United States Government Accountability Office

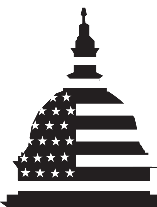
GAO

Report to Congressional Requesters

March 2010

MEDIA PROGRAMMING

Factors Influencing the Availability of Independent Programming in Television and Programming Decisions in Radio


GAO

GAO-10-369

Highlights of GAO-10-369, a report to congressional requesters

March 2010

MEDIA PROGRAMMING

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Why GAO Did This Study

The media industry plays a vital role in informing and entertaining the public. Media ownership and the availability of diverse programming have been a long-standing concern of Congress. Despite numerous programming choices in television and radio available to the public, some studies have reported that independently produced programming—that is, programming not affiliated with broadcast networks or cable operators—has decreased through the years. This requested report discusses (1) the extent to which the sources of television programming have changed over the last decade, (2) the factors industry stakeholders identified as affecting the availability of independent television programming, and (3) the factors industry stakeholders identified as influencing programming decisions in radio. To address these issues, GAO analyzed data from the Federal Communications Commission (FCC) and industry on sources of broadcast television programming in prime time (weeknights generally from 8:00 p.m. to 11:00 p.m.) and companies owning cable networks, as well as radio format data to determine programming variety. GAO also reviewed legal, agency, and industry documents and interviewed industry stakeholders, public interest groups, and others.

GAO provided FCC with a draft of this report for comment. In response, FCC provided technical comments that we incorporated where appropriate.

View GAO-10-369 or key components.
For more information, contact David J. Wise at (202) 512-2834 or wised@gao.gov.

What GAO Found

The sources of broadcast and basic cable television programming have changed little in recent years. As a source of programming for prime time television, major broadcasters (ABC, CBS, Fox, and NBC) and their affiliated studios produced the majority of programming in each of the selected years that GAO analyzed. In particular, GAO found major broadcasters produced about 76 to 84 percent of prime time programming hours. The remaining programming came from independent producers, which are not affiliated with the major broadcasters. Since basic cable networks are also a source of television programming, GAO analyzed the ownership of those networks as an indicator of which entities control the television programming. On the basis of GAO analysis of ownership in the 20 most widely distributed basic cable networks, major broadcasters and companies affiliated with both major broadcasters and cable operators have owned half or more of the top 20 cable networks for each year reviewed. Combining ownership in both prime time programming and basic cable networks, the major broadcasters have controlled a significant share of television programming over the last decade.

Stakeholders primarily cited economic factors as influencing the availability of independent television programming. In this regard, producers GAO contacted stated that developing and producing broadcast television programs is costly and financially risky. And while funds need to be secured early on in the development and production process to finance these costs, independent producers stressed that it is difficult to obtain financing for production costs. For cable television (viewed through a subscription video service), representatives of independent cable networks said a new network faces considerable uncertainty as to whether it will be distributed by a sufficient number of video providers (such as Comcast and DirecTV) to make its operations viable. By contrast, cable networks developed by cable operators or major broadcasters are able to negotiate distribution of the network with video providers as part of an agreement for distribution of an established affiliated network.

For radio, stakeholders cited economic factors, local community interests, and consolidation in the radio industry as influences on programming decisions. Among both commercial and public radio stations, stakeholders said that programming decisions are based on listeners' interests in a given market. GAO found that within two of the three largest local markets nationwide, many of the most common local radio formats differ from the most common radio formats nationally, indicating that programming decisions are affected by local community interests. Over the last 10 years there has been consolidation in the radio industry; however, stakeholders' opinions varied about the extent to which consolidation has affected programming decisions. While some studies show that consolidation has led to homogenized radio playlists in different markets nationwide, GAO's analysis shows diverse formats and preferences are reflected within individual local markets.

Contents

Letter 1

Background 5
Sources of Broadcast and Cable Television Programming Have Changed Little in the Last Decade 12
Stakeholders Cited Economic Factors, Technical Issues, and Legal Conditions as Affecting the Availability of Independent Television Programming 18
Stakeholders Cited Various Factors as Influencing Programming Decisions, Including Format and Playlist Selection, in Commercial and Public Radio 25
Agency Comments 35

Appendix I **Objectives, Scope, and Methodology** 37

Appendix II **Registered Marks Used in the Report** 42

Appendix III **Comments from the Federal Communications Commission** 44

Appendix IV **GAO Contact and Staff Acknowledgments** 46

Tables

Table 1: Glossary of Terms 5
Table 2: Top 10 Radio Station Owners in 2009 and Number of Stations Owned in 2007-2009 9
Table 3: Percentage of Format Overlap among Top 10 Radio Station Owners in 2009 34
Table 4: Experts and Industry Stakeholders We Contacted 38

Figures

Figure 1: Television Programming in Broadcast and Subscription Video Service 6

Figure 2: Annual Broadcasting Program Development Process for Scripted Programming 7
Figure 3: Percentage of Broadcast Prime Time Program Hours Provided by Major Broadcaster-Affiliated Studios and Independent Producers for 2002, 2005, 2008, and 2009 13
Figure 4: Top Five Owners of Basic Cable Networks and the Number of Cable Networks They Have Owned from 1998 to 2008 15
Figure 5: Number of Networks by Ownership Interest in the Top 20 Most Widely Distributed Basic Cable Networks 16
Figure 6: Most Popular Formats Nationwide in 2009 28
Figure 7: Most Popular Formats in Arbitron Market 1 (New York) and Arbitron Market 3 (Chicago) in 2009 30
Figure 8: Top 10 Formats among Commercial and Public Radio Stations 32
Figure 9: Share of Commercial Radio Stations Owned by Top 10 Radio Station Owners for Selected Years 33

Abbreviations

BIA*fn*	Broadcast Investment Analyst Financial Network
FCC	Federal Communications Commission
MSA	Metropolitan Statistical Area
NPR	National Public Radio

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United States Government Accountability Office
Washington, DC 20548

March 17, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Herbert Kohl
Chairman
Subcommittee on Antitrust, Competition Policy, and Consumer Rights
Committee on the Judiciary
United States Senate

The Honorable Byron L. Dorgan
United States Senate

The media industry plays an important role in educating and entertaining the public. Given this vital role, the ownership of media outlets and the availability of diverse programming in the media have been a long-standing concern of Congress. One such concern, in particular, is that with consolidation in the media industry, the percentage of independently produced programming content on media outlets has decreased, thus limiting the number of distinct media voices and selection choices for the public. [1] In 1995, the Federal Communications Commission (FCC) repealed the Financial-Syndication Rules, thereby allowing broadcast networks to have ownership interests in television programs during prime time.[2] In addition, the Telecommunications Act of 1996, among other things, directed FCC to conduct a rulemaking to evaluate local limits of ownership in television and relaxed the ownership limits in local radio stations, leading to consolidation in some segments of the media industry.[3] For example, prior to the act, the largest radio station owner owned fewer

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[1]Independently produced programming has no affiliation with broadcast networks, cable operators, or satellite providers.

[2]*In re Review of the Syndication and Financial Interest Rules, Sections 73.659 –73.663 of the Commission's Rules*, F.C.C. 95-382, 10 F.C.C.R. 12165, 10 F.C.C. Rcd. 12165, (1995).

[3]Pub. L. No. 104-104, Title II, § 202, 110 Stat. 110, 111-112, as amended by Pub. L. No. 108-199, Div. B, Title VI, § 629, 118 Stat. 3, 99-100 (2004) (47 U.S.C. § 303 Note).

than 65 radio stations, whereas in 2009, the largest radio station owner owned over 800 stations, raising concerns about the variety of programming available on the radio. Although the current media environment provides the public with numerous programming choices in television and radio, and over the Internet, some media industry stakeholders and studies have reported that independently produced programming has decreased through the years as a result of media consolidation.

You requested that we study the state of programming for television and radio and the factors influencing programming decisions. As such, we reviewed (1) the extent to which the sources of programming in television have changed over the last decade, (2) the factors and conditions industry stakeholders identified as affecting the availability of independent programming in television, and (3) the factors industry stakeholders identified as influencing programming decisions in radio.

To determine the extent to which the sources of programming in television have changed during the last decade, we analyzed available data on two key sources of television programming—companies producing prime time television programs for major broadcast networks[4] and companies with basic cable network[5] ownership interests over the last decade. We focused on programs broadcasted on prime time because that is the block of time on television with generally the most viewers, and in turn these programs generate the most advertisement revenue for networks.[6] To determine which companies produced prime time broadcast television programming, we classified prime time programs into two categories: (1) programs

[4]A broadcast network is an organization that may produce and distribute television programs, such as drama, comedy, reality programs, and news, to the public through local television stations. We refer to the broadcast networks (ABC, CBS, Fox, and NBC) as major broadcasters in this report, although the term "broadcasters" can include local television stations that are not owned by the major broadcast networks. Throughout this report, we refer to media firms by their popularly known acronyms or names, some of which like ABC, CBS, Fox, and NBC, are registered trade or service marks. Appendix II contains a list of registered marks appearing in this report.

[5]A basic cable network is an organization that may produce television programs, which are distributed to the public through a subscription video service.

[6]To analyze the fall prime time schedule in each year, we included programs on the schedule Monday through Saturday from 8 p.m. to 11 p.m., and on Sunday from 7 p.m. to 11 p.m. Because some prime time program schedule changes or cancellations can occur in the fall prime time schedule, we used the debut schedule of programs that appeared in September of each selected year.

produced by major broadcasters, and (2) programs produced by independent production companies not affiliated with a major broadcaster (independent producers). Because annual data that track program production in these categories are limited, we analyzed the fall prime time schedules in 2002, 2005, 2008, and 2009 and classified them in the two categories. We selected these years based on available data from FCC's previous study that contained data in the two categories for 2002. We then conducted our analysis for every third year and classified the programs into the two categories. We also analyzed the 2009 fall prime time schedule to provide the most current data available. Since basic cable networks are also a source of television programming, we analyzed the ownership of those networks as an indicator of which entities control the television programming on the networks. Specifically, we used data from SNL Kagan to determine the types and the number of companies with ownership interests in basic cable networks that were available from 1998 to 2008, and the companies that owned the largest number of basic cable networks during this period.[7] Of the 20 most widely distributed basic cable networks, as measured by the number of subscribers for each year from 1998 to 2008, we determined how many were affiliated with major broadcasters, cable operators, and other media companies and how many were unaffiliated independent cable networks.

To determine the factors industry stakeholders identified as affecting the availability of independent programming in television, and as influencing programming decisions in radio, we met with FCC officials and interviewed or obtained written comments from selected academic experts and industry stakeholders and associations, including representatives from broadcasting (such as ABC and Fox), cable and satellite (such as Comcast and DirecTV), commercial and public radio (such as Clear Channel Communications and National Public Radio), independent programming groups (such as Future of Music Coalition and Independent Film and Television Alliance), and public interest groups (such as Consumers Union and Free Press). See appendix I for a complete list of academic experts and industry stakeholders we contacted. We selected experts and industry stakeholders based on published studies, representation of the different segments of the media (i.e., broadcast and cable televisions and radio), and recommendations from other industry stakeholders; we intended to obtain diverse views and did not weight

[7]SNL Kagan Media and Communications is a private research company that collects and maintains data on cable networks.

views of the experts and stakeholders but grouped similar stakeholders that represent a segment of the media industry. We also reviewed the relevant laws, regulations, and literature, including comments filed by stakeholders in various FCC proceedings. Additionally, for radio, we focused on radio station formats indicating the types of programming a station might play.[8] To conduct this analysis, we obtained historical data on the distribution of radio stations by their primary formats nationwide and in local markets from 1999 to 2003 and station-level format data from the Broadcast Investment Analyst Financial Network's (BIA*fn*) Media Access Pro Database for commercial and public radio stations from 2004 to 2009. Although the BIA*fn* format data provide a general overview of the type of programming aired on a given radio station, they do not identify specific programming content that is played on the station. We did not assess independently produced programming on radio because a national playlist database identifying record label affiliation is not available. We analyzed the format data to determine programming variety and distribution of radio stations by their format nationwide and in two selected local markets in 2009.[9] For local markets, we selected New York and Chicago because they are similar in size with different demographic populations. We also examined 2009 format data for commercial and public radio stations and identified the top 10 most popular formats (based on the number of stations with the particular formats available) for each group nationwide.[10] To examine the extent of programming variety among radio stations, we selected the top 10 radio station owners—that is, owners who own the most radio stations nationwide—and examined similarities and differences in formats for each owner's radio stations in the same market. To identify the top 10 radio station owners in 1996-1998, 2000-2002, 2007, and 2009 we used data from FCC reports and the BIA*fn* database. The top 10 radio station ownership data were not available in 2003-2006 and 2008. We also reviewed studies on radio programming for information on radio station playlists and the extent to which playlists for

[8]A radio station format refers to the type of programming content on a radio station, such as Adult Contemporary, Country, Jazz, News and Information, Sports, Talk, and so forth.

[9]Local markets, also known as Arbitron markets, are geographically contiguous areas in which Arbitron Inc. surveys the listenership of radio stations for rating. These markets align with the Office of Management and Budget's Metropolitan Statistical Area (MSA) definitions. As of August 2009, there were 300 Arbitron markets.

[10]Public radio stations are locally owned and operated stations that receive some or all of their funding from listener contributions, the federal government, or other sources. Some public radio stations are affiliated with National Public Radio, which is a national radio service that provides station programming content.

each owner's radio stations overlap in the same market. We determined that the television and radio data we obtained were sufficiently reliable for the purposes of this report.

We conducted our work from May 2009 to March 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product. Appendix I contains a more detailed discussion of our objectives, scope, and methodology.

Background

The media industry has its own terminology, and the following glossary provides the definition of terms used throughout this report:

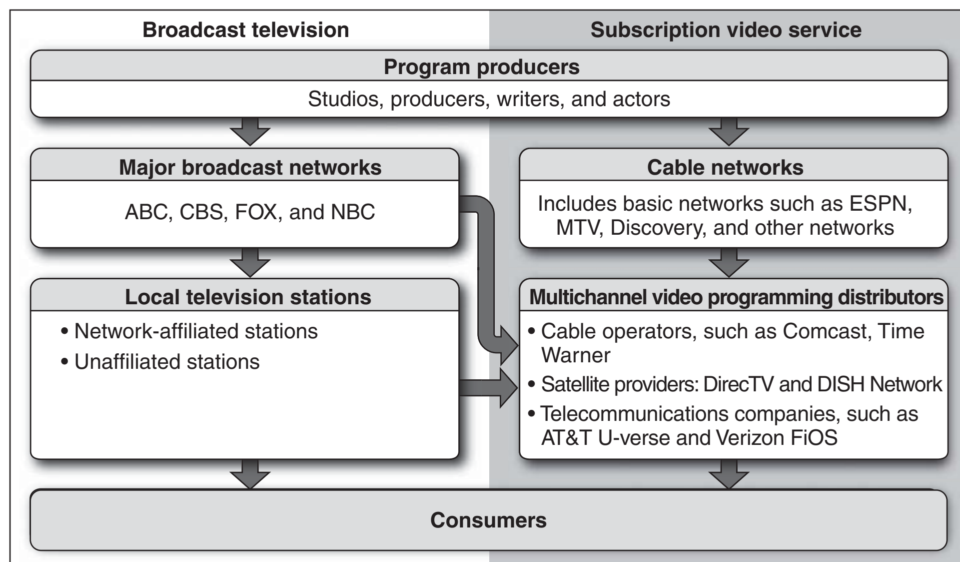
Table 1: Glossary of Terms

Term	Definition
Basic cable network	An organization that may produce television programs, which are distributed to the public through a subscription video service.
Independent cable network	An organization that is not affiliated with major broadcasters, cable operators, or satellite providers.
Radio station format	Type of programming content on a radio station, such as Adult Contemporary, Country, Jazz, News and Information, Sports, Talk, and so forth.
Public radio stations	Locally owned and operated stations that receive some or all of their funding from listener contributions, the federal government, or other sources. Some public radio stations are affiliated with National Public Radio, which is a national radio service that provides station programming content.
Multichannel video programming distributors (referred to as video providers in this report)	Entities such as a cable operator, a direct broadcast satellite service, or telecommunications company that distributes video programming to subscribers for a subscription fee.
Scripted programming	Programs that are developed based on written scripts by writers and producers and include different program genres, including comedy and drama.
Nonscripted programming	Programs that are not based on written scripts, such as reality programs, game shows, and sports.
Arbitron radio market	A geographically contiguous area in which the listenership of radio stations is surveyed for ratings by Arbitron Inc.

Source: GAO based on FCC and industry information.

Typically, the general public views television programming through broadcast or subscription video service. Broadcast television provides free over-the-air programming to the public through local television stations. By contrast, consumers pay fees for subscription video service to video providers, including cable operators, satellite providers, or telecommunications companies. Programming for broadcast and subscription video service differs, as illustrated in figure 1.

Figure 1: Television Programming in Broadcast and Subscription Video Service



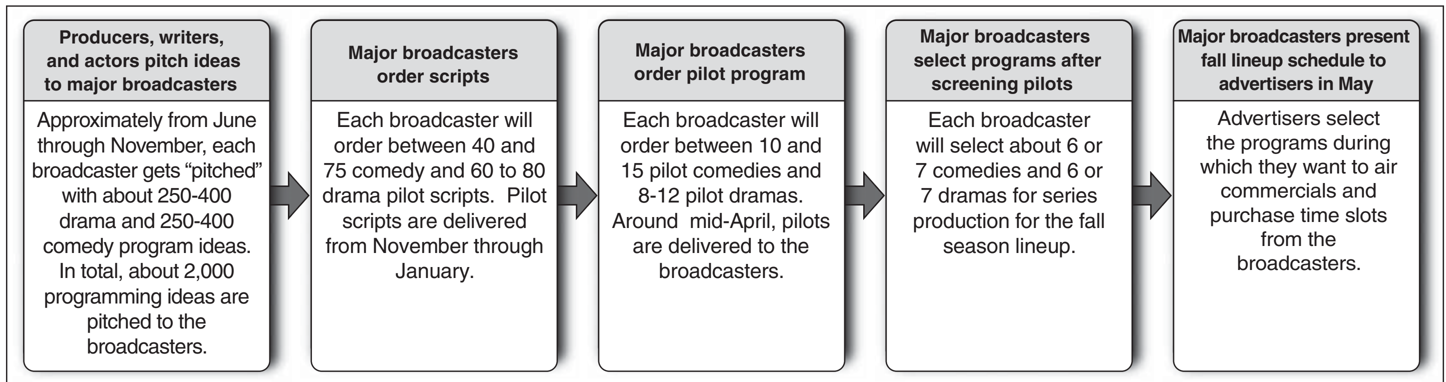
Source: FCC and GAO.

Broadcast television consists mainly of four major broadcast networks (ABC, CBS, Fox, and NBC) and several smaller networks, such as the CW Television Network, MyNetworkTV, and ION Television. Each of the four major broadcasters owns and operates some local television stations; other stations can be affiliated with one of the major broadcasters or, as is the case with public television, unaffiliated with the major broadcasters.[11] The four major broadcasters provide scripted and nonscripted programming to the local television stations that is produced either by the major broadcasters' affiliated production companies or by independent producers. The development process of scripted programs (i.e., drama and

[11]Affiliated stations are stations not owned by major broadcasters but grant broadcasters use of specific time periods for network programming and advertisement, for compensation.

comedy series) for prime time programming involves steps that allow major broadcasters to periodically assess the program as it develops, as described in figure 2.

Figure 2: Annual Broadcasting Program Development Process for Scripted Programming



Source: GAO analysis of major broadcasters' data.

In contrast, the development process for nonscripted programs, such as reality programs and game shows, does not involve most of the steps shown in figure 2. Scripts and pilots do not need to be developed for nonscripted programs, making them less expensive to produce than scripted programs.

For subscription video service, video providers obtain a variety of programming from both broadcasters (which can include major networks and local stations) and cable networks.[12] Video providers must negotiate with broadcasters and cable networks to air and distribute their programming. Negotiations include the price, terms, and conditions for distribution on the video providers' systems. Video providers have the discretion to select which cable networks will be available and, subject to negotiation, how they will be packaged and marketed to subscribers.[13]

[12]Video providers offer subscribers television programming through different service tiers—that is, bundles of networks grouped into a package. A basic tier, which is the lowest level of cable services, includes the local broadcast stations. Video providers also offer an expanded basic service tier, which expands upon the basic service. Additionally, subscribers can also purchase digital tiers and premium pay channels, such as HBO and Showtime, for an additional fee.

[13]Video providers must also pay licensee fees—usually on a per subscriber basis—for the rights to carry cable networks and their respective programming.

According to a recent FCC report, more than 500 cable networks exist, including national cable networks (such as CNN, Discovery Channel, ESPN, and Fox News) as well as regional cable networks (such as the California Channel, Comcast SportsNet Chicago, and the YES Network). Cable networks can provide niche programming—that is, programming that targets specific demographics. For instance, Lifetime Network offers programming that specifically targets women, while MTV Network targets programming for the 18-to-34 age demographic.

The general public receives radio programming through commercial and public radio stations. Over the last 5 years, the number of full-power radio stations has increased from 13,590 in 2005 to over 14,600 in 2009, with the vast majority of these stations being commercial (78 percent, or 11,430 stations) and the remainder being public (22 percent, or 3,198 stations).[14] Following passage of the Telecommunications Act of 1996, concentration in radio station ownership increased significantly because of the act's relaxation of national and local multiple radio ownership limits.[15] For example, in 1996, the two largest radio station owners held fewer than 65 radio stations each. By contrast, as of 2009, Clear Channel Communications Inc. owned over 800 radio stations (down from 1,135 in 2007), and the second largest group owner, Cumulus Broadcasting LLC, owned about 300 radio stations (see table 2).[16] In 2009, the top 10 radio station owners owned 20 percent of all commercial radio stations. In addition, each radio station has a primary programming format designation that describes the programming content on that station. For example, in 2009, radio station KQSD in Lowry, South Dakota's, primary format was Classical, its secondary format was News, and its tertiary format was Jazz. As such, the station primarily plays Classical music, but it also provides some news and plays some Jazz.

[14]The number of stations includes full-service commercial and public stations and excludes low-power FM stations and stations with construction permits.

[15]Pub. L. No. 104-104, §202(h), 110 Stat. 56. In response to the directive in the 1996 Telecommunications Act, FCC eliminated the nationwide radio ownership limits rule.

[16]In 1999, CapStar Broadcasting and Chancellor Media Corporation merged and were later acquired by Clear Channel Communications Inc., which subsequently became the largest radio station owner, with over 1,000 radio stations in 2007. In 2006, Clear Channel sold off several of its radio stations.

Table 2: Top 10 Radio Station Owners in 2009 and Number of Stations Owned in 2007-2009

Radio station owners	2007	2008	2009
Clear Channel Communications Inc.	1,135	694	847
Cumulus Broadcasting LLC	306	306	305
Educational Media Foundation	180	205	253
Citadel Communications	212	204	205
American Family Association Inc.	126	130	137
CBS Radio	140	140	134
Entercom	120	115	112
Salem Communications Corporation	98	97	93
Saga Communications Inc.	89	91	91
Cox Radio Inc.	79	79	85

Source: GAO analysis of BIA*fn* data.

FCC awards licenses to television and radio stations to use the airwaves expressly on the condition that licenses serve the public interest and licensees are responsive to the needs of its local community. Toward this end, FCC has long identified localism, competition, and diversity as its three core goals of media policy. Within this framework, FCC has considered the public interest best served by promoting free expression of diverse views and has promoted program diversity by limiting the number of broadcast outlets any one entity may own. As such, individual radio and television stations generally have discretion to select programming and to determine how best to serve the local community audience.

Since the mid-1990s, FCC has amended or repealed a number of rules and regulations affecting the media industry. In 1995, FCC repealed the Financial Interest and Syndication Rules (Fin-Syn rules)[17] so that a major broadcaster can own programming that it airs during prime time hours, as well as own syndication rights to programs purchased from independent

[17]*In re Review of the Syndication and Financial Interest Rules, supra.* The Fin-Syn rules were adopted in 1970 to limit broadcasters' control over television programming and restricted their ability to own and syndicate programming.

producers.[18] Following the repeal of the Fin-Syn rules, each of the four major broadcasters merged with, or acquired an ownership interest in, at least one major production studio. For instance, the Walt Disney Company acquired ABC and developed ABC Television Studio; CBS became affiliated with the studio Paramount Television; and NBC merged with Universal Pictures. In addition, News Corporation—which launched the Fox Broadcasting Network in 1986—owns several production studios, including 20th Century Fox. FCC is required to review media ownership rules every 4 years and determine whether those rules are necessary in the public interest.[19]

Although FCC regulates television primarily through ownership rules and station licensing, some of its other rules also affect aspects of television programming. Some of the key rules that affect programming and carriage were adopted in 1992 and are summarized below.[20]

- **Retransmission consent and must carry rules.**[21] Under these rules, every 3 years local commercial television stations (including those owned and operated by the major broadcasters) must decide whether to negotiate individual retransmission consent agreements with each cable operator in its designated market area for compensation in exchange for the cable operator's right to carry the broadcast signal.[22] In lieu of negotiation,

[18]Broadcasters can request syndication rights for programs when they are negotiating the financing of programs. If a program remains on the network long enough to accumulate about 80 to 100 episodes, then the program can be syndicated, that is, offered and sold to local television stations or cable networks for the right to broadcast the programs again during non-prime time hours.

[19]Telecommunications Act of 1996, § 202, as amended (47 U.S.C. § 303 Note).

[20]The Cable Televisions Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat 1460, established these rules, placed in Sections 325, 614, and 616 of the Communications Act, as amended (47 U.S.C. § 534). FCC then established regulations to put into effect those statutory provisions. (In addition, the act established the program access rule to prevent a vertically integrated cable operator from discriminating in the process, terms, and conditions that it makes programming available to unaffiliated distributors or have exclusive access to the programming in which it has an ownership interest. Because stakeholders we interviewed did not identify how this rule affects independent programming, we did not include a discussion of the issue.)

[21]Communications Act of 1934, § 614, as amended (47 U.S.C. § 534); 47 C.F.R. §§ 76.56, 76.64.

[22]Compensation can take the form of cash payments, the video provider's purchase of advertising time on the broadcast station, the broadcaster being given free advertising time on the video provider's system, the video provider's carriage (and tier placement) of other program networks owned by the broadcaster, or some combination of these.

stations may elect to require each cable operator in its designated market area to carry its signal (i.e., must carry), without receiving compensation for such carriage.

- **Program carriage rule.**[23] This rule prevents a video provider from requiring a financial interest in programming or coercing a programmer (i.e., cable network) to grant exclusive rights as a condition for carriage, or from discriminating against an independent cable network in a way that unreasonably restrains the ability of the network to compete.

- **Commercial leased access rule.**[24] Under this rule, cable operators are required to set aside a certain number of channels, depending on the size of the cable system, that can be leased out to independent cable networks for access on its distribution system.[25] Congress has required FCC to (1) determine the maximum reasonable rates that a cable operator may establish for commercial use of the designated channels; (2) establish reasonable terms and conditions for such use, including those for billing and collections; and (3) establish procedures for the expedited resolution of disputes concerning rates or carriage.[26]

[23]Communications Act of 1934, § 616, as amended (47 U.S.C. § 536); 47 C.F.R. §§ 76.1301, 76.1302.

[24]Communications Act of 1934, § 612, as amended (47 U.S.C. § 532); 47 C.F.R. §§ 76.970, 76.971.

[25]Cable operators with 36 to 54 activated channels must set aside 10 percent, while cable operators with 55 to 100 activated channels must set aside 15 percent of those channels not otherwise required for use or prohibited from use by federal law or regulation. Cable operators with more than 100 activated channels must designate 15 percent of such channels for commercial use.

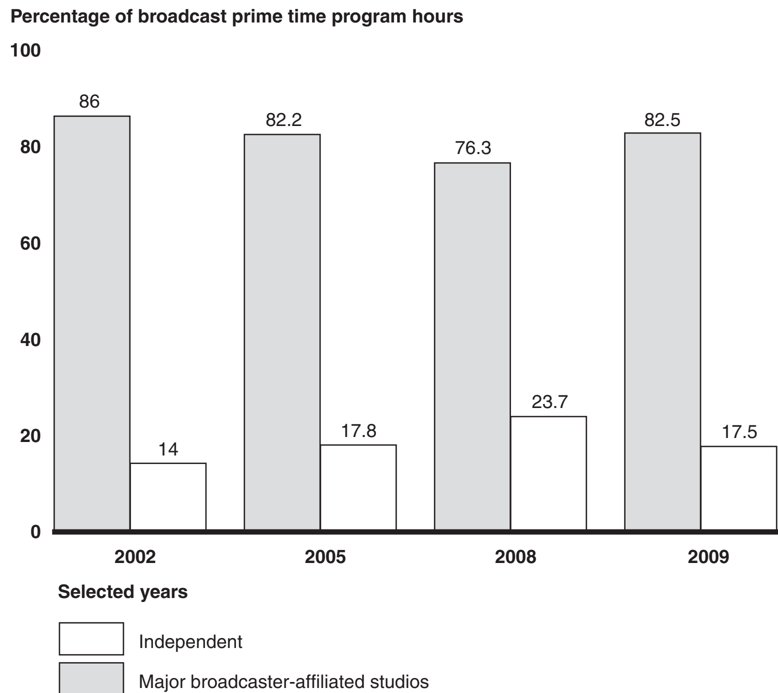
[26] The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 9, 106 Stat. 1460 (codified at 47 U.S.C. § 532)

Sources of Broadcast and Cable Television Programming Have Changed Little in the Last Decade

Major Broadcasters and Their Affiliated Studios Have Produced the Majority of Broadcast Prime Time Programming

Major broadcasters and their affiliated studios have produced the majority of broadcast prime time programming in each of the selected years that we analyzed. In particular, major broadcaster-affiliated studios produced from 76 to 84 percent of broadcast prime time programming hours, with the remaining hours coming from independent producers. As shown in figure 3, in most of the years that we reviewed, the share of major broadcaster-produced prime time programs did not change significantly. However in 2008, the prime time programming from independent producers increased slightly compared with such programming in 2005.

Figure 3: Percentage of Broadcast Prime Time Program Hours Provided by Major Broadcaster-Affiliated Studios and Independent Producers for 2002, 2005, 2008, and 2009



Source: GAO analysis of data from *FCC Media Ownership Working Group Report* and *International Television & Video Almanac* used by permission from Quigley Publishing Company.

Note: For each of the selected years, the independent category includes studios, regardless of their size, that were not affiliated with a major broadcaster. For example, Universal Television Studios merged with NBC in 2004; therefore it was included in the independent category in 2002 and in the broadcaster category in the other selected years. Sony Pictures Television Studio is not affiliated with a major broadcaster, so it is included in the independent category for shows it produced in the selected years.

For the fall 2009 broadcast prime time schedule, the top five program producers as measured in prime time program hours were studios affiliated with ABC, CBS, Fox, NBC, and Warner Bros.[27] These producers provided approximately 76 total programs, amounting to about 82 percent, in the fall prime time schedule. We identified 11 prime time programs that fell into the independent producer category for the fall 2009 prime time schedule. Of those, Sony Pictures Television Studio produced 3 programs,

[27]Warner Bros. is affiliated with the CW Television Network.

and eight other independent producers each supplied a program. Although most of the programs produced during the years we reviewed were affiliated with major broadcasters, a previous FCC-commissioned study indicated that the number and affiliation of prime time programming producers has changed significantly since the repeal of the Fin-Syn rules in 1995.[28] The study found that in 1995, the top five program producers provided about 54 percent of prime time programming, with three producers affiliated with a major broadcaster.

Numerous Companies Own Cable Networks, but Major Broadcasters and Their Affiliated Companies Have Continued to Own about Half of the Most Widely Distributed Cable Networks

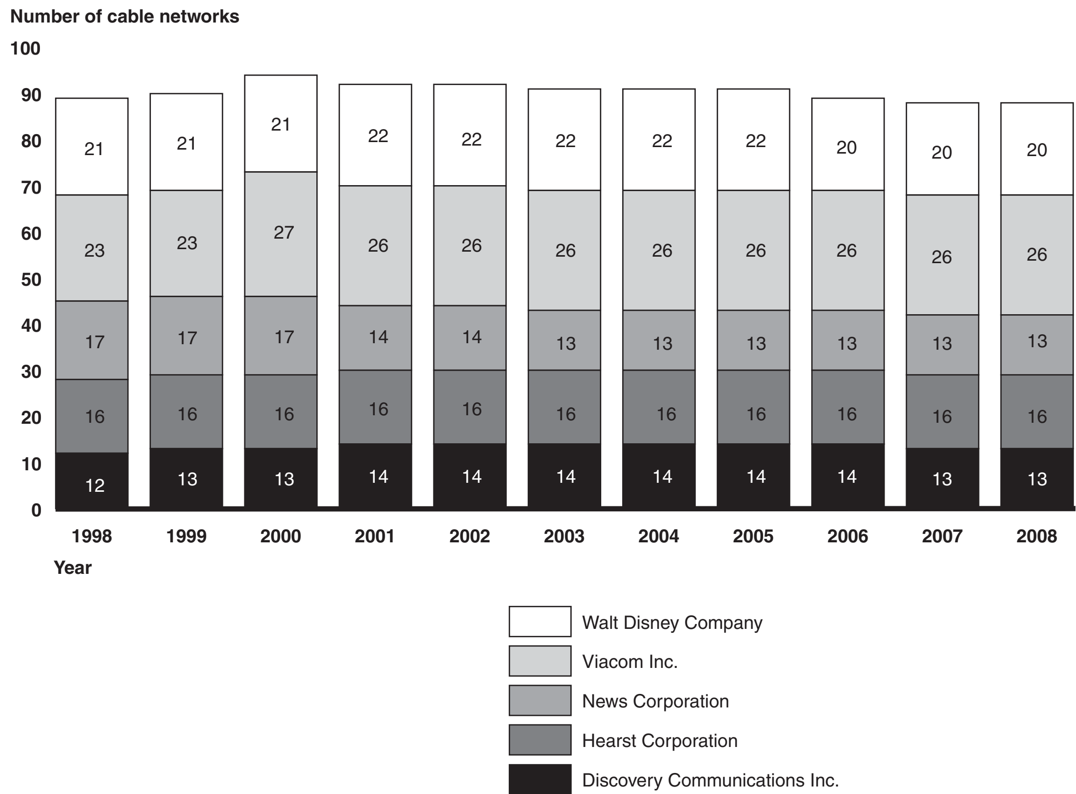
Since basic cable networks are also a source of television programming, we analyzed the ownership of those networks as an indicator of which entities control the television programming on the networks. On the basis of our analysis of ownership interests over the last decade, we found that a number of companies have ownership interests in a basic cable network (cable network), but a much smaller group of companies have ownership interests in 5 or more such networks.[29] From 1998 to 2008, 94 companies on average have owned an interest in at least 1 cable network. The number of companies has declined somewhat over time, however, from a high of 106 companies in 1998 to a low of 81 companies in 2008.[30] Cable network owners include owners of major broadcasters, such as News Corporation, which owns Fox, and Walt Disney Company, which owns ABC; cable operators, such as Comcast and Cablevision; owners of major publications and television stations, such as Tribune Company and Hearst Corporation; and other media companies, such as Liberty Media Corporation and Scripps Networks Interactive. On the basis of our analysis of all the companies with cable network ownership interests from 1998 to 2008, we found a range of 11 to 13 companies that owned an interest in 5 or more networks in at least 1 year. Of these companies, we found a range of 5 to 7 companies that owned at least 12 cable networks over the decade. As shown in figure 4, the number of basic cable networks owned by these top 5 companies has not changed significantly over the last 11 years.

[28]Mara Einstein, "Program Diversity and the Program Selection Process on Broadcast Network Television," *Federal Communications Commission Media Ownership Working Group*, Washington, D.C., September 2002.

[29]Our analysis included ownership interests in basic cable networks, which are those cable networks that often appear in the basic service tier for consumers, and did not include other cable networks carried on a digital tier and premium cable networks, such as HBO, Showtime, and Starz.

[30]During the last decade, the number of basic cable networks has ranged from about 160 to 180.

Figure 4: Top Five Owners of Basic Cable Networks and the Number of Cable Networks They Have Owned from 1998 to 2008



Source: GAO analysis of SNL Kagan data.

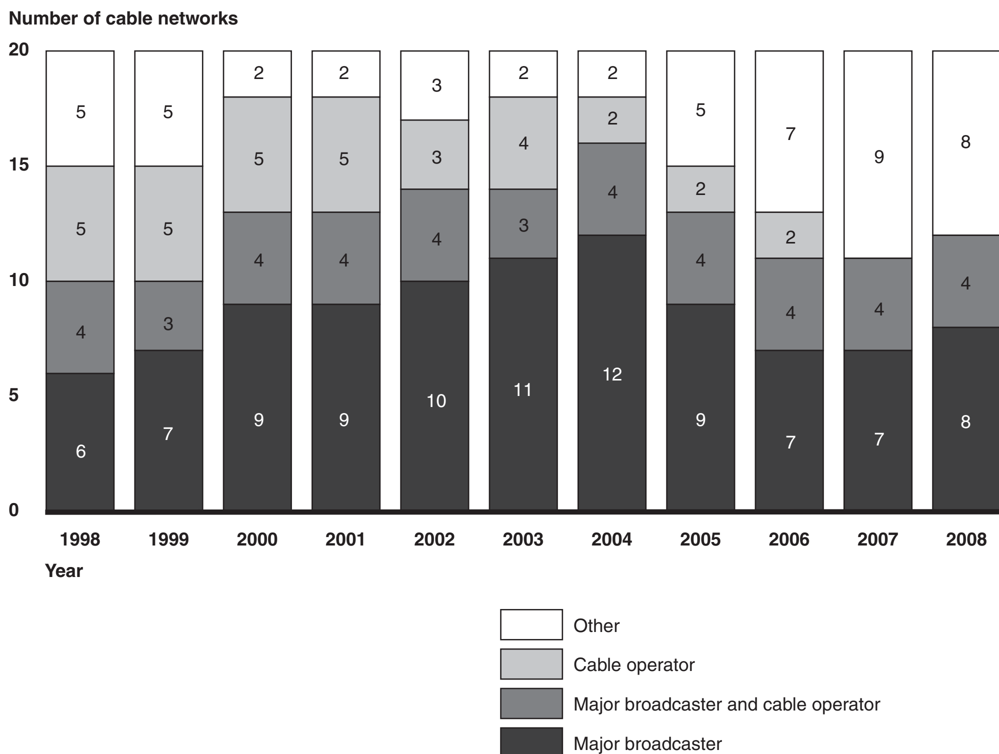
Note: The top owners were determined using company names presented in data obtained from SNL Kagan. For example, for 2008, the data indicate that NBC Universal had an ownership interest in 7 basic cable networks and General Electric (GE) had an ownership interest in 11 cable networks. Although GE is a parent company of NBC Universal, this analysis does not attribute ownership interest in the 7 NBC Universal-owned cable networks to GE. In 2008, the total number of cable networks with either a GE or NBC Universal affiliation totaled 18.

Viacom and Walt Disney Company had ownership interests in the most cable networks over the last decade, with each owning more than 20 networks in each year. None of the top five owners has increased the number of cable networks owned since 2001. In 2008, these top five companies owned about half of basic cable networks.

We analyzed ownership of the 20 most widely distributed basic cable networks, as measured by the number of subscribers for each year from 1998 to 2008 (referred to as top 20 cable networks). On the basis of our analysis, we found major broadcasters and companies affiliated with both major broadcasters and cable operators combined owned 50 percent or

more of the top 20 networks. As shown in figure 5, the number of major broadcaster-owned top 20 cable networks ranged from 6 in 1998 to a high of 12 in 2004 before declining to 8 cable networks in 2008. The number of top 20 cable networks owned by companies affiliated with both major broadcasters and cable operators remained relatively steady during the decade at 3 to 4. Cable operators without a broadcast company affiliation owned 5 of the top 20 cable networks in 1998, but this number declined over time and was zero in 2007 and 2008.

Figure 5: Number of Networks by Ownership Interest in the Top 20 Most Widely Distributed Basic Cable Networks



Source: GAO analysis of SNL Kagan data.

Note: We categorized owners that had an ownership interest in a top 20 basic cable network into four categories: major broadcaster, both major broadcaster and cable operator (or satellite provider), cable operator (or satellite provider), and other. Basic cable network owners that fell into the “other” category were generally those that could not be identified with the three other categories and included independent cable networks.

In 2008, the last year of our analysis of ownership of the top 20 cable networks, we found 8 cable networks that were affiliated with major broadcasters. For example, 2 top 20 cable networks, ABC Family Channel and Disney Channel, are owned by Disney, a company that also owns the

ABC broadcast network. Four networks in the top 20 were affiliated with both major broadcasters and cable operators. For example, in 2008, CNN, TBS, and TNT were owned by Time Warner, a company affiliated with cable operator Time Warner Cable, broadcaster CW Television Network, and television production studio Warner Bros.[31] In addition, 8 networks in the top 20 fell in the "other" category for 2008, because they did not appear to have a direct affiliation with a major broadcaster, cable operator, or satellite provider. Some of the networks in this category, including the Food Network and HGTV network, which are owned by Scripps Networks, could be identified as independent networks. Other cable networks identified as independent networks in other studies, such as the Hallmark Channel and the NFL Network, did not fall into the top 20 cable networks by subscribership in 2008 or in previous years, so they were not included in our analysis.

Combining ownership in both prime time broadcast programming and widely distributed basic cable networks, the major broadcasters have had an interest in a significant share of television programming over the last decade. Independent producers have been a source for a smaller share of prime time broadcast programming. Cable operators without a major broadcaster affiliation are not a source of prime time broadcast network programming,[32] and over the last decade their interest in the top 20 most widely distributed basic cable networks has decreased. However, they make programming decisions for the cable networks they own and determine which cable networks will be carried on their cable distribution systems. FCC annually reports on cable network programming variety and ownership as part of its video competition report, but the report does not assess the extent to which the sources of programming affect variety in television and selection choices for the public.

[31]Because of data availability, our analysis was for the 11 years from 1998 to 2008. In 2009, Time Warner announced a spin-off of its Time Warner Cable operations.

[32]In December 2009, Comcast, a cable operator, announced that it had signed a definitive agreement with GE (owner of NBC) to form a joint programming venture that will be 51 percent owned by Comcast, 49 percent owned by GE, and managed by Comcast.

Stakeholders Cited Economic Factors, Technical Issues, and Legal Conditions as Affecting the Availability of Independent Television Programming

In Broadcast Television, Economic Factors Influence the Availability of Independent Programming

Industry stakeholders we interviewed stated that the high cost of developing, producing, and distributing television programs is a significant factor that affects the availability of independent programming in broadcast television. According to television broadcast executives and representatives of independent producers, developing and producing broadcast television programs is costly and financially risky. For example, one report estimated that major broadcasters spent about $120 million for the 1997-1998 season to develop 49 drama pilots and used 14 in their schedules, of which 1 program returned for a second season.[33] Moreover, according to television broadcast executives, once programming is developed, the costs to produce a scripted drama or comedy program range from about $21 million to $48 million for 21 program episodes per season, with no guarantee that a program will continue to be produced for another season.[34]

Producers need to sell their program ideas to major broadcasters and secure financing to cover the costs of developing and producing scripted television programs. Because of their large size and access to capital, major broadcaster-affiliated studios and other large unaffiliated studios

[33]Joe Schlosser, "Wolf Says Shows Can Fly without Pilots," *Broadcasting & Cable*, July 6, 1998, 30.

[34]In contrast, nonscripted programs are less costly to produce because there are no costs associated with ordering scripts and pilots.

often have the ability to finance development and production costs.[35] However, representatives of independent producers stressed that it is difficult for them to obtain financing for development and production costs, and oftentimes they must secure financing through the major broadcaster-affiliated studios. The independent producers said since major broadcasters have the ability to finance production costs and make programming decisions, it results in seven or eight companies controlling a significant portion of the program content on television.

When selecting programming for prime time, television broadcast executives told us that they strive to air programming that will achieve high ratings. Advertisers will generally pay more for programs that achieve higher ratings, and since major broadcasters rely on advertising revenue, it is in their financial interest to select programs that will accrue the high level of audience that drives advertising revenue. Television broadcast executives and an academic expert we contacted stated that they also consider quality for prime time programming, and not necessarily the source of programming (i.e., whether the program was produced by an independent producer or an affiliated production studio).[36] They said quality programming will attract the largest share of viewers, which in turn, drives advertising revenue. Further, they stated that since advertisers spend less overall during times of economic downturn and have multiple choices for their advertising dollars (such as on cable television and the Internet), it is all the more essential to have quality programming to attract the advertisers.

While television broadcast executives said that it is the quality, not the source, of programming that influences the selection of prime time programming, major broadcasters are, nevertheless, financially invested in the affiliate-produced programs and stand to gain additional profits if the affiliated programming makes it to syndication. Consequently, some

[35]An example of a large unaffiliated studio is Sony Pictures Television Studio, which is not affiliated with any broadcasters. Although large unaffiliated studios may have the ability to finance production costs, stakeholders said they produced fewer programs than broadcaster-affiliated studios because one of the few unaffiliated studios decided to primarily produce movies rather than television programs.

[36]Although quality is subject to the preferences of the networks that select the programs, according to television broadcast executives, general criteria for quality include good ideas, mass audience appeal, and whether the content of the program meets the specific needs of the network. Literature we reviewed indicated that quality programming depends on talent and high production values, both of which can be costly.

stakeholders said broadcasters might choose their own programming over that of independent producers. In particular, according to an academic expert and representatives of independent producers, if both major broadcaster-affiliated studios and an independent producer offer similar genre and programming content to a major broadcaster, the major broadcaster will select the program from its affiliated studio over an independent producer because of these financial interests. As we previously noted, major broadcaster-affiliated studios (5 companies) produced 82 percent of prime time programming in the fall 2009 prime time schedule. While independent producers most likely would be unable to produce and distribute programming without some financial arrangements with major broadcasters, they said working under the major broadcasters' control could cause them to lose creative control of the program's content, with the writing of the program being directed by the studio bearing the financial risk of production. For example, an independent producer cited the replacement of a writer for CBS's *The Education of Max Bickford*, a drama on the major broadcaster's 2001 prime time schedule, when creative differences arose with the major broadcaster that owned the program.

In Cable Television, Economic Factors, Finite Capacity, and Federal Law Affect Network Carriage

For carriage on cable television, stakeholders cited (1) economic factors, (2) finite capacity, and (3) federal law as affecting carriage of new independent networks.

Economic factors. Representatives of independent networks and some video providers said economic factors affect carriage of new independent networks and their programming. According to video providers, it is difficult to determine the cost and value of new independent networks and how many subscribers will be gained based on concepts and business plans of unproven independent networks. Representatives of independent networks we contacted and a study we reviewed indicated that a new network usually faces considerable uncertainty as to whether it will be distributed by a sufficient number of video providers to make its operations viable. Similarly, an academic study indicates that for new networks, there is a high cost to sustaining operations while attracting a sufficient number of video providers and their subscribers.[37] For instance,

[37]Richard Caves, Karen Guo, Catherine O'Gorman, Matthew S. Rosenberg, and Richard J. Wegener, *Switching Channels: Organization and Change in TV Broadcasting.* (Cambridge, Mass.: Harvard University Press, 2005).

one report stated that cable network Fox News Network had invested over $150 million by the time it launched in 1996, but it was expected to lose up to $400 million in the next 5 years.[38] Representatives of independent networks told us that it is difficult to obtain financing for a new cable network because commercial banks want a network to secure carriage with a major cable company, such as Comcast, before extending financing to it.

By contrast, cable networks developed by cable operators, major broadcasters, or other media companies are generally more able to finance the development of affiliated networks over new independent networks. As our analysis indicated, major broadcasters and their affiliated companies owned at least half of the most widely distributed cable networks. Basic cable networks that are affiliated with cable operators, major broadcasters, or other media companies can negotiate carriage of an affiliated cable network as part of an agreement for carriage of an established affiliated network. For example, the Walt Disney Company owns ESPN, SoapNet, and ABC Family cable networks, along with ABC. According to representatives of small cable operators, during the course of negotiating for carriage for ESPN, they must also carry ESPN's spin-off cable networks, including ESPN2 and ESPNEWS. In another example, a new cable network—Wedding Central—that is affiliated with cable operator Cablevision was launched in August 2009 on its distribution system.

Finite capacity. Stakeholders also cited finite capacity in cable system infrastructure of some video providers as a technical issue that affects selection and availability of independent programming. Representatives of video providers we contacted commented that although their overall capacity to carry television programs has expanded with advanced technology, it remains finite. Because cable operators and telecommunications companies offer a wide array of services over their broadband networks, they must determine how to allocate their systems' capacity among these multiple services.[39] Representatives of cable

[38]Jim McConville, "Fox Ready to Roll Dice in All-News Gamble," *Broadcasting & Cable*, October 7, 1996, 52.

[39]The array of services that cable operators and telecommunications companies offer includes high-speed Internet, telephone, and digital television, as well as traditional analog television services. A satellite provider we interviewed stated that competing uses for broadband is not an issue, since it cannot offer high-speed Internet and telephones services, but it noted that available capacity on its basic service tier is also limited.

operators and television broadcast executives told us that adding another cable network—independently produced or otherwise—when more than 75 already exist in basic cable, might not be considered the most efficient use of cable operators' resources and capacity. For example, given the demand for high-speed Internet services, cable operators told us they want to ensure they are using the finite capacity of their systems efficiently to be able to meet that demand.

Despite the constraints on capacity in the cable system infrastructure, representatives of video providers and television broadcast executives we spoke with noted that alternative distribution platforms, such as online video streams, have provided more outlets and opportunities for independent programming. For instance, in 2007, two independent producers produced a television drama called *Quarterlife*, which was aired on the social network Web site MySpace.com. On the other hand, television broadcast executives and representatives of independent producers we contacted commented that although the Internet provides the opportunity for distribution of independent programming, it does not translate to success with regard to attracting the number of viewers that television offers.

Federal law. Stakeholders cited, and studies have reported, that FCC rules and regulations implementing certain federal statutes can also influence programming decisions.

- **Retransmission issues.**[40] As we previously mentioned, representatives of some video providers stated that the business practice of bundling networks—meaning that certain networks are sold as a package with broadcast networks rather than being sold individually—which may occur during negotiations between broadcasters (which can include major networks and local stations) and video providers for retransmission rights. Such bundling influences video providers' carriage decisions and limits their ability to select independent programming. In 2004, we reported that because the terms of retransmission agreements often include the carriage of major broadcaster-owned cable networks, cable operators sometimes

[40] 47 C.F.R. § § 76.56, 76.64. As previously mentioned, the retransmission consent rule requires local broadcast stations, some of which are owned and operated by broadcasters, who have opted against must carry status, to negotiate individual retransmission consent agreements with each cable operator in its service area for compensation in exchange for the cable operator's right to carry the broadcast signal.

carry cable networks they otherwise might not have carried.[41] Representatives of some video providers told us recently that this practice also fills their systems' capacity, leaving less capacity for independent cable networks and making it difficult for independent cable networks to gain carriage. Television broadcast executives, on the other hand, commented that negotiations in lieu of invoking the retransmission rule may be necessary for them to be fully compensated for their content.

As part of its annual report on the status of competition in the delivery of video programming, FCC is currently seeking data and analysis on implementation of the retransmission consent rules.[42] FCC also has a separate proceeding specifically looking at revisions to the retransmission consent rules and whether it would be appropriate to preclude the practice of programmers tying desired programming with undesired programming, such as tying carriage of a major broadcaster-owned cable network to retransmission conditions for a broadcast signal.[43] The comment period for the notice closed in December 2007, and FCC officials are currently reviewing comments.

- **Program carriage rule.**[44] Representatives of independent cable networks and public interest groups stated that although the program carriage rule is needed to promote independent programming, FCC criteria for determining discrimination on the basis of affiliation are unclear. They told us more precise standards for proving discriminatory or exclusionary conduct by cable operators as well as the establishment of a time frame for FCC to determine whether the complaining independent cable networks have sufficient evidence to proceed to a hearing would make the

[41] 47 C.F.R. § § 76.56, 76.64. As previously mentioned, the retransmission consent rule requires local broadcast stations, some of which are owned and operated by broadcasters, who have opted against must carry status, to negotiate individual retransmission consent agreements with each cable operator in its service area for compensation in exchange for the cable operator's right to carry the broadcast signal.

[42] *In the Matter of the Annual Assessment of the Status of the Competition in the Market for the Delivery of Video Programming*, FCC MB Docket No. 07-269. FCC 07-207, 24 F.C.C.R. 750, 24 FCC Rcd. 750 (January 16, 2009), as supplemented at 24 F.C.C.R. 4401, 24 F.C.C. Rcd. 4401 (April 9, 2009).

[43] *In the Matter of the Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, FCC MB Docket No. 07-198, Notice of Proposed Rulemaking, 22 F.C.C. Rcd. 17791 (October 1, 2007).

[44] 47 C.F.R. §§ 76.1301, 76.1302. As previously noted, the program carriage rule prevents video providers from requiring financial interest in programming as a condition for carriage.

rule more effective. According to independent cable network representatives, some independent cable networks have waited over a year before FCC determined whether it would conduct a hearing. Because the independent cable network is not being carried by the defendant cable operator in the interim, some independent cable networks can go out of business before a decision is made.[45] Representatives of cable operators, on the other hand, stated that the rule is not necessary because a cable operator's decision to reject a network could be based on the program quality and similarity of content and not on the ownership of a network.

- **Leased access rule.**[46] In the case of the leased access rule, a public interest group official indicated that this rule has not achieved what it was intended to do because the prices for leased access were set too high.[47] Representatives of cable operators explained that the rule forces cable operators to carry programming even if they believe the channel does not bring much value to the subscribers. Representatives of cable operators cited home shopping channels as an example of programming that relies on leased access to gain carriage. The rule also affects the cable operators' ability to carry other programming because the set-aside channels consume capacity that could be used for other programming. Cable operators also noted that the rule does not apply to satellite providers and their systems.

[45]FCC officials told us that it takes time to adjudicate these cases because program carriage disputes are complicated and often result from behavior related to program carriage negotiations and require an evaluation of facts and behavior. They further noted that an action one party views as prohibited under the statute may be viewed by the other as a legitimate business practice. In some instances, additional measures are required to perform a proper evaluation. In the event that the staff is unable to resolve a program carriage complaint on the basis of the written record, a case may be sent for a hearing before an administrative law judge.

[46]47 C.F.R. §§ 76.970, 76.971. The commercial leased access rule requires cable operators to set aside a certain number of channels that can be leased out to independent cable networks for access on its distribution system.

[47]FCC reviewed the price rate for leased access and announced its decision to reduce the charge in November 2007. *In the Matter of Leased Commercial Access*, FCC 07-208, 23 F.C.C.R. 2909, 23 F.C.C. Rcd. 2909 (Feb. 1, 2008). However, FCC's decision has been appealed.

Stakeholders Cited Various Factors as Influencing Programming Decisions, Including Format and Playlist Selection, in Commercial and Public Radio

Commercial Radio Stations Largely Make Programming Decisions Based on Economic Factors

In selecting radio station formats and music playlists, stakeholders we interviewed stated that (1) advertisement revenue, (2) cost of programming, and (3) market competition are key economic factors that influence programming decisions in commercial radio.

Advertisement revenue. Commercial radio stations are primarily funded by advertisement revenue obtained from selling radio time to companies seeking to reach specific demographic segments.[48] Radio station owners and experts told us that when making decisions about format and playlist selection, program directors will consider the number of listeners that programming will likely attract,[49] and, in turn, the advertisement revenue they may earn.[50] The rates that a station obtains for advertising time depend on the station's ability to attract listeners within the advertisement companies' target demographic segment, the length of the advertisement spot, and the size of the market, with larger markets typically receiving higher rates than smaller markets. Radio stations compete for listeners and advertising revenue with other stations within their respective local markets. Consequently, radio stations continuously examine their

[48]In contrast, public radio stations are primarily funded by contributions received from listeners and, in some cases, government funding.

[49]By "format" of radio programming, we mean the genre of programming content on a radio station, such as Country, Sports, Adult Contemporary, Smooth Jazz, and Rock.

[50]Advertisers and radio stations use data published by audience measuring services, such as Arbitron Inc., to estimate the number and demographics of listeners within an Arbitron radio market.

programming content to try to attract an audience that is highly desirable to advertisers. In particular, a radio station's format enables it to target specific segments of listeners sharing demographics that appeal to advertisers. According to a radio industry expert, if the advertising market is not interested in reaching the specific target audience of a music format, the station will not be able to survive economically because it will not be able to gain enough ad revenue. Moreover, radio station owners with stations in different markets but of the same format can be more effective at attracting revenue from advertisers who want to reach a similar demographic in multiple markets.

Cost of programming. Another economic factor that influences programming decisions is the cost to produce radio content. For example, radio station owners and experts told us that increased costs and decreased advertisement revenue over the past decade have led to an increase in the use of voice tracking and syndicated programming.[51] According to radio station owners and experts, voice tracking is less costly than producing shows for individual markets, and to save programming costs, some stations choose to import programming from another market during peak listener times rather than hire their own radio personalities. In addition, radio industry experts pointed out that historically, stations in small markets have generally relied on nationally syndicated programming to bring in marketable talent that will allow them to compete with other stations in the market. Some stakeholders have expressed concern that voice tracking and syndicated programming are replacing local programming and therefore the needs and interests of the local community are not being reflected by the voice-tracked or syndicated programming. However, representatives of radio station owners have stated that there is no evidence that voice tracking or syndicated programming diminishes localism. For example, one station owner pointed out that the value of programming is determined by how strongly it resonates with listeners, regardless of where it originates.

Market competition. Marketplace factors, such as the extent of competition in a given market, also affect programming decisions. For example, radio station owners stated that when radio station program directors are trying to determine a station's format, they will consider

[51]Voice tracking occurs when a radio station personality prerecords a program that is then aired in multiple markets, including markets other than that of the local radio station. Syndicated programming includes programming that is purchased by a radio station (such as the Ryan Seacrest Top 40 Program) to air on multiple stations in different markets.

what formats are currently available in the local market and what formats are missing. If there are already stations programmed with a popular format in a given market, a radio station will likely look to competitively differentiate itself by selecting a format targeted toward a demographic that is not currently being served. In doing so, a station may also better compete for audiences and advertising revenues with other media.

Experts and representatives of independent producers told us that radio station formats have become more specific in recent years in an attempt to enable stations to target a specific demographic and attract advertisers, and as a result, radio station formats have changed over time. According to radio station owners, the number of radio station formats has increased. Representatives of radio station owners conducted a study examining radio station formats, and found that from 2001 to 2005, the number of radio station formats increased by 7.5 percent. Station owners have characterized this increase in the number of formats as an increase in variety in radio programming. However, some experts and representatives of independent producers have noted that formats with different names often have similar playlists, diminishing real variety among those formats. For example, one expert noted that it is very difficult to discern differences in playlists between radio formats such as Rock and Light Rock.

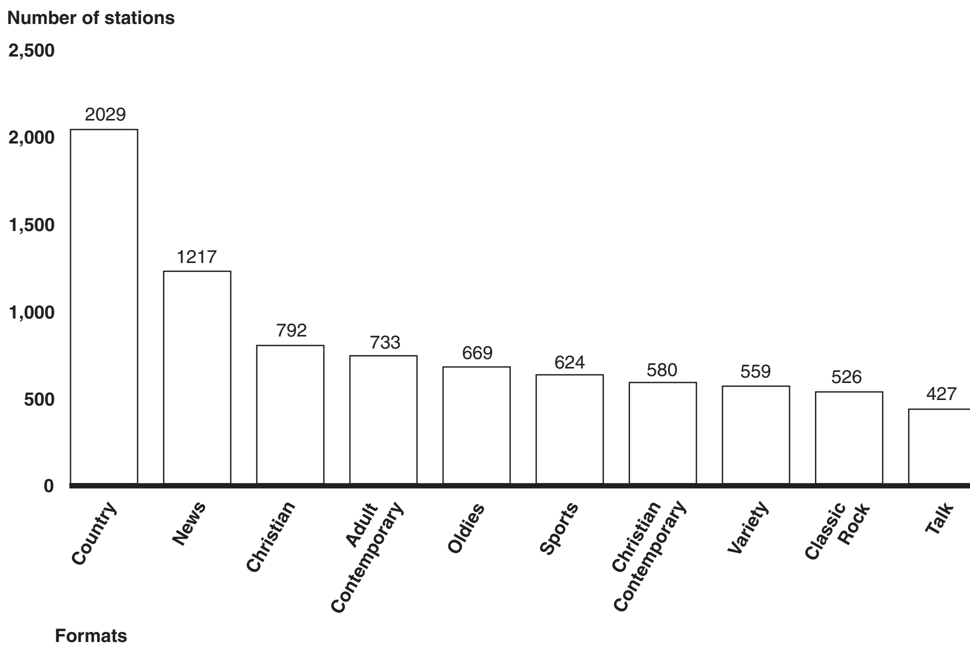
Local Interests Also Affect Programming Decisions in Both Commercial and Public Radio Stations

Stakeholders stated that in both commercial and public radio, programming decisions such as selection of format and music playlists are based on the interests of listeners in a given market. Radio station owners in both commercial and public radio reported that program directors will conduct research related to the demographics and preferences of the listeners in their markets to ensure they are meeting the needs of their community. In commercial radio, understanding the interests of listeners in a given market is important for the station to attract a large audience and, as previously noted, attract advertising revenue. According to radio station owners, program directors are expected to be familiar with music interests in their markets and make programming decisions that will be successful in reaching an audience within their market. A stakeholder also noted that even among similarly formatted radio stations, the playlist will vary to meet the needs of the local market. For example, the type of country music that is popular in Tucson, Arizona, can be very different from popular country music in New York City.

According to our analysis, in 2009, the 10 most common formats across all national radio stations included Country, News, Christian, Adult

Contemporary, Oldies, Sports, Christian Contemporary, Variety, Classic Rock, and Talk, as shown in figure 6.

Figure 6: Most Popular Formats Nationwide in 2009



Source: GAO analysis of BIA*fn* data.

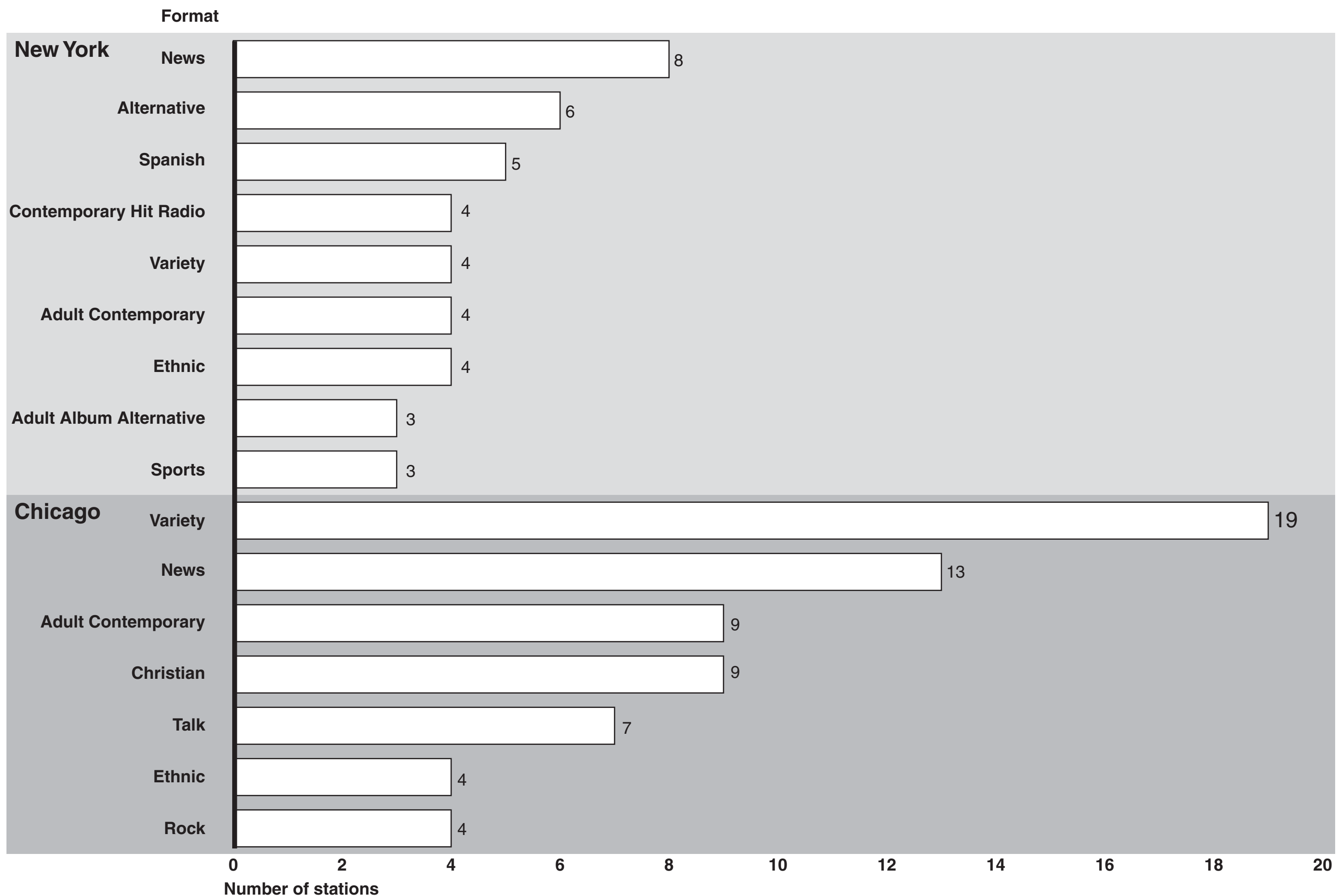
Note: The "Primary Format" field in the BIA*fn* database was used to identity the most popular formats in 2009 and includes data for 14,628 stations, both in and outside of Arbitron-rated markets, and commercial and public stations. Stations designated as multicast stations, or having a construction permit, are not included in this analysis because multicast stations are available only to listeners who have purchased an HD radio and radio stations designated as having construction permits are not yet operating.

We found that within selected individual markets, the top radio formats differ from the top radio formats nationally, indicating that programming decisions are locally based on the preferences and interests of listeners within a given market. For example, the most popular radio station formats in New York City (the largest Arbitron market) include 5 formats not reflected in the top 10 national radio formats (Alternative, Spanish, Contemporary Hit Radio, Ethnic, and Adult Album Alternative). In addition, we found 19 percent of all stations in the New York market were designated as Ethnic and Spanish formats compared with 7 percent nationwide, suggesting that programming decisions among radio stations

in this market reflect the demographics and interests in the market.[52] By comparison, in Chicago, Illinois (the third-largest Arbitron market), we found that 11 percent of stations in this market were designated as Ethnic and Spanish formats. Furthermore, formats that were among the most popular in Chicago but not in New York included Christian, Talk, and Rock (see fig. 7).

[52]FCC commissioned 2007 Media Ownership Study 5 (Tasneem Chipty, *Station Ownership and Programming in Radio*, Boston, Mass.: CRA International, June 24, 2007) indicated that ethnic formats included Asian, Greek, Hawaiian, International, Japanese, Korean, Polish, and Portuguese formats. Spanish formats included Hurban, Mexican, Ranchera, Reggaeton, Spanish, Spanish Adult Contemporary, Tejano, and Tropical formats.

Figure 7: Most Popular Formats in Arbitron Market 1 (New York) and Arbitron Market 3 (Chicago) in 2009



Source: GAO analysis of BIAfn database.

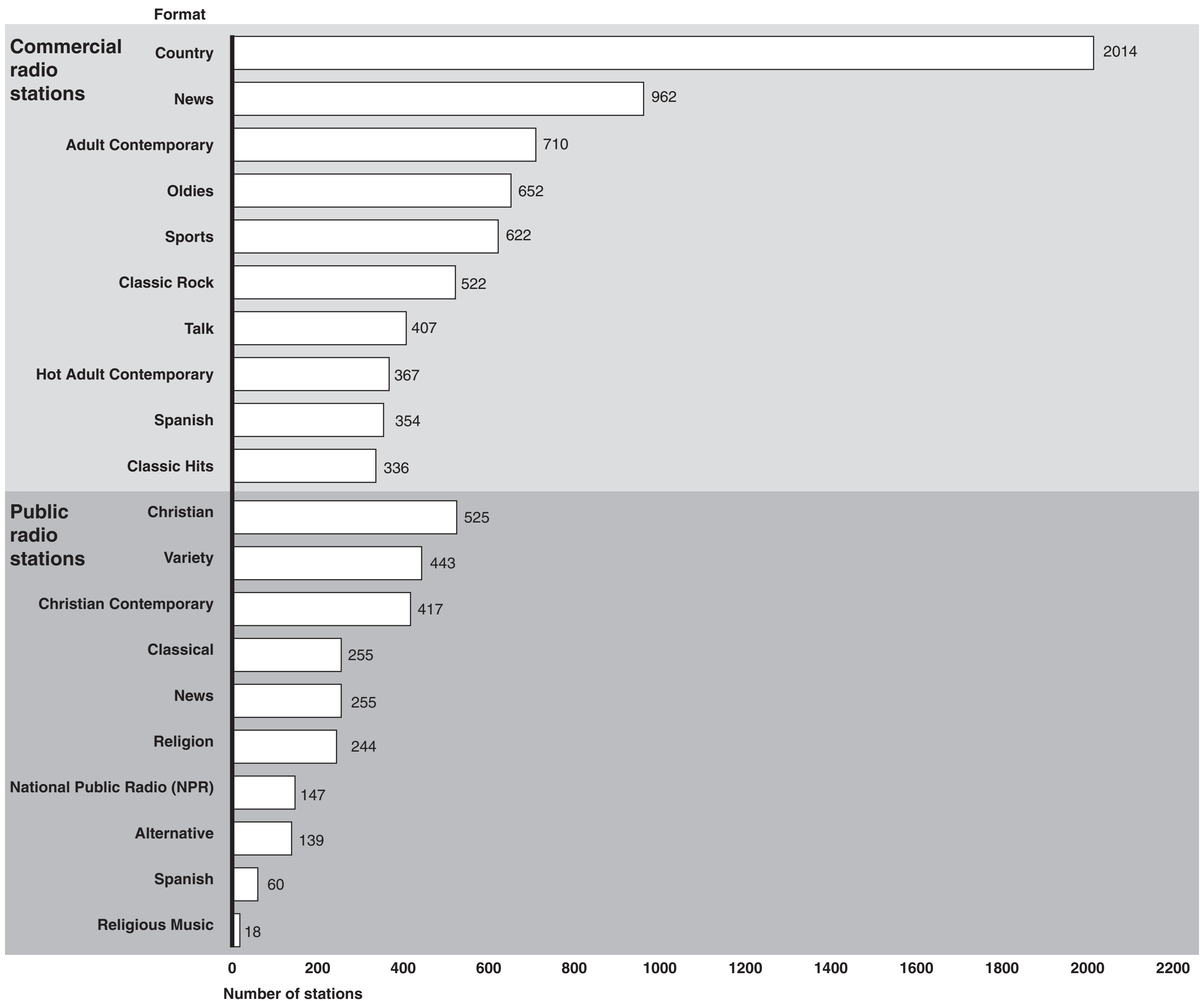
Note: Datasets for Arbitron Market 1 (New York) included data for 74 radio stations and 130 radio stations for Arbitron Market 3 (Chicago). Both datasets included commercial and public FM and AM stations.

As is the case in commercial radio, representatives of public radio reported that programming decisions are locally based on the preferences and interests of listeners within a given market; however, they said their community service orientation also influences programming decisions. Representatives of public radio explained that local public stations select their own formats and determine their own audience strategies based on their understanding of local community needs, and their role in serving those needs. They also said the cost of programming is a final

consideration for public radio stations after quality- and mission-related factors are considered. In addition, representatives of public radio noted that public stations generally play music from artists that are signed to small, independent labels.[53] Independent labels generally seek out a station if the station's format includes music similar to that of the labels, and will then establish relationships with such stations. On the basis of our review of 2009 format data for commercial and public radio stations, we found that the top 10 formats in public radio differ from the top 10 formats in commercial radio (see fig. 8). Only two formats (News and Spanish) were among the top 10 formats in both commercial and public radio.

[53]An independent label refers to a record label that is not associated with a major record label.

Figure 8: Top 10 Formats among Commercial and Public Radio Stations



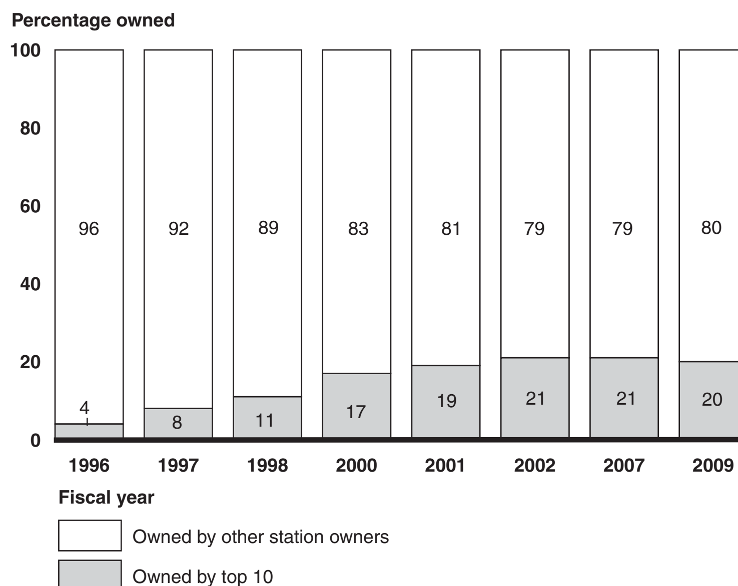
Source: GAO analysis of BIA*fn* data

Note: Data used for analysis include 6,946 commercial stations and 2,503 public stations, both inside and outside of Arbitron-rated markets, and FM and AM stations. Stations designated as multicast stations, or having a construction permit, are not included in this analysis.

Opinions Vary on How Consolidation in the Radio Industry Has Affected Programming Decisions

Stakeholders that we interviewed generally agreed that since 1996, the number of stations owned by a single radio station owner has increased; however, viewpoints varied about the extent to which consolidation has affected programming decisions. Experts and representatives of independent producers we contacted stated that the elimination of the radio ownership limits in 1996 resulted in an increase in the number of stations owned by a single station owner nationally and in local markets. Independent producers have reported that the radio station holdings of the 10 largest radio station owners have increased significantly. On the basis of our analysis, we found that the share of commercial stations owned by the top 10 station owners did increase, from 4 percent in 1996 to 20 percent in 2009. However, throughout that period, the top 10 radio station owners did not own more than 21 percent of all commercial stations, as shown in figure 9.

Figure 9: Share of Commercial Radio Stations Owned by Top 10 Radio Station Owners for Selected Years



Source: GAO analysis of FCC and BIA*fn* data.

Note: Because of data limitations, we did not include data for 2003 through 2006 and for 2008.

In addition, we analyzed data for the top 10 national radio station owners in 2009 and found that for most owners (7 out of the 10 owners), stations' formats were differentiated within individual markets. For example, Clear Channel—the largest radio station owner—owns multiple radio stations in

148 Arbitron markets. We found that in most of those markets (72 percent), Clear Channel programmed its stations with different formats, while in 28 percent of those markets some stations were programmed with the same format. As illustrated in table 3, among the station owners that we reviewed, those with the highest percentage of overlap among radio stations in the same market included American Family Association (78 percent), Cox Radio (56 percent), and Educational Media (56 percent). We also found that 75 percent of the markets where format overlap did exist included large markets with 30 or more radio stations.

Table 3: Percentage of Format Overlap among Top 10 Radio Station Owners in 2009

Radio station owner company	Number of Arbitron markets where owner is present	Number of Arbitron markets where owner owns multiple stations	Percentage of markets where owner owns multiple stations with the same format
Clear Channel Communications Inc.	153	148	28
Educational Media Foundation	103	34	56
Cumulus Broadcasting LLC	58	54	19
Citadel Communications	48	43	33
American Family Association Inc.	45	9	78
Salem Communications Corporation	35	28	39
CBS Radio	30	28	21
Entercom	24	21	33
Cox Radio Inc.	19	16	56
Saga Communications Inc.	14	13	15

Source: GAO analysis of BIA*fn* data.

Radio station owners and representatives of independent producers offered different perspectives on how consolidation in the radio industry has affected programming decisions nationally and in individual markets. On one side, radio station owners and experts told us that to remain financially viable, stations have had to eliminate duplicative operating and overhead expenses and establish a business model where one program director is responsible for programming decisions for multiple stations. Some station owners added that program directors overseeing programming decisions for stations in multiple markets make decisions based on the interests of listeners within the individual markets. Further, radio station owners and experts have reported that common ownership of multiple stations in a single market benefits the audience in that market,

as the station owner will choose to diversify formats among its stations to attract a large share of the listening audience in the market.[54]

Another viewpoint expressed by representatives of independent producers and experts is that the increased consolidation has changed the stations' decision-making structure, resulting in homogenized programming decisions across markets and resulting in large companies using centralized methods to make programming decisions. According to this view, as jobs are consolidated when one entity owns multiple stations, one program director may make similar programming decisions across multiple stations in different markets. The independent producers said that as a result, playlists of radio stations owned by the same owner will overlap. Studies conducted by representatives of independent producers and academic experts examined playlists of radio stations owned by the same owner across all markets and found overlap in playlists of stations with the same format.[55] For example, a December 2006 study published by the Future of Music Coalition found examples of overlap among playlists of individual stations owned by the same company in different markets—such as an overlap for the playlists of two country stations located in different markets (WQRB-FM in Eau Claire, Wisconsin, and WRWD-FM in Poughkeepsie, New York). However, the study did not examine overlap and differences among playlists of owners' radio stations in the same market. A January 2006 study conducted by an academic expert also examined playlist data for each owner's radio stations and found that the playlists of radio stations in different markets overlapped, but that the playlists of radio stations in the same market were different.

Agency Comments

We provided a draft of this report to FCC for official review and comment. FCC provided technical comments that we incorporated where appropriate. FCC's written comments appear in appendix III.

[54]A 2007 FCC-commissioned study (Tasneem Chipty, *Station Ownership and Programming in Radio*, Boston, Mass.: CRA International, June 24, 2007) and other academic studies (Andrew Sweeting, *Too Much Rock and Roll? Station Ownership, Programming, and Listenership in the Music Radio Industry*, Evanston, Ill.: Northwestern University, January 15, 2006) found similar results, finding that markets with large radio ownership groups offer more format choices within given markets.

[55]While our analysis examined format data, these studies looked at playlists.

We will send copies of this report to the Chairman of the Federal Communications Commission and appropriate congressional committees. In addition, the report is available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me on (202) 512-2834 or wised@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

David J. Wise
Director, Physical Infrastructure Issues

Appendix I: Objectives, Scope, and Methodology

To obtain information on the extent to which sources of programming in television have changed over last decade, we analyzed available data on two major sources of television programming—companies producing prime time broadcast television programs and companies with cable channel ownership interests during the last decade. We focused on programs broadcasted during prime time because that is the block of time on television with generally the most viewers and in turn generates the most advertisement revenue for networks.[1] To determine which companies produced prime time broadcast television programming, we used a previous Federal Communications Commission (FCC) study and the *International Television & Video Almanac* to classify prime time programs into two categories: (1) programs produced by major broadcasters, and (2) programs produced by independent production companies not affiliated with a major broadcaster (independent producers). We analyzed the fall prime time schedules in 2002, 2005, 2008, and 2009 and classified them in the two categories. We selected these years because annual data that tracked production information in the two categories were limited; FCC's previous study contained data in the two categories for 2002. We then conducted our analysis for every third year (2005 and 2008) using the *Almanac's* production company information for each television program in that year's debut fall broadcast prime time schedule and classified the programs into the two categories. We also analyzed the *Almanac* for the 2009 fall prime time schedule to provide the most current data available. Additionally, since basic cable networks are also a source of television programming, we analyzed the ownership of those networks as an indicator of which entities control the television programming on the networks. To determine cable network ownership over the last decade, we used data from SNL Kagan, which show companies having an ownership interest in each of the basic cable networks from 1998 to 2008.[2] We analyzed these data to determine the types and the number of companies that have had an ownership interest in basic cable networks and the companies that owned the largest number of networks during this period. To analyze cable network ownership for the most widely distributed networks, we used the 20 basic cable networks with the most subscribers (the top 20 networks) from 1998 to 2008 and classified

[1]To analyze the fall prime time schedule in each year, we included programs on the schedule Monday through Saturday from 8 p.m. to 11 p.m., and on Sunday from 7 p.m. to 11 p.m. Because some prime time program schedule changes or cancellations can occur in the fall prime time schedule, we used the debut schedule of programs that appeared in September of each selected year.

[2]Because data that track program production information were limited for programming on all cable networks, we looked at the ownership of basic cable networks only.

the networks into one of four categories: (1) networks owned by major broadcasters, (2) networks owned by video providers, (3) networks owned by both major broadcasters and video providers, and (4) networks owned by other types of companies. We also examined the top 20 networks in 2008 for any independent cable networks; that is, any network that did not have an affiliation with a major broadcaster or video provider, or an affiliation with a major holding company with media interests.

To determine the factors and conditions that stakeholders identified as affecting the availability of independent programming in television and factors that influence radio programming decisions, we interviewed or obtained written comments from a variety of experts and industry stakeholders, including academics, industry representatives, media companies, and public interest groups (as shown in table 4) to obtain their views on the factors that affect the availability of independent programming in television and radio.

Table 4: Experts and Industry Stakeholders We Contacted

Stakeholder groups	Stakeholder
Academic experts	Mara Einstein, New York University and Queens College
	David Waterman, Indiana University
	Philip Napoli, Fordham University
	Andrew Sweeting, Duke University
Broadcast television and affiliates groups	The Walt Disney Company/ABC
	CBS Corporation
	NBC Universal
	News Corporation/Fox
	CBS and NBC Affiliate Association
	Sinclair Broadcast Group
	Young Broadcasting
Radio station owners group	Clear Channel Communications
	Citadel Broadcasting
	American Public Media/Minnesota Public Radio
Public television and radio	Association of Public Television Stations
	Public Broadcasting Service
	National Federation of Community Broadcasters
	National Public Radio

Stakeholder groups	Stakeholder
Video providers	Comcast
	DirecTV
	DISH
	AT&T
	Verizon
Cable networks	Discovery Communications
Industry associations	American Cable Association
	National Association of Broadcasters
	National Association of Independent Networks
	National Cable and Telecommunications Association
Independent programming groups	Independent Film and Television Alliance
	Writers Guild of America, West
	Center for Creative Voices in Media
	American Association of Independent Music
	Future of Music Coalition
Public interest, nonprofit groups	Consumers Union
	Consumer Federation of America
	Media Access Project
	Progress and Freedom Foundation
	Free Press
Industry Research Group	Edison Research

Source: GAO.

We selected the experts and stakeholders based on relevant published literature, including FCC filings and reports, stakeholders' recognition and affiliation with a segment of the media industry (i.e., cable operators, satellite providers, broadcasters, radio station owners, independent radio advocacy groups, and so forth), and other stakeholders' recommendations. In our selection of experts and stakeholders, we intended to obtain balanced and diverse views; we did not weight experts' and stakeholders' views but grouped similar stakeholders that represent a segment of the media industry. We conducted semistructured interviews and analyzed the responses to determine patterns and the extent to which the experts and stakeholders agreed on the key factors affecting independent programming and radio programming decisions. We also spoke with FCC officials and reviewed the relevant laws, regulations, literature, comments filed by stakeholders in various FCC proceedings, FCC studies, and FCC-sponsored research on television and radio programming.

In addition, for radio, we examined radio station formats, indicating the genre and types of programming, such as Adult Contemporary, Country, News, Sports, and Talk, a station might play. We obtained historical data on the distribution of radio stations by their primary formats nationwide and in local markets from 1999 to 2003 and format data from the Broadcast Investment Analyst Financial Network's (BIA*fn*) Media Access Pro Database, containing station-level data for commercial and public radio stations in the United States from 2004 to 2009. Although the BIA*fn* format data provide a general overview of the genre of programming aired on a given radio station, they do not identify specific programming content that is played on the station. We did not look at independently produced programming on radio because national playlist data identifying record label affiliation are not available. We analyzed the data to determine programming variety and distribution of radio stations by their format nationwide and in local markets in 2009. To highlight programming variety in local markets, we selected two radio station markets-New York and Chicago-and analyzed the format data of radio stations in those markets and compared them with national radio station format data in 2009. We selected New York and Chicago because these two markets are similar in size, (New York is the largest market, and Chicago is the third-largest market) but have different demographic populations. In addition, each market contains both commercial and public stations, FM and AM stations, and contains multiple radio station owners in the market. To highlight similarities and differences in programming variety among commercial and public stations, we examined 2009 format data for commercial and public radio stations and identified the top 10 most popular formats (based on the number of stations with the particular formats available) for each group nationwide. Finally, to examine programming variety for each owner's radio stations and consolidation in the radio industry, we selected the top 10 radio station owners—that is, owners who own the most radio stations nationwide—and reviewed format data of stations owned by the top 10 owners. To identify the top 10 radio station owners in 1996-1998, 2000-2002, 2007, and 2009, we used data from FCC reports and the BIA*fn* database. The top 10 radio station ownership data were not available in 2003-2006 and 2008. Collectively, in 2009, the top 10 owners owned a total of 2,262 commercial radio stations, or 20 percent of all U.S. commercial radio stations. In addition, the top 10 owners owned stations that reach a 44 percent share of total Arbitron listeners in the United States and collect 52 percent of the radio industry's revenue. For each station owner, we then examined similarities and differences in formats among commonly owned radio stations in the same market. We also reviewed studies on radio programming for information

on radio station playlists and the extent to which playlists for commonly owned radio stations overlap in the same market.

To assess the reliability of the basic cable network data obtained from SNL Kagan, and radio data obtained from BIA*fn* used in our analysis, we (1) obtained information from the system owners on their data reliability procedures, (2) reviewed systems documentation, (3) reviewed data to identify obvious errors in accuracy and completeness, and (4) compared the data with information we obtained from other sources, including FCC studies. After reviewing the data sources, we determined that the data were sufficiently reliable for the purposes for which we have used them in this report.

We conducted our work from May 2009 to March 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

Appendix II: Registered Marks Used in the Report

Registered mark	Listed owner
20th Century Fox	Twentieth Century Fox Film Corporation
ABC	American Broadcasting Companies Inc.
ABC Family	American Broadcasting Companies Inc.
Arbitron	Arbitron Inc.
AT&T	AT&T Intellectual Property II L.P.
BIA*fn*	BIA Financial Network Inc
Cablevision	Cablevision Systems Corporation
CapStar Broadcasting	CapStar LLC
CBS	CBS Broadcasting Inc.
CBS Radio	CBS Broadcasting Inc.
Citadel Communications Company	Citadel Communications Company
Clear Channel	Clear Channel Communications Inc.
CNN	Cable News Network LP
Comcast	Comcast Corporation
Comcast SportsNet	Comcast Sports Management Services LLC
Consumers Union	Consumers Union of United States Inc.
Consumers Federation of America	Consumers Federation of America
Cox Communications	Cox Communications Inc.
Cox Radio	Cox Radio Inc.
DirecTV	Directv Inc.
Discovery Channel	Discovery Communications LLC
DISH Network	DISH Network LLC
Disney Channel	Walt Disney Productions Corporation
Edison Research	Edison Media Research Inc.
Entercom	Entertainment Communications Inc.
ESPN	ESPN Inc.
Fox	Twentieth Century Fox Film Corporation
Fox News	Twentieth Century Fox Film Corporation
GE	General Electric Company
Hallmark	Hallmark Licensing Inc.
HBO	Home Box Office Inc.
HGTV	Scripps Networks Inc.
Independent Film and Television Alliance	Independent Film & Television Alliance Corporation
ION Television	ION Media Networks Inc.
Lifetime Networks	Lifetime Entertainment Services LLC

Registered mark	Listed owner
Media Access Project	Media Access Project
Minnesota Public Radio	Minnesota Public Radio
MTV Networks	Viacom International Inc.
MyNetworkTV	MynetworkTV Inc.
National Public Radio	National Public Radio, Inc.
NBC	NBC Universal, Inc.
News Corporation	News Holdings Pty Ltd.
NFL Network	National Football League
Paramount Television	Paramount Pictures Corporation
Saga Communications Inc	Saga Communications Inc.
Salem Communications Corporations	Salem Communications Corporation
Scripps Networks	Scripps Howard Broadcasting Company
Showtime	Showtime Network Inc.
SNL	SNL Financial LC
SoapNet	Disney Enterprises Inc.
Sony Pictures	Sony Corporation
Starz	Starz Entertainment Group LLC
TBS	Superstation Inc.
The Food Network	Television Food Network, G.P. , et Al.
Time Warner Cable	Time Warner Inc.

Source: Trademark Electronic Search System, United States Patent and Trademark Office.

Appendix III: Comments from the Federal Communications Commission

Federal Communications Commission
Washington, D.C. 20554

March 1, 2010

David Wise
Director, Physical Infrastructure Issues
United States Government Accountability Office
Washington, D.C. 20548

Re: GAO-10-369

Dear Mr. Wise:

Thank you for the opportunity to review and comment on the Government Accountability Office Draft Report *Media Programming – Factors Influencing the Availability of Independent Programming in Television and Programming Decisions in Radio.*

While the Draft Report does not contain any specific recommendations for action by the Federal Communications Commission, the Draft Report does recognize the important role that the media industry plays in educating and entertaining the public and acknowledges that the Commission's rules can affect programming decisions. To that end, the Commission's longstanding goals in the development and implementation of media policy have been the promotion of diversity, competition, and localism in media. The report covers several subjects pertinent to our media ownership policy. The Commission does not propose any editorial recommendations to the Draft Report. In an attachment to this letter, however, we offer technical corrections for your consideration.

As the Draft Report notes, the Commission is required to review its media ownership rules every four years to determine whether those rules are necessary in the public interest. Currently, the Commission is in the early stages of the 2010 quadrennial media ownership review. The Draft Report's availability comes at a time that its information and findings can assist the Commission as it moves forward in the ownership review.

Thank you for the opportunity to comment on the Draft Report. The FCC appreciates your contribution regarding the important subject areas covered.

Sincerely,

William T. Lake
Chief, Media Bureau

ATTACHMENT

On p.1, clarify the actions taken by the Telecommunications Act of 1996 ("The 1996 Act"). The 1996 Act eliminated nationwide broadcast television and radio station ownership limits and relaxed (rather than "reduced") local broadcast radio station limits. The 1996 Act did not change local television ownership limits, but directed the FCC to conduct a rulemaking to evaluate its existing local television ownership limitations. See 1996 Act § 202.

Regarding p.8 n.15, at the time of the 1996 Act's enactment, the FCC's rules contained a national radio limit of 20 AM plus 20 FM stations and a local radio limit of two or three AM plus two or three FM stations, depending on the size of the local market. See Revision of Radio Rules and Policies, 9 FCC Rcd 7183 (1994).

Regarding the second paragraph of the "Retransmission Consent" bullet on p.23-24, the FCC released an Order on January 10, 2010 in the program access proceeding adopting rules permitting complainants to pursue program access claims involving terrestrially delivered, cable-affiliated programming similar to the claims that they may pursue for satellite-delivered, cable-affiliated programming, where the purpose or effect of the challenged act is to significantly hinder or prevent the complainant from providing satellite cable programming or satellite broadcast programming. See 2009 WL 236800 (released Jan. 20, 2010).

2

Appendix IV: GAO Contact and Staff Acknowledgments

GAO contact

David Wise, (202) 512-2834 or Wised@gao.gov

Acknowledgments

In addition to the contact above, Sally Moino, Assistant Director; Amy Abramowitz; Brad Dubbs; Alana Finley; Bert Japikse; Delwen Jones; Jennifer Kim; Maria Mercado; and Andrew Stavisky made key contributions to this report.

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