-think-tank/Legacy-Medias-Slice-of-the-Social-Commerce-Economy---Jack-Myers.html>.
- 44 Interview with Rafat Ali, Paid Content, by Steven Waldman, FCC, Nov. 22, 2010 (Ali Interview 11/22/10).
- 45 Ali Interview 11/22/10.
- 46 Ali Interview 11/22/10.
- 47 Ali Interview 11/22/10.
- 48 Michael J. Miller, *Online Privacy and "Do Not Track" Proposals: Only the Beginning*, FORWARD THINKING... (PC Magazine), Jan. 26, 2011, [http://blogs.pcmag.com/miller/2011/01/online\\_privacy\\_and\\_do\\_not\\_trac.php](http://blogs.pcmag.com/miller/2011/01/online_privacy_and_do_not_trac.php).
- 49 Interview with Gordon Crovitz by Steven Waldman, FCC (Oct. 5, 2010.)
- 50 HARRIGAN, BROADBAND ADOPTION AND USE IN AMERICA at 13, 27–29.
- 51 HARRIGAN, BROADBAND ADOPTION AND USE IN AMERICA at 24.
- 52 See Will Sullivan, *RJI iPad Research Shows Tablet Subscriptions Will Cannibalize Print Subscriptions*, DONALD W. REYNOLDS JOURNALISM INSTITUTE, Dec. 9, 2010, <http://www.rjionline.org/blog/rji-ipad-research-shows-tablet-subscriptions-will-cannibalize-print-subscriptions>.
- 53 See PEW 2010 NEWS CONSUMPTION SURVEY at 90.
- 54 "Network TV Audience" in PEW, STATE OF NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/network-tv-summary-essay/audience/>.
- 55 See *Copyright, Competition and Publishers' Pursuit of Online Compensation*, Univ. of So. California Annenberg Ctr. on Communication Leadership & Policy, Comment No. 544505-00022 in re FTC File No. P091200: *From Town Criers to Bloggers: How Will Journalism Survive the Internet Age?* (filed Nov 6, 2009) (Annenberg Ctr., *Copyright, Competition and Publishers' Pursuit of Online Compensation*), available at <http://www.ftc.gov/os/comments/newsmediaworkshop/544505-00022.pdf> (stating "[o]nline readers are usually not paying for their news, and are often reading their news away from the content originator's site. Online advertisers pay less for placement than they did in the traditional printed papers.").
- 56 HAROLD VOGEL, ENTERTAINMENT INDUSTRY ECONOMICS: A GUIDE FOR FINANCIAL ANALYSIS 343 (Cambridge University Press) (2007).
- 57 Apple, *Apple Launches Subscriptions on the App Store* (press release), Feb 15, 2011, <http://www.apple.com/pr/library/2011/02/15appstore.html>.
- 58 See Annenberg Ctr., *Copyright, Competition and Publishers' Pursuit of Online Compensation*.
- 59 Estimate for cash flow margin and employment reductions: Calculations by Prof. James Hamilton (Duke Univ.) for the Future of Media Project, based on discussions with Rick Edmonds of the Poynter Institute. Analyzing the impact of reductions in newsroom reporting staff, Edmonds estimates that annual spending on newsroom expenses declined about \$1.6 billion between 2006 and 2009. See "Newspapers: News Investment" in PEW, STATE OF THE NEWS MEDIA 2010, <http://stateofthemediamedia.org/2010/newspapers-summary-essay/news-investment/>. He estimates that newspaper industry revenues were \$47 billion in 2008 and \$37 billion in 2009, which means that the \$1.6 billion reduction in annual newsroom expenses would be equivalent to 3.4 percent of industry revenues in 2008 and 4.3 percent in 2009. Examining cash flows as a percentage of firm revenues, Lauren Rich Fine calculated the cash flow margins of selected newspaper companies in 2008 was 13 percent. See LAUREN RICH FINE, BAD PUBLIC RELATIONS OR IS THIS A REAL CRISIS? YES 11 (Duke Conference on Nonprofit Media) (2009), available at <http://sanford.duke.edu/nonprofitmedia/documents/dwcrichfinefinal.pdf>. This implies that if newspaper firms had been willing to accept a 9 percent cash flow margin rather than 13 percent in 2008, then newsroom expenditures could go back up by more than \$1.6 billion, and staffing could go back to 2006 newsroom employment levels (or even higher, since the original \$1.6 billion estimate included cuts not made until 2009). Edmonds notes that about 80–90 percent of newsroom spending goes for salaries and the rest is spent on items



such as travel, wire service, or freelance work. Survey data from NAB's Television Financial Report: 2010 show that in 2009 local television stations had average net revenues of \$13,453,516, and average cash flow (defined as net revenues minus total expenses) of \$3,071,955. Average news expenses at local TV stations in 2009 were \$2,537,814. For a local television station with these average finances, this translates into a cash flow margin of 23 percent. If the station had reduced its cash margin by two percentage points (i.e., accepted a 21 percent cash margin), it could have increased newsroom spending by \$269,070 or 11 percent, reducing the pressure to fire staff.

- 60 Interview with Andrew Lack, C.E.O., Multimedia Group, Bloomberg LP, by Steven Waldman, FCC (Dec. 16, 2010).
- 61 Interview with Bill Girdner, Editor and Publisher, Courthouse News Service, by Kathleen Struck, FCC (July 2, 2010).
- 62 Jarvis Testimony 3/4/10, Tr. at 216:3-4.
- 63 Email from Clay Shirky to Steve Waldman, FCC (Apr. 2, 2011).
- 64 *Newspaper Economics: Online and Offline*, Presentation by Hal Varian, Chief Economist, Google, and Professor, Univ. of California, Berkeley, FTC Workshop, "From Town Criers to Bloggers: How Will Journalism Survive The Internet Age?" (Mar. 9, 2010) (Varian, *Newspaper Economics: Online and Offline*), at 20, available at <http://www.ftc.gov/opp/workshops/news/mar9/docs/varian.pdf>.
- 65 Interview with Esther Dyson by Steven Waldman, FCC (Sept. 3, 2010).
- 66 Interview with John Hood by Steven Waldman, FCC (April, 2011)
- 67 Howard Kurtz, *Washington Post Will Pair With Bloomberg*, WASH. POST, Oct. 2, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/01/AR2009100104226.html>.

## 26 Broadcast, Radio and Television

- 1 See *Amendment of Section 3.606 Of The Commission's Rules and Regulations*, Report and Order, 41 FCC 148 (1952) ("Sixth Report and Order"); see also *Applications of WQED PITTSBURGH (Assignor) et al.*, Memorandum Opinion and Order, 15 FCC Rcd 202, 212 (1999) ("WQED").
- 2 Federal Communications Commission (FCC), 34th Annual Report for Fiscal Year 1968, at 28; *Deletion of Noncommercial Educational Reservation of Channel \*16, 482-488 MHz, Pittsburgh, Pennsylvania*, 11 FCC Rcd 11700, 11707-08 (1996).
- 3 See, e.g., *Advanced Telecommunications Systems and Their Impact on the Existing Television Broadcast Service (Advanced Television Systems)*, Second Inquiry, 3 FCC Rcd 6520, 6525, 6530 (1988); *Advanced Television Systems*, First Order, 5 FCC Rcd 5627, 5627-5629 (1990); *Advanced Television Systems*, Notice of Proposed Rulemaking, 6 FCC Rcd 7024 (1991); *Advanced Television Systems*, Fourth Report and Order, 11 FCC Rcd 17771, 17787 (1996).
- 4 *Banzhaf v. FCC*, 405 F.2d 1082, 1095 (D.C. Cir. 1968), cert. denied sub nom., *Tobacco Inst. v. FCC*, 396 U.S. 842 (1969). See also *Turner Broadcasting System v. FCC*, 512 U.S. 622, 650-51 (1994) (discussing limited nature of FCC oversight responsibilities in light of First Amendment constraints, Court noted that "our cases have recognized that Govern-

ment regulation over the content of broadcast programming must be narrow, and that broadcast licensees must retain abundant discretion over programming choices.") (internal citations omitted). One study that documents the chilling effect: Thomas W. Hazlett and David W. Sosa, *Was the Fairness Doctrine A 'Chilling Effect'? Evidence from the Postderegulation Radio Market*, 26 J. LEGAL STUD. 279-301(1997).

- 5 *Great Lakes Broadcasting*, 3 F. R. C. Ann. Rep. 32 (1929), rev'd on other grounds, 59 App. D. C. 197, 37 F.2d 993, cert. dismissed, 281 U.S. 706 (1930). See generally Mark A. Conrad, *The Demise of the Fairness Doctrine: A Blow for Citizen Access*, 41 FED. COMM L.J. 161 (1989).
- 6 *Mayflower Broadcasting Corp.*, 8 FCC 333, 340 (1940).
- 7 Mark A. Conrad, *The Demise of the Fairness Doctrine: A Blow for Citizen Access*, 41 FED. COMM L.J. 161, 166 (1989).
- 8 *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949).
- 9 See, e.g., *Repeal or Modification of the Personal Attack and Political Editorial Rules*, Proposed Rule, 48 Fed. Reg. 28295 (June 21, 1983).
- 10 As the Court noted, "Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969).
- 11 *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).
- 12 *Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees*, Report, 102 FCC 2d 145, 170 (1987) (*Fairness Doctrine Report 1987*).
- 13 *Fairness Doctrine Report 1987*, FCC 77-643, 102 FCC 2d at 171. For other examples of such chilling, see *id.* at 169-188, *passim*.
- 14 *Repeal or Modification of the Personal Attack and Political Editorial Rules*, 15 FCC Rcd 20697 (2000); *Radio-Television News Directors Ass'n v. FCC*, 229 F.3d 269 (D.C. Cir. 2000).
- 15 Congressional testimony for the Senate Commerce Committee, June 16, 2009. *Federal Communications Commission Chairman Nomination*, C-SPAN, June 16, 2009, <http://www.c-spanvideo.org/program/287044-1>.
- 16 47 C.F.R. § 73.1910.
- 17 See *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141, 141 (1963).
- 18 See Radio Act of 1927, Pub. L. No. 69-632, § 19, 44 Stat. 1162, 1170 (1927); Communications Act of 1934, Pub. L. No. 73-416, § 317, 48 Stat. 1064, 1089 (1934) (codified as amended at 47 U.S.C. § 317); Communications Act Amendments, Pub. L. No. 86-752, § 8(b), 74 Stat. 889, 896 (1960). In 1960, Congress amended Section 317 to add this proviso to subsection (a) as well as to add subsections (b) through (e) of Section 317. See Communications Act Amendments, Pub. L. No. 86-752, § 8(a), 74 Stat. 895.
- 19 47 C.F.R. § 76.1615.
- 20 47 U.S.C. § 317(a)(1).
- 21 See Application of Sponsorship Identification Rules to Political Broadcasts, Teaser Announcements, Governmental Entities and Other Organizations, Public Notice, 66 FCC 2d 302 (1977).
- 22 See Codification of the Commission's Political Programming Policies, Opinion and Order, 7 FCC Rcd 678, 687 (1991).
- 23 Online disclosure would increase the ability of private parties to monitor compliance with the rules. Ellen P. Goodman, *Stealth Marketing and*

- Editorial Integrity*, 85 TEX. L. REV. 83, 151-152 (2006).
- 24 For instance, Section 507(a) of the Communications Act of 1934 (Communications Act), 47 U.S.C. § 508(a), requires that each station employee who has accepted consideration for the airing of the material, or any person who has paid an employee, must disclose that fact to the station prior to the airing of the matter. Section 507(b) imposes a similar duty of disclosure upon any person involved in the preparation of the story. The disclosure must be made to each payee's employer, the person for whom the material is being produced, or the licensee. These obligations do not apply to cable operators. See 47 U.S.C. § 508(a), (b), (c).
  - 25 See Access Humboldt et al. Joint Comments in re FOM PN (FCC Launches Examination of The Future of Media and Information Needs of Communities in a Digital Age, Comment Sought, GN Docket No. 10-25, Public Notice, 25 FCC Rcd 384 (2010) (FOM PN)), filed May 7, 2010 (Humboldt Comments) at 75.
  - 26 *ACC Licenses, Inc.*, Order and Consent Decree, 2010 WL 3806284 (Enf. Bur. rel. Sept. 29, 2010).
  - 27 Interview with Tom Rosensteil, by Steven Waldman, FCC, (Jan. 11, 2011).
  - 28 Fines can be increased above the base level for: "(1) Egregious misconduct; (2) Ability to pay/relative disincentive; (3) Intentional violation; (4) Substantial harm; (5) Prior violations of any FCC requirement; (6) Substantial economic gain; (7) Repeated or continuous violation." 47 CFR 1.80. See, *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303.
  - 29 *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, MB Docket No. 05-171, Public Notice, 20 FCC Rcd 8593, 8593 (2005) (*Video News Release PN*).
  - 30 See Center for Media and Democracy & Free Press Comments in re *Video News Release PN*, filed June 22, 2005 (Ctr. for Media and Democracy Comments in re *Video News Release PN*), at 2.
  - 31 *Fox Television Stations, Inc., Licensee of Station KMSP-TV, Minneapolis, MN*, Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-, 2011 WL 1099542 (EB rel. Mar. 24, 2011), available at <http://www.fcc.gov/eb/Orders/2011/DA-11-521A1.html>; *Access 1 New Jersey License Company, LLC, Licensee of Station WMGM-TV, Wildwood, NJ*, Notice of Apparent Liability for Forfeiture, File No. EB-06-IH-3725, 2011 WL 1099543 (EB rel. Mar. 24, 2011), available at <http://transition.fcc.gov/eb/Orders/2011/DA-11-523A1.html>.
  - 32 Letter from John C. Quale, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, counsel for Fox Television Holdings, Inc., and Fox Television Stations, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 25, 2007, at 1-2.
  - 33 47 U.S.C. § 508(b)-(c).
  - 34 *Graham Williams Group*, Letter, 22 FCC Rcd 18092 (Enf. Bur., Inv. & Hearings Div. 2007).
  - 35 47 U.S.C. § 317(c). See also 47 C.F.R. §§ 73.1212(b), 76.1615(b).
  - 36 47 U.S.C. § 317(b). See also 47 C.F.R. § 73.1212(c). Cable operators do not have a comparable reporting requirement. Compare 47 C.F.R. § 76.1615.
  - 37 See Center for Media and Democracy Comments in *Sponsorship Identification Rules and Embedded Advertising*, MB Docket No. 08-90, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd 10682 (2008) (*Sponsorship Identification NOI & NPRM*), filed Sept. 22, 2008, at 2 (citing BOB PAPPER, THE FUTURE OF NEWS: A STUDY BY THE RADIO TELEVISION NEWS DIRECTORS FOUNDATION 32-33 (2006))
  - 38 See Comments of Fairness and Integrity in Telecommunications Media in re *Sponsorship Identification NOI & NPRM*, filed Sept. 23, 2009, at 10-15.
  - 39 See, e.g., The National Association of Broadcasters Reply Comments in re *Sponsorship Identification NOI & NPRM*, filed Nov. 21, 2008, at 18-19; Reply Comments of The Walt Disney Company in re *Sponsorship Identification NOI & NPRM*, filed Nov. 21, 2008, at 14-20.
  - 40 Hearings on H.R. 7357 before the House Comm. on Merchant Marine & Fisheries, 68th Cong., 1st Sess. 10 (1924). See also *In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, Notice of Inquiry, 87 FCC 2d 836 (1981).
  - 41 EarlyRadioHistory.us, HTML Reproduction of Photocopy of Proceedings of the Fourth National Radio Conference and Recommendations for Regulation of Radio, November 9-11, 1925 (Fourth Nat'l Radio Conference Recommendations), <http://earlyradiohistory.us/1925conf.htm> (last visited Dec. 30, 2010); see also Thomas H. White, United States Early Radio History, Early Government Regulation (1903-1946), EARLYRADIO-HISTORY.US, <http://earlyradiohistory.us/sec023.htm> (stating that the four National Radio Conferences held in 1922 through 1925 "brought together representatives from the government and the radio industry, plus private citizens, in order to provide guidance to Commerce Secretary Herbert Hoover on the future of radio") (last visited Feb. 2, 2010).
  - 42 Fourth Nat'l Radio Conference Recommendations.
  - 43 See, e.g., LUCAS A. POWE, JR., AMERICAN BROADCASTING AND THE FIRST AMENDMENT 58 (Univ. of California Press) (1987).
  - 44 See, e.g., *Hoover v. Intercity Radio Co.*, 286 F. 1003 (D.C. Cir. 1923).
  - 45 Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162. The Act granted the FRC licensing authority for one year only, with the authority reverting thereafter to the Commerce Secretary.
  - 46 In 1943, the Supreme Court approved the "public interest, convenience or necessity" standard as applied to the regulatory authority of the Federal Communications Commission. See *NBC v. United States*, 319 U.S. 190 (1943).
  - 47 Reed E. Hundt, *The Public's Airwaves: What Does the Public Interest Require of Television Broadcasters?* 45 DUKE L.J. 1089 (1996).
  - 48 One commentator wrote shortly after the passage of the Radio Act of 1927 that the inclusion of the phrase, "public interest, convenience, and necessity" was of enormous consequence, since it meant that "licenses are no longer for the asking. The applicant must pass the test of public interest. His wish is not the deciding factor." STEPHEN DAVIS, THE LAW OF RADIO COMMUNICATIONS 61 (McGraw Hill, 1927), NOTED IN ERWIN G. KRASNOW & LAWRENCE D. LONGLEY, THE POLITICS OF BROADCAST REGULATION 16 (St. Martin's Press) (1973).
  - 49 This is not to suggest that entertainment programming was not "in the public interest." It was, in fact, one of 14 categories of programming identified by the Commission as being so. See *infra* at 12 & n.55. Rather, entertainment material was not generally the focus of regulatory efforts because its promotion was well regulated by market forces alone.
  - 50 67 Cong. Rec. 5479 (1926).
  - 51 *NBC v. United States*, 319 U.S. 190, 215 (1943), citing 47 U.S.C. §§ 307(a), (d), 309(a), 310, 312.

- 52** See, e.g., 47 U.S.C. §§ 303, 307(a), 309(a).
- 53** STERLING & KITROSS, STAY TUNED at 189.
- 54** See FCC, *Public Service Responsibility of Broadcast Licensees* (1946), reprinted in DOCUMENTS OF AMERICAN BROADCASTING (4TH EDITION) (Frank J. Kahn ed.) 148-63 (1984), at 39.
- 55** *Report and Statement of Policy res: Commission en banc Programming Inquiry*, 44 FCC 2303, 2310 (1960) (1960 Programming Report).
- 56** 1960 Programming Report, 44 FCC at 2312.
- 57** 1960 Programming Report, 44 FCC at 2314.
- 58** 1960 Programming Report, 44 FCC at 2314.
- 59** See *Primer on Ascertainment of Community Problems by Broadcast Applicants*, Report and Order, 27 FCC 2d 650 at Appendix B (1971) (*Primer on Ascertainment of Community Problems*). The *Primer* instructed applicants to (1) determine the composition of the population falling within a station service area with respect to, among other factors, race and ethnicity; (2) interview leaders of significant groups within the community regarding community needs and problems; (3) randomly survey the general public regarding such needs and problems; (4) evaluate the relative importance of the needs and problems so disclosed, the timeliness of the comments, and the extent to which it can provide programming to meet each; and (5) formulate programs that addressed those issues deemed, in the good faith discretion of the applicant, to merit such on-air treatment. See *id.*
- 60** *Primer on Ascertainment of Community Problems* at Appendix B.
- 61** *Primer on Ascertainment of Community Problems* at Appendix B.
- 62** See *Amendment of Part O of the Commission's Rules- Commission Organization- With Respect to Delegation of Authority to the Chief, Broadcast Bureau, Order*, 43 FCC 2d 638, 640 (Appendix) (1973). If the applicant had failed to meet such limits or if the programming varied from the licensee's prior representations to the FCC (the so-called "promise-versus-performance" review), the application would be subject to review by the Commission itself, which would be a less expeditious and potentially more risky process than delegated Bureau action.
- 63** See *Amendment of Part O of the Commission's Rules- Commission Organization- With Respect to Delegation of Authority to the Chief, Broadcast Bureau, Order*, 43 FCC 2d at 640 (Appendix) (1973).
- 64** *Amendment of Section O.281 of the Commission's Rules- Delegation of Authority to the Chief, Broadcast Bureau, Order*, 59 FCC 2d 491, 493 (1976).
- 65** Interview with Steve Schwaib, Director of News and Digital Content, WGCI Atlanta, by Cynthia C. Kennard, FCC (June 30, 2010).
- 66** Interview with Lee Giles, former V.P. and Director, News, WISH-TV Indianapolis, by Cynthia C. Kennard, FCC, (June 27, 2010).
- 67** Interview with Gayle Eichenthal, Program Director KJSC Radio, Los Angeles, by Cynthia Kennard, FCC (Sept. 25, 2010); see also Ken Reich, *Gail Eichenthal Leaves KNX, As Station Under New Management Gets Softer*, TAKE BACK THE TIMES BLOG, Jan. 20, 2005, <http://takebackthetimes.blogspot.com/2005/01/gail-eichenthal-leaves-knx-as-station.html>.
- 68** *Reason Interview: Mark S. Fowler*, REASON, Nov. 1, 1981, excerpt available at [http://findarticles.com/p/articles/mi\\_m1568/is\\_1998\\_Dec/ai\\_53260535/pg\\_4/?tag=content;col1](http://findarticles.com/p/articles/mi_m1568/is_1998_Dec/ai_53260535/pg_4/?tag=content;col1).
- 69** 47 C.F.R. § 73.671. See also *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10,660, 10,662 (1996).
- 70** 47 C.F.R. § 73.673.
- 71** 47 C.F.R. § 73.670 (no more than 10.5 minutes per hour during week-ends and 12 minutes per hour during the week).
- 72** *Deregulation of Radio*, Report and Order, 84 FCC 2d 968 (1981) (*Deregulation of Radio 1981*), recon. granted in part, 87 FCC 2d 797 (1981), remanded sub nom. *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983), on remand, Second Report and Order, 96 FCC 2d 930 (1984), remanded sub nom. *Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702 (D.C. Cir. 1985), on remand, Memorandum Opinion and Order, 104 FCC 2d 505 (1986).
- 73** *Deregulation of Radio 1981*, 84 FCC 2d at 968-69.
- 74** *Deregulation of Radio 1981*, 84 FCC 2d at 971.
- 75** *Deregulation of Radio 1981*, 84 FCC 2d at 977.
- 76** *Deregulation of Radio 1981*, 84 FCC 2d at 978.
- 77** *Deregulation of Radio 1981*, 84 FCC 2d at 998.
- 78** *Deregulation of Radio 1981*, 84 FCC 2d at 971.
- 79** *Deregulation of Radio 1981*, 84 FCC 2d at 978. Notably the Commission applied a different analysis to stations in smaller communities "where few alternatives are available to listeners." *Id.* Such stations were required to "be more broadly based in their programming," something which the Commission believed to be dictated by "good business sense" anyway, as "stations in smaller communities must broadly base all of their programming to attract, hold and serve a large audience." *Id.*
- 80** *Deregulation of Radio 1981*, 84 FCC 2d at 979.
- 81** *Deregulation of Radio 1981*, 84 FCC 2d at 1002-08.
- 82** *Deregulation of Radio 1981*, 84 FCC 2d at 1008-1011.
- 83** *Deregulation of Radio 1981*, 84 FCC 2d at 1008.
- 84** *Office of Comm'n of the United Church of Christ v. FCC*, 707 F.2d 1413, 1426 (D.C. Cir. 1983).
- 85** *Office of Comm'n of the United Church of Christ v. FCC*, 707 F.2d at 1427.
- 86** *Office of Comm'n of the United Church of Christ v. FCC*, 707 F.2d at 1435-38.
- 87** *Office of Comm'n of the United Church of Christ v. FCC*, 707 F.2d at 1441 (internal citation omitted).
- 88** *Deregulation of Radio*, Memorandum Opinion and Order, 104 FCC 2d 505, 507 (1986).
- 89** *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1076, 1984 WL 251255 at \*2 (Aug. 21, 1984) (*Television Deregulation Order*).
- 90** *Television Deregulation Order*, 1984 WL 251255 at \*7.
- 91** *Television Deregulation Order*, 1984 WL 251255 at \*8.
- 92** *Television Deregulation Order* at 1984 WL 251255 at \*2.
- 93** Between 1934 and 1952, Section 307(d) of the Act provided that action on license renewal applications should be governed by the same considerations and practices as the granting of the original applications, including application of traditional comparative factors such as integration of ownership and management and diversification of media ownership. See ch. 652, Title III, Part I, § 307, 48 Stat. 1083 (June 19, 1934). Nevertheless, in 1951, the Commission acknowledged it had given some consideration to the past broadcast records of incumbent licensees in the renewal ap-

plication process, and would continue to do so alongside the traditional comparative factors. See *Hearst Radio, Inc. (WBAL)*, 15 FCC 1149 (1951). In so doing, the Commission reasoned that a literal reading of Section 307(d) would effectively eliminate consideration of the incumbent's past broadcast record, which would not be in the public interest. The Commission's reasoning gave rise to the "renewal expectancy" preference, which was granted to the incumbent depending on the Commission's review of the incumbent's program performance. If the Commission's determination that the incumbent's past program service had been meritorious in meeting the needs and interests of listeners or viewers in its community of license or service area, renewal expectancy was warranted and was given significant weight when evaluated against the traditional structural factors. The Commission believed that Congress had to some extent confirmed the existence of such an expectancy when it amended Section 307(d) to delete the language subjecting renewal applicants to "the same considerations and practice" as original applicants and substituted the present language subjecting all applications to the standard of "public interest, convenience, and necessity." See 82 P.L. 554, ch 879, § 5, 66 Stat. 71447 (July 16, 1952).

The renewal expectancy preference was applied on an *ad hoc* basis, without guidelines concerning comparative criteria or the weights to be assigned to particular factors, until 1965. In that year, the Commission adopted a *Policy Statement* to deal with situations involving comparative proceedings between non-incumbent applicants according to the following principles:

"Decisional significance will be accorded only to material and substantial differences between applicants' proposed program plans. Minor differences in the proportions of time allocated to different types of programs will not be considered. Substantial differences will be considered to the extent that they go beyond ordinary differences in judgment and show a superior devotion to public service."

*Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 397 (1965) (internal citations omitted) (*1965 Policy Statement*). Since the Commission didn't enforce the implementation of the program proposals of winning applicants, few were crazy enough to under-propose, warranting comparative consideration with their opponents' proposals. However, the *1965 Policy Statement* did not attempt to address the interplay between these comparative factors and the "renewal expectancy" preference adopted in the *Hearst Radio* decision.

In 1970, the Commission adopted a second policy statement specifically tailored for comparative hearings. *Policy Statement Concerning Comparative Hearings Involving Regular Renewal Applicants*, Public Notice, FCC-70-62, 22 FCC 2d 424 (1970) (*1970 Policy Statement*), *rev'd*, *Citizens Communications Center v. FCC*, 447 F.2d 1201 (1971). Under the *1970 Policy Statement*, a renewal applicant would be preferred over any competing applicant if the incumbent could show in a hearing that its programming during the license term had been "substantially attuned" to meeting the needs and interests of its service area, and that its operation had otherwise been characterized by "serious deficiencies." *1970 Policy Statement*, 22 FCC 2d at 425. If the presiding judge determined that the renewal applicant's record of service met that test, it was to halt the proceeding and grant the renewal application. *Id.* at 428.

The *1970 Policy Statement* lasted one year before it was overturned by the Court of Appeals for the District of Columbia Circuit. The Court held that the bifurcated procedure adopted in the *1970 Policy Statement* violated Section 309 of the Act as interpreted by the Supreme Court in

*Ashbacker Radio Corp. v. FCC.*, 326 U.S. 327 (1945), by depriving qualified challenging applicants of the right to a full comparative hearing on the merits of their proposals. *Citizens Communication Center v. FCC*, 447 F.2d 1201 (D.C. Cir. 1971) (*CCC*), *clarified*, 463 F.2d 822 (D.C. Cir. 1972). However, the Court did note that prior cases had established a presumption—or, as the court referred to it, an "operational bias" that created an "insuperable advantage"—in favor of license renewal when the licensee's service record was satisfactory. *CCC*, 447 F.2d at 1207-08.

The Commission then returned to processing comparative renewal proceedings under the standards in the *1965 Policy Statement*, with the renewal expectancy typically being the dispositive factor, while also pursuing a rulemaking in the wake of the *CCC* decision. In the leading comparative license renewal case from this era, the D.C. Circuit court upheld the Commission's grant of the incumbent's renewal application against a competing application. *Cowles Florida Broadcasting, Inc.*, Decision, 60 FCC 2d 372 (1976) (*Cowles*), *recon. denied and clarified*, 62 FCC 2d 953 (1977), *further recon. denied*, 40 RR 2d 1627 (1977), *remanded sub nom. Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37 (D.C. Cir. 1978), *on remand, Cowles Broadcasting, Inc.*, 86 FCC 2d 993 (1981), *aff'd sub nom. Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982). In granting the renewal, the Commission held that, for significant "public interest" reasons, an incumbent licensee's 'meritorious' record could outweigh a challenging applicant's advantages under the structural criteria of diversification and integration. *Cowles*. In affirming that decision, the D.C. Circuit held that so long as the Commission did not raise the renewal expectancy preference to an "irrebuttable presumption" in favor of the incumbent, and so long as it weighed all factors at the same time, the Commission could permissibly attribute renewal expectancies of varying strength and weight. *Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503, 506 (D.C. Cir. 1982). The court restated and affirmed the three-part justification underlying the renewal expectancy preference:

there is no guarantee that a challenger's paper proposals will, in fact, match the incumbent's proven performance;

the likelihood of renewal encourages licensees to make investments to ensure quality service which would not be made if their dedication to service is not rewarded; and

the comparing of challengers and incumbents on the same basis as new applicants are compared could lead to an undesirable haphazard restructuring of the broadcast industry, i.e., could lead to licensees owning more than one station being displaced by challengers with no or fewer stations.

*Central Florida Enterprises, Inc.*, 683 F.2d at 507, *quoting Cowles*, 86 FCC 2d at 1013.

- 94 See *WWOR-TV, Inc.*, Decision, 7 FCC Rcd 636, 638 (1992), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 966 F.2d 386 (D.C. Cir. 1993) (in disqualifying a party for filing a competing application for purposes of obtaining a settlement payment from the incumbent licensee, the Commission states that "incentives and mechanisms for abuse... have been inherent in the licensing process").
- 95 Telecommunications Act of 1996, P.L. 104; § 203 110 Stat. 56, 112 (1996) (Telecom Act). The Omnibus Budget Reconciliation Act of 1981 had extended radio station license terms from the original three years to seven years and extended television station license terms from three years to five years. See *Omnibus Budget Reconciliation Act of 1996*, Pub. L. No. 35, Sub. B, ch. 2, 95 Stat. 357, 736 (1981).
- 96 Telecom Act § 204, 110 Stat. 56, 112-13. Passage of the Act, however, did not alter the Commission's longstanding policy of considering

time-sharing proposals to accommodate competing demand for limited NCE-FM spectrum. See, e.g., *Nassau Community College*, File No. BMLED-951024KA, Memorandum Opinion and Order, 12 FCC Rcd 12234, 12234-5 (1997); *Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5100-01 (2001) (affirming use of time sharing as tie-breaker of last resort in selecting among competing applicants for new NCE stations).

- 97** See FCC, *Instructions for FCC 303-S Application for Renewal of Broadcast Station License* (FCC Form 303-S Attached) (updated Sept. 2009) (*Instructions for FCC Form 303-S*) at 25, 34, available at [www.fcc.gov/Forms/Form303-S/303s.pdf](http://www.fcc.gov/Forms/Form303-S/303s.pdf).
- 98** 47 C.F.R. § 73.3527(e)(8)(i).
- 99** See *Application for Renewal of Broadcast Station License* at 25, 34.
- 100** Commission regulations do provide the following language with respect to the list: “The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided the treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated.” See, e.g., 47 C.F.R. § 73.3526(e)(12); and 47 C.F.R. § 73.3527(e)(8)(i) (containing identical language).
- 101** As discussed in Chapter 26, Broadcast Radio and Television, in its Enhanced Disclosure proceeding, the Commission imposed such a requirement on television licensees, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007), but this rule has not yet become effective.
- 102** These findings are based on FOM staff’s review of the quarterly issues/programs lists that several stations have prepared and placed in their public inspection files.
- 103** KNBC-TV, Quarterly Issues/Program Report, third quarter of 2009.
- 104** It should be noted that renewal applications denied on grounds other than failure to meet public interest obligations were not included in this tally. Such grounds include misrepresentations, character matters or other disqualification involving the licensee or its principals, non-operation of the station in violation of Section 312 of the Communications Act, 47 U.S.C. § 312, or situations in which a competing applicant in a comparative renewal proceeding was deemed to be superior to the incumbent licensee.
- 105** During its initial administrative review of the petition of a coalition of church and civil rights groups to deny the renewal application of Lamar Life Broadcasting Company for Station WLBT-TV, the Commission concluded that the coalition lacked standing to protest the application. See *Lamar Life Broadcasting Co.*, 38 FCC 1143 (1965) (*Lamar Life 1965*), *rev’d and remanded sub nom. Office of Comm’n of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) (*UCC I*), *accepting remand*, 3 FCC2d 784 (1966); *renewing license again*, 14 FCC2d 495 (*ALJ 1967*); *aff’d*, 14 FCC2d 431 (1968) (*Lamar Life 1968*); *rev’d and vacated sub nom. Office of Comm’n of the United Church of Christ v. FCC*, 425 F.2d 543 (D.C. Cir. 1969) (*UCC II*). While nonetheless acknowledging that the petition raised serious questions about the Lamar Life’s compliance with the public interest standard, the Commission noted its view that a licensee who had failed to comply with the standard in the past should be granted renewal upon its agreement to cease all operations which the Commission finds contrary to the public interest. See *Lamar Life 1965*. The DC Circuit reversed the Commission’s decision, finding that the petitioners did have standing. See *UCC I*. On remand, the Commission granted the renewal application notwithstanding the petition after holding an evidentiary hearing. See *Lamar Life 1968*. The DC Circuit reversed, directing the Commission to cancel the renewal and noting that the FCC hearing examiner had displayed a “profound hostility to the participation of the Public Intervenors and their efforts.” *UCC II*, 425 F.2d at 549–50.
- 106** *Brandywine-Main Line Radio, Inc. v. FCC*, 473 F.2d 16, 20 (D.C. Cir. 1972); see also *Brandywine-Main Line Radio, Inc.*, Decision, 24 FCC 2d 18 (1970), *recon. denied*, 27 FCC 2d 565 (1971).
- 107** See, e.g., *Applications of the Alabama Educational Television Commission For Renewal Of Licenses For Station Waiq (Ed-Tv), Montgomery, Ala.*, Memorandum Opinion and Order, 33 FCC 2d 495 (1972) (rescinding the Commission’s grant of renewal applications to the Alabama stations and designating them for hearing); *Applications of Alabama Educational Television Comm’n*, 50 FCC 2d 461, 483 (1975) (overturning ALJ decision and denying renewal applications).
- 108** *West Coast Media, Inc.*, Decision, 79 FCC 2d 610 (1980).
- 109** See *License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 5 FCC Rcd 3847 (1990), *recon. denied*, 6 FCC Rcd 4191 (1991) (*Philadelphia Television Cases*); *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (Com. Car. Bur. 2003) (*Philadelphia Radio Cases*).
- 110** See *Philadelphia Television Cases*, 5 FCC Rcd at 3847 n.5.
- 111** See *Philadelphia Television Cases*, 5 FCC Rcd at 3847. The proceeding raised serious issues about the Commission’s public file requirements. One of the television stations whose license was renewed admitted in papers that it had been “inadvertently” deficient in maintaining its public file. *License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 6 FCC Rcd 4191, 4191 (1991). Evidence suggested that another such station had attempted to forestall review of its file. See *id.* at 4194 (Duggan, Ervin S., Commissioner, concurring). Although the Commission affirmed the renewal decisions on reconsideration, Commissioner Ervin S. Duggan, issued a Separate Statement in order to question whether the Commission was “taking its public file requirements serious enough today.” See *id.* Duggan noted that the issues/programs list “is one of our most important requirements, for such lists [ ] provide the only real means for monitoring station compliance with the public interest standard of the Communications Act.” *Id.* He concluded that, with the elimination of quantitative programming guidelines, if the public file requirement “is not vigorously enforced, does the public interest standard today mean anything at all?” *Id.*
- 112** WZFM (FM), Narrows, Va., *Application to Renew Station License, Operational Status Inquiry*, Letter from Peter Doyle, Chief, Audio Services Division, Media Bureau, to Old Dominion Communications, Inc., April 7, 2004. Under section 312(g), a station forfeits its license if it fails to broadcast signals for 12 consecutive months. 47 U.S.C. Section 312(g).
- 113** Old Dominion Communications, Inc., *Petition for Reconsideration*, Declaration of H. Edward Hale, at 1, Apr. 19, 2004.
- 114** Old Dominion Communications, Inc., *Petition for Reconsideration Granted, Application Reinstated*, June 9, 2004, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-262186A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262186A1.pdf).

- 115** ANGELA J. CAMPBELL, PUBLIC PARTICIPATION AT THE FEDERAL COMMUNICATIONS COMMISSION (2010) (unpublished study available upon request). The author is Director of Georgetown Law's Institute for Public Representation, which operates as clinic for law students and provides *pro bono* legal assistance to non-profit organizations. Kate Aishton and Niko Perazich provided research assistance.
- 116** These delays are often the result of processing holds that are placed on renewal applications by the Enforcement Bureau to preserve its right to issue notices of apparent liability in pending matters, most commonly indecency cases. Because Section 503(b)(6) of the Act imposes a statute of limitations of one year from the violation, postponing the renewal preserves the Commission's ability to propose a forfeiture. See 47 U.S.C. § 503(b)(6).
- 117** It should be noted that there were two cases in recent years in which the Commission did take major action—but, significantly, they involved mergers, not the normal license renewal process. One case involved the transfer of the Tribune Company to Sam Zell, the other, the sale of Univision. In both cases, it was necessary for the Commission to grant renewal applications to the stations before it could approve their sale. In the Univision case, the Commission confronted concerns over Univision's reliance on telenovelas to satisfy its children's programming obligations. Rather than designating the applications for hearing, the Commission entered into a consent decree with Univision that required the licensee to pay \$24 million to the U.S. Treasury. The sale was then approved. See *Shareholders of Tribune Company*, Memorandum Order and Opinion, 22 FCC Rcd. 21266 (2007); *Shareholders of Univision Communications Inc.*, Memorandum Order and Opinion, 22 FCC Rcd. 5842 (2007) (*Univision*).
- 118** Specifically, the Industry Analysis Division of the Media Bureau looked at week-long television station programming schedules from 12:00 a.m. Monday to 11:59 p.m. Sunday to determine if the station aired any news. The sources used to determine station programming were Zap2it.com, TV Guide, local station websites, and Wikipedia.org.
- If the station broadcast 30 minutes or more of news per week, that station was deemed to broadcast news. Notation was made if the station fell into any of the following categories: airing Local and National News, Local News Only, National News Only, or No News. Regional and Campus News programs were included in the local news category. Broadcasts of state legislature, public affairs, and public interest programs were not considered news.
- Once these determinations were made, percentages were calculated for the total markets. The total number of broadcast stations was 1,632. Of those, 1,239 stations were commercial stations, and 393 were non-commercial educational stations. There were 696 stations that broadcast no local news, and 248 stations did not broadcast news. Of the 393 non-commercial educational stations, 322 did not broadcast local news.
- Calculations were also made for the Top 100 DMAs in those categories. The Top 100 DMAs contained 1100 stations. Of those, 842 were commercial stations and 258 were non-commercial educational stations. There were 496 stations in the top 100 markets that broadcast no local news, and 207 stations that broadcast no news. Of the 258 non-commercial educational stations, 199 did not broadcast local news.
- 119** See *Improving Commission Processes*, Notice of Inquiry, 11 FCC Rcd 14006, 14017 (1996).
- 120** Absent action by the private party or the FCC, ABIP agreements automatically renew for subsequent three-year periods.
- 121** Far fewer stations in other broadcast services (e.g. Class A, Low Power TV) participate in ABIP. For example, as of December 2010, less than one percent of Low Power TV stations participate in ABIP.
- 122** The FCC's self-inspection checklists include information on assessing compliance with the most frequently violated broadcast regulations. See FCC, Broadcast Self Inspection-Checklists, <http://www.fcc.gov/eb/bc-chklsts/>.
- 123** For example, the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters issued a comprehensive report, Charting the Digital Broadcasting Future, in December 1998. <http://benton.org/archive/publibrary/piac/report.html>. The Advisory Committee's major recommendations concerned the following topics: 1) improving the quality of public discourse, 2) disaster warnings, 3) disability access to digital programming and 4) diversity in broadcasting. See Letter from Vice President Al Gore to FCC Chairman William Kennard, October 20, 1999. <http://benton.org/archive/publibrary/piac/vpltr.html>.
- 124** Mark Fowler & Daniel Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. 207, 210 (1982) (*A Marketplace Approach to Broadcast Regulation*).
- 125** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 211–12. (1982). They also advocated the elimination of any restrictions on the alienation of licenses, including the ownership rules, maintaining that such rules serve to restrict growth by existing participants and create barriers to the entry of new ones, thus retarding program diversity. *Id.* at 245–47.
- 126** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 242–44 (1982). He alternatively proposed that current licensees retain “squatter's rights” to their authorizations, and be free to sell them to parties that would have flexibility to decide how to use the spectrum. *Id.* at 244.
- 127** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 247–48.
- 128** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 247–48.
- 129** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 248–49.
- 130** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 252–54.
- 131** *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. at 255.
- 132** Prepared Testimony of Henry Geller, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), at 7, *available at* <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 133** Testimony of Henry Geller, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), Tr. at 74:3–10, *available at* [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=57c2b1d8-4ecb-49b8-ad8e-bb30d794b784&groupId=19001](http://reboot.fcc.gov/c/document_library/get_file?uuid=57c2b1d8-4ecb-49b8-ad8e-bb30d794b784&groupId=19001).
- 134** SEE ADVISORY COMMITTEE ON PUBLIC INTERNET OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS, CHARTING THE DIGITAL BROADCASTING FUTURE (FINAL REPORT) (1998), <http://benton.org/archive/publibrary/piac/report.html>.
- 135** See, e.g., Paul Taylor & Norm Ornstein, *The Case for Free Air Time: A Broadcast Spectrum Fee for Campaign Finance Reform* (Spectrum

- Series Working Paper # 4*), New America Foundation Public Assets Program, June 2002, at 8, [http://www.newamerica.net/publications/policy/the\\_case\\_for\\_free\\_air\\_time](http://www.newamerica.net/publications/policy/the_case_for_free_air_time).
- 136** Steve Coll, *Reboot: An open letter to the FCC about a media policy for the digital age*, COLUMBIA JOURNALISM REV. (Nov./Dec. 2010) (*Coll Open Letter*), [http://www.cjr.org/cover\\_story/reboot.php](http://www.cjr.org/cover_story/reboot.php).
- 137** See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rule Making, 15 FCC Rcd 19816 (2000).
- 138** See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2007).
- 139** See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274, Appendix B (2007).
- 140** See, e.g., *Heavy compliance burden of Enhanced Disclosure Order exceeds OMB threshold, NAB says*, BROADCASTENGINEERING.COM, May 14, 2008, [http://broadcastengineering.com/eng/heavy\\_compliance\\_burden\\_enhanced\\_disclosure\\_order\\_0514/](http://broadcastengineering.com/eng/heavy_compliance_burden_enhanced_disclosure_order_0514/); David Oxenford, *Will the FCC Back off on its TV Enhanced Disclosure Requirements?*, BROADCAST LAW BLOG, Sept. 15, 2008, <http://www.broadcastlawblog.com/2008/09/articles/public-interest-obligationsloc/will-the-fcc-back-off-on-its-tv-enhanced-disclosure-requirements/#discussion>.
- 141** *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12445 (2004) (*Localism NOI*) (Powell, Michael K., Chairman, concurring).
- 142** 47 U.S.C. § 307(b).
- 143** See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982) (*FM Allocation Priorities Order*), on recon., 56 Rad. Reg. 2d (P&F) 448 (1984); *Amendment of Section 3.606 of the Commission's Rules and Regulations*, 41 FCC 148, 167 (1952) (*TV Allocation Priorities Order*). The Commission's first FM allocation priority is first-time aural service, followed by second full-time aural service and first local service; the latter two have "co-equal status." See *FM Allocation Priorities Order*, 90 FCC 2d at 92. The Commission's first television allocation priority is "[t]o provide at least one television service to all parts of the United States"; its second is "[t]o provide each community with at least one television broadcast station." *TV Allocation Priorities Order*, 41 FCC at 167. Although AM stations are not allotted, where mutually exclusive AM applications are filed, they are first evaluated under similar section 307(b) criteria.
- 144** *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955).
- 145** *Localism NOI* (citing 47 C.F.R. § 73.1125).
- 146** *Localism NOI* (citing *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988)).
- 147** *Localism NOI* (citing 47 C.F.R. §§ 73.3526(e)(11)(i) (commercial TV issues/program list), 73.3526(e)(12) (commercial AM and FM issues/program list)). "These lists must be retained until final action has been taken on the station's next renewal application." *Id.* (citing 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3526(e)(12)).
- 148** *Localism NOI* (citing *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, 15 FCC Rcd 19816, 19821 (2000) (*Enhanced Disclosure NPRM*) (citing *Commercial TV Deregulation Order*, 98 FCC 2d at 1076, 1107-11 (explaining the purpose of issues/programs lists for commercial television))).
- 149** See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, § 2(a)(11), 106 Stat. 1460 (1992) (1992 Cable Act). The Commission has stated its promotion of localism has a statutory basis in the "Congressional Findings and Policy" Section of the 1992 Cable Act. *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*, Notice of Proposed Rulemaking, 17 FCC Rcd 18503 (2002) (citations omitted).
- 150** See *Turner Broadcasting System v. FCC*, 520 U.S. 180, 225 (1997)
- 151** 1992 Cable Act, 106 Stat. at 1461.
- 152** See FCC, *Localism Task Force Archives*, <http://www.fcc.gov/localism/taskforce-archive.html> (last visited Jan. 6, 2011).
- 153** See *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324 (2008) (*Localism Report & NPRM*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-218A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-218A1.pdf).
- 154** See *Localism Report & NPRM*, 23 FCC Rcd at 1335–36.
- 155** See *Localism Report & NPRM*, 23 FCC Rcd at 1336–38, 1369.
- 156** Michael C. Copps, Commissioner, FCC, *Getting Media Right: A Call to Action*, Address Before the Columbia University Graduate School of Journalism (Dec. 2, 2010), available at [http://www.journalism.columbia.edu/system/documents/347/original/Copps\\_speech\\_final.pdf](http://www.journalism.columbia.edu/system/documents/347/original/Copps_speech_final.pdf).
- 157** 47 C.F.R. § 73.3526(e)(12).
- 158** The uncertainty engendered by such ambiguity was apparent even to the Commission itself. See *Deregulation of Radio 1981*, 84 FCC 2d at 971 (stating, in response to concerns expressed by some commenters that its deregulatory actions would make even more unclear precisely what the public interest standard was, "The Commission was not created solely to provide certainty"). Moreover, the ambiguity raised such heightened concern that the National Association of Broadcasters, which itself had initially proposed the elimination of the application processing guidelines that the Commission embraced in the Radio Deregulation Order, asked the Commission to reconsider the elimination on the ground that it left broadcasters without "reasonably specific guidance. . . on those matters upon which his performance is to be judged- a judgment which will determine the licensee's fitness for continued broadcast service." *Deregulation of Radio*, Memorandum Opinion and Order, 87 FCC 2d 797, 813 (1981); see also *id.* at 815 (discussing NAB's initial proposals).
- 159** Testimony of Jerald N. Fritz, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010) (Fritz Testimony 3/4/10), Tr. at 131:14–21, available at <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 160** Fritz Testimony 3/4/10, Tr. at 138:15–18.
- 161** Prepared Testimony of Jane Mago, Exec. V.P. and Gen. Counsel, National Ass'n of Broadcasters, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), at 1–2, 4, available at <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 162** National Ass'n of Broadcasters, *Broadcasters Generate \$10.3 Billion in 2005 Public Service* (press release), June 12, 2006, <http://www.nab.org/documents/newsroom/pressRelease.asp?id=1220>.

- 163** National Association of Broadcasters Comments in re *FOM PN*, filed Oct. 13, 2010, at 52.
- 164** Testimony of Paul Starr, Professor of Communication and Public Affairs, Princeton Univ., FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), Tr. at 75, available at <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 165** S. REP. NO. 229, 92nd Cong., 1st Sess. at 1 (1971). The legislative history of Title I of the Federal Election Campaign Act of 1971 (“FECA”), Pub. L. No. 92-225, 86 Stat. 3 (1971), included provisions regarding reasonable access for federal candidates and lowest unit charge for all candidates.
- 166** S. REP. NO. 96, 92nd Cong., 1st Sess. at 15 (1971). This quote refers to the reasonable access obligation adopted in Title I of FECA. The FCC has also stressed the importance of political broadcasting: “In short, the presentation of political broadcasting, while only one of many elements of service to the public... is an important facet, deserving the licensee’s closest attention, because of the contribution broadcasting can thus make to an informed electorate—in turn so vital to the proper functioning of our Republic.” *Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968) (citations omitted). The FCC emphasized that “the provision of time for [political broadcasts] is an essential element of the public interest obligations of broadcasters.” *Id.*
- 167** *CBS, Inc. v. FCC*, 453 U.S. 367, 396 (1981).
- 168** Pub. L. No. 92-225, 86 Stat. 3 (1971); 47 U.S.C. § 315(b); 47 C.F.R. § 73.1942.
- 169** 47 C.F.R. § 76.206.
- 170** 47 C.F.R. § 25.701(c). See 47 U.S.C. § 335(a).
- 171** *DARS R&O*, 12 FCC Rcd at 5792.
- 172** 3 Fed. Reg. 1692, 1693 (1938).
- 173** 47 C.F.R. § 73.1943.
- 174** *Amendment of the Commission’s Rules to Require Stations to Notify Opposing Candidates of Gifts of Time For Use Within 72 Hours Prior to Day of Election*, 60 FCC 2d 884, 886 (1976).
- 175** Pub. L. No. 107-155, 116 Stat. 81 (2002).
- 176** 47 U.S.C. § 315(e). This is defined as “a message relating to any political matter of national importance including (i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance.” The information to be retained includes all requests for particular schedules of time, including rates and classes, and the actual broadcaster disposition of those requests.
- 177** 47 U.S.C. § 315(c)(1). 47 C.F.R. § 76.1701.
- 178** 47 U.S.C. § 335(e). See 47 C.F.R. § 25.701(d).
- 179** 47 C.F.R. §§ 73.3526 and 73.3527.
- 180** *Enhanced Disclosure Requirement for Television Broadcast Licensee Public Interest Obligations*, 23 FCC Rcd 1274, 1281-82 (2008) (*Enhanced Disclosure Proceeding*). We note that the rules adopted in this proceeding have not yet taken effect.
- 181** 47 U.S.C. § 312(a)(7) (added in 1972 by Title I of FECA); 47 C.F.R. § 73.1944. In 1974, the FCC in effect repealed the provision applying the reasonable access provisions to cable.
- 182** 47 C.F.R. § 25.701(b)(3). See 47 U.S.C. § 335(a).
- 183** *DARS R&O*, 12 FCC Rcd at 5792.
- 184** *The Law of Political Broadcasting and Cablecasting: A Political Primer 1984 Edition*, 100 FCC 2d 1476, 1522 (1984 Primer).
- 185** *Codification of the Commission’s Political Programming Policy*, Report and Order, 7 FCC Rcd 678, 682 (1991). In the Commission’s 1999 *NOI on Public Interest Obligations*, however, the Commission requested comment on, among other things, several proposals to require broadcasters to provide time for state and local candidates, and whether there were “steps the Commission can take to promote voluntary efforts to enhance political debate and information that the public receives concerning candidates.” *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633, 21648 (1999). In 2008, the Commission declined to take any further action, saying it would be premature given its decision at the time to move ahead with the *Enhanced Disclosure Proceeding. Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2085 (2008). The Commission indicated, however, that to the extent circumstances changed, it would revisit its decision and initiate appropriate proceedings. As discussed above, the enhanced disclosure rules have not gone into effect.
- 186** *Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2008).
- 187** 47 U.S.C. § 315(b); 47 C.F.R. § 73.1941.
- 188** 47 C.F.R. § 76.205.
- 189** 47 C.F.R. § 25.701(b)(4). See 47 U.S.C. § 335(a).
- 190** *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Report and Order, Memorandum Opinion and Order & Further Notice Of Proposed Rulemaking, 12 FCC Rcd 5754, 5792 (1997) (*DARS R&O*).
- 191** See S. Rep. No. 562, 86th Cong., 1st Sess. 1959, 1959 U.S.C.C.A.N. 2564, 2572. See also Conf. Rep. No. 1069, 86th Cong., 1st Sess. 1959, 1959 U.S.C.C.A.N. 2564.
- 192** Specifically, these include advertisements where the candidate—on whose behalf the time is purchased—makes a positive, identifiable appearance, including by voice or picture, for at least four seconds (referred to as a candidate “use” in Section 315.) 47 U.S.C. § 315(a); 47 C.F.R. § 73.1941.
- 193** 47 C.F.R. § Section 76.205(a).
- 194** 47 C.F.R. § Section 25.701(b)(4)(i). See 47 U.S.C. § 335(a).
- 195** *DARS R&O*, 12 FCC Rcd at 5792.
- 196** 47 U.S.C. § 315(c).
- 197** 47 C.F.R. § 76.5(p) (emphasis added). Similarly, Section 25.701(b)(2) defines “DBS origination programming” as “programming (exclusive of broadcast signals) carried on a DBS facility over one or more channels and subject to the exclusive control of the DBS provider.” 47 C.F.R. § 25.701(b)(2).
- 198** The issue was referenced in a 2000 Mass Media Bureau Staff Ruling responding to a request for declaratory ruling filed by A&E Television Networks (“AETN”). In that Ruling, the Bureau stated that “[t]he Commission has not considered whether cable network programming such as the programming produced by AETN could, under any circumstances, be deemed cablecast origination material and will not address this issue



here.” *Request of A&E Television Networks for Declaratory Ruling*, Ruling, 15 FCCR 10796, 10796 (MMB 2000). See, e.g., *Emergency Complaint of Dennis J. Kucinich v. Cable News Network and Time Warner, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 482 (MB 2008) (because the Bureau denied the complaint on other grounds, it found “it unnecessary to consider whether the equal opportunities requirements set forth in Section 315 apply to cable programming aired by CNN”).

- 199 *Requests of Fox Broadcasting Co., et al. for a Declaratory Ruling*, Declaratory Ruling, 11 FCC Rcd. 11,101 (1996); *Request of A.H. Belo Corp. for a Declaratory Ruling*, Staff Ruling, 11 FCC Rcd. 12,306 (MMB 1996).
- 200 *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 916 (2010) (internal footnotes omitted).
- 201 *John Doe No. 1 v. Reed*, 130 S.Ct. 2811, 2837 (2010) (Scalia, J., concurring in the judgment).

## 27 Cable Television

- 1 *Rules and Regulations Relating to the Distribution of Television Broadcast Signals by the Community Antenna Television Systems*, Second Report and Order, 2 FCC 2d 725 (1966). See also Stanley M. Besen & Robert W. Crandall, *The Deregulation of Cable Television*, 44 LAW & CONTEMP. PROBS. 77, 88-89 (1981).
- 2 See, e.g., Scott M. Fulton, *FCC abandons its ‘a la carte’ cable programming plan*, BETANEWS.COM, Nov. 28, 2007 <http://www.betaneews.com/article/FCC-abandons-its-a-la-carte-cable-programming-plan/1196283815>.
- 3 GEOFFREY COWAN & DAVID WESTPHAL, *PUBLIC POLICY AND FUNDING THE NEWS 10* (Univ. of Southern California Annenberg School of Communication) (2010), <http://fundingthenews.usc.edu/report/> (PUBLIC POLICY AND FUNDING THE NEWS).
- 4 See 1992 Cable Act §§ 4-5, 106 Stat. 1460 (codified at 47 U.S.C. §§ 534-535).
- 5 Statement and written testimony of James B. Hedlund, Ass’n of Independent Television Stations, Inc., *Cable TV Consumer Protection Act of 1991: Hearing on S.12 Before the Subcommittee on Communications of the Committee on Commerce, Science and Transportation*, 102nd Cong. 205 (1991) (*Hedlund Testimony*) (footnote omitted).
- 6 *Hedlund Testimony* at 205-6.
- 7 Statement of Edward O. Fritts, President and CEO, National Ass’n of Broadcasters *Cable Television Regulation: Hearings on H.R. 1303 and H.R. 2546 Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce of the House of Representatives*, 102nd Cong. 753 (1991).
- 8 According to a study by the Industry Analysis Division of the Media Bureau in connection with this Report, discussed more fully, *supra*, at Chapter 3, Television.
- 9 See 47 C.F.R. § 76.56(b)(2) (smaller systems are required to carry fewer channels). See also 47 C.F.R. § 76.55(c), (e). A Designated Market Area or DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing

hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included. See Nielsen Media Research, *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

- 10 See 47 C.F.R. § 76.64(f)(2); see also 47 C.F.R. § 76.56.
- 11 See 47 C.F.R. § 76.55(b)(1), (b)(2).
- 12 Interview of Dave Lougee, President, Gannett Broadcast Division, by Steven Waldman, FCC, (Feb. 16, 2011).
- 13 See, e.g., House Committee on Energy and Commerce, H.R. REP. NO 934, 98th Cong., 2d Sess. at 48 (1984).
- 14 Pub. L. No. 98-549, 98 Stat. 2780, 2782-83 (1984). The purposes behind the Act (and Section 612) were “to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.” 47 U.S.C. § 532(a) (codifying Section 612 of the Act).
- 15 *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd 5267, 5269 (1997) (*Cable TV Consumer Protection & Competition Second Report & Order*) (citations omitted).
- 16 *Cable TV Consumer Protection & Competition Second Report & Order*, 12 FCC Rcd at 5273-74, quoting House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong., 2d Sess., at 40 (1992).
- 17 Independent programmers do get carried on cable systems, even if not on the leased access channels. Comcast, for example, says it has carriage agreements with 50 independent programming networks. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, para 201 (2009).
- 18 Letter from Senator Herb Kohl, Chairman, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, to Kevin Martin, Chairman, FCC, June 23, 2008.
- 19 See Letter Comment from Doron Gorshein, President and C.E.O., The America Channel, LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 07-42 (filed Sept. 11, 2007), at 13; Appendices B & C. See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, para 215 (2009).
- 20 Overall, 0.7 channels were used for leased access programming out of an average number of 24.8 basic service tier channels as of January 1, 2006, or out of an average of 26.7 basic service tier channels as of January 1, 2008. See *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, Report on Cable Industry Prices, 24 FCC Rcd 259, 283 (MB 2009).
- 21 For instance,  
“leased access programming on TWC systems falls primarily into three general categories: religious (often over 40 percent), infomercials promoting real estate sales, automobile dealers, and tourism, among other things (about one-third of total leased access programming), and international/foreign language programs (typically accounting for 10-15 percent). The remaining leased access programming usually consists of community programs featuring local news and sporting events,

- segments devoted to hobbies such as fishing and cooking, as well as educational, home shopping and entertainment programs.”
- Time Warner Cable Inc. Comments in re *Leased Commercial Access NPRM (Leased Commercial Access, Notice of Proposed Rulemaking, 22 FCC Rcd 11222 (2007) (Leased Commercial Access NPRM)*, filed Sept. 11, 2007, at 14–15. Comcast reports that approximately half of the leased access time on its systems is used for infomercials or home shopping. See Comcast Corp. Comments in re *Leased Commercial Access NPRM*, filed Sept. 11, 2007, at 17.
- 22 See, e.g., *Leased Commercial Access NPRM; Leased Commercial Access, Report and Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 2909 (2008).
  - 23 Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (codified at 47 U.S.C. §§ 521-529).
  - 24 47 U.S.C. § 531.
  - 25 H.R. REP. NO. 98-934, as reprinted in 1984 U.S.C.C.A.N. 4655, 4667 (1984) (adding that the Act “continues the policy of allowing cities to specify in cable franchises that channel capacity and other facilities be devoted to such use”).
  - 26 THE BUSKE GROUP, ANALYSIS OF RECENT PEG ACCESS CENTER CLOSURES, FUNDING CUTBACKS AND RELATED THREATS (2011) (prepared for the Alliance for Communications Democracy), available at [theacd.org/uploaded\\_docs/2011\\_PEG\\_Access\\_study.pdf](http://theacd.org/uploaded_docs/2011_PEG_Access_study.pdf).
  - 27 Alliance for Communications Democracy Comments in re *FOM PN*, “Media: Public, Educational, and Government (PEG) Access by Laura Linder, Ph.D. and Gary Kenton, M.A.”, filed Apr. 23, 2010 (Linder Kenton Comments), at 12.
  - 28 See, e.g., Reed Johnson, *Cable Flips Channel on Public Access TV*, L.A. TIMES, Jan. 5, 2009, <http://articles.latimes.com/2009/jan/05/entertainment/et-publicaccess5> (reporting the closing of 12 public access studios in Los Angeles as a bellwether of future PEG closings across the nation); Josh Goodman, *Unscripted Ending: The Picture Gets Blurry for Public Access Television*, GOVERNING.COM, Jan. 31, 2008, <http://www.governing.com/topics/technology/Unscripted-Ending.html> (stating that in the aftermath of statewide franchises PEG channels are losing funding, studio space, or being shut down altogether, and adding that the future of public access TV as “more uncertain . . . than at any time since its inception in the 1970s”).
  - 29 See Alliance for Community Media, *Assessing the Damage: Survey shows that state video franchise laws bring no rate relief while harming public benefits* (press release), 2008, available at [www.cantv.org/keepusconnected/Harm-Survey-Report.pdf](http://www.cantv.org/keepusconnected/Harm-Survey-Report.pdf).
  - 30 Alliance for Community Democracy, “*Analysis of Recent PEG Access Center Closures, Funding Cutbacks, and Related Threats*,” at 3 (Benton Foundation, April 8, 2011), <http://benton.org/sites/benton.org/files/2011%20PEG%20Access%20study.pdf>.
  - 31 American Community Television, Inc. Comments in re *FOM PN*, filed May 7, 2010 (American Community TV Comments), at 15. In Ohio, this only applies to the community service fees that are over and above the franchise fee. See Linder Kenton Comments at 13.
  - 32 American Community TV Comments at 15.
  - 33 City of Pikeville, Kentucky, Comments in re *FOM PN*, filed Apr. 29, 2010, at 6, citing KY. REV. STAT. ANN. § 136.660 (2010).
  - 34 Linder Kenton Comments at 13.
  - 35 Reed Johnson, *Cable Flips Channel on Public Access TV*, L.A. TIMES, Jan. 5, 2009, <http://articles.latimes.com/2009/jan/05/entertainment/et-publicaccess5>; see also the Digital Infrastructure and Video Competition Act of 2006, CAL. PUB. UTIL. CODE § 5800 (2010).
  - 36 Alliance for Community Democracy, “*Analysis of Recent PEG Access Center Closures, Funding Cutbacks, and Related Threats*,” Appendix 2 (Benton Foundation, April 8, 2011), <http://benton.org/sites/benton.org/files/2011%20PEG%20Access%20study.pdf>.
  - 37 CHARLES P. GOLDFARB, CONGRESSIONAL RESEARCH SERVICE, PUBLIC, EDUCATIONAL, AND GOVERNMENTAL (PEG) ACCESS CABLE TELEVISION CHANNELS: ISSUES FOR CONGRESS 6 (2008).
  - 38 Petition for Declaratory Ruling of the Alliance for Community Media et al., File No. CSR-8126, MB Docket No. 09-13 (filed Jan. 30, 2009), at 7–8.
  - 39 Letter from James K. Smith, Assistant Vice President, Federal Regulatory, AT7T, to Marlene Dortch, FCC, June 11, 2009.
  - 40 GA. CODE ANN., § 36-76-8(b)(5); TEX. UTIL. CODE § 66.009(d); MICH. COMP. L. ANN. § 484.3304(2).
  - 41 Interview with Bunnie Riedel, Executive Director, American Community Television; John Rocco, Executive Director, TV Access21 (Charlotte, NC); Mauro DePasquale, Executive Director and Station Manager, WCCA-TV (Worcester, MA); Kathie Pohl, Director of Marketing and Community Relations Manager, Mentor Channel (Euclid, OH); Dennis Riggs, Director, HEC-TV (St. Louis, MI); Barry Verrill, Executive Director, KL-TV (Cowlitz County, WA); and Frank Bluestein, Executive Producer, GHS-TV (Germantown, TN), by Christopher Ali, FCC (May 21, 2010).
  - 42 For instance, in 2006 Time Warner stopped airing San Antonio Public Access because the channel could no longer meet the 8-hour non-repeat daily programming requirement. UNIV. OF MINNESOTA, HUBERT H. HUMPHREY INSTITUTE OF PUBLIC AFFAIRS, CENTER FOR SCIENCE TECHNOLOGY & PUBLIC POLICY, STATEWIDE VIDEO FRANCHISING LEGISLATION: A COMPARATIVE STUDY OF OUTCOMES IN TEXAS, CALIFORNIA AND MICHIGAN 13, 21 (2009).
  - 43 See C-Span, About C-Span, <http://www.c-span.org/About/About-C-SPAN/> (last visited Feb. 3, 2011).
  - 44 Email from Paul Giguere, President, Nat’l Ass’n of Public Affairs Networks (NAPAN), to Simon Banyai, FCC (Sept. 7, 2010) (Giguere Email 9/7/10).
  - 45 Cable Television Consumer Protection and Competition Act of 1992, SENATE REP. NO. 102-92, at 52–53, (1991), reprinted in 1992 U.S.C.C.A.N. 1133, 1185–86.
  - 46 Section 541 of the Act allows a franchise authority to “require adequate assurance that the cable operator will provide adequate [PEG] . . . financial support.” 47 U.S.C. § 541(a)(4)(B).

## 28 Satellite Television and Radio

- 1 See *Comsat Study—Implementation of Section 505 of the International Maritime Satellite Telecommunications Act*, Final Report and Order, 77 FCC 2d 564, 583-584 (1980) (“NASA embarked on experimental programs to develop information useful to an active commercial communications satellite system with the objective of testing the feasibility

- of communications via satellite, and providing information on the reliability and longevity of critical components in space.”); EDWARD A. COMOR, COMMUNICATION, COMMERCE AND POWER: THE POLITICAL ECONOMY OF AMERICA AND THE DIRECT BROADCAST SATELLITE, 1960-2000 (Palgrave Macmillan) (1998).
- 2 Section 628 of the Communications Act, codified at 47 U.S.C. § 548).
  - 3 *Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, Report and Order, 22 FCC Rcd 17791 (2007).
  - 4 1992 Cable Act (codified at 47 U.S.C. § 335).
  - 5 47 U.S.C. § 335(b); 47 U.S.C. § 335(b)(4) (requiring that prices not exceed 50 percent of total direct costs of making such a channel available).
  - 6 47 U.S.C. § 335(b)(5)(B).
  - 7 *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 13 FCC Rcd 23254, 23285 (1998) (1998 Order).
  - 8 1998 Order, 13 FCC Rcd at 23290 (“We conclude that the term ‘national educational programming supplier’ in Section 335(b)(5)(B) includes only noncommercial entities with an educational mission... [W]e believe that the eligibility of a programming supplier under the statute should depend on its noncommercial character, not merely whether its programming contains commercials”).
  - 9 1998 Order, 13 FCC Rcd at 23256. Initially, in 1998, the Commission concluded that although it had the authority to impose other public interest programming requirements, it would refrain given the relatively new status of the DBS industry. *Id.* at 23279-80. In 2004, the Commission ordered DBS providers adhere to limits on the commercialization of children’s programming. See *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, Second Order and Reconsideration of First Report and Order, 19 FCC Rcd 5647, 5666-68 (2004) (2004 Second Order and Reconsideration).
  - 10 See DISH Network and DirecTV Filings for 2007, 2008 and 2009.
  - 11 47 U.S.C. §335(b)(4). The 1998 Order further delineates direct costs to be those that “are directly related to making the capacity available to noncommercial programmers,” such as incremental compression equipment and backhaul costs to transmit the noncommercial educational or informational programming. 1998 Order, 13 FCC Rcd at 23308.
  - 12 See, e.g., Denver Area Education Telecommunication Consortium, et al. Comments in re *DBS-Public Interest PN (Comments Sought in DBS Public Interest Rulemaking*, MM Docket 93-25, Public Notice (Jan. 31, 1997) (*DBS-Public Interest PN*)), at 13-14, filed Apr. 28, 1997; Comments of the Alliance for Community Media and the National Ass’n of Telecommunications Officers and Advisers in re *DBS-Public Interest PN*, filed Apr. 28, 1997, at 15.
  - 13 1998 Order, 13 FCC Rcd at 23308.
  - 14 1998 Order, 13 FCC Rcd at 23308-09.
  - 15 47 C.F.R. § 25.701(f)(6).
  - 16 1998 Order, 13 FCC Rcd at 23276.
  - 17 2004 Second Order and Reconsideration, 19 FCC Rcd at 5663.
  - 18 See 17 U.S.C. § 119 (codifying the 1999 Satellite Home Viewer Improvement Act, Pub. L. No. 106-113 (S. 1948), 113 Stat. 1501 (Nov. 29, 1999), which permits satellite carriers to offer subscribers local-into-local service in markets across the country).
  - 19 *Implementation of the Satellite Home Viewer Improvement Act of 1999*, Report and Order, 16 FCC Rcd 1918, 1926 (2000).
  - 20 *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, 585 (2009).
  - 21 Still, the local tailoring is rough, which means that regional and national capacity is “wasted” on local content transmitted far beyond its area of interest. Most subscribers are able to access far fewer channels than the satellite beams to their area—typically only the in-market local channels and the national channel package to which they have subscribed.
  - 22 2004 Second Order and Reconsideration, 19 FCC Rcd at 5664.
  - 23 Email from Paul Giguere, President, National Association of Public Affairs Networks (“NAPAN”)/President and CEO, The Connecticut Network, to Simon Banyai, FCC (Sept. 14, 2010).
  - 24 The Satellite Television Extension and Localism Act of 2010 § 209, Pub. L. No. 111-175, 124 Stat. 1218 (2010).
  - 25 See American Mobile Radio Corp. Application for Authority to Construct, Launch, and Operate Two Satellites in the Satellite Digital Audio Radio Service, Order and Authorization, 13 FCC Rcd 8829 (IB 1997).
  - 26 Specifically, the Commission reaffirmed that:
 

“SDARS terrestrial repeaters are restricted to the simultaneous retransmission of the complete programming, and only that programming, transmitted by the SDARS licensee’s satellite directly to the SDARS licensee’s subscribers’ receivers, and may not be used to distribute any information not also transmitted to all subscribers’ receivers.”

“Operators of SDARS terrestrial repeaters are prohibited from using those repeaters to retransmit different transmissions from a satellite to different regions within that satellite’s coverage area.”

47 C.F.R. § 25.144(e)(4),(5). See Amendment of Part 27 of the Commission’s Rules to Govern Operation of Wireless Communications Services in the 2.3 GHz Band, Report and Order, 25 FCC Rcd 11710, 11825-26 (2010).

## 29 The Internet and Mobile

- 1 The system connected the Pentagon to researchers at MIT, the University of California-Berkeley, a consulting firm called the System Development Corporation, and the Rand Corporation. See COMMITTEE ON INNOVATIONS IN COMPUTING AND COMMUNICATIONS: LESSONS FROM HISTORY & NAT’L RESEARCH COUNCIL, *FUNDING A REVOLUTION: GOVERNMENT SUPPORT FOR COMPUTING RESEARCH* 101, 172 (Nat’l Academies Press) (1999).
- 2 See, e.g., CERN: European Organization for Nuclear Research, 1990: Tim Berners-Lee invents the Web, <http://public.web.cern.ch/public/en/About/History90-en.html> (last visited Jan. 18, 2011); LivingInternet.com, Tim Berners-Lee, Robert Cailliau, and the World Wide Web, [http://www.livingInternet.com/w/wi\\_lee.htm](http://www.livingInternet.com/w/wi_lee.htm) (last visited Jan. 18, 2011).
- 3 See Communications Decency Act, Pub. L. No. 104-104, 110 Stat. 56 (1996).
- 4 See Internet Tax Freedom Act, Pub. L. No. 105-277, 112 Stat. 2681-719 (1998).
- 5 See JONATHAN E. NUECHTERLEIN & PHILIP J. WEISER, *DIGITAL CROSSROADS: AMERICAN TELECOMMUNICATIONS POLICY IN THE INTERNET AGE* 58-59 (MIT Press) (2005). “The Part 68 rules supplanted AT&T’s last-

- gasp efforts to discriminate against equipment manufacturing rivals by forcing them to purchase, from AT&T, various ‘protective coupling devices.’”
- 6 Jason Oxman, FCC, *The FCC and the Unregulation of the Internet* (OPP Working Paper, July 1999) at 14, available at <http://www.fcc.gov/osp/workingp.html>.
  - 7 JOHN B. HARRIGAN, PEW INTERNET & AMERICAN LIFE PROJ, HOME BROADBAND ADOPTION: ADOPTION STALLS FOR LOW-INCOME AMERICANS EVEN AS MANY BROADBAND USERS OPT FOR PREMIUM SERVICES THAT GIVE THEM MORE SPEED (2008) (HOME BROADBAND ADOPTION), available at [http://www.pewinternet.org/-/media/Files/Reports/2008/PIP\\_Broadband\\_2008.pdf](http://www.pewinternet.org/-/media/Files/Reports/2008/PIP_Broadband_2008.pdf).
  - 8 See TELEVISION BUREAU OF ADVERTISING, INC., TV BASICS: A REPORT ON THE GROWTH AND SCOPE OF TELEVISION 2 (2011), available at [http://www.tvb.org/media/file/TV\\_Basics.pdf](http://www.tvb.org/media/file/TV_Basics.pdf) (Television penetration of U.S. households is up to 98.9 percent in 2011).
  - 9 FCC, NATIONAL BROADBAND PLAN at XIV (2010) (NATIONAL BROADBAND PLAN).
  - 10 NATIONAL BROADBAND PLAN at XIV.
  - 11 See President Barack Obama, *State of the Union 2011: Winning the Future* (speech) (Jan. 25, 2011), available at <http://www.whitehouse.gov/state-of-the-union-2011>. The details of the “Wireless Innovation and Infrastructure Initiative” were laid out in the President’s February 10, 2011 speech at Northern Michigan University, including freeing up spectrum through incentive auctions, spurring innovation, and creating a nationwide, interoperable wireless network for public safety. See Exec. Office of the President, *President Obama Details Plan to Win the Future through Expanded Wireless Access* (press release), Feb. 10, 2011, <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>. See also National Broadband Plan at XIV.
  - 12 According to a Pew survey, 10 percent of Americans are dial-up users and 62 percent of them are not interested in giving up their current connection to switch over to broadband. HOME BROADBAND ADOPTION at 1.
  - 13 See, e.g., Colin Rhinesmith, *Community Media and Information Literacy in the Digital Age*, SUSTAINING DEMOCRACY IN A DIGITAL AGE (New America Foundation Media Policy Initiative), June 22, 2010, [http://mediapolicy.newamerica.net/blogposts/2010/community\\_media\\_and\\_information\\_literacy\\_in\\_the\\_digital\\_age-33433](http://mediapolicy.newamerica.net/blogposts/2010/community_media_and_information_literacy_in_the_digital_age-33433).
  - 14 Michael K. Powell, “*The Digital Broadband Migration: Toward a Regulatory Regime for the Internet Age*,” Remarks at the Silicon Flatirons Symposium, University of Colorado School of Law, Boulder, Colorado, February 8, 2004, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-243556A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf).
  - 15 FCC, *FCC Adopts Policy Statement: New Principles Preserve and Promote the Open and Interconnected Nature of Public Internet* (press release), Aug. 5, 2005, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-260435A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260435A1.pdf); see also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005).
  - 16 FCC, *Commission Orders Comcast To End Discriminatory Network Management Practices: FCC Affirms Its Authority to Protect Vibrant and Open Internet* (news report), 2008 FCC LEXIS 5790, at \*7-\*8 (Aug. 1, 2008); see also *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications*, Memorandum Opinion and Order, 23 FCC Rcd 13028, 13065 (2005) (Martin, Kevin J., Chairman, concurring).
  - 17 FCC, *FCC Acts To Preserve Internet Freedom And Openness; Action Helps Ensure Robust Internet For Consumers, Innovation, Investment, Economic Prosperity* (press release), 2010 FCC LEXIS 7415 at \*7-\*8 (rel. Dec. 23, 2010) (*Open Internet Press Release*); see also *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905 (2010) (*Open Internet Report & Order 2010*).
  - 18 *Open Internet Press Release*, 2010 FCC LEXIS 7415 at \*9-\*11.
  - 19 “TechNet Leadership Comments on FCC’s Draft Open Internet Framework, December 1, 2010. TechNet is an association of technology companies and leaders focused on innovation.
  - 20 *Open Internet Report & Order 2010*, 25 FCC Rcd at 17907.
  - 21 Written Statement of Michele Combs, Vice President of Communications, Christian Coalition of America, Hearing on Net Neutrality and Free Speech on the Internet before the Committee on the Judiciary, Task Force on Competition Policy and Antitrust Laws, 110th Cong. (2008), available at [http://www.openInternetcoalition.org/files/CCA\\_Testimony.pdf](http://www.openInternetcoalition.org/files/CCA_Testimony.pdf)
  - 22 comScore, *Score Releases November 2010 U.S. Search Engine Rankings* (press release), Dec. 15, 2010, [http://www.comscore.com/Press\\_Events/Press\\_Releases/2010/12/comScore\\_Releases\\_November\\_2010\\_U.S.\\_Search\\_Engine\\_Rankings](http://www.comscore.com/Press_Events/Press_Releases/2010/12/comScore_Releases_November_2010_U.S._Search_Engine_Rankings).
  - 23 See Consumer Watchdog’s Inside Google, *Google using search engine to muscle into Internet businesses, study finds* (press release), June 2, 2010, <http://insidegoogle.com/2010/06/google-using-search-engine-to-muscle-into-Internet-businesses-study-finds-2/>.
  - 24 See, e.g., James Kanter, *European Antitrust Inquiry Into Google Is Broadened*, N.Y. TIMES, Dec. 15, 2010, <http://www.nytimes.com/2010/12/18/technology/18google.html>.
  - 25 Stephen Nevas Comments in re *FOM PN*, filed Apr. 19, 2010 (Nevas Comments), at 4.
  - 26 “Copyright owners who elect to participate would be required to periodically submit records of their digitized download records to the Copyright Office, records to be cleansed in advance of information that personally identifies those who use that content.” To “prevent gaming the system,” organizations such as Nielson would be commissioned to conduct “market-by-market sampling” to “cross-check [ ] download records.” Nevas Comments at 5.
  - 27 See Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, Report and Order (Proceeding Terminated), 86 FCC 2d 469 (1981).
  - 28 See Wireless Telecommunications Bureau, FCC, Auctions Summary, <http://wireless.fcc.gov/auctions/summary.html> (listing auction completion dates and amounts) (last updated Dec. 15, 2010) (last visited Jan. 19, 2011).
  - 29 47 U.S.C. § 332(c)(1). “Commercial mobile service” is defined to mean “any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.” 47 U.S.C. § 332(d)(1). CMRS providers are subject to certain common carrier obligations such as providing service upon reasonable request and ensuring that charges and practices are just, reasonable, and not unreasonably discriminatory, 47 U.S.C. §§ 201, 202, though the

- Commission has forbore from applying certain elements of common carrier regulation to CMRS providers. See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 (1994). See also 47 U.S.C. § 332(c)(1).
- 30** See, e.g., 47 U.S.C. §§ 301, 303, 307(a), 316.
- 31** See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996). See also 47 C.F.R. § 20.18.
- 32** See, e.g., Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996); Telephone Number Portability, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236 (1997). See also 47 C.F.R. § 52.31.
- 33** See, e.g., Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Report and Order, 18 FCC Rcd 16753, 16764-65 ¶ 26 (2003); Erratum, 18 FCC Rcd 18047 (2003). See also 47 C.F.R. § 20.19.
- 34** See, e.g., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007); Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 (2010); Second Report and Order, FCC 11-52 (rel. Apr. 7, 2011) ( Commercial Data Roaming Second Report and Order). See also 47 C.F.R. § 20.12.
- 35** See, e.g., Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, Second Report and Order, 15 FCC Rcd 7105 (2000).
- 36** See, e.g., 47 C.F.R. §§ 24.203, 27.14.
- 37** Presentation of Christopher Guttman-McCabe, V.P. Regulatory Affairs, CTIA-The Wireless Association, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), at 4, available at [http://reboot.fcc.gov/c/document\\_library/get\\_file?uuid=f20f4ad8-e082-443c-a4fe-6672df61b4e4&groupId=101236](http://reboot.fcc.gov/c/document_library/get_file?uuid=f20f4ad8-e082-443c-a4fe-6672df61b4e4&groupId=101236).
- 38** Id.
- 39** See Open Internet Report & Order 2010, 25 FCC Rcd at 17956-17962, 17992-17993 (2010) (requiring mobile broadband providers to disclose the network management practices, performance characteristics, and terms and conditions of their broadband services; prohibiting mobile broadband providers from blocking lawful websites or blocking applications that compete with their voice or video telephony services, subject to reasonable network management).
- 40** See Commercial Data Roaming Second Report and Order (requiring facilities-based providers of commercial mobile data services to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations).
- 41**
- 42** See Connect America Fund, WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (proposing to fundamentally modernize the Commission's Universal Service Fund and intercarrier compensation system by eliminating waste and inefficiency and reorienting these programs to meet the nation's broadband availability challenge); Universal Service Reform, Mobility Fund, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) (seeking comment on using reserves accumulated in the Universal Service Fund to create a new Mobility Fund to significantly improve coverage of current-generation or better mobile voice and Internet service for consumers in areas where such coverage is currently missing).
- 43** See, e.g., Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, Report and Order and Second Report and Order, 25 FCC Rcd 11710 (2010) (modifying technical rules to facilitate the provision of mobile broadband service in 25 megahertz of spectrum in the 2.3 GHz band); Unlicensed Operation in the TV Broadcast Bands, Second Memorandum Opinion and Order, 25 FCC Rcd 18661 (2010) (finalizing rules to make the unused spectrum in the TV bands available for unlicensed broadband wireless devices); Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, Report and Order, FCC 11-57 (rel. Apr. 6, 2011) (taking steps to remove regulatory barriers to terrestrial use of 90 megahertz of spectrum allocated to the Mobile Satellite Service).
- 44** See FCC, FCC Chairman Genachowski Takes Steps to Increase Access to Broadband and Telecommunications Services for All Americans (news release), Mar. 3, 2011 (announcing that the FCC approved several items to strengthen and improve access to broadband and telecommunications services for persons with disabilities, Native Americans, low-income consumers and small businesses), available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0303/DOC-305005A1.doc](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0303/DOC-305005A1.doc).
- 45** See Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (systematically reexamining the Commission's Lifeline/Link Up, which historically has provided assistance to Americans to afford basic telephone service, in light of technological, market, and regulatory changes).
- 46** See, e.g., *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (seeking government-to-government consultation and coordination with federally recognized Tribes and the input of inter-Tribal government associations, Native representative organizations, and the public on modifications to the Commission's rules and policies to provide greater economic, market entry, and adoption opportunities and incentives for Native Nations); *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (seeking comment on a range of specific proposals and issues with the objective of promoting greater use of spectrum over Tribal lands).
- 47** See, e.g., *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Notice of Proposed Rulemaking, 26 FCC Rcd 3133 (2011) (seeking comment on ways to help promote access by persons with disabilities to advanced communications services through manufacturing requirements, enhanced enforcement efforts, and expanded access to mobile broadband services); *Contributions to the Telecommunications Relay Services Fund*, CG Docket No. 11-47, Notice of Proposed Rulemaking, 26 FCC Rcd 3285 (2011) (seeking comment on whether participation and contribution to the Telecommunications Relay Service Fund should be extended to non-interconnected voice over Internet Protocol (VoIP) service providers).

- 48 NATIONAL BROADBAND PLAN at 81–82.
- 49 NATIONAL BROADBAND PLAN at 88. See also *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010) (initiating preliminary steps to enable the repurposing of a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions the Commission expects to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband).
- 50 See, e.g., Nat'l Ass'n of Broadcasters, *Equipping Mobile Phones with Broadcast Radio Capability for Emergency Preparedness* (issue paper), available at <http://www.nab.org/advocacy/issue.asp?id=2354&issueid=1082>; Nat'l Ass'n of Broadcasters, *NAB Statement on CTIA's Anti-Radio Letter to Lawmakers* (press release), Aug. 23, 2010, available at <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2351>; CNET News, *Broadcasters defend push for mandatory FM tuners*, Aug. 27, 2010, available at [http://news.cnet.com/8301-13578\\_3-20014874-38.html](http://news.cnet.com/8301-13578_3-20014874-38.html).
- 51 INSIGHT RESEARCH CORP., *STUDY OF FM RADIO-ENABLED HANDSETS IN THE U.S.* 4 (2010), available at <http://www.nabfastroad.org/>.
- 52 See, Letter from Brian Josef, Assistant Vice President, CTIA, to Marlene Dortch, Secretary, FCC, GN Docket No. 10-25 (filed Mar. 31, 2011). See, e.g., Letter from Steve Largent, President and CEO, CTIA-The Wireless Association, et al. to The Honorable Patrick Leahy, Chairman, Senate Judiciary Committee, et al., dated Aug. 23, 2010, available at [http://files.ctia.org/pdf/Leahy\\_Conyers\\_Letter.pdf](http://files.ctia.org/pdf/Leahy_Conyers_Letter.pdf); Consumer Electronics Assoc'n, *CEA Survey Shows Americans Oppose Mandatory Fm Tuners In Cell Phones* (press release), available at [http://www.ce.org/Press/CurrentNews/press\\_release\\_detail.asp?id=11964](http://www.ce.org/Press/CurrentNews/press_release_detail.asp?id=11964).
- 53 Testimony of William H. Kling, Pres. and CEO, American Public Media Group, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010), Tr. at 384:15–385:7, available at <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>.

## 30 Ownership

- 1 See Telecom Act § 202(h), 110 Stat. 56, 111-12.
- 2 *Prometheus Radio Project v. FCC*, 373 F.3d 372, 383 (2004), quoting *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 780, (1978).
- 3 *Localism NOI*, 19 FCC Rcd at 12426. As the Commission explained in the *2002 Biennial Order*, in the Communications Act, Congress directed the Commission to distribute licenses, as follows:
- “among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” In the earliest government regulation of radio, the Commission embraced localism. In the Federal Radio Commission’s 1927 Report to Congress, it wrote: ‘The Commission found it possible to reassign the allocated stations to frequencies which would serve as many communities as possible to ensure those communities had at least one station that would serve as a basis for the development of good broadcasting to all sections of the country. . . . New York and Chicago stations were not allowed to dominate the situation.’

“When the Commission created the Table of Allotments in 1952 pursuant to the Communications Act, localism was the organizing principle of the plan. In announcing the allotments, the Commission explained that dispersed allotments ‘protect[] the interests of the public residing in smaller cities and rural areas more adequately than any other system.’ 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.’

“The courts too have long viewed localism as an important public interest objective of broadcast regulation. In *NBC v. United States*, the Supreme Court wrote: ‘Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community.’”

*2002 Biennial Review Order*, 18 FCC Rcd at 13643–44 (internal citations omitted).

- 4 *2002 Biennial Review Order*, 18 FCC Rcd at 13644.
- 5 *2002 Biennial Review Order*, 18 FCC Rcd at 13632.
- 6 *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*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13631 (2003) (*2002 Biennial Review Order*), *aff'd in part and remanded in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004).
- 7 See, e.g., DAVID PRITCHARD, MEDIA OWNERSHIP WORKING GROUP (“MOWG”) STUDY NO. 2: VIEWPOINT DIVERSITY IN CROSS-OWNED NEWSPAPERS AND TELEVISION STATIONS: A STUDY OF NEWS COVERAGE OF THE 2000 PRESIDENTIAL CAMPAIGN (FCC) (2002) (examining to what extent commonly owned newspapers and TV stations in a community speak with a single voice about important political matters), available at <http://www.fcc.gov/ownership/materials/already-released/viewpoint090002.pdf>; TASNEEM CHIPTY, MOWG STUDY NO. 5: STATION OWNERSHIP AND PROGRAMMING IN RADIO (FCC) (2007) (studying the effects of radio ownership structure on content diversity), <http://www.fcc.gov/ownership/studies.html>.
- 8 47 C.F.R. § 73.3555(b). Currently, the local television ownership rule employs analog broadcast contours to determine compliance with the rule. Now that the transition to digital television is complete, analog contours are no longer relevant.
- 9 47 C.F.R. § 73.3555(a).
- 10 It’s deemed to overlap if (1) a television station’s Grade A service contour completely encompassed the newspaper’s city of publication, (2) the predicted or measured 2 mV/m contour of an AM station completely encompassed the newspaper’s city of publication, or (3) the predicted 1 mV/m contour for an FM station completely encompassed the newspaper’s city of publication. 47 C.F.R. § 73.3555(d)(1)(i)-(iii).
- 11 47 C.F.R. § 73.3555(d)(3).
- 12 *2006 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*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2042-43 (2008) (*2006 Quadrennial Regulatory Review Order*).
- 13 47 C.F.R. § 73.3555(d)(6).
- 14 47 C.F.R. § 73.3555(d)(7).

15 2006 Quadrennial Regulatory Review Order, 23 FCC Rcd at 2042–43.

16 47 C.F.R. § 73.3555(c).

17 47 C.F.R. § 73.3555(c).

18 47 C.F.R. § 73.3555(c)(3).

19 The rule provides that “[a] television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were ‘networks’ as defined in [section] 73.3613(a)(1) of the Commission’s regulations....” 47 C.F.R. § 73.658(g) (emphasis in original).

20 Appropriations Act, 118 Stat. at 100, amending Section 202(h) of the Telecommunications Act of 1996.

21 *Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559, 12560 (1999) (*1999 Broadcast Attribution Order*), recon. granted in part, *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 16 FCC Rcd 1097 (2001), stayed, 16 FCC Rcd 22310 (2001).

22 See *1999 Broadcast Attribution Order*, 14 FCC Rcd at 12562–63. The broadcast attribution rules are detailed in Note 2 of Section 73.3555 of the Commission’s rules. See 47 C.F.R. § 73.3555 Note 2. The broadcast attribution rule attributes corporate voting stock interests of five percent or more. See *Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Amendment of Sections 73.35, 73.240 and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Report and Order, 97 FCC 2d 997, 1005–06 (1984) (*1984 Broadcast Attribution Order*), recon. in part, 58 R.R.2d 604 (1985), further recon. granted in part, 1 FCC Rcd 802 (1986); see also 47 C.F.R. § 73.3555 Note 2(a). For specified “passive” institutional investors (as defined by 15 U.S.C. § 80a-3), voting stock interests of 20 percent or more are attributable. 47 C.F.R. § 73.3555 Note 2(b). Non-voting stock interests, options, warrants, and debt are not attributable, subject to the equity/debt plus (EDP) rule, discussed below. 47 C.F.R. § 73.3555 Notes 2(e) and (i).

The broadcast attribution rule includes a single majority shareholder exemption, which provides that a minority shareholder’s corporate voting interests will not be attributed where a single corporate shareholder owns more than 50 percent of the outstanding voting stock. See former 47 C.F.R. § 73.3555 Note 2(b). The Commission justified the exemption, which it first adopted in 1984, on the grounds that without the agreement or assistance of any other shareholder, a minority shareholder cannot ordinarily direct the activities of a company when a single person or entity can outvote all other shareholders. See *1984 Broadcast Attribution Order*, 97 FCC 2d at 1008–09 (1984).

In 1995, the Commission initiated a broad review of its broadcast attribution rules, culminating in the *1999 Broadcast Attribution Order*. See 14 FCC Rcd at 12561. In that *Order*, the Commission adopted the Equity/Debt Plus (“EDP”) attribution rule. Under the EDP attribution rule, where an investor is either (1) a major program supplier (supplying over 15 percent of a broadcast station’s total weekly broadcast programming hours); or (2) a same-market media entity subject to the broadcast multiple ownership rules, its interest in a licensee or other media entity will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33 percent of the total assets (equity plus debt) of the licensee or media entity. 47 C.F.R. § 73.3555 Notes 2(a) & (i). In other words, attribution results where the financial interest exceeds 33

percent and there is a triggering relationship, i.e., either the investor is a major program supplier or a same-market media entity subject to the broadcast multiple ownership rules. The EDP rule was intended to operate “in addition to other attribution standards and would attempt to increase the precision of the attribution rules, address our concerns about multiple nonattributable relationships, and respond to concerns about whether the single majority shareholder and nonvoting stock attribution exemptions were too broad.” *1999 Broadcast Attribution Order*, 14 FCC Rcd at 12573. The Commission targeted its remedy to address its concerns. *Id.* at 12580. The EDP attribution rule narrows the availability of the single majority shareholder exemption and the exemptions for nonvoting stock and debt. See *id.* at 12579.

In the 2008, the Commission modified the EDP rule to allow an interest holder to exceed the 33 percent threshold without triggering attribution if the investment would enable an “eligible entity” to acquire a broadcast station provided that “(1) the combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or (2) the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.” *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5936 (2008). An “eligible entity” is defined as any entity that would qualify as a small business consistent with Small Business Administration standards for its industry groupings on revenue. *Id.* at 5925–26.

23 See *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, 25 FCC Rcd 6086 (2010).

24 SNLKagan Database for a five year + period—2005 to 2009 and Q.1 2010, deals of \$1 million+. Closed deals only for an average year during this period was \$503 billion, or a little more than \$1 billion per year.

25 *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982). From 1978 to 1995, the government offered “a tax certificate” program to encourage minority ownership. It allowed broadcast and cable companies to defer capital gains on the sale of media and cable properties to minority-owned businesses. Under Section 1071 of the Internal Revenue Code, the Commission could permit sellers of broadcast or cable properties to defer capital gains taxation on a sale whenever it was deemed “necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations.” Prospective buyers could also use the policy to attract equity investors.

26 *1978 Policy Statement* at 983. Previously, the Commission had limited distress sales to circumstances where the licensee is bankrupt or physically or mentally disabled.

27 *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 229–230 (1995). Gender-based classifications need only satisfy intermediate scrutiny. *United States v. Virginia*, 518 U.S. 515, 531–33 (1996).

28 See *Deduction for Health Insurance Costs of Self-Employed Individuals*, Pub. L. No. 104-7, § 2, 109 Stat 93 (1995).

29 For example, the Commission created data entry fields for corporate

structure information that previously had been filed in exhibits that were not machine-readable, added internal checks to minimize the entry of incorrect data, and adopted measures to improve data users' ability to aggregate and cross-reference multiple forms involving the same owners or stations. See *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896 (2009), *order on reconsideration*, Memorandum Opinion & Order and Fifth Further Notice of Proposed Rulemaking, 24 FCC Rcd 13040 (2009).

- 30** The Commission's orders adopting these changes, cited above, explain these concerns in more detail. See also U.S. GOVERNMENT ACCOUNTABILITY OFFICE, MEDIA OWNERSHIP: ECONOMIC FACTORS INFLUENCE THE NUMBER OF MEDIA OUTLETS IN LOCAL MARKETS, WHILE OWNERSHIP BY MINORITIES AND WOMEN APPEARS LIMITED AND IS DIFFICULT TO ASSESS (2008) (GAO-08-383) (GAO, MEDIA OWNERSHIP), available at <http://www.gao.gov/products/GAO-08-383>.
- 31** For more information on these concerns, see the orders cited above. The Commission is also considering a proposal to collect minority and female ownership information from noncommercial broadcasters. See *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896 (2009).
- 32** Although the Commission had previously required broadcasters to identify the race, ethnicity, and gender of officers, directors, and individuals holding an ownership interest, the new form also required these individuals to obtain a unique FCC identification number, or FRN, to enable users to better aggregate forms involving the same owners and to more reliably determine whether multiple forms listing someone with the same name in fact referred to the same person. To obtain an FRN, individuals must submit their Social Security number to the Commission (the Commission does not make these Social Security numbers available to the public). The Commission already required companies who own broadcast stations to obtain an FRN and to submit their taxpayer identification number in order to get an FRN. In response to broadcasters' concerns, the Commission adopted a temporary means of allowing individuals to obtain an FRN without submitting their Social Security number.
- 33** See Public Notice, *Media Bureau Announces Availability of 2009 Biennial Ownership Data Set for Commercial Broadcast Licensees*, DA 11-334, 26 FCC Rcd 2024 (MB 2011), available at <http://www.fcc.gov/document/media-bureau-announces-availability-2009-biennial-ownership-data-set-commercial-broadcast-l>.
- 34** Pub. L. No. 105-33, 111 Stat 251 (1997).
- 35** As part of the Telecommunications Act of 1996, Congress directed the FCC to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services. See *Telecom Act*; see also 47 U.S.C. § 257 (a-b).
- 36** 47 C.F.R. § 73.5007(a); see also 47 C.F.R. § 73.5008. Generally, media interests will be attributable for purposes of the new entrant bidding credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. Further, any bidder asserting new entrant status must have de facto as well as de jure control of the entity claiming the bidding credit. See 47 C.F.R. § 73.5007. Typically, de jure control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest

in cases where the bidder is not a corporate parent. De facto control is determined on a case-by-case basis. See, e.g., *Auction of FM Broadcast Construction Permits Rescheduled for April 27, 2011, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 91*, Public Notice, DA 10-2253, 25 FCC Rcd 16787, 16805 n.90 (MB rel. Dec. 3, 2010).

- 37** Former FCC Chairman Michael Powell worked closely with the Diversity Advisory Committee, which he established, on tax deferral proposals. See, e.g., Fifth Meeting of the Federal Advisory Committee on Diversity for Communications in the Digital Age (Dec. 10, 2004), Tr. at 10-11, available at <http://www.fcc.gov/DiversityFAC/041210/transcript121004.doc>.
- 38** To qualify as a minority-owned business, over 50 percent of the voting shares or over 20 percent of the total equity in a limited partnership must be owned by African-Americans, Hispanic Americans, Asian Americans or Native Americans.
- 39** The tax certificate program for the purchase of cable systems to minorities was available in those instances where a minority general partner holds more than 20 percent interest in the broadcast or cable facility, and where shareholders in a minority-controlled media entity seek to sell their shares. *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, Policy Statement and Notice of Proposed Rulemaking, 92 FCC 2d 849 (1982).
- 40** See, e.g., *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532 (1994).
- 41** GAO, MEDIA OWNERSHIP at 25-26.
- 42** Erwin Krasnow and Lisa M. Fowlkes, *The FCC's Minority Tax Certificate Program: A Proposal for Life After Death*, 51 FED. COMM. L.J. 665, 670 (1999), available at <http://www.law.indiana.edu/fclj/pubs/v51/no3/kra-mac9.PDF>.
- 43** Remarks of FCC Commissioner Robert M. McDowell, FCC Media Bureau Workshop on Media Ownership and Diversity (Jan. 27, 2009), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-295992A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295992A1.pdf).

## 31 Nonprofit Media

- 1** *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 3833, 3834 n.3 (2002) (*NCE SFNPRM 2002*), citing 3 Fed. Reg. 364 (Feb. 9, 1938).
- 2** See *Allocation of Frequencies to the Various Classes of Non-Governmental Services in the Radio Spectrum from 10 Kilocycles to 30,000,000 Kilocycles*, Opinion, 39 FCC 165, 222, 226 (1945).
- 3** *NCE SFNPRM 2002*, 17 FCC Rcd at 3833-34.
- 4** Sterling and Kittross, *STAY TUNED*, 328; Sixth R & O at ¶ 38, in Pike and Fisher, *Radio Regulation*, Vol. 1, Part 3, at 91:612-91:613 (1952).
- 5** This valuation assumes that (1) the value of over-the-air (OTA) broadcast television spectrum is approximately \$8.9 to \$12.2 billion; (2) the value of broadcast television spectrum without broadcast restrictions (akin to spectrum currently used for mobile broadband) is approximately ten times that amount (\$89 to 122 billion); and (3) NCE TV licenses constitute 22 percent of total TV allocated licenses. See OMNIBUS BROADBAND INITIATIVE, SPECTRUM ANALYSIS: OPTIONS FOR BROADCAST SPECTRUM 7



- (2010) (calculating the \$8.9-\$12.2 valuation of OTA broadcast television spectrum and explaining a ten-fold gap in market value between mobile broadband and the more regulated OTA air television broadcasting); Broadcast Station Totals as of December 31, 2009, *available at* FCC, Broadcast Station Totals (Index)1990 to Present, <http://www.fcc.gov/mb/audio/BroadcastStationTotals.html>. The valuation range was calculated by taking 22 percent of the lowest (\$8.9 billion) and highest (\$122 billion) range valuation of OTA spectrum with and without broadcast restrictions, respectively.
- 6** FCC, Broadcast Station Totals as of December 31, 2010, Feb. 11, 2011 (Broadcast Station Totals), *available at* <http://www.fcc.gov/mb/audio/BroadcastStationTotals.html>.
- 7** Broadcast Station Totals.
- 8** While required to air children's programming, they do not have to submit children's television reports. Compare 47 C.F.R. § 73.671 (children's programming rules) with 47 C.F.R. § 3526(e)(11)(iii) (reports to be filed by commercial stations). Multiple ownership rules, which govern the ownership of more than one AM, FM, or television station by a single entity or company, are not applicable to noncommercial educational FM and TV stations. See 47 C.F.R. § 73.3555. In addition, NCE licensees have limited obligations in the area of political broadcasting. NCE FM radio licensees have some specific operating requirements. They must operate at least 36 hours per week, with at least 5 operating hours per day on at least 6 days of the week. Stations licensed to educational institutions are exempt from this schedule and are not required to operate during weekends or official school vacation or recess periods. Stations that operate less than 12 hours per day may be required to share their frequencies (an extremely rare occurrence). 47 C.F.R. § 73.561. In contrast, noncommercial educational AM and TV stations are not required to operate on a regular schedule and have no minimum hours of operation. However, the number of actual operating hours during a license period is a factor in determining the renewal of noncommercial educational AM and TV broadcast licenses. 47 C.F.R. § 73.621 (non-commercial TV).
- 9** *Applications of WQED PITTSBURGH (Assignor) and CORNERSTONE TELEVISION, INC. (Assignee); For Consent to the Assignment of License of Noncommercial Educational Station WQEX(TV), Channel \*16, Pittsburgh, Pennsylvania*, Memorandum Opinion and Order, 15 FCC Rcd 202, 228 (1999) (*WQED*), quoting FCC, Form 340, Section II, Para. 11(a).
- 10** See, e.g., *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7409 n.38 (2000). The traditional list of ascertainment categories or elements is contained in the Community Leader Checklist that was adopted by the Commission in 1976 in connection with developing ascertainment standards. See *Ascertainment of Community Problems by Broadcast Applicants*, Primer, 41 Fed. Reg. 1372, 1384 (Jan. 7, 1976).
- 11** In 1975, the Commission denied applications for renewal or licensing of nine Alabama stations operated by the Alabama Educational Television Commission ("AETC"), based on its finding that racially discriminatory policies permeated AETC's programming practices. See *Applications of Alabama Educational Television Commission for Renewal of Licenses for: Station WAIQ (ED-TV), Montgomery, Ala., et al.*, 50 FCC 2d 461 (1975). In 1991, the Commission affirmed a Review Board decision denying the renewal application for KQEC(TV), San Francisco, based upon a finding that the licensee of the station committed serious misconduct by lacking candor and misrepresenting the reasons why it had deactivated the station. See *Application of KQED, INC. San Francisco, California for renewal of licenses of noncommercial stations KQED-FM KQED-TV, and KQEC(TV)*, 6 FCC Rcd 625 (1991).
- 12** 47 C.F.R. § 73.621(a).
- 13** 47 C.F.R. § 73.621(c).
- 14** 47 C.F.R. § 73.503(a).
- 15** *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rulemaking, 87 FCC 2d 716, 732 (1981).
- 16** 47 C.F.R. § 73.621 (requiring nonprofit educational organizations to use their NCE broadcast stations "primarily to serve the educational needs of the community"). The Commission has clarified "primarily" to mean "substantial majority" of a station's entire digital capacity, as measured on a weekly basis. See *Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees*, Report and Order, 16 FCC Rcd 19042, 19048 (2001).
- 17** *WQED*, 15 FCC Rcd at 214.
- 18** 47 U.S.C. § 399(b)(2) ("No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement").
- 19** See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 97 FCC 2d 255, 265-66 (1984); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), republished, 7 FCC Rcd 827 (1992) (citing examples of the more liberal or "enhanced" underwriting policy) (*Commission Policy Concerning the Noncommercial Nature of EBS PN*).
- 20** *Commission Policy Concerning the Noncommercial Nature of EBS PN*.
- 21** *Commission Policy Concerning the Noncommercial Nature of EBS PN*.
- 22** *Minority Television Project, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15646, 15649-52 (2002).
- 23** Letter from the Chief, Mass Media Bureau to WNYE-TV, 7 FCC Rcd 6864 (rel. Oct. 16, 1992) (WNYE-TV Letter).
- 24** *Commission Policy Concerning the Noncommercial Nature of EBS PN* ("It continues to be our view that the public broadcaster's good faith judgment must be the key element in meeting Congress' determination that the service should remain free of commercial and commercial-like matter."); *Petition of Xavier University, Licensee of Noncommercial Radio Station WVXU(FM), Cincinnati, OH for Reconsideration of Letter of Admonition*, 5 FCC Rcd 4920, 4921 (1990), quoting *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 911 (1982), *recon. granted*, 97 FCC 2d 255, 264-65 (1984) (*Commission Policy Concerning the Noncommercial Nature of EBS 1982*) ("We recognize that it may be difficult to distinguish at times between announcements that promote and those that identify. We only expect our public broadcast licensees to exercise their reasonable, good faith judgments in this regard.").
- 25** *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 97 FCC 2d 255, 263 (1984) (*Commission Policy Concerning the Noncommercial Nature of EBS 1984*).
- 26** *Commission Policy Concerning the Noncommercial Nature of EBS 1984*, 97 FCC 2d at 263.
- 27** WNYE-TV Letter, 7 FCC Rcd 6864, 6865 (Oct. 16, 1992) ("[W]hile the Commission has not adopted any quantitative guidelines on underwrit-

- ing announcements, the longer an announcement takes to identify the underwriter, the more likely it is to be promotional.”).
- 28** Prepared Testimony of Craig Parshall Senior Vice-President and General Counsel National Religious Broadcasters, FCC Workshop on Future of the Media: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010) (Parshall Prepared Testimony 4/30/10), at 8, *available at* <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>.
  - 29** National Religious Broadcasters Comments in re *FOM PN*, filed Feb. 18, 2010 (NRB Comments), at 13–15.
  - 30** See, e.g., Public Radio Capital Comments in re *FOM PN*, filed May 7, 2010, at 4 (recommending that “the Commission not regard announcements concerning fundraising events that a station conducts with other entities to be an ‘interruption’ of its regular programming”); Public Broadcasting System Comments in re *FOM PN*, filed May 7, 2010, at 24 (seeking, *inter alia*, a clarification that underwriting rule proscribing sponsorship messages that include a “call to action” in terms of selling a product do not prohibit public broadcasters from airing sponsorship messages that “using the common verbiage ‘visit [www.\[site\].com](#)’”); NRB Comments at 14–15 (requesting that the Commission reject the distinction it has previously drawn between permissible promotional language constituting part of a pre-existing corporate *slogan*, and non-slogan-based promotional language by corporate sponsors that failed to have developed such slogans, on the grounds of ‘manifest unfairness’).
  - 31** Memo from Vivian Schiller, President and C.E.O., National Public Radio, sent by email to Steven Waldman, FCC (Dec. 22, 2010) (Schiller Memo 12/22/10).
  - 32** Schiller Memo 12/22/10.
  - 33** The relevant Commission rules, Section 73.503(d) and 73.621(e), apply to noncommercial broadcast service.
  - 34** The Community Service Grant (“CSG”) Review Panel has recommended, for example, that while online advertising revenues cannot be counted toward the minimum non-Federal financial support (“NFFS”) stations need to be eligible for Community Service Grants, online messages that are underwriting credits can. CORPORATION FOR PUBLIC BROADCASTING (CPB), SUMMARY OF TELEVISION CSG REVIEW PANEL MEETING #7 12-13 (2010); see also Memorandum from Public Television CSG Review Panel to Pat Harrison, President & CEO, CPB, Final Report and Recommendations (Aug. 25, 2010), at 15 (affirming that any underwriting revenue included in NFFS generated by websites must meet the current underwriting requirements stated in CPB’s financial reporting guidelines).
  - 35** See Ellen Edwards, *PBS Missing Out on ‘Barney’ Bucks; Tie-Ins Reap Millions for Creators*, WASH. POST, Sept. 13, 1993, at A1; Steve Behrens, *What Did Barney Earn, and Why Didn’t PBS Get More?*, CURRENT, Mar. 6, 1995, <http://www.current.org/funding/funding504barney.shtml>.
  - 36** 47 U.S.C. § 325(b)(2)(A).
  - 37** See, e.g., *Daystar Public Radio, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 13297, 13297–98 (2002) (*citing Commission Policy Concerning the Noncommercial Nature of EBS 1982*, 90 FCC 2d at 907; *Ohio State University*, Opinion, 62 FCC 2d 449 (1976)).
  - 38** See, e.g., FCC, *Media Bureau Announces Procedures for Obtaining Commission Approval for NCE Station Fundraising to Aid Haiti Relief Efforts* (press release), Jan. 13, 2010, *available at* [http://www.fcc.gov/mb/haiti\\_relief\\_efforts.pdf](http://www.fcc.gov/mb/haiti_relief_efforts.pdf); *Commission Policy Concerning the Noncommercial Nature of EBS 1982*, 90 FCC 2d at 907 n.29 (*citing* FCC 82-198 (Apr. 22, 1982), in which the Commission granted a waiver of 47 C.F.R. § 73.621 to Greater Washington Educational Telecommunications Ass’n, Inc. (licensee of noncommercial educational television Station WETA-TV, Washington, D.C.), allowing it to conduct a three-hour fundraiser for the Wolf Trap Foundation after determining that unique circumstances warranted the waiver.
  - 39** NRB Comments at 13.
  - 40** Parshall Prepared Testimony 4/30/10 at 8. Asked what types of non-profits might benefit from such a rule change, Craig Parshall, executive director of NRB suggests, (1) Local rescue missions in their listening areas, most of which would provide food, shelter and sometimes clothing and employment assistance. (2) Seasonal charities, like Operation Christmas Child, which provide toys and necessities to needy children and their families. (3) International relief organizations (e.g. Compassion International, World Vision) that provide on-going world relief to needy nations and communities, not just the massive Haiti/ Katrina type situation. (4) Wycliffe Bible Translators, [for] their work in translating the Bible into indigenous languages, and international Christian radio broadcasters like HCJB Global and Trans World Radio, which have equipment needs in order to get radio transmissions to places like West Africa, and international cooperative efforts between American Christian broadcasters and fledgling Christian broadcasting stations in places like republics in the former Soviet Union. Email from Craig Parshall, Exec. Dir., NRB, to Steven Waldman, FCC (Nov. 4, 2010).
  - 41** Interview with Joseph Bruns and Sharon Percy Rockefeller, President and C.E.O., WETA by Steven Waldman, FCC, (Aug. 4, 2010).
  - 42** Email from Joseph Bruns, WETA, to Steven Waldman, FCC (Aug. 6, 2010). (Bruns noted that he was making his suggestion in his personal capacity and not as a representative of WETA).
  - 43** See, e.g., Bill McConnell, *Noncoms to Get Multicasting DTV Carriage*, BROADCASTING & CABLE, Jan. 31, 2005, [http://www.broadcastingcable.com/article/156009-Noncoms\\_to\\_Get\\_Multicasting\\_DTV\\_Carriage.php](http://www.broadcastingcable.com/article/156009-Noncoms_to_Get_Multicasting_DTV_Carriage.php).
  - 44** 47 C.F.R. § 73.621 (requiring nonprofit educational organizations to use their NCE broadcast stations “primarily to serve the educational needs of the community”). The Commission has clarified “primarily” to mean “substantial majority” of a station’s entire digital capacity, as measured on a weekly basis.
  - 45** *Ancillary or Supplementary Use of Digital Television Capacity by Non-commercial Licensees*, Report and Order, 16 FCC Rcd 19042, 19051-52 (2001) (*Digital Television Capacity R&O 2001*).
  - 46** *Digital Television Capacity R&O 2001*, 16 FCC Rcd at 19059 (amending 47 C.F.R. § 73.624(g) to require NCE licensees to “remit fees of five percent of their gross revenues received for feeable ancillary or supplementary services provided on their digital bitstreams”).
  - 47** Email from Hossein Hashemzadeh, FCC, to Sherille Ismail, FCC (Mar. 8, 2011).
  - 48** CORPORATION FOR PUBLIC BROADCASTING, APPROPRIATION REQUEST AND JUSTIFICATION FY 2011 AND FY 2013 13 (2010) (CPB FY2011 AND 2013 REQUEST), *available at* [http://www.cpb.org/aboutcpb/financials/appropriation/justification\\_11-13.pdf](http://www.cpb.org/aboutcpb/financials/appropriation/justification_11-13.pdf).
  - 49** CPB, Federal Appropriation History (CPB, Federal Appropriation History), <http://www.cpb.org/aboutcpb/financials/appropriation/history.html> (last visited Jan. 20, 2011).
  - 50** See FREE PRESS, CHANGING MEDIA: PUBLIC INTEREST POLICIES FOR THE DIGITAL AGE 266-67 (2010) (CHANGING MEDIA), *available at* [http://www.freepress.net/files/changing\\_media.pdf](http://www.freepress.net/files/changing_media.pdf).

- 51 47 U.S.C. § 396(l). The remaining 11 percent goes towards system support and CPB operations. *Id.*; see also CPB FY2011 AND 2013 REQUEST at 17 (illustrating the breakdown of CPB federal appropriations for 2010).
- 52 47 U.S.C. § § 396(k)(3)(A)(i)(III), (k)(3)(A)(ii)(I).
- 53 47 U.S.C. § § 396(k)(3)(A)(i)(IV), (k)(3)(A)(ii)(II).
- 54 47 U.S.C. § 396(k)(3)(A)(ii)(II).
- 55 CPB, Proposed FY 2009 Operating Budget for the CPB and Cover Memo dated Sept. 23, 2008, at 4 (first page of FY 2009 Operating Budget), available at [http://www.cpb.org/aboutcpb/leadership/board/resolutions/080923\\_fy09operatingbudget.pdf](http://www.cpb.org/aboutcpb/leadership/board/resolutions/080923_fy09operatingbudget.pdf). They are disbursed to public television programs such as the National Program Service (assembled by PBS), the Independent Television Service (“ITVS”), the Minority Consortia, a discretionary General Program Fund, and voluntary grants to PBS. CPB FY2011 AND 2013 REQUEST at 5–6. With PBS, CPB also jointly manages the Program Challenge Fund, which supports high-visibility, high-impact limited series and feature-length documentaries. CPB, Program Challenge Fund, <http://www.cpb.org/grants/07challengefund/> (last visited Jan. 28, 2011).
- 56 See, e.g., APT Action Inc., *Funding Brief: CPB Digital*, <http://www.apts.org/legislative/policy-issues/cpb-digital> (last visited Jan. 21, 2011) (“Congress, recognizing that the federally mandated transition to digital broadcast would place a hardship on public television’s limited resources, has provided public television stations with more than \$300 million in CPB digital funds since 2001.”).
- 57 See, e.g., CPB, *CPB Welcomes Additional Nine Radio Stations to the Community Service Grant Program* (press release), Aug. 23, 2007, <http://www.cpb.org/pressroom/release.php?pm=614>.
- 58 Email (and attachments thereto) from Eben Peck, Corporate and Public Affairs, CPB to Anne Chen, FCC (Aug. 20, 2010).
- 59 CPB, FY2010 RADIO COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA 7 (2010) (CPB FY2010 RADIO CSG), available at <http://www.cpb.org/stations/grants/radio/2010/>; CPB, FY2010 TELEVISION COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA 5 (2010) (CPB FY2010 TV CSG), available at <http://www.cpb.org/stations/grants/tv/2010/>.
- 60 CPB FY2010 RADIO CSG at 7; CPB FY2010 TV CSG at 6.
- 61 CPB FY2011 and 2013 Request at 13, 14.
- 62 CPB also imposes additional operating, use, and reporting requirements on CSG recipients. For example, FM stations must have an operating power of 100 watts or greater, and AM stations must broadcast at 250 watts or greater. CPB FY2010 RADIO CSG at 7. CSG radio stations must also operate at least 18 consecutive hours per day, 7 days per week, 52 weeks per year; have professionally equipped on-air and production facilities; be capable of simultaneous local production and origination; and offer sufficient office space for station operators. CPB FY2010 RADIO CSG at 7. Both radio and television stations must meet minimum staffing requirements. CPB FY2010 RADIO CSG at 7–8; CPB FY2010 TV CSG at 6. Stations eligible are also required to show significant and measurable listening relative to coverage area, and must have non-federal financial support. CPB FY2010 RADIO CSG at 8; CPB FY2010 TV CSG at 6. In general, these requirements are designed to ensure that stations provide a robust signal to their communities, have a significant amount of non-federal funding, and achieve a certain amount of scale.
- 63 See CPB, CORPORATION FOR PUBLIC BROADCASTING FY2011 RADIO COMMUNITY SERVICE GRANT GENERAL PROVISIONS & ELIGIBILITY CRITERIA, available at [http://www.cpb.org/stations/grants/radio/generalprovisions/cpb\\_11RadioCSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/radio/generalprovisions/cpb_11RadioCSG_GeneralProvisions.pdf) (last visited Feb. 11, 2011); CPB, CORPORATION FOR PUBLIC BROADCASTING FY2010 TELEVISION COMMUNITY SERVICE GRANT GENERAL PROVISIONS AND ELIGIBILITY CRITERIA, available at [http://www.cpb.org/stations/grants/tv/2010/cpb\\_10TV\\_CSG\\_GeneralProvisions.pdf](http://www.cpb.org/stations/grants/tv/2010/cpb_10TV_CSG_GeneralProvisions.pdf) (last visited Feb. 11, 2011).
- 64 Memorandum from Public Television CSG Review Panel to Pat Harrison, President & CEO, CPB, Final Report and Recommendations (Aug. 25, 2010) at 8–9, 12.
- 65 American Public Media Comments in re *FOM PN*, filed May 7, 2010 (American Public Media Comments), at 6–9.
- 66 JOSH SILVER ET AL., NEW PUBLIC MEDIA: A PLAN FOR ACTION 33-34 (Free Press) (2010) (NEW PUBLIC MEDIA), available at [http://www.freepress.net/files/New\\_Public\\_Media.doc.pdf](http://www.freepress.net/files/New_Public_Media.doc.pdf).
- 67 Email correspondence between Sue Schardt, Exec. Dir., Ass’n of Independents in Radio, Inc. and Ellen P. Goodman, FCC (Jan. 26, 2011); Association of Independents in Radio, Inc. Comments in re *FOM PN*, filed May 7, 2010 (AIR Comments), at 6.
- 68 Email from Terry Clifford, Station Resource Group, to Ellen P. Goodman, FCC (Mar. 16, 2011).
- 69 Its mandate is broad, and includes the ability to “contract with or make grants to public telecommunications entities, national, regional, and other systems of public telecommunications entities, and independent producers and production entities, for the production or acquisition of public telecommunications services to be made available for use by public telecommunications entities...” 47 U.S.C. §396(g)(2)(B).
- 70 Public Telecommunications Act of 1988, Pub. L. No. 100–626, 102 Stat. 3207, 3210–11 (1988) (codified at 47 U.S.C. § 396(k)(3)(B)(iii)) (requiring a portion of television programming grants to be set aside for an “independent production service” to “expand the diversity and innovativeness of programming available to public broadcasting”).
- 71 Email correspondence between Sue Schardt, Exec. Dir., Ass’n of Independents in Radio, Inc. and Ellen P. Goodman, FCC (Jan. 26, 2011); AIR Comments at 6.
- 72 See 47 U.S.C. § 396. According to the Public Broadcasting Act, CPB is required to cover at least a portion of satellite interconnection costs. 47 U.S.C. § 396(k)(10) (2000) (establishing a Satellite Interconnection Fund for the maintenance, “replacement, refurbishment, or upgrading of [public radio and television’s] national satellite interconnection systems”). Congress has funded public television satellite interconnection systems in the past, sponsoring the second interconnection system in 1989–91 for \$150 million and a total of \$418.3 million on interconnection capital since 1991. See Dan Odenwald, *Satellite Bill Coming Due as DTV Request Languishes*, CURRENT, June 24, 2002, <http://www.current.org/tech/tech0211sat.html> (second interconnection system in 1989–91); CPB, Federal Appropriation History (interconnection capital since 1991); Email (and attachments thereto) from Edward Coltman, Sr. Dir. Communications, CPB, to Anne Chen, FCC (Oct. 8, 2009). The Satellite Program Distribution Fund, which existed in the early to mid-1980s, also funded start-up projects to fill the then-largely unused capacity of satellite channels that interconnected public radio stations. AIR Comments at 7–8.
- 73 Karen Everhart, *Radio Nets and PBS Propose ‘Public Media Platform’ Based on API*, CURRENT, Mar. 1, 2010, available at <http://www.current.org/web/web1004platform.shtml>.
- 74 American Public Media Comments at 3–4.

- 75** See, e.g., Bay Area Video Coalition, What if there was a high-speed fiber optic network that served the public interest?, [http://www.bavc.org/index.php?Itemid=718&id=551&option=com\\_content&task=view](http://www.bavc.org/index.php?Itemid=718&id=551&option=com_content&task=view) (last visited Feb. 4, 2011).
- 76** NATIONAL BROADBAND PLAN at 10, 153, 239.
- 77** U.S. Nat'l Telecommunications and Information Administration (U.S. Dep't of Commerce), Technology Opportunities Program, Grants, <http://www.ntia.doc.gov/top/grants/grants.htm> (last visited June 29, 2010).
- 78** See, e.g., Public Radio Exchange, *PRX receives major NTIA grant*, Oct. 13, 2003, <http://www.prx.org/>.
- 79** See Clea Simon, *Cambridge nonprofit wins MacArthur award*, BOSTON GLOBE, Apr. 11, 2008, available at Public Radio Exchange, Boston Globe on PRX, <http://blog.prx.org/2008/04/boston-globe-on-prx-2>; JOSH SILVER, PUBLIC MEDIA'S MOMENT 15 (Free Press) (2009).
- 80** See, e.g., *New, improved Public Radio Player now live in iTunes*, Public Radio Exchange Blog, Mar. 2, 2010, <http://blog.prx.org/2010/03/new-improved-public-radio-player-now-live-in-itunes/>.
- 81** See, e.g., John D. and Catherine T. MacArthur Foundation & Humanities, Arts, Science, and Technology Advanced Collaboratory, Reimagining Learning (Digital Media and Learning Competition), [http://dmlcompetition.net/reimagining\\_learning.php](http://dmlcompetition.net/reimagining_learning.php) (last visited Feb. 11, 2011).
- 82** See Stephanie From, *Donations Ban on iPhone Apps Irritates Non-profits*, N.Y. TIMES, Dec. 8, 2010, <http://www.nytimes.com/2010/12/09/technology/09charity.html>. Jake Shapiro, *Apple's No-Donation Policy for Apps is a Cop-Out*, ARS TECHNICA, June 4, 2010, <http://arstechnica.com/apple/news/2010/06/nonprofit-developer-apples-no-donation-policy-is-a-cop-out.ars>.
- 83** Based on research by Ben Jacobson, FCC, Summer 2010, using FCC Broadcast Station Totals, which are available at <http://www.fcc.gov/mb/audio/BroadcastStationTotals.html>.
- 84** Based on research by Ben Jacobson, FCC (Summer 2010).
- 85** See, e.g., STATION RESOURCES GROUP (SRG), STATION RESOURCES GROUP REPORT ON GOVERNANCE (2002), <http://www.srg.org/governance/report1.html> (identifying the characteristics of good governance for NCE licensees). See also Email from Steven Bass, President, Oregon Public Broadcasting to Ellen P. Goodman (July 28, 2010) (citing examples of governance changes that significantly improved performance at Nashville Public Television, which moved from school board to community licensee, and WNYC, which moved from municipal New York City ownership to community licensee).
- 86** Email from Terry Clifford, co-C.E.O., SRG, to Ellen P. Goodman, FCC (July 28, 2010) (Clifford Email 7/28/10).
- 87** See, e.g., SRG, STATION RESOURCES GROUP REPORT ON COMMUNITY ADVISORY BOARDS 2004 (2004) (identifying the characteristics of successful community advisory boards), <http://www.srg.org/governance/CAB/CAB.html>.
- 88** Email from William H. Kling, President and CEO, American Public Media Group, to Ellen P. Goodman, FCC (July 28, 2010) (Kling Email 7/28/10).
- 89** Kling Email 7/28/10.
- 90** Kling Email 7/28/10.
- 91** Terry Clifford recommends focusing the efforts to improve governance at CPB, noting:  
 "CPB has invested in several large-scale efforts to build organizational capacity at public television and radio stations that want to become stronger. The more a station engages in high-level fundraising (CPB's Leadership for Philanthropy), the more an organization forms community partnerships (CPB's National Center for Community Engagement and Harwood Institute projects), and the more an organization sets goals for growth in its audience (the CSG audience service criteria), the more that organization will move toward effective and substantive governance structures—mainly because they can't succeed in becoming a significant and valued organization without strong, connected leadership at the top."  
 Clifford Email 7/28/10.
- 92** See Letter from William H. Kling to Steven Waldman, FCC (Nov. 1, 2010).
- 93** BARBARA COCHRAN, THE ASPEN INSTITUTE, RETHINKING PUBLIC MEDIA: MORE LOCAL, MORE INCLUSIVE 48-49 (2010).
- 94** 47 U.S.C. § 310(d).
- 95** For example, in 2008, the FCC dismissed an application by WXEL-TV, based in West Palm Beach, Florida, to assign its license to WXEL Public Broadcasting Corporation, which was based in New York and whose board was not representative of the licensee's community. See [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app\\_det.pl?Application\\_id=1155667](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app_det.pl?Application_id=1155667).
- 96** CPB, PUBLIC RADIO IN THE NEW NETWORK AGE: WIDER USE, DEEPER VALUE, COMPELLING CHANGE—REPORT AND RECOMMENDATIONS OF THE PUBLIC RADIO AUDIENCE GROWTH TASK FORCE 20 (2010), <http://www.srg.org/GTA/GTARports.html>.
- 97** THE BENTON FOUND., WHAT'S GOING ON IN COMMUNITY MEDIA 9 (2007), <http://benton.org/node/6172>.
- 98** CPB, National Minority Consortia, <http://www.cpb.org/aboutpb/consortia.html> (last visited June 29, 2010).
- 99** NEW PUBLIC MEDIA at 35-38.
- 100** See, e.g., National Federation of Community Broadcasters Comments in re *FOM PN*, filed May 7, 2010 (NFCB Comments), at 3; PUBLIC RADIO AUDIENCE GROWTH TASK FORCE, PUBLIC RADIO IN THE NEW NETWORK AGE 12-18 (2010), available at <http://www.srg.org/GTA/GTARports.html>; Native Public Media Comments in re *FOM PN*, filed May 7, 2010, at 4, 6 (Native Public Media Comments); NEW PUBLIC MEDIA at 34-38; African-American Public Radio Consortium et al., An Open Letter to Our Public Media Colleagues, May 2009, available at <http://www.nativepublicmedia.org/images/stories/documents/OpenLetter.pdf>.
- 101** NFCB Comments at 2-3.
- 102** NEW PUBLIC MEDIA at 35; see also Public Broadcasting Service (PBS), CPB/PBS Diversity & Innovation Fund, <http://www.pbs.org/difund/> (last visited Jan. 21, 2011).
- 103** See Memorandum from Public Television CSG Review Panel to Pat Harrison, President & CEO, CPB, Final Report and Recommendations (Aug. 25, 2010).
- 104** See, e.g., AIR Comments at 13.
- 105** *Spreading the Zing: Reimagining Public Media*, Comments of Association of Independents in Radio (AIR) & Jessica Clark, Center for Social Media, in re *FOM PN*, filed May 12, 2010.
- 106** 47 U.S.C. § 396(c)(2).
- 107** 47 U.S.C. §§ 396(c)(1), (c)(5).
- 108** See CHANGING MEDIA 271-73. Free Press proposes that the CPB Board

Chair and Vice Chair should be affiliated with different political parties, and expanding the Board along the lines proposed by the Association of Public Television Stations with some caveats. *See id.* This would entail growth to 13 directors, five of which would include “leaders from both the major cultural institutions—the Library of Congress, the Smithsonian Institution, the National Science Foundation and the National Endowments for the Arts and Humanities.” *Id.* at 273. Representation of PBS and NPR on the Board would be increased, but also ensured would be “representation from noncommercial media makers who are not part of PBS and NPR and from leaders in the field of journalism such as a representative from the Association for Education in Journalism and Mass Communication.” *Id.* Under this proposal, the White House would only be involved in the nomination of eight directors, only four of which would be allowed to be of the same political party; however, it would have consultation rights vis-a-vis represented organizations with respect to the non-appointed directors. *Id.*

- 109** *Coll Open Letter.*
- 110** CARNEGIE COMMISSION ON THE FUTURE OF PUBLIC BROADCASTING, THE REPORT AND RECOMMENDATIONS OF THE CARNEGIE COMMISSION ON EDUCATIONAL TELEVISION: PUBLIC TELEVISION, A PROGRAM FOR ACTION at 68–73 (Harper & Row) (1967) (Carnegie I); RALPH ENGELMAN, PUBLIC RADIO AND TELEVISION IN AMERICA 88 (Sage) (1996).
- 111** JOHN WITHERSPOON & ROSELLE KOVITZ, THE HISTORY OF PUBLIC BROADCASTING 52–53 (Current) (1987) (WITHERSPOON & KOVITZ, HISTORY OF PUBLIC BROADCASTING)
- 112** Excerpt from RALPH ENGELMAN, FRIENDLYVISION: FRED FRIENDLY AND THE RISE AND FALL OF TELEVISION JOURNALISM (Columbia Univ. Press) (2009), available at <http://www.current.org/history/hist0909friendly.shtml>.
- 113** See Public Broadcasting Self-Sufficiency Act of 1996, H.R. 2979, 104th Cong. (1996), available at <http://www.current.org/pbpb/legislation/fields96.html>; see also Steve Behrens, *Field Proposes Trust Fund, But Caps Its Size At \$1 Billion*, CURRENT, Mar. 11, 1996, <http://www.current.org/mo/mo605.html>.
- 114** NATIONAL BROADBAND PLAN at 304.
- 115** THE BENTON FOUND., CHARTING THE DIGITAL BROADCASTING FUTURE: FINAL REPORT OF THE ADVISORY COMMITTEE ON PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS 65 (1998) (CHARTING THE DIGITAL BROADCASTING FUTURE), available at <http://govinfo.library.unt.edu/piac/piacreport.pdf>.
- 116** CHARTING THE DIGITAL BROADCASTING FUTURE at 65. Ultimately, the Commission came to no consensus of a specific alternative model of public interest obligations.
- 117** *Coll Open Letter.*
- 118** Steve Coll, *Why Journalists Shouldn't Resist Public Funds*, ZOCAL PUBLIC SQUARE, Jan. 8, 2011 (*Why Journalists Shouldn't Resist Public Funds*), <http://zocalopublicsquare.org/thepublicsquare/2011/01/08/why-journalists-shouldnt-resist-public-funds/read/nexus/>.
- 119** *Why Journalists Shouldn't Resist Public Funds.*
- 120** Writers Guild of America East Comments in re *2010 Quadrennial Review NOI (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, 75 Fed. Reg. 33227 (June 11, 2010) (*2010 Quadrennial Review NOI*)), filed July 8, 2010, at 1–2.
- 121** Carnegie I at 8.
- 122** See Christian M. Bron, *Financing and Supervision of Public Service Broadcasting*, IRIS PLUS 2010-4, 7, 11 (2010).
- 123** NEW PUBLIC MEDIA at 28.
- 124** WITHERSPOON & KOVITZ, HISTORY OF PUBLIC BROADCASTING at 51–52.
- 125** NEW PUBLIC MEDIA at 24–27.
- 126** NEW PUBLIC MEDIA at 24–25. This estimate assumes a taxable base of \$190 billion in 2010 with a 3 percent growth rate per year, and exemptions from certain industries (e.g. newspapers, online advertising) that will increase from 38 percent to 49 percent in 2019 because of a greater shift to online advertising. *Id.* at 24. The estimate also assumes continued federal appropriations to the CPB at a growth rate of 3 percent per year, and that federal sources also include 10 percent of the amount collected from the advertising tax; the remainder would be deposited in a trust fund. *Id.*
- 127** NEW PUBLIC MEDIA at 26–27. This estimate also assumes a 3 percent annual increase in advertising spending and in federal appropriations for public media, though with no exemptions to the deduction for any particular industry. The estimate also assumes a tax law change allowing businesses to deduct 80 percent of advertising costs in the year ads are placed, with the remaining 20 percent amortized over the next four years. *Id.* at 27.
- 128** Prepared Testimony of Randolph May, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era (Apr. 30, 2010), at 6, available at <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>.
- 129** Adam Thierer, *The Wrong Way to Reinvent Media, Part 2: Broadcast Spectrum Taxes to Subsidize Public Media*, THE PROGRESS & FREEDOM FOUNDATION: PROGRESS ON POINT, vol. 17, issue 2 (Mar. 2010), at 5 (*The Wrong Way to Reinvent Media, Part 2*).
- 130** Adam Thierer, *Unappreciated Benefits of Advertising and Commercial Speech*, MERCATUS ON POLICY No. 86 (Mercatus Ctr. at George Mason Univ.) (Jan. 2011), available at [http://mercatus.org/sites/default/files/publication/unappreciated-benefits-of-advertising-and-commercial-speech\\_0.pdf](http://mercatus.org/sites/default/files/publication/unappreciated-benefits-of-advertising-and-commercial-speech_0.pdf).
- 131** *Why Expansion of the FCC's Public Interest Regulatory Regime is Unwise, Unneeded, Unconstitutional, and Unenforceable*, Prepared Testimony of Adam Thierer, President, The Progress & Freedom Foundation, FCC Workshop on the Future of Media and the Information Needs of Communities: Serving the Public Interest in the Digital Era (Mar. 4, 2010), at 11–12 (Thierer Prepared Testimony 3/4/10), available at <http://reboot.fcc.gov/futureofmedia/serving-the-public-interest-in-the-digital-era>.
- 132** Progress & Freedom Foundation Comments in re *FOM PN*, filed May 5, 2010 (PFF Comments), at 18; *The Wrong Way to Reinvent Media, Part 2*.
- 133** Thierer Prepared Testimony 3/4/10 at 4–5.
- 134** CPB Comments at 18–19.
- 135** Eric Newton Comments in re *FOM PN*, filed May 7, 2010.
- 136** See *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2211–12 (2000) (*Low Power Radio Svc. Order 2000*).
- 137** See *Low Power Radio Svc. Order 2000*, 15 FCC Rcd at 2213.
- 138** 47 C.F.R. § 73.853 (licensing requirement); 47 C.F.R. § 73.855 (ownership limits). In addition, former pirate radio operators are not eligible to hold

- an LPFM license. See 47 C.F.R. § 73.854. At one point, a single entity could own up to ten LPFM stations, but the Rules were revised in 2007 to restrict ownership of more than one LPFM station, with the notion that it would further protect localism and foster greater diversity of programming. See *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21922 (2007) (*Low Power Radio Svc. Order 2007*); 47 C.F.R. § 73.855(a). An LPFM license may not be transferred or assigned for three years from the date of issue, and the transferee/assignee must satisfy all eligibility criteria that apply to an LPFM licensee. See 47 C.F.R. § 73.865. LPFM construction permits are non-transferrable. *Id.*
- 139** 47 C.F.R. § 73.801 (incorporating restrictions in 47 C.F.R. § 73.503).
- 140** Pub. L. No. 111-371, 124 Stat. 4072 (2011).e
- 141** 2001 District of Columbia Appropriations Act (“2001 DC Appropriations Act” or “Act”).
- 142** See, e.g., Paul Riismandel, *Breaking down the House’s new LPFM bill*, RADIO SURVIVOR, Dec. 18, 2010, <http://www.radiosurvivor.com/tag/local-community-radio-act-of-2009/>; Hayley Tsukayama, *Advocates rejoice as Obama signs Local Community Radio Act*, Post Tech (Wash. Post), Jan. 7, 2011.
- 143** See, e.g., Future of Music Coalition, *Low Power FM*, Dec. 8, 2010, <http://futureofmusic.org/article/fact-sheet/low-power-fm>.
- 144** Antenna Vision, <http://www.antennavision.net/70111.html> (last visited Dec. 27, 2010).
- 145** *Low Power Radio Svc. Order 2007*, 22 FCC Rcd at 21929–30; see also Local Community Radio Act of 2010, Pub. L. No. 111-371, § 5(3), 124 Stat. 4072,—(mandating that translators and LPFM stations remain “equal in status”).
- 146** *Low Power Radio Svc. Order 2007*, 22 FCC Rcd at 21934.
- 147** See *Low Power Radio Svc. Order 2007*, 22 FCC Rcd at 21930, citing *Creation of Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6776–78 (2005). Indeed, nearly two-thirds of all non-reserved band translator authorizations were issued out of the 2003 translator window. See *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642, 9651 (2009).
- 148** *Low Power Radio Svc. Order 2007*, 22 FCC Rcd at 21934–35.
- 149** *Low Power Radio Svc. Order 2000*, 15 FCC Rcd at 2219–2220.
- 150** See 47 C.F.R. § 74.1231(b) (“An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified, and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section.”); *Id.* at § 74.1231(g) (“Originations concerning financial support are limited to a total of 30 seconds an hour.”).
- 151** Connolly-Ahern, C., Schejter, A., Obar, J., & Martinez-Carrillo, N. (September 2009). A slice of the pie: Examining the state of the Low Power FM Radio Service in 2009. Presented at the 37th TPRC Conference on Communication, Information and Internet Policy, Arlington, VA.
- 152** See, e.g., FCC, *Low Power Television (LPTV) Service: FCC Consumer Facts (FCC, LPTV Facts)*, <http://www.fcc.gov/cgb/consumerfacts/lptv.html> (last visited Dec. 27, 2010).
- 153** FCC, LPTV Facts.
- 154** FCC, *Consumer Advisory: The DTV Transition and LPTV/Class A/Translator Stations (FCC, DTV Transition & LPTV/Class A/Translator Stations)*, <http://www.fcc.gov/cgb/consumerfacts/DTVandLPTV.html> (last visited Dec. 27, 2010).
- 155** FCC, *DTV Transition & LPTV/Class A/Translator Stations*.
- 156** See, e.g., 47 C.F.R. §§ 74.703, 74.709, 90.303.
- 157** 47 C.F.R. § 73.3580(d)(5)(i)(A). See also *In the Matter of Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355 (2000).
- 158** See *Commencement of Rural, First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Beginning August 25*, Public Notice, DA 09-1487, 24 FCC Rcd 8911 (MB, rel. June 29, 2009). The initiation of nationwide first-come, first-served digital licensing for low power television and TV translators was postponed to July 26, 2010. See *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translator Services Postponed to July 26, 2010*, Public Notice, DA 09-2611, 24 FCC Rcd 14614 (MB rel. Dec. 22, 2009).
- 159** These 24 are Alaska, Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Washington, and Wisconsin.
- 160** These 16 are: Arizona, Alaska, California, Colorado, Connecticut, Florida, Illinois, Michigan, Montana, Nebraska, Ohio, Pennsylvania, Oregon, South Carolina, Washington, and Wisconsin. Giguere Email 9/14/10.
- 161** These states are California, Michigan, Wisconsin, and Pennsylvania. Giguere Email 9/14/10.
- 162** Giguere Email 9/14/10 (the 12 SPANs identified are in Arizona, Alaska, Colorado, Connecticut, Florida, Illinois, Montana, Nebraska, Ohio, Oregon, South Carolina, and Washington).
- 163** Email from Christopher Long, President and CEO, WisconsinEye, to Simon Banyai, FCC (Sept. 16, 2010).
- 164** Meeting of NAPAN with Steven Waldman and additional staff members, FCC (June 7, 2010).
- 165** 47 U.S.C. § 531(a) (providing that franchising authorities “may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use” to the extent provided in section 531).
- 166** Giguere Email 9/14/10.
- 167** Email from Paul Giguere, President, NAPAN/President and CEO, The Connecticut Network, to Simon Banyai, FCC (Nov. 16, 2010).
- 168** Meeting of NAPAN with Steven Waldman and other staff members, FCC (Nov. 4, 2010) (NAPAN Meeting 11/4/10).
- 169** NAPAN Meeting 11/4/10.
- 170** See *Satellite Television Extension and Localism Act of 2010* § 209, Pub. L. No. 111-175, 124 Stat. 1218, 1254-1255 (2010) (codified at 47 U.S.C. § 335(b)).
- 171** Email from Greg Lane, President & C.E.O., TVW (Washington State Public Affairs TV Network) to Sherille Ismail, FCC (Aug. 13, 2010); Interview of Paul Giguere by Simon Banyai, FCC (Sept. 7, 2010).
- 172** Letter from Eric Newton, V.P., Journalism Program, John S. and James L. Knight Foundation, to Steven Waldman, FCC (May 7, 2010).
- 173** Alan Mutter, *Bridge to Nowhere: Non-profit Press Ownership*, REFLECTIONS OF A NEWSOSAUR, Mar. 24, 2009, <http://newsosaur.blogspot.com/2009/03/bridge-to-nowhere-non-profit-press.html>.

- 174** David M. Schizer, *Subsidizing the Press*, JOURNAL OF LEGAL ANALYSIS (forthcoming) (2010) (Schizer), available at [http://lsr.nellco.org/columbia\\_pllt/9191/](http://lsr.nellco.org/columbia_pllt/9191/) (abstract only).
- 175** MARION R. FREEMONT-SMITH, CAN NONPROFITS SAVE JOURNALISM? LEGAL CONSTRAINTS AND OPPORTUNITIES 16 (Joan Shorenstein Ctr. on the Press, Politics and Public Policy) (2009), (CAN NONPROFITS SAVE JOURNALISM?), available at <http://www.npjhub.org/academics/academic-research>, (citing Treas. Reg. § 1.501(c)(3) 1(d)(3)).
- 176** CAN NONPROFITS SAVE JOURNALISM? at 18 (citing Rev. Rul. 67-4, 1967-1 C.B. 121).
- 177** Rev. Rul. 77-4, 1977-1 C.B. 141.
- 178** CAN NONPROFITS SAVE JOURNALISM? at 18.
- 179** Richard Schmalbeck, James T. Hamilton, Edward Skloot, et al., *Guidance Suggestions: Newspapers and Nonprofit Organizations* (letter to U.S. Internal Revenue Service), May 28, 2009 (*Guidance Suggestions: Newspapers and Nonprofit Organizations*), available at <http://dewitt.sanford.duke.edu/images/uploads/dwcirsguidancefinal.pdf>.
- 180** *Guidance Suggestions: Newspapers and Nonprofit Organizations*.
- 181** *Guidance Suggestions: Newspapers and Nonprofit Organizations* at 3.
- 182** Testimony of Allen R. Bromberger, Partner, Perlman & Perlman, LLP, Federal Trade Commission (FTC) Workshop, “From Town Criers To Bloggers: How Will Journalism Survive The Internet Age?” (Mar. 9, 2010), Tr. at 188:9-11, available at <http://www.ftc.gov/opp/workshops/news/index.shtml>.
- 183** 26 U.S.C. § 501(c)(3).
- 184** IRS, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, <http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html> (last reviewed June 16, 2010) (“Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”).
- 185** Testimony of Joel Kramer, FTC Workshop, “From Town Criers To Bloggers: How Will Journalism Survive The Internet Age?” (June 15, 2010), Tr. at 54, available at <http://www.ftc.gov/opp/workshops/news/index.shtml>.
- 186** Hoffer Memo.
- 187** The experience of a Pasadena, California church concerning speech issues and Section 501(c)(3) status provides helpful insight into the type of problems a Section 501(c)(3) news organization might face. In 2005, the All Saints Episcopal Church found itself under investigation by the IRS, threatened with an audit of its finances and loss of its tax-exempt status, after a guest pastor gave a sermon shortly before the 2004 presidential election that presented a hypothetical debate about the Iraq conflict among Jesus, George Bush, and John Kerry. See All Saints Episcopal Church, *All Saints Church, Pasadena Demands Correction and Apology From the IRS* (press release), Sept. 23, 2007, [http://www.allsaintspas.org/documents/IRS\\_Press\\_Release\\_Sept\\_23\\_\\_2007.pdf?docID=2521](http://www.allsaintspas.org/documents/IRS_Press_Release_Sept_23__2007.pdf?docID=2521). As the Church explained in a press release, the sermon “addressed the moral and religious implications of various social issues facing our country today” without “tell[ing] the congregation how to vote.” See *id.* The Church eventually received a letter from the IRS concluding that the sermon in question constituted “prohibited political campaign intervention,” but also informing the Church, paradoxically and without explanation, that the IRS would not challenge the Church’s tax-exempt status or institute an audit. See *id.*
- 188** See, e.g., Corinne Antley, *Intentionally Nonprofit Journalism: A Tax Lawyer’s Perspective*, DOW LOHNES PLLC, Aug. 2010, at 3-4, [www.dowlohnesh.com/files/upload/section501\(c\)\(3\).pdf](http://www.dowlohnesh.com/files/upload/section501(c)(3).pdf).
- 189** Interview with Charles C. Duncan Pardo, Editor, Raleigh Public Record, by Paige Gold, FCC, (June 23, 2010).
- 190** Email from Miles Maguire to Steven Waldman, April 3, 2011.
- 191** *Guidance Suggestions: Newspapers and Nonprofit Organizations* at 3.
- 192** Larry Margasak, *Cardin proposes nonprofit status for newspapers*, ASSOCIATED PRESS, Mar. 24, 2009, <http://www.baltimoresun.com/news/nation-world/politics/bal-cardin-newspapers0324,0,7631327.story>.
- 193** Interview with Bruce Hopkins, Sr. Partner, Polsinelli Shughart PC (Kansas City, MO), by Paige Gold, FCC (Dec. 22, 2010).
- 194** *Guidance Suggestions: Newspapers and Nonprofit Organizations* at 1.
- 195** Hoffer Memo.
- 196** David Schizer, *Subsidizing the Press 26 et seq.* (Columbia Law And Economics Working Paper No. 376) (2010), available at [lsr.nellco.org/cgi/viewcontent.cgi?article=1083&context=columbia\\_pllt](http://lsr.nellco.org/cgi/viewcontent.cgi?article=1083&context=columbia_pllt).
- 197** See Senate Bill No. 690, 2010 Md. ALS 97, 2010 Md. Laws 97 (codified at MD. CORP. & ASS’N CODE ANN. § 5-6C-01).
- 198** See Corporate Flexibility Act Of 2010/Flexible Purpose Corporation, Cal. Senate Bill 1463 (DeSaulnier) (Apr. 5, 2010).
- 199** ROBERT LANG, COMMUNITY FOUNDATIONS AND THE L3C (Americans for Community Development) (2008), <http://www.americansforcommunitydevelopment.org/whitepapers.php>.
- 200** For example, at a March 2010 FTC workshop, Elizabeth Grant, Attorney-in-Charge of the Oregon Department of Justice’s Charitable Activities Section, said:  
 “[W]hen I think about how I’m going to be doing my job, it gets complicated in this hybrid realm because traditionally, one thing I know about nonprofit corporations, there’s a whole body of law established, and there aren’t equity interest... [b]ut with these hybrid forms, I hear... some amount of distribution is appropriate, but I’m not really sure what amount is appropriate, and when can you say they’re distributing too much and not really furthering the charitable objective of the organization any more?”  
 Testimony of Elizabeth Grant, FTC Workshop, “From Town Criers To Bloggers: How Will Journalism Survive The Internet Age?” (Mar. 9, 2010), Tr. at 196:5-18, available at <http://www.ftc.gov/opp/workshops/news/index.shtml>.
- 201** Council on Foundations, *Program Related Investments (PRIs) Promotion Act* (position statement), Mar. 2010, <http://www.cof.org/files/Bamboo/programsandservices/publicpolicy/documents/pris.pdf>. “Under current procedure, foundations are understandably reluctant to enter into otherwise promising ventures because of the risks.” *Id.* Such risks include steep financial penalties if the IRS later determines that an investment did not qualify as a PRI. There are two ways a foundation can determine whether an investment satisfies IRS requirements for PRIs, both of which are resource-intensive. A foundation can obtain a private legal opinion, the outcome of which will depend on the interpretation of the lawyer preparing it. It can also seek an IRS determination, a process that is costly, takes a great deal of time, and cannot be relied upon as precedent by any other groups. To help remedy this, the Council on

Foundations' position paper states, "A process that encourages foundations to request IRS guidance will promote transparency and consistency in the way that the legal rules surrounding PRI's are being interpreted and applied." *Id.*

- 202** See American Bar Ass'n Section of Taxation, Comments to Hon. Douglas Shulman, Internal Revenue Service Commissioner, Concerning Proposed Additional Examples on Program Related Investments, Mar. 3, 2010, *available at* [http://www.abanet.org/tax/pubpolicy/2010/Comments\\_Concerning\\_Proposed\\_Additional\\_Examples\\_on\\_Program\\_Related\\_Investments.pdf](http://www.abanet.org/tax/pubpolicy/2010/Comments_Concerning_Proposed_Additional_Examples_on_Program_Related_Investments.pdf).
- 203** See Americans for Community Development, Proposal for Philanthropic Facilitation Act, Nov. 9, 2010, <http://www.americansforcommunitydevelopment.org/proposedfedlegislation.php>.

## 32 Advertising Policy

- 1** U.S. GOVERNMENT ACCOUNTABILITY OFFICE, MEDIA CONTRACTS: ACTIVITIES AND FINANCIAL OBLIGATIONS FOR SEVEN FEDERAL DEPARTMENTS (2006) (GAO-06-305), *available at* <http://www.gao.gov/products/GAO-06-305>.
- 2** U.S. GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL ADVERTISING: ESTABLISHED PROGRAMS WERE LARGELY USED TO ADDRESS EXECUTIVE ORDER TO ENSURE SMALL AND MINORITY-OWNED BUSINESS PARTICIPATION (2007) (GAO-07-877), *available at* <http://www.gao.gov/products/GAO-07-877>. See also, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, MEDIA CONTRACTS: ACTIVITIES AND FINANCIAL OBLIGATIONS FOR SEVEN FEDERAL DEPARTMENTS, (2006) (GAO-06-305) *available at* <http://www.gao.gov/products/GAO-06-305>.
- 3** U.S. GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL ADVERTISING: ESTABLISHED PROGRAMS WERE LARGELY USED TO ADDRESS EXECUTIVE ORDER TO ENSURE SMALL AND MINORITY-OWNED BUSINESS PARTICIPATION (2007) (GAO-07-877), *available at* <http://www.gao.gov/products/GAO-07-877>.
- 4** See U.S. Census Bureau, *2010 Census: Media Highlights Week 8: 3/6–3/12*, *available at* [http://dola.colorado.gov/dlg/demog/census2010/publications/media\\_highlights\\_mar6.pdf](http://dola.colorado.gov/dlg/demog/census2010/publications/media_highlights_mar6.pdf); U.S. Census Bureau, *2010 Census: Media Highlights Week 6: 2/20–2/26*, *available at* [http://dola.colorado.gov/dlg/demog/census2010/publications/media\\_highlights\\_feb20.pdf](http://dola.colorado.gov/dlg/demog/census2010/publications/media_highlights_feb20.pdf).
- 5** See, e.g., U.S. Census Bureau, *Census Bureau Launches 2010 Census Advertising Campaign* (press release), Jan. 14, 2010, <http://2010.census.gov/news/releases/operations/ad-campaign-release.html>.
- 6** Letter from Steven Lanzano, President of TVB to Steven Waldman, April 15, 2011.
- 7** GEOFFREY COWAN & DAVID WESTPHAL, PUBLIC POLICY AND FUNDING THE NEWS 10 (Univ. of Southern California Annenberg School of Communication) (2010), <http://fundingthenews.usc.edu/report/> (PUBLIC POLICY AND FUNDING THE NEWS).
- 8** Geoffrey Cowan & David Westphal, *American government: It's always subsidized commercial media*, ONLINE JOURNALISM REV., Nov. 30, 2009, <http://www.ojr.org/ojr/people/davidwestphal/200911/1801/>.
- 9** See, e.g., Public Notice Resource Center, Inc. (PNRC), c (last visited Feb. 11, 2011) (listing latest such legislation, proposed in New Jersey and Nebraska).
- 10** PNRC, Defining Characteristics, <http://www.pnrc.net/about-public-notices/what-is-a-public-notice/defining-characteristics/> (last visited Jan. 25, 2011); PNRC, Where Do I Find A Public Notice?, <http://www.pnrc.net/about-public-notices/where-do-i-find-a-public-notice/> (last visited Jan. 25, 2011).
- 11** Financial Transparency Restoration Act, H.R. 2727, 111th Cong., § 3(b).
- 12** Emery P. Dalesio, *Move to online public notices looms over papers*, USA TODAY, May 22, 2009, [http://www.usatoday.com/tech/news/2009-05-22-online-notices\\_N.htm](http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm).
- 13** Prepared Testimony of Craig Aaron, Managing Director, Free Press, FCC Workshop on the Future of Media and the Information Needs of Communities: Public and Other Noncommercial Media in the Digital Era, (Apr. 30, 2010), at 6, *available at* <http://reboot.fcc.gov/futureofmedia/public-and-other-noncommercial-media-in-the-digital-era>. This estimate assumes inclusion of exemptions from the advertising tax for small businesses, newspapers or online advertising. See *id.* Free Press has proposed a "gross receipts tax on recipients of advertising revenue or via a 'sales tax' on advertisers" at 2 percent, which it estimates could raise "over \$45 billion for a public media trust fund after a 10-year period, which would equate to a \$2.25 billion annual budget in the 11th year." *Id.* Free Press also proposes "changing the tax code to allow only 80 percent of the advertising expense to be deducted in the year it was purchased, 'amortizing' the remaining expense over time." *Id.* at 6. Such change would cause the taxable base of each advertiser to rise, and thus lead to greater tax revenues, which "could be earmarked for a public media trust fund." *Id.* Free Press estimates that "in little more than a decade" a \$61 billion media trust fund would be created, one that would "net[] a continued annual operating budget exceeding \$3 billion." *Id.*
- 14** American Advertising Fed'n, *Alert: Threat to Advertising Deductibility Renewed* (member government affairs alert), Sept. 15, 2009, <http://www.aaf.org/default.asp?id=1045>.
- 15** U.S. Internal Revenue Service, 11. Other Expenses, <http://www.irs.gov/publications/p535/ch11.html> (under caption, "Miscellaneous Expenses") (last visited Jan. 25, 2011).
- 16** Ken Doctor, *The Newsonomics of Do Not Track*, NIEMAN JOURNALISM LAB, Dec. 9, 2010, <http://www.niemanlab.org/2010/12/the-newsonomics-of-do-not-track/#>.
- 17** Panelist Presentation of Lem Lloyd, Vice President, Channel Sales, Yahoo!, FTC Workshop, "From Town Criers To Bloggers: How Will Journalism Survive the Internet Age?" (Dec. 1, 2009), at 4, *available at* <http://www.ftc.gov/opp/workshops/news/index.shtml>.

## 33 Print

- 1** See WikiSource, Letter to Edward Carrington—January 16, 1787 (Letter to Edward Carrington), [http://en.wikisource.org/wiki/Letter\\_to\\_Edward\\_Carrington\\_-\\_January\\_16,\\_1787](http://en.wikisource.org/wiki/Letter_to_Edward_Carrington_-_January_16,_1787) (last visited Jan. 25, 2011).
- 2** See Letter to Edward Carrington.
- 3** PAUL STARR, THE CREATION OF THE MEDIA: POLITICAL ORIGINS OF MODERN COMMUNICATIONS 87-88 (Basic Books) (2004) (STARR, CREATION OF THE MEDIA).
- 4** STARR, CREATION OF THE MEDIA at 57. In addition, newspapers in the colonies were published by printers who were focused on newspapers



that carried information about public debate, in contrast to printers in Britain who were either more focused on the book trade or on publishing newspapers whose high price after taxes severely limited their circulation to elites.

- 5 GERALD J. BALDASTY, *THE COMMERCIALIZATION OF NEWS IN THE NINETEENTH CENTURY* 20 (Univ. of Wisconsin Press) (1992) (Baldasty).
  - 6 BALDASTY, *THE COMMERCIALIZATION OF NEWS IN THE NINETEENTH CENTURY* at 23.
  - 7 STARR, *CREATION OF THE MEDIA* at 261. “The number of periodicals with 100,000 circulation quadrupled from 21 to 85 between 1885 and 1900 and then nearly doubled again to 159 in 1905; the first magazine to hit a circulation of 1 million was the Ladies’ Home Journal in 1903.” *Id.*
  - 8 15 U.S.C. § 1801 *et seq.*
  - 9 Geoffrey Cowan & David Westphal, *Reality Check. Shrinking government support contributes to news media economic decline*, UNIV. OF SOUTHERN CALIFORNIA ANNENBERG CENTER ON COMMUNICATION LEADERSHIP & POLICY BLOG, Nov. 30, 2009, [http://communicationleadership.usc.edu/blog/government\\_action/cowan\\_westphal\\_reality\\_check\\_s.html](http://communicationleadership.usc.edu/blog/government_action/cowan_westphal_reality_check_s.html).
- ## 34 Copyright and Intellectual Property
- 1 Copyright law protects “original works of authorship fixed in any tangible medium of expression,” including pictorial and graphic works, audiovisual works and sound recordings. 17 U.S.C. § 102 (a). Among other exclusive rights, the copyright owner has the right to control reproduction and distribution of copies. 17 U.S.C. § 106.
  - 2 Farhad Manjoo, *Public Protests NPR Link Policy*, WIRED, June 20, 2002, [www.wired.com/techbiz/media/news/2002/06/53355](http://www.wired.com/techbiz/media/news/2002/06/53355).
  - 3 TIM BERNERS-LEE, *WEAVING THE WEB: THE ORIGINAL DESIGN AND ULTIMATE DESTINY OF THE WORLD WIDE WEB* (Harper) (2000).
  - 4 Zachary M. Seward, *Here’s the AP document we’ve been writing about*, NIEMAN JOURNALISM LAB, Aug. 13, 2009, <http://www.niemanlab.org/2009/08/heres-the-ap-document-weve-been-writing-about/> (*citing* Associated Press, *Protect, Point, Pay—An Associated Press Plan for Reclaiming News Content Online* (internal memorandum), July 2009).
  - 5 Nicole Bashor, *The Cache Cow: Can Caching And Copyright Co-Exist?*, 6 J. MARSHALL REV. INTELL. PROP. L. 101 (2006) (*The Cache Cow*) (*citing* Google Guide: How Google Works, <http://www.googleguide.com>) (last visited Jan. 31, 2011).
  - 6 See, e.g., Jonathan Bailey, *Why RSS Scraping Isn’t O.K.*, PLAGIARISM TODAY, Aug. 29, 2006, <http://www.plagiarismtoday.com/2006/08/29/why-rss-scraping-isnt-ok>.
  - 7 David Kaplan, *Fair Syndication Consortium: Google Responsible For Over Half Of Unlicensed Newspaper Articles*, PAID CONTENT, Dec. 1, 2009 (*Fair Syndication Consortium*), <http://paidcontent.org/article/419-fair-syndication-consortium-google-responsible-for-over-half-of-unlicen/#>.
  - 8 *Fair Syndication Consortium*.
  - 9 Eric Weigle, *Credit where credit is due*, GOOGLE NEWS BLOG, Nov. 16, 2010, <http://googlenewsblog.blogspot.com/2010/11/credit-where-credit-is-due.html>.
  - 10 American Univ. Ctr. for Social Media, *Documentary Filmmakers’ Statement of Best Practices in Fair Use*, <http://www.centerforsocialmedia.org/fair-use/best-practices/documentary/documentary-filmmakers-statement-best-practices-fair-use> (last visited Jan. 26, 2011).
  - 11 Doug Rand, *Memo from the Edge: Legal Analysis and Practical Recommendations for Newspapers in Crisis* (paper presented at Conference on “Journalism & The New Media Ecology: Who Will Pay the Messenger?,” Yale Law School Nov. 13-14, 2009), at 3, *available at* <http://www.law.yale.edu/intellectuallife/09mediapapers.htm>.
  - 12 Testimony of Laura Malone, Associate General Counsel, Intellectual Property, The Associated Press, FTC Workshop, “From Town Criers To Bloggers: How Will Journalism Survive The Internet Age?” (Mar. 9, 2010), Tr. at 67, *available at* <http://www.ftc.gov/opp/workshops/news/index.shtml>.
  - 13 Bruce W. Sanford, *Revamped Legal Structure is Key to the Future of Journalism*, SPEAKING FREELY, July 2010, *available at* <http://www.tjcenter.org/wp-content/uploads/Spkng%20Frly%20Sanford%207-1-10%5B1%5D%281%29.pdf>.
  - 14 James Fallows, *How to Save the News*, THE ATLANTIC, June 2010, <http://www.theatlantic.com/magazine/print/2010/06/how-to-save-the-news/8095>.
  - 15 Testimony of James W. Marcovitz, Sr. V.P. and Deputy Gen. Counsel, News Corp., FTC Workshop, “From Town Criers To Bloggers: How Will Journalism Survive The Internet Age?” (Mar. 9, 2010), Tr. at 65:8-10; 12-14, *available at* <http://www.ftc.gov/opp/workshops/news/index.shtml>.
  - 16 Testimony of James Boyle, William Neal Reynolds Professor of Law, Duke Univ. Law School, FTC Workshop, “From Town Criers To Bloggers: How Will Journalism Survive The Internet Age?” (Mar. 9, 2010), Tr. at 86:4-18, 87:1-6, *available at* <http://www.ftc.gov/opp/workshops/news/index.shtml>.
  - 17 *The Cache Cow*, 6 J. Marshall Rev. Intell. Prop. L. at 108 (*citing* Robots Exclusion, <http://www.robotstxt.org/wc/exclusion.html> (last visited Jan. 26, 2011)).
  - 18 Danny Sullivan, *Josh Cohen of Google News on Paywalls, Partnerships and Working with Publishers*, SEARCHENGINELAND.COM, Nov. 15, 2009, <http://searchengineland.com/josh-cohen-of-google-news-on-paywalls-partnerships-working-with-publishers-29881>.
  - 19 Digital Millennium Copyright Act, Title II, Online Copyright Infringement Liability Limitation Act, Pub L. 105-304, 112 Stat. 2877-2886 (1998) (amending 17 U.S.C. § 512).
  - 20 See 17 U.S.C. § 512(h).
  - 21 See, e.g., Chilling Effects Clearinghouse, *Frequently Asked Questions (and Answers) About DMCA Subpoenas*, <http://www.chillingeffects.org/dmca-sub/faq.cgi> (“Question: How is Internet anonymity affected by Section 512(h) subpoenas? . . . Answer: Since anyone who has ever written or typed something is a copyright holder, it is possible that any of these people might misuse the Section 512(h) subpoena to discover identity for purposes other than vindicating copyright rights. In some instances, the fear of improper discovery of their identity will intimidate or silence online speakers even though they were engaging in protected expression under the First Amendment.”)
  - 22 Fair Syndication Consortium, *Content Syndication and Management Guidelines 0.9*, [http://www.fairsyndication.org/guidelines/Content\\_Syndication\\_and\\_Management\\_Guidelines\\_v0.9.html](http://www.fairsyndication.org/guidelines/Content_Syndication_and_Management_Guidelines_v0.9.html) (last visited Jan. 26, 2011). Under the Fair Syndication Consortium plan, if a publisher

- chooses to charge for full copy use, ad networks will act as royalty collectors/distributors. Publishers can choose the sites they want to publish their content, ruling out disreputable ones such as hate sites and pornography. Infringers will be dealt with using a “graduated escalation” enforcement path. The Consortium stresses the importance of considering the frequency and extent of reuse that is occurring, and does not consider it in publishers’ best interest to expend resources going after casual, incidental, or unintentional re-users.
- 23** See *Graduated Response Trial Unmasks a Cooperative Internet*, FAIR SYNDICATION CONSORTIUM BLOG, Nov. 8, 2010, <http://www.fairsyndication.org/blog/2010/graduated-response-trial-unmasks-a-cooperative-Internet/>.
- 24** “AP board approves independent agency to license digital news,” press release, Associated Press, Feb. 3, 2011, [http://www.ap.org/pages/about/pressreleases/pr\\_020311a.html](http://www.ap.org/pages/about/pressreleases/pr_020311a.html).
- 25** *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 344-45 (1991), quoting *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 556 (1985).
- 26** See *Associated Press v. All Headline News Corp. et al.*, 608 F. Supp. 2d 454 (S.D.N.Y. 2009) (*All Headline News*).
- 27** *Int’l News Service v. Associated Press*, 248 U.S. 215 (1918).
- 28** *Int’l News Service*, 248 U.S. at 240.
- 29** *Int’l News Service*, 248 U.S. at 245.
- 30** *Int’l News Service*, 248 U.S. at 245.
- 31** *Nat’l Basketball Ass’n v. Motorola, Inc.*, 105 F.3d 841 (2d Cir. 1997).
- 32** The NBA wanted to stop Motorola because it had negotiated a similar deal with a company called SportsSticker. Although the court ultimately ruled against the NBA, it held that similar forms of legal actions concerning intellectual property were not preempted by the Copyright Act if they met the following requirements:
- (1) a plaintiff gathers information at a cost;
  - (2) the information is time-sensitive;
  - (3) the defendant’s use of the information is “free-riding”;
  - (4) the defendant is offering a service in direct competition with the plaintiff’s;
  - (5) the ability to free ride on the plaintiff’s efforts “would so reduce the incentive to produce the product or service that the existence or quality would be substantially threatened.”
- See *Nat’l Basketball Ass’n*, 105 F.3d at 845.
- 33** *Nat’l Basketball Ass’n*, 105 F.3d at 845. Based on this precedent, in 2008 the Second Circuit federal judge overseeing *All News Headlines* upheld AP’s right to proceed to trial.
- The Second Circuit ruling came as a shock to many media commentators. TechCrunch’s Erick Schonfeld asked:
- “But what constitutes “hot news” in an age of instant communications? And how long does it last. In 1918, “hot news” traveled by mail and telegraph. It could last hours or even days. Today, a true scoop lasts for about a minute. The AP would have to show instances of articles where not only the AP broke the news, but was the only outlet to get the original story—something rare and rarer when anyone can publish news over the Internet.... Hot news is a concept best left in the twentieth century.” Erick Schonfeld, *Hot News: The AP Is Living In The Last Century*, TECH-
- CRUNCH.COM, Feb. 22, 2009, <http://techcrunch.com/2009/02/22/hot-news-the-ap-is-living-in-the-last-century/>.
- 34** *Barclays Capital, Inc. v. TheFlyOnTheWall.com*, 700 F. Supp. 2d 310 (S.D.N.Y. 2010) (*TheFlyOnTheWall.com*).
- 35** *TheFlyOnTheWall.com*, 700 F. Supp. 2d at 337.
- 36** Brief Amici Curiae of Advance Publications, Inc., et al., *Barclays Capital Inc., et al. v. TheFlyOnTheWall.com*, Second Circuit Court of Appeals, No. 10-1372, June 21, 2010 (*News Organization Barclays Amici Brief*), available at [http://www.rcfp.org/newsitems/docs/20100623\\_163140\\_amicus\\_brief.pdf](http://www.rcfp.org/newsitems/docs/20100623_163140_amicus_brief.pdf).
- 37** See, e.g., Melissa Lipman, *Google, Twitter Back Removal Of ‘Hot News’ Injunction*, LAW 360, June 22, 2010, <http://www.law360.com/topnews/articles/176629/google-twitter-back-removal-of-hot-news-injunction>.
- 38** A Future of Media submission from the Corporation for Public Broadcasting, PBS, NPR and the Association of Public Television Stations reminded the Commission that “the public interest in continued access to information, education and enlightenment calls for a fair and reasonable balance” between the “sometimes competing interests” of copyright owners and users. CPB Comments at 20.
- Native Public Media, an association of tribal radio stations, cautioned that any congressional amendments providing copyright exemptions to public broadcasting organizations for online distribution of public media should afford protection to the “intellectual property rights of Native Americans regarding information about tribal history, culture, and other information deemed proprietary by individual Tribal Nations.” Native Public Media Comments at 7.
- Patricia Aufderheide and Peter Jaszi sent a reminder that “Copyright and creativity are tightly linked. All cultural expression everywhere, including all media, draws upon existing culture; otherwise, it would be incomprehensible.” Aufderheide/Jaszi Comments at 1.
- New Media Rights, a San Diego-based group offering education and discussion about new media technologies and the law and policies affecting users of new media, wrote to voice its support for efforts to ensure that fair use protects incidental uses of content and personal, noncommercial uses of content. New Media Rights Comments in re *FOM PN*, filed May 7, 2010, at 4–5.
- Comments submitted on behalf of two dozen community public interest groups by the New America Foundation, Free Press, and the Media Access Project brought up their concern with restrictive interpretations of fair use and misuse of the DMCA’s notice-and-takedown process against non-infringing works, which they say threaten both the availability of source material and the persistent availability of citizen journalism and nonprofit media content.
- “Innovators in digital news distribution, the builders of feed-readers, aggregators, podcasters and -catchers, and social discovery services also depend on the limits of copyright to bring media to news consumers in novel ways...We anticipate that the Commission will receive recommendations for the expansion of copyright protections. We recommend that you consider those critically, in light of the unintended negative consequences of previous copyright expansions.”
- Access Humboldt Joint Comments at 116.
- 39** Aufderheide/Jaszi Comments at 2.
- 40** Patricia Aufderheide & Peter Jaszi Comments in re *FOM PN*, filed Apr. 27, 2010 (Aufderheide/Jaszi Comments), at 3.

## 35 Recommendations

- 1** National Religious Broadcasters. Comments in re *FOM PN* (FCC Launches Examination of the Future of Media and Information Needs of Communities in a Digital Age, GN Docket No. 10-25, Public Notice, 25 FCC Rcd 384 (2010) (*FOM PN*), filed February 18, 2010 (NRB Comments) at 12.
- 2** The Commission has recently taken a number of steps to move its processes away from reliance on paper and to being more reliant on digital technology. For instance the Commission has reduced the number of paper copies of pleadings that must be filed and moved towards electronic notification of docket filings and fees.”
- 3** H.R. 2392, § 2(a), 111th Cong., 1st Sess. (2009), available at <http://www.govtrack.us/congress/billtext.xpd?bill=h111-2392>.
- 4** *Id.*, at § 2(b).
- 5** Federal Trade Commission Staff. 2010. “Discussion Draft: Potential Policy Recommendations to Support the Reinvention of Journalism,” at 31. Accessed Dec. 1, 2010. <http://www.ftc.gov/opp/workshops/news/jun15/docs/new-staff-discussion.pdf>.
- 6** *Unappreciated Benefits of Advertising and Commercial Speech*, by Adam Thierer, Mercatus on Policy, Mercatus Center, George Mason University, January 2011, available at [http://mercatus.org/sites/default/files/publication/unappreciated-benefits-of-advertising-and-commercial-speech\\_0.pdf](http://mercatus.org/sites/default/files/publication/unappreciated-benefits-of-advertising-and-commercial-speech_0.pdf).
- 7** Rev. Rul. 77-4, 1977-1 C.B. 141.
- 8** Letter from Eric Newton, V.P., Journalism Program, John S. and James L. Knight Foundation, to Steven Waldman, FCC (May 7, 2010).
- 9** Letter from Eric Newton, V.P., Journalism Program, John S. and James L. Knight Foundation, to Steven Waldman, FCC (May 7, 2010).



