Office of
Inspector
General

Report of Investigation
into
Allegations that Senior Management Ordered Research Suppressed or Destroyed

October 4, 2007

I. Introduction

The investigation reported below began in mid-September 2006, when the Chairman of the Federal Communications Commission ("Commission") first heard that two draft Media Bureau economic research reports were alleged to have been suppressed at the agency and asked the Commission's Inspector General to examine the matter. Shortly thereafter, on September 20, 2006, Senators Boxer, Dorgan and Wyden sent a letter to the Inspector General requesting investigation of these two and additional related matters, including allegations that "senior managers ordered 'every last piece' of [a draft Media Bureau] report destroyed." In light of the allegations, the Inspector General expanded the investigation to determine whether there had been any violations of United States criminal law or the Commission's rules. Because the matters specified by the Senators would be covered by the scope of the investigation in any event, we have organized this report to follow in general fashion the matters as identified by the Senators.

II. Scope of Investigation

This investigation was the largest ever conducted by the Commission's Office of Inspector General ("OIG"). At the time the investigation was opened, the Assistant Inspector General for Investigations had only one investigator whose time was, and continues to be, devoted almost exclusively to supporting Department of Justice investigations and prosecutions of fraud in the Commission's universal service program and who could not be taken off that work without endangering the success of those prosecutions. The Inspector General thus asked for additional attorneys with litigation or investigation experience to be transferred to OIG to conduct the investigation.

More than 150,000 pages of documentation were reviewed and over one terabyte of electronic data was searched in this investigation. In addition, dozens of related Commission reports and orders were reviewed and the OIG's Senior Forensic Economist reviewed and analyzed more than 60 economic and research documents, including reports, papers, article, surveys and so forth. In addition, 35 individuals were interviewed, including present and former staff and management, economists and lawyers, among them the former Media Bureau Chief and the current Chairman's Chief of Staff. Two former Commission employees refused to be interviewed for this investigation: Professor Adam Candeub of the Michigan State University College of Law, who had been a Media Bureau staff attorney and who made the allegations to the Senators and the media that a Media Bureau report had been suppressed and ordered to be destroyed by senior Commission managers, and one of the authors of the report at issue in Professor Candeub's allegations. The Inspector General cannot compel testimony of non-government employees and at first we were concerned that our inability to interview these two former staffers would limit our ability to completely investigate these matters. As discussed in more detail below, however, the extent and thoroughness of our investigation on these matters and the lack of any corroborating evidence give us comfort that we have been able to investigate these matters adequately and that our findings and conclusions rest on solid grounds.

III. Matters Investigated and Conclusions

A. Inquiry Into Local TV News Report

The Senators' and Chairman's concern regarding the draft report entitled "Do Local Owners Deliver More Localism? Some Evidence from Local Broadcast News" ("Local TV News Report") stems from the allegations of Professor Adam Candeub of Michigan State University College of Law, who was employed as a staff attorney in the Commission's Media Bureau during part of the relevant period. As stated in the Senators' letter, Professor Candeub's allegations are that "the report 'was stopped in its tracks because it was not the way the agency wanted to go' and that senior managers ordered 'every last piece' of the report destroyed."[1] Professor Candeub made similar allegations in several media interviews and the allegations were repeated in various media articles and reports.[2] Our investigation did not substantiate either allegation of Professor Candeub.

1. Senior Managers of the Commission did not Order the Local TV News Report Destroyed

We first address the allegation that senior managers ordered the Local TV News Report destroyed because it is both an extremely serious allegation and simple to address. Section 2071 of Title 18 of the United States Code makes destroying or concealing government records or attempting to do so a criminal act and would require anyone found guilty of such an offense to forfeit any government office held and be disqualified from holding government office in future.[3] Federal courts have long held that the government records at issue do not need to be formal or official records or records that would be accessible to the public.[4] In addition, the courts have rejected arguments that this crime

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[1] See letter to Kent R. Nilsson, Inspector General, from Senators Barbara Boxer, Byron Dorgan and Ron Wyden, dated September 20, 2006, p.1.

[2] "'[T]hey said that the project was dead and to delete computer records,' [Professor Candeub] told TelevisionWeek." TVWeek, September 14, 2006. "[Professor Candeub] said 'the order did come down from somewhere in the senior management of the media bureau [sic]that this study had to end ... and they wanted all the copies collected.'" Los Angeles Times, September 15, 2006. "Candeub, now a law professor at Michigan State University, said senior managers at the agency ordered that the report be destroyed." Associated Press, September 15, 2006.

[3] 18 U.S.C. § 2071. In addition, the Standards of Conduct for Employees of the Executive Branch apply to Commission employees and officers and might also be at issue in a situation involving the destruction of documents. Specifically, rule 2635.101(9) requires government employees to protect and conserve Federal property. 5 C.F.R. § 2635.101(9). Although Federal property is not defined for section 2635, elsewhere in the federal rules the term is specifically defined to exclude records, and thus the reasonable interpretation is that Federal property as used in rule 2635.1010(9) includes such records. *See, e.g.*, 41 C.F.R. § 102-36.40, 12 C.F.R. 1102.306.

[4] *See McInerney v. United States*, 143 F. 729 (1st Cir. 1906); *United States v. Poindexter*, 725 F. Supp 13 (D.D.C. 1989).

can only be committed by the, or a, custodian of record.[5] Indeed, the Eight Circuit has found that soliciting the concealment of government records by someone who did not have access to the records falls within the statutory prohibition.[6] Thus, our view is that a direction by senior managers – or anyone else -- to destroy the Local TV News Report could be found to violate section 2071 and we would be required to refer any evidence of such criminal action to the Department of Justice for potential prosecution.

Professor Candeub, who is no longer a government employee and thus cannot be compelled to answer questions in an OIG investigation,[7] declined to be interviewed by OIG regarding his allegations to the Senators and in media interviews that senior managers of the Commission ordered the Local TV News Report destroyed.[8] Initially we were concerned that Professor Candeub's refusal to cooperate in the investigation would constrain our ability to investigate those allegations fully, and to have confidence in any conclusions drawn from our investigation into the matter. The complete lack of any hint that corroborating evidence exists for the allegation that anyone gave a direction to destroy documents, despite an extensive and wide-ranging investigation, however, gives us comfort that that is not the case.

As a preliminary and factual matter, every piece of the Local TV News Report was not destroyed. Multiple copies of multiple version of the report were produced immediately, both in our investigation and pursuant to a Freedom of Information Act request for which it was a responsive document. We are not aware of any contemporaneous reports of any order to destroy the report being made to any supervisors or the OIG. More importantly, in our investigation we interviewed, among others, one author of the Local TV News Report (who remains employed at the Commission), Commission staff and management known to have copies of the report, the former Chief, Deputy Bureau Chief, and other members of the Media Bureau's front office at the time in question. Every person, including the author of the report, stated that he or she had neither received nor given an order to destroy the Local TV News Report or any other

[5] *Coplon v. United States*, 191 F.2d 749 (D.C. Cir. 1951); *United States v. Poindexter*, 725 F. Supp at 20.

[6] *United States v. May*, 625 F.2d 186 (8th Cir. 1980).

[7] The Commission's OIG does not have the authority to issues a subpoena ad testificandum.

[8] When OIG initially spoke with Professor Candeub, he stated he was willing to be interviewed for purposes of this investigation. He failed to respond to several voicemails over a period of weeks as OIG attempted to schedule an interview with him in Lansing, Michigan. Professor Candeub finally responded to electronic mail and asking OIG to propose dates as he was quite busy with the press of his teaching duties. After several more attempts to reach Professor Candeub, staff eventually reached him by telephone to propose interview dates, at which time he said he had decided to retain counsel to represent him in this matter and needed time in which to find counsel and prepare for the interview. OIG staff again sent electronic mail to the Professor proposing various dates on which the Professor did not hold classes during the next month, according to the Michigan State University College of Law website, and setting a date certain on which OIG staff would call Professor Candeub to schedule the interview. On that date, Professor Candeub left a voicemail for the OIG investigator stating that he had decided he would decline to be interviewed for the investigation and that he "[did] not think [he] could add much to the issues [he] believe[d] the investigation was required to pursue."

document. In addition, because of the seriousness of the allegations, we asked every person interviewed in the investigation, even those who were not involved with the Local TV News Report, whether they had ever given or received an order to destroy any document outside of the agency's standard record retention and destruction policy directions or if they had ever heard even a rumor of such. With the exception of Professor Candeub's allegations, which some interviewees remembered reading or hearing about in media reports, no one we interviewed was aware of even a rumor of such criminal conduct at the Commission. We conclude that no order to destroy the Local TV News Report was given by senior managers or anyone else at the Commission.

2. <u>The Weight of the Evidence does not Support the Allegation that the Local TV News Report was Suppressed Because Agency Management Disliked the Report's Results</u>

The results of the Local TV News Report, as reported to the Media Bureau Chief on February 17, 2004, were: "[w]e find that local ownership (defined as the DMA where the company's headquarters is located) adds almost four minutes of local news, over four minutes of total news and almost five minutes of local on-location news." The report went through at least eight different drafts with changes varying from slight cosmetic alteration to substantive revision.[9] The broad substantive conclusions of the report remained consistent, but the regression techniques used changed among the various versions and the number of additional minutes aired of local news, on-location local news, and total news per half hour that were attributable to local ownership varied, depending on the regression technique used, from 4 to 5.5 minutes, 5 to 3 minutes, and 3 to 6.5 minutes, respectively.[10] The report was never formally released by the Commission. A version of the report, dated June 17, 2004, became public during the reconfirmation hearings of Chairman Martin in September 2006 and Chairman Martin, in agreement with Senator Boxer, then directed that the report be placed in the record for the localism and media ownership proceedings. The additional versions of the report were placed on the Media Bureau's website on December 29, 2006.

The allegation that the Local TV News Report was suppressed in 2004, as we understand it, is based on the idea that the then-agency management would not have liked an economic study that concluded local ownership of broadcast stations produced more localism content in the form of local news because the Commission's Chairman at the

[9] The versions collected within the Commission for a FOIA request bear the dates of January 15, 2004, February 18, 2004, February 27, 2004, March 26, 2004, March 29, 2004, May 12, 2004, June 17, 2004, and July 2004. The drafts up to and including June 17, 2004 were provided to reviewers at roughly the same time as the dates on the drafts. The report dated July 2004 was provided to the supervisor of the authors in March 2005. The author could not remember why he sent the draft to the supervisor in March 2005 when he thought the report had been stopped and stated so in the accompanying electronic mail message. The supervisor stated that it was provided because she required the economists she supervised to provide at least one written work product for her to review for each performance appraisal cycle. We confirmed that that was the practice of the supervisor. That draft appeared to the supervisor, and to us, to have only minor cosmetic changes to the immediately prior draft dated June 17, 2004.

[10] A more detailed description of the Local TV News Report in its last iteration and its criticisms is provided in an appendix to this report of investigation.

time, Michael Powell, had been a strong proponent of relaxing the ownership cap rules and thus Kenneth Ferree, the Media Bureau Chief Chairman Powell appointed, would seek to suppress the study because he saw the study as undermining the policy position that it was reasonable and appropriate to relax the media ownership cap.[11] Instead, the evidence clearly indicates that agency management's like or dislike of the results was not a factor and that the Local TV News Report was not released formally by the Commission for reasons that do not relate to agency management's like or dislike of the results.

Background

The genesis of the Local TV News Report came in the late summer of 2003 and was the independent research idea of the two authors, following a perceived call for research by the then-Chairman, Michael Powell, in his description of the mandate of the "Localism Task Force" ("LTF"). The LTF was created shortly after the end of the Commission's 2002 Biennial Regulatory Review proceeding to address localism, the core of "public concern about the media" as voiced during the twenty-month proceeding. Among other things, the LTF was to conduct studies to rigorously measure localism and how it may be affected by existing Commission rules, and make recommendations to the Commission on how it could promote and strengthen localism in television and radio. At the same time, the Media Bureau created the position of "Director of Research" and initiated a Media Bureau Staff Research Papers Series to encourage and utilize the research efforts of Media Bureau economists in both specifically assigned and independently conceived research.[12] The LTF and Media Bureau staff and management overlapped substantially and at times the lines of authority and management were

[11] The Commission revised the local broadcast ownership rule to permit an entity to own up to two television stations in markets with 17 or fewer stations, and up to three television stations in markets with 18 or more stations. *2002 Biennial Regulatory Review- Review of the Commission's Broadcast Ownership Rules and other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking* 18 FCC Recd 13,620 (2003) (*2002 Biennial Media Ownership Review*). The Third Circuit questioned the Commission's rationales and remanded the rule changes to the Commission *Prometheus Radio Project v. F.C.C.* 373 F3d 372 (2004). The rule currently operative is that which predates the *2002 Biennial Review*: a single entity may own two television stations in the same local market if (1) the so-called "Grade B contours of the stations do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share and at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the market after the combination. This formula was adopted by the Commission in its 1999 *Local TV Ownership Report and Order*, 14 FCC Rcd 12903 at 12930-31, in accord with the Telecommunications Act of 1996.

[12] The purposes of Media Bureau Staff Research Paper Series include: (1) creating awareness of future media policy issues; (2) fostering debate and discussion both within the Commission and external to the Commission among researchers, scholars, media enterprises, other interested parties, and the public generally about future media policy issues prior to the Commission initiating formal inquiries or rulemakings to address and resolve such issues; (3) providing both descriptive and inferential (econometric) empirical studies on aspects of media industry structure, conduct, and performance; and (4) providing conceptual analysis and empirical research in support of ongoing or near term Media Bureau inquiries and rulemakings. *See* www.fcc.gov/mb/mbpapers.html, last accessed October 3, 2007.

blurred. Much of the work of the LTF, especially its work relating to economic research, was done by Media Bureau staff, most of whom were not formally members of the LTF.

The authors, then both staff economists in the Media Bureau, proposed to conduct a study of data on local television news broadcasts which had become available to one of the authors, at no charge, though a University of Delaware professor. The authors presented their idea to management in their supervisory chain and the Media Bureau's Director of Research, who thought the proposal had promise as an economic research project. The authors then gave a presentation to the Co-Chair of the LTF (who was also the Deputy Chief of the Media Bureau). The Co-Chair was politely interested but non-committal, which appears to have given rise to confusion as to whether the project went forward as an LTF, or simply a Media Bureau Staff Research Paper Series, project. There appears to be a fair amount of confusion on this issue, even within the recollections of individuals. We do not believe, however, it is necessary to determine under which aegis the project went forward for purposes of this investigation. At the very least, the proposed study was viewed as research of potential value at some level to the Commission. The authors clearly were given permission to pursue the project with Commission resources in down time when they did not need to be working on assigned work.

The authors commenced work in approximately the late autumn of 2003, reviewing and analyzing approximately 550 hours of broadcast samples of news reports and characterizing them as non-local, local, or on-location local news reports. They began drafting the written report of their research in January, 2004. These drafts were reviewed by various colleagues, including the Media Bureau Director of Research. Not later than February 17 2004, the Media Bureau Chief was informed of the research project and its initial results that "local ownership ... adds almost four minutes of local news, over four minutes of total news and almost five minutes of local on-location news." In late March 2004, the authors gave a presentation on the report to Industry Analysis Division of the Media Bureau and other interested economists. As part of that process, a draft of the report was circulated to various staff and management in the Media Bureau and on the LTF and to other potentially interested and knowledge Commission employees. Significant criticisms and questions on the draft report were raised at the presentation and in follow-on communications to the authors and their supervisor.

Following the presentation and follow-on critiques, the authors made various revisions to the draft report. Criticisms were received not only from senior economists responsible for reviewing the work, but also staff economists, including colleagues of the authors. The author we interviewed felt strongly that they responded completely and made all changes they thought necessary to meet the criticisms they considered valid. The senior economists reviewing the work, including the Director of Research, did not agree. The resulting tension was within the framework of pre-existing tensions between the authors and their supervisors on personnel and personality matters, and with a senior economist who perceived the authors to have been working on the Local TV News Report research during the period when one of the authors failed to perform adequately or timely on work assigned to him to assist that senior economist. The authors' supervisor then sought a rough approximation of a double-blind peer review with a staff economist from another bureau in the Commission. The written comments of this reviewer were provided to the authors, as were other similar written comments from other staff and management economists. Again the authors thought they responded to all valid criticisms, but the senior economists reviewing the work did not agree that the report had been effectively revised. Although recollections and perceptions differ as to what happened next, after mid-summer 2004, the authors did not produce additional drafts to their supervisor, the Director of Research, or anyone else in the Media Bureau or the LTF, for the approvals necessary to move the report forward towards release.[13]

Discussion

As a primary matter, we neither saw nor heard any direct evidence that anyone in senior management at the Commission stated orally or in writing that he or she disliked the results of the Local TV News Report. Based on the evidence we have gathered, it also appears clear that the report was never presented to the Media Bureau Chief or his immediate staff or to the Co-Chair of the LTF by senior economists or management as a document to be considered for public release. We neither saw nor heard evidence that the report or any aspect of it was ever discussed with anyone in the offices of Chairman Powell, Chairman (then-Commissioner) Martin, or any other Commissioner.

We found extensive evidence in this investigation, through both interviews and document review, that serious issues with the Local TV News Report were raised contemporaneously. This includes matters involving the underlying economic research methodologies, the extent and usefulness of the narrative portions of the report, especially as to the completeness of describing the qualifying limitations of the data, and that the narrative conclusions appeared to be broader than could be supported by the data. We found that these issues were discussed directly with the authors, and were also discussed among management and senior economists responsible for addressing such work in the Media Bureau. The senior economists we interviewed all stated that the last draft of the report they reviewed had not addressed all issues of concern, and the report never reached a stage at which they felt it met their professional standards such that they would present it to the Media Bureau front office or the LTF for potential release. The witnesses who had criticisms of the draft paper, however, uniformly thought that the problems could have been corrected to produce a releasable report (although views of its potential value differed). We find these witnesses to be credible on these points. We also had the OIG's Senior Forensic Economist examine the collected drafts of the report, the written criticisms, relevant portions of interview transcripts and discuss the interviews and other evidence with the OIG staff working this investigation. The OIG's Senior Forensic Economist determined that the various versions of the report exhibited issues noted by the reviewing economists and that the final versions have not corrected for all issues and retained serious flaws as a piece of economic research.

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[13] As noted *supra* at note 9, a cosmetically revised version of the June 17, 2004 draft paper was provided to the authors' supervisor in March 2005, apparently for the purposes of the performance appraisal cycle.

The two authors of the report both state that they believe the report was not released because the then-Media Bureau Chief did not like its results, and not because of any issues with the quality of the report or the underlying economic research. Both authors also claim the level of review and criticism for the Local TV News Report was unusual, if not even unique, for review of Media Bureau economic research papers. As noted elsewhere in this report of investigation, the author who performed the substantive econometric work on the project, left government employment prior to the start of this investigation and declined to be interviewed by the OIG for this investigation.[14] The econometrician provided a written statement to his co-author who provided us with a copy of a written document that appears to be that statement.[15] We were able to interview the author who remained at the Commission, however, who cooperated fully and at length. We believe that author was honest and straight-forward in reporting his views and recollections. We note, however, that this author is a theoretician and had little to do with the underlying economic analysis or the econometrics that appear to have raised the most significant concerns with the report.[16] Further, this author's past theoretical work at the Commission was highly regarded; staff and management, economist and non-economist witnesses all mentioned this, as did OIG's Senior Forensic Economist.[17] We also note that there was a pre-existing and high level of tension between the authors and their supervisors that appears to stem from both personnel

[14] OIG staff contacted this author, the econometrician, more than eight times. One investigator spoke directly to the econometrician on the telephone four times; throughout the process the investigator left voicemails that the econometrician did not return; the Assistant Inspector General for Investigations also tried to assist in the effort and left him three voicemails that also were not returned. In one of the telephone conversations, the econometrician told the investigator he did not trust "the IG process." To assuage his concern, the investigator noted that the OIG had contracted with a court reporting service and would have this independent entity record the interview and produce a written transcript which he could review for accuracy. The econometrician stated that his concerns were increased with the ability to have an actual transcript of his interview. OIG then offered to have a more informal interview recorded only on tape and without a formal transcript, the econometrician author still expressed doubt that he would agree. In the last conversation with him, the econometrician told the investigator that he would not agree to be interviewed at all.

[15] In the telephone conversation in which he declined to be interviewed, the econometrician stated that he had given a statement to the other author who remained at the Commission and understood that that author had provided it to us. Because we were not able to interview the econometrician, we were not able to confirm the documents were identical or to question him about the other author's recollection. However, we have no reason to believe the author we interviewed would alter the statement provided by his co-author and thus, for purposes of this report of investigation, we have assumed the written statement we have is that of the econometrician.

[16] This author spent much of his time on this project viewing the news broadcast tapes, a significant and time-consuming task; he also wrote much of the narrative portion of the report.

[17] We also note that both authors were involved early in their Commission careers with the process for the Media Ownership Working Papers developed and run through the Media Bureau front office and the Office of Chairman Powell for purposes of the 2002 Biennial Regulatory Review, and which did not necessarily follow the normal practices of Media Bureau economic paper review. Witnesses with longer experience at the Commission stated that significant review of economic papers, including informal peer review, were usual practices. We found those witnesses credible, but note that this does not detract from the credibility of the author we interviewed as to his perceptions, because he had different experiences.

matters and personality differences, and between a senior economist reviewing the report and the authors because of performance issues on a recent project.[18] We believe this back-drop of tension may have led the authors to perceive the criticisms as inaccurate and pretextual.[19] Some witnesses thought, and the authors' supervisor stated, that the managers involved perceived the tension and that the then-unusual process of informal peer review with a staff economist from outside the Media Bureau was an attempt to combat the perception the criticisms came from the background of tension rather than actual problems with the work.[20] We find this explanation and the witnesses providing it credible. Based on the information gathered in our investigation, and on the OIG's Senior Forensic Economist's analysis of the various versions of the Local TV News Report and its criticisms, OIG believes that the concerns with quality aspects of the report were sincerely held and rationally based, and that the attempts to have the authors revise the report were honest attempts to have the authors improve the report and not efforts to lead them to abandon it.

In March 2004, during the period in which criticisms were being given to the authors and revisions made to the draft versions, an intellectual property issue arose. When the authors first presented their proposal, Media Bureau management and the Commission's Office of General Counsel ("OGC") addressed initial intellectual property rights issues. At that time, the authors identified the data to be used as the intellectual property of a certain professor. After some back and forth with the professor, a letter granting the Commission permission to use the data was obtained that satisfied the OGC. Later, however, in responding to criticism that the underlying data had not been described in sufficient detail, the authors indicated that the professor had enhanced underlying data belonging to the Project on Excellence in Journalism ("PEJ"). This raised serious concerns among the legal staff in the Media Bureau that the Commission might not have complete rights to use the data or release it further, especially as PEJ had denied Commission requests to use PEJ data in the recent 2002 Biennial Regulatory Review proceeding. The authors' supervisory chain and the Media Bureau front office again began working with OGC to seek necessary permission to use the underlying data. The

[18] During the same time period the authors were undertaking the task of more than 550 hours of viewing and coding broadcast news tapes, they were assigned to do economic work necessary to assist the senior economist's work on a major Commission proceeding with a strict deadline. The senior economist reported that he often had trouble locating the authors and getting them to respond to his requests during that time period (the senior economist also reported feeling frustrated by this). The senior economist encountered especially difficult problems with the econometrician, who failed to provide adequate and timely work, ultimately forcing the senior economist to do the work assigned to the author by himself one week-end before the deadline.

[19] It seems possible that the back-drop of tension and exasperation also may have led the criticisms to have been delivered with more intensity than usual; however, as noted, our Senior Forensic Economist confirms there are substantive concerns with the report in all versions.

[20] The evidence indicates that the peer review process did not result in a fully double-blind peer review in one case. We interviewed the reviewer, however, and found him credible and objective. In addition, as noted elsewhere, the OIG's Senior Forensic Economist also found the problems in the various versions of the report.

Media Bureau Chief was informed of the PEJ data rights issue at this time and, based on the past experience with PEJ's denial of Commission requests to use data, directed that Media Bureau staff and management take precautions to insure that the Commission not appear to have misused proprietary data, or failed to protect it once the fact the data was PEJ's became known.

The authors both view the concern with the intellectual property issue as a pretext for stopping or suppressing their work on the Local TV News Report. In his written statement, the econometrician stated that the Deputy Bureau Chief "after seeing our findings, tried very hard to raise intellectual property concerns about the paper even after [the other author] had clearly made sure that everything was in order on the intellectual property front." The author we were able to interview told us of similar views in his interview. Although we believe this author was entirely credible in reporting his view to us, we do not think it was an accurate assessment.

The Media Bureau economic research work in general involves an intersection of economists and lawyers. A common refrain in this investigation was that economic issues that are simple and clear to economists are not so to lawyers. We think that in this case, similarly, legal issues that raise concerns in lawyers may not do so to non-lawyers. It appears reasonable to us to have a concern with the proprietary rights issue, especially given the past history with PEJ. We also note that the evidence from our interviews and document review establishes that the Media Bureau again began to work with OGC to address the intellectual property concerns for use of the data in the Local TV News Report. A letter to PEJ seeking permission to use its data was drafted and went through some review. This process was going on at the same time management and the senior economists reviewing the Local TV News Report became frustrated because repeated drafts of the report did not seem to be addressing the most significant criticisms.[21] We note that the issue, and Media Bureau efforts to address it, came after the Bureau Chief had been notified of the report's existence in draft form and its conclusions. In our interviews, the former Bureau Chief and others then in the Bureau front office had vivid memories of an intellectual property rights issue arising from an economic research project and the Bureau Chief's concern with this issue, while the Bureau Chief and other front office members not otherwise involved with the report did not have specific memories of the Local TV News Report from that time period. We found those witnesses credible and that the intellectual property concern was strongly held, acted upon reasonably and in good faith, and was not a pretext to suppress the report.

The only evidence we found that might directly support the allegation that the report was suppressed because senior management disliked its results is the 2007 recollection of one of the authors in his OIG interview that a supervisor had a meeting with the two authors and told them something to the effect that "the results [of the Local TV News Report] weren't consistent with what the front office might have liked to have seen." The supervisor identified stated specifically that she would not get into conversation with the authors about whether the Bureau Chief liked or disliked the report;

[21] At some point it was decided not to send the letter until it appeared that report was closer to a final product.

she remembered repeated statements from the authors from the beginning of the draft review process that she and management did not like the report because of "the bottom line" and that the authors clearly wanted to get her to say she agreed. No other witness recalled any statement by the Bureau Chief that he disliked or disfavored the results of the Local TV News Report or that he ever addressed it substantively in any way.

In his written statement, the econometrician states that he "strongly believe[s] the paper [the Local TV News Report] was 'killed' because Kenneth Ferree did not like the results," but he also states that he was told Mr. Ferree was "furious" with the report and that he thinks:

> it certainly doesn't seem plausible that Ferree 'was furious' with the quality of the [Local TV News Report]. It therefore appears to me that to the extent [a supervisor] accurately represented Ferree's emotional state, Ferree was furious with the paper's findings.[22]

The econometrician does not mention in his written statement that he was told by management that the front office did not like the results of the report, either in support of his view on this issue or elsewhere in the statement and his statement accords with the supervisors testimony that the authors repeatedly told her that they thought management did not like the results of the report.. The absence from the written statement of any discussion of a conversation in which a member of Media Bureau management stated that the front office disliked the report is not dispositive, but it does seem a significant and highly relevant fact to ignore. And the absence still leaves us without corroboration for the first author's recollection. Professor Candeub, who alleged in the media and to the Senators that the Local TV News Report was suppressed because agency management did not like the results, also declined to be interviewed and thus we could not follow up on any information Professor Candeub might have with respect to this specific matter.

We specifically questioned the former Media Bureau Chief about the Local TV News Report. He did not have any specific memories of the report or remember any view about it from that time period. He did read the report when the stories about it came out in the media. The former Bureau Chief thought in retrospect that he probably would not have agreed to release it in 2004 because he viewed it as dealing specifically with ownership issues, which the Commission had only recently finished with, rather than the behavioral aspects of localism that he viewed as the appropriate focus of current efforts.[23]

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[22] No witness recalled that the Bureau Chief was "furious" with the Local TV News Report, although some recall him being upset over one economic report that they cannot identify and several noted that he was very concerned when he learned that there might be a significant proprietary data rights issue with the Local TV News Report. Based on other accounts in which witnesses could recall the Bureau Chief being upset with an identified economic report, and the similarity of timing and circumstances for the accounts in which a witness could not identify the subject report, our best surmise is that the report at issue was the Draft 2003 Radio report discussed below. It might also be a recollection of the Bureau Chief's response to the news that there was a potential issue with PEJ proprietary data rights and the Local TV News Report.

[23] The Media Bureau Chief's approval would have been required to release the report in the Media Bureau Staff Working Paper Series.

The Bureau Chief also thought that he would likely have told staff to hold the work for use in the next biennial or quadrennial review when the Commission would again address ownership issues, as he viewed the results of the Local TV News Report as likely to be useful in supporting the retention of some national ownership cap. We also asked the Co-Chair of the LTF about the report, as it conceivably could have gone through a separate approval and release process for LTF purposes. The Co-Chair felt that, had it been presented to him by the Media Bureau senior economists as a releasable paper, he would have considered it for its relevance and value as a LTF report. The Co-Chair stated that the LTF did not ignore the ownership variable in addressing localism and noted that the LTF's major research study specifically included ownership information as a variable. We find these witnesses credible on these points and that they did not dislike or disfavor the results of the Local TV News Report.

We do note that there is some evidence that is ambiguous and by itself would not be inconsistent with the possibility that agency management, at least in the form of the then Media Bureau Chief, did not like the results of the Local TV News Report. One witness thought the Media Bureau Chief stated at some point that he thought Michael Powell would not have wanted the report released, the witness thought but was not sure that this was in reference to the Local TV News Report. This instance, however, is also consistent with the view that the Media Bureau Chief was concerned with the timing of producing or releasing material on ownership structure in part because he believed that view was shared by Chairman Powell. In addition, the failure to follow through with seeking permission for data use from PEJ could be seen to stem from a decision not to release the report, but there was no evidence of such motivation. We think the combination of the press of other work, the growing sense that the authors were not likely soon to revise the report to meet the professional concerns of the senior economists, and the fact that a letter could be sent at a later time if necessary is the more likely explanation.

Conclusions

As discussed in more detail above, we find the weight of the evidence discovered in our investigation indicates the most probable explanation is that the report was not released because the senior economists responsible for reviewing and approving the report did not determine it had been revised sufficiently to the level of releasable work and not because of agency management's like or dislike of its results. Based on the information gathered in our investigation, and on the OIG's Senior Forensic Economist's analysis of the various versions of the Local TV News Report and its criticisms, we believe that the concerns with quality aspects of the report were sincerely held, rationally based and not pretexts to suppress the Local TV News Report. We suspect that the tensions between staff and management and staff and senior economists may have exacerbated a difficult situation, but that this tension was not caused by or related to any effort to suppress the report because of agency management dislike of the results.

B. Inquiry Into Draft 2003 Radio Report

The question of what happened with the draft report entitled "Review of the Radio Industry, 2003" ("Draft 2003 Radio Report") is in some ways simpler than the question of the Local TV News Report and in some ways presents more troubling aspects. There is no dispute that a fairly complete draft was prepared by Media Bureau staff and presented to its front office. There is also no dispute that the then-Media Bureau Chief decided the report would not be revised into a final version to be submitted to the Chairman's office for expected release and that the Media Bureau would not work on another update of the report in the immediate future, at least not until media ownership issues were before the Commission again.[24] We note, however, that a decision not to release a document does not by itself establish that the document was "suppressed." Decisions to revise, change, release, or not release documents are common and expected in government agencies and the role of agency management includes making such decisions. Although agency management (and staff) cannot conceal documents or information, there can be valid reasons for decisions not to release a document or information even when the information is not privileged or otherwise to be protected from disclosure. We look to the context of the decision-making and the reasons, expressed and observed, for the decision not to release to determine whether the decision and related actions were reasonable and consistent with agency management's obligations to the agency and the citizens it serves, or whether the decision was arbitrary and capricious or, in the worst case, an act to conceal information.[25]

Background

The Commission initiated the series of "annual" Radio Reports in response a Congressional request for periodic updates concerning the effects of the relaxation of radio ownership rules pursuant to the Telecommunications Act of 1996.[26] The Radio Report was prepared and released at uneven intervals five times before the instant inquiry: March 1998, January 2001, September 2001 and September 2002. The Draft 2003 Radio Report was posted on the Media Bureau website on December 29, 2006, along with other material produced in response to a FOIA request.[27] As will be discussed later in this report of investigation, a 1999 Radio Report was prepared but not released. The 2003 Radio Report was prepared but not put into final revision and released and is

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[24] The expectation at that time would have been the next quadrennial regulatory review proceeding in which media ownership rules would be addressed. Previously the Commission has reviewed these matters on a biennial basis, but in January 2004, Congress amended section 202h of the Telecommunications Act of 1996 to provide for a quadrennial rather than a biennial review. Appropriations Act 2004, Pub. L. No. 108-199, Div. B, § 629, 118 Stat. 3, 99 (2004).

[25] As noted above, an attempt to conceal the draft report at issue could be found to be a violation of section 2071 of Title 18 of the United States Code and we would be required to refer evidence of such to the Department of Justice.

[26] The OIG has not succeeded in determining the precise nature or scope of the request, nor from whom it originated.

[27] http://www.fcc.gov/ownership/additional.html, last accessed October 3, 2007.

the subject of this investigation. No Radio Report was prepared after the 2003 version until the 2007 Radio Report, which was released in 2007 as part of the 2006 quadrennial regulatory review proceeding. The material analyzed, subjects addressed and format of the Radio Reports are largely identical. The Radio Reports drew conclusions about ownership and other structural, economic and performance trends in the radio industry, employing the BIA Publications, Inc. Master Access Database of radio stations, Arbitron Metro level data and Standard & Poor's 500 financial data, Bureau of Labor and Statistics consumer price index data and, in the case of the Draft 2003 Radio Report, Service Quality Analysis Data. All of the data used in the Reports was publicly available from sources outside the Commission.

In general, statistics presented by the Draft 2003 Radio Report indicated that radio industry consolidation patterns observed in prior reports continued to evidence ever decelerating growth in the number of stations, number of large group owners, and size of the largest group of stations. They also revealed that advertising revenue market share concentration increased greatly immediately after the Telecommunications Act of 1996, but at a diminishing rate thereafter, and that the concentration effect was most pronounced in the smaller markets. Ownership diversity, measured by the number of independent owners of stations per market, declined to an ever lessening extent. On the other hand, format diversity increased in smaller markets and declined slightly in larger markets consistently over the seven-year period. According to several indicia used in the Draft 2003 Radio Report, the radio broadcast industry enjoyed a robust financial performance in the first few years after the Telecommunications Act of 1996, but this fell off in 2001 and showed sporadic results thereafter.

There appears to be no dispute that the economic work product in the Draft 2003 Radio Report was competent and did not raise the types of issues seen with the Local TV News Report. The Draft 2003 Radio Report followed the pattern set by the prior three released reports and used standard economic methodologies and publicly available data, as had the prior reports. The results of the Draft 2003 Radio report also appear to be expected and uncontroversial: the pattern of consolidation in radio ownership since the Telecommunications Act of 1996 was continuing although with the same minor flattening effect seen in past reports.[28] The Draft 2003 radio report was presented to the Media Bureau front office for review in late December 2003. Minor criticisms from a reviewer in the Media Bureau front office were received, some could have been dealt with minor edits, some appeared to be the result of unfamiliarity with the series of reports and could have been addressed through discussion. Revisions were not made, however, because the Media Bureau Chief decided the report should not go further towards release. In an electronic mail message, the then-Chief stated that he:

> [was] not inclined to release this one unless the story can be told in a much more positive way. This is not the time to be stirring the "radio consolidation" pot. ... [Given that the reports in the series had been issued

[28] A more detailed description of the Radio Report series and the Draft 2003 Radio Report with its findings is provided in an attached appendix.

at uneven intervals in the past] It would hardly seem odd if we did not release one this year ... particularly given that we just did a big radio order as part of the biennial ... All in all this is a really bad time to release something like this. If we can change the focus and make it more positive ... then perhaps we can do something like this again, but this will take more than just regurgitating last year's report with new numbers.

Discussion

We interviewed present and former Media Bureau staff and management to investigate this matter, including the former Bureau Chief, who has left government employment but voluntarily agreed to be interviewed under oath in this investigation.[29] We also performed an extensive document review as noted previously. Based on the evidence, we believe the decision not to go forward with the release process for the Draft 2003 Radio Report was not an attempt to conceal information, and was a reasoned decision based on valid agency management issues consistent with expressed and observed directions of the Media Bureau Chief on similar matters. This is an area on which reasonable minds could differ and another person could have made a legitimate decision to continue the release process for the 2003 Radio Report, but that does not affect our view that the actual decision of the Media Bureau Chief was not improper. The Bureau Chief considered reasonable factors, including agency efficiency, but there are certain factors relating to government work product that perhaps could have been more carefully weighed, such as the Senators' concern that work done at taxpayer expenses was not made directly available to the public. We cannot conclude, however, that additional consideration of such factors would have resulted in a different decision and do not conclude, therefore, that the decision was improper.

The reasons for the decision not to release the Draft 2003 Radio Report, as provided in the electronic mail referenced above, and as reported to us in various interviews taken in this investigation, appear to be legitimate and based on valid agency considerations. The statement that the report might be done again if the focus could be more positive could be seen as an indication of a desire to twist or conceal facts. We found no evidence of such an intent, however, and accept that this statement was a policy-maker addressing the natural framing of issue and argument. The statement that it "is not the time to be stirring the 'radio consolidation' pot" can similarly be viewed negatively as an apparent desire to avoid legitimate debate on a controversial Commission decision. In its context, and consistent with other contemporaneous statements and actions of the former Media Bureau Chief, we believe this to be in part a reflection of the Bureau Chief's oft-expressed concern that staff's efforts and work product focus on matters actively before the Commission and the Media Bureau.

The Radio Report series was intended and executed solely to look at radio ownership data. With respect to the Draft 2003 Radio Report and other research projects

[29] As with the Local TV News Report, we found no evidence the matter went beyond the level of the Bureau Chief.

addressing media issues, the then-Bureau Chief took the position and directed staff and management that work should not be done on ownership issues, as that had been addressed and settled for purposes of the Commission when the biennial proceeding ended in June 2003. In the context of similar matters, the Bureau Chief directed that staff should look at other matters, specifically, to address localism and behavioral rather than structural ownership issues.[30] In addition, the Commission, like all government agencies, has limited resources. It is thus reasonable, if inelegantly put, that the Bureau Chief would not want to "stir the pot" and have staff resources directed to responding to such stirring when agency management needed staff to be addressing other issues. Finally, as the Bureau Chief and many others noted to us, the report analyzed publicly available data from sources outside the Commission and the analysis simply indicated the trends previously identified continued as generally expected by most observers. Thus, although the information and analysis in the Draft 2003 Radio Report might be useful and of interest, it presented nothing especially new or novel and was an analysis others could undertake if they so desired. We agree that these facts lend weight to the view that this decision was not an attempt to conceal unfavorable information.

The aftermath of the decision not to move the Draft 2003 Radio Report to release presents more troubling issues. Media Bureau staff had noted to the Bureau Chief that the report had been released on a repeated, if irregular, basis and that there were often sporadic requests for it or inquiries as to when a new version would be released. It is clear that the then-Bureau Chief directed that responses to inquires for future versions would be that the Media Bureau did not have time and resources to produce annual updating of the report. It is more unclear as to the directions regarding responses to inquiries that would implicate the draft but unreleased 2003 Radio Report. Several members of the Media Bureau did not remember receiving any instructions on this matter. One of these individuals responded to an inquiry about a 2003 version from within the Media Bureau itself that "[w]e didn't do one in 2003" and went on to identify the most recent released reports and offer to arrange for copies of such. Another remembered receiving a direct inquiry for the 2003 report from a Commissioner's office and responding that there had been a decision not to release the draft. One member of the Media Bureau remembers having been told that the Bureau Chief directed that they say the Bureau did not have the time to do a 2003 report because of the press of other work; that person clearly thought the instruction basically was to lie, but did not have any recollection of receiving or responding to any inquiries. The Media Bureau Chief did not remember giving out directions on responding to inquiries for the 2003 version or having any conversation about the topic at all.

We are aware of only one person that made inquires about a 2003 Radio Report. That person was a former Commission staffer who served at the relevant time in a

[30] We note the division of structural from behavioral aspects of localism was conceptually difficult for economists and staff and appeared to some to be an abstract and unreal division. In practice, it appears to have been interpreted to mean ownership variables could be considered but should not be a special focus. The Radio Report series, however, was intended to, and did, focus on ownership issues.

Commissioner's office.[31] That person has left government employment but agreed to be interviewed in this investigation. He did not have specific memories of which staff or management he made inquiries of, but remembered the general impression that a 2003 Radio Report was not going to be released and available. The intended use was to have a citation for speeches and remarks that radio ownership consolidation continued as expected; instead the remarks were made along the lines that we expect the trends in consolidation continue and that if a Radio Report were done today it would show such.

Conclusions

As discussed above, we conclude that the decision of the former Media Bureau Chief not to move the Draft 2003 Radio Report forward for release was not improper. We have more concerns with the situation involving the response to inquiries for a 2003 Radio Report. We are troubled by the possibility that there could have been, at the least, an effort to distract attention from asking for the Draft 2003 Radio Report and, at the worst, an attempt to conceal the existence of the draft report. The evidence in this matter is sometimes contradictory, often ambiguous, and generally rests on recollections far after the events in question. We do not feel that the evidence is strong enough to establish with certainty that any improper or illegal acts to conceal the Draft 2003 Radio Report took place and therefore this cannot be a matter for referral. We suspect that, were the then-Media Bureau Chief still in place, we would refer the matter to the Chairman for administrative consideration. Given that different management is in place and that during our extensive investigation we have not heard reports of similar situations, we do not see it necessary to refer this matter.[32]

C. Inquiry Into Additional Media-Related Matters

The Senators also asked us to determine if there were additional similar material related to media ownership or localism that was not released to the public and if so, to examine the surrounding circumstances. The Senators expressed concern specifically with the long delay with several contract-based research projects entered into for the LTF and which still have not resulted in publicly released material. The expressed concern raises a potential issue that the delays might have been intentional efforts to conceal the relevant material from the public because it was disfavored by agency management. As noted above, we conducted an extensive and wide-ranging investigation, including interviews and document review relating to this issue. We found no evidence that the delays with respect to these contract-based research projects were intentional efforts to delay the public release of information. We also found no evidence that additional materials that were not released to the public were withheld based on improper motives.

[31] The internal inquiry referenced above related to this person's inquiry.

[32] We note that the fact of this extensive and highly public investigation and report may be informally educational for staff and management on this issue. And we note that Commission staffers or any others who encounter such situations or hear about them may contact the OIG directly or through our Hotline number at (202) 418-0273, or toll free at (888) 863-2244, or by electronic mail at hotline@fcc.gov.

Discussion

The Senators identified Commission expenditures to consultants for unreleased radio sampling data related to localism content as a related matter of concern. We looked at this as well as related matters. The matter identified by the Senators involves the unique attempt to create a database of actual radio broadcast content over a period of time that would provide Commission and outside researchers with a sufficiently large body of data to study actual radio broadcasting activities in the area of localism. The project was a massive undertaking, both as an economic research project and as a contractual matter for the Commission. The Commission as an institution appears not to have had sufficiently recent experience with such a project, and LTF personnel also did not have specific experience with similar projects. As is often true with large first-time endeavors, the initial stages took longer than anticipated. Further, the contractor, which was the sole bidder for the contract, appears to have had significant performance problems with both the quality and the timing of contract deliverables. These problems do not appear to have been resolved fully to date. Thus, there is not complete database ready to be made available to the public yet.[33]

There was also a small consulting contract to an academic to produce a theoretical piece to inform the LTF and the Commission with respect to localism. A draft of the work was made available on the Internet in 2004, so the material has not been suppressed as a factual matter. At a later point, the academic delivered a draft to the Commission, which appears to have been reasonably viewed as an extremely academic piece that was essentially too academic and theoretical to be of great help to policy-makers. Commission staff reviewed the report delivered and requested certain substantive and stylistic edits in an attempt to make the piece more useful to regulators. There was also a period of delay during the transition period to a new Chairman during which action was reserved on most matters, including this one. There was an additional fairly long delay while the academic considered and addressed these proposed revisions. The cause of the delay in this matter seems to rest with the academic researcher's schedule, along with the press of other work on staff, and perhaps a feeling that pressuring the academic was not necessary given the final value of the piece for regulatory purposes.

The Senators asked us to determine whether there were any additional reports, research, data, recommendations or other materials on media ownership or localism that were not released and, if so, to examine the circumstances. We found that a few additional, small matters, mostly relating to localism, also did not come to fruition as originally planned, although many also only rose to the suggestion state and had not been fully fleshed out or approved. The work required additional Commission staff efforts and for some matters, additional contract-based work or materials. Generally, work load priorities did not allow the necessary staff efforts, including because of the much greater burden of the radio content database project discussed above, prior to the transition to a new Chairman. A few research projects moved into rough draft stage, but most were not begun and the few that were partially worked on were not completed because of the press

[33] Some of the data collected so far has been made available in response to a FOIA request.

of other work and varying levels of interest.[34] A new Chairman was appointed at that point and, as is often the case, did not have the same priorities or interest as did Chairman Powell with respect to the LTF's projects. During the transition period, Media Bureau and LTF members were directed to continue work on the on-going contract-related projects, but not start work on those projects not yet begun. There was some confusion as whether staff should continue working on approved but not assigned tasks (work based on independent research ideas of staff for which they had authority to use Commission resources in their down or personal time) at this time. It appears to have been ultimately made clear the Media Bureau staff that should work only on tasks specifically assigned by management. This has been seen as a management choice reaching to all subjects, not a specific effort to suppress specific results not favored by management. Eventually, several of these projects were completed, in some cases in slightly tweaked form, as part of the 2006 quadrennial regulatory review process.

Conclusions

The major contract-based LTF research project has not had an efficient history, but we did not find any evidence that the delays were due to intentional efforts to delay or sabotage the project or prevent the final unique database from becoming available to the public. The project clearly seems not to have moved smoothly or quickly to its end and we have no doubt detailed examination of the decisions and processes would find areas wherein other persons would have made different decisions and that there are management lessons to have been learned from this project. We did not address those issues in detail because the scope of our investigation was narrow: to determine if the delays were due to intentional efforts to stifle or suppress research or information because it was not to liking of agency management. We found no evidence of such and the evidence we did find indicates that Commission personnel worked diligently and in good faith to address and resolve problems within a difficult situation. Similarly, we did not find anything that appears to have been intentional efforts to delay or suppress any of the additional projects in order to prevent disfavored results from being released.

D. Inquiry Into Practice of Senior Management with Respect to Reports

The Senators asked us to examine whether it is or has been "the practice of any commission or senior FCC management to suppress facts, analysis, or other materials that is contrary to a result desired by that person." In order to address this very broad question, we asked every person we interviewed on the specific matters described above if they knew of any other matters similar to the one(s) we discussed or it they knew of any situation which they thought might have involved suppression of reports, facts, analysis, or other material. We asked the witnesses to answer as broadly as they could, providing us with rumor and hearsay and telling us about any situation which might possibly have been related to a suppression scenario, whether current or in the past. Our investigation into the above matters led us to economists and researchers, staff and management, current and former, in the Media Bureau and elsewhere in the Commission.

[34] We note one staff economist was perturbed when his very rough and unedited draft work was released on the Commission's website on December 29, 2006, in a state he would not have chosen to have it released.

In addition, in an effort to ensure we did not miss leads from other parts of the Commission, we specifically interviewed to at least one researcher in each bureau and office that was not represented in our investigations into the above matters and followed up on all leads provided to us.

Discussion

As a preliminary point, we have found no evidence that it is or ever was a pattern or practice of any commissioner or anyone in the Commission's senior management to suppress reports, facts, analysis, or any other material because it was contrary to a result desired by that person. We investigated all the leads we received for matters in recent history and did not find any evidence that any of these matters was an episode of suppression, much less a pattern or practice of such.

We did hear about two isolated incidents in the past, under two separate former Chairmen, that raise the possibility of suppression.[35] We did not have the time or resources to investigate these isolated, historical incidents, which also appear to be beyond the statute of limitations for any possible criminal prosecution. We caution that these were only leads as to situations that may or may not have involved improper actions; we note that the investigated matters recounted above look suspicious as first encountered with limited information, but that complete and time-consuming investigation determined otherwise. We do not have the evidence from which we could draw any conclusions about these historical matters and we do not do so. We specifically note that aside from these two possible instances, there was not other evidence or even hint of other possible suppression under either Chairman and thus there is no evidence of any practice or pattern of suppression by senior management at the time or by those Chairmen. We also heard views that the Commission's research environment in the seventies and eighties was much more tightly controlled and perhaps hostile with respect to independent research, but we were given only general impressions made vague in part by the passage of time and were not told of any specific matters.

We sometimes were directed by interviewees to certain individuals on the grounds they might know of possible situations involving suppression or leads thereto. In

[35] As mentioned briefly above, a draft 1999 radio report was prepared but not released. In this instance, the report went through Media Bureau front office approval and was submitted to the office of the Chairman at that time for authority to release, which was not granted. The persons we interviewed on this matter were not told any specific reasons for the decision not to release. There was supposition that a section on minority and women ownership information that had been specifically requested to be added to the 1999 report might have been considered embarrassing in light of a fairly recent Commission rule-making. In the other instance, a Chairman specifically requested economic research into an issue. When the final draft was provided to him, he requested that the report be revised to focus on specific elements. The staff author did not think the research could support the requested revision in focus. The draft report was not revised or released. The Commission later issued a rule-making addressing the specific element on which that Chairman had wanted the report to focus. In hindsight, a person with some knowledge of the matter wondered if the Chairman had wanted the study to support this aspect of the rule-making and as not otherwise interested in research on the subject matter. As noted, we did not have the time or resources to follow up these leads regarding isolated historical episodes.

some instances, the individuals to whom we were directed gave us additional leads which we investigated as described below. In other cases, the individuals to whom we were directed stated they did not know of any possible suppression matters or anything similar.[36] Among the leads that we investigated with respect to other possible suppression situations were three instances in which researchers were not given permission to make presentations at academic conferences on official time. In none of the cases, however, were related reports or papers suppressed. In one instance, it was known to management that the researcher was working on a related paper on personal time with an outside co-author and they expected to publish the paper at some point.[37] In another, the paper was placed on a conference website in preparation for a conference and it was known to management that the underlying substantive material was in the public domain.[38] In the third instance, the researcher did not have a specific paper.

There were two instances of suggested possible suppression that required fairly substantial investigation. In neither, however, did we find evidence of suppression of reports, facts, analysis or other materials. The first matter involved a draft article reviewing selected economic highlights at the Commission in the prior year. The

[36] For example, one individual in particular was referred to us because an interviewee though this person had been denied permission to publish work outside the Commission and perhaps had had work suppressed. Instead, that individual told us the individual's recent experience was to have been repeatedly granted permission to publish outside articles and had not had any experiences that appeared to suggest suppression. The witness appeared credible on these points.

[37] The authors later submitted the paper for an internal Commission award on the mistaken belief the award was for research relating to the Commission's work. Instead the award is for work produced at the Commission and submissions are presumed to be Commission work product, which it can use as necessary, including placing it in the record of relevant proceedings, and which it can control for purposes of publication. (We confirmed this interpretation in reading the relevant documents on the award process.) The mistaken belief appears to have come to light because of a passing remark between a reviewer and the author that the work might be placed in the record of a relevant proceeding. The Commission-employed author had a past experience in which well-received work of his was placed in the record of a proceeding and relied upon by the Commission in its related rule-making. The author was given permission to publish the paper in an academic journal, but only if it was not substantively edited as the Commission had relied on the work. Unfortunately, the academic journal took the position that it would not even consider a paper that it could not edit, without regard to the actual quality or content. Given the importance of academic publication to the professional career of an economist, the author did not want to risk a similar situation and withdrew its submission for award. The outside author considered this an odd situation, but the Commission-employed author was clear, and appeared quite credible on this point, that the decision is this case was his and he felt no pressure from management as to which choice to make. We concluded the facts did not indicate this was an instance of suppression, especially given that senior management was aware of the authors' intent and ability to publish the work outside the Commission.

[38] The author continued to work on refining the paper for potential release as a working paper. A final draft version went through her supervisory chain to the office of Chairman Martin, but the bureau never received a decision regarding release of the document. The author's supervisors inquired about its status a few times, but neither they nor the author pursued release further. Chairman Martin's Chief of Staff was interviewed in this investigation and asked specifically about this matter. The Chief of Staff had no recollection of the paper or any decision regarding it. He noted the enormous volume of material that passes through the Chairman's office for consideration and decision in explaining his inability to recall one paper. We found him credible on this point. We concluded that the facts did not indicate this was an instance of suppression, especially given that the substantive material was already available to the public.

Commission had drafted and submitted similar annual reviews for an academic journal in prior years. That journal solicited the submission of the draft in early 2005, during a period when the Commission did not have a Chief Economist and shortly before Chairman Powell resigned. Several Commission economists were asked to, and did, draft a paper for possible submission, addressing several economic issues relating to wireline and media matters. The article was put in final draft form and submitted to the office of the new Chairman, Kevin Martin, sometime in late June or July, 2005 for authorization to submit it to the academic journal. Chairman Martin's Chief of Staff denied the request for authorization. We interviewed the head of the office that received the denial, who did not remember being given a reason for the denial; the reports that went to the authors were that approval to submit the article had been denied and no reason had been given. One person believes he asked if edits could be made to gain submission authorization and was told "no," but could not remember any specific information about such a conversation. The Chief of Staff was interviewed for this investigation but did not recall the article or the reasons for denying authorization to submit it for publication, noting again the volume of material reviewed for such approvals by his office.

We interviewed the authors of the draft article, all of whom thought the article was unremarkable and were surprised it had not been approved for submission. All the authors thought their sections contained unremarkable analysis and the relevant data was all publicly available information. One author speculated that his section contained a somewhat novel economic analysis of Commission work, but had not viewed it as controversial in terms of any policy matter. His co-author thought it must be the other section, if any, which raised content issues. That other section also raised an investigative issue for the OIG. A large part of the analysis in the review article rested on data from a report the Commission released, like the Radio Report series, generally if somewhat irregularly on an annual basis. The report that would come out the next year appeared to have been unusually delayed and was not released until after this investigation started. We interviewed both staff and management involved with that annual report. Some staff members thought the delay in finalizing the draft report that would go to the front office was unusually long and were not sure of the reasons, but those staff also noted that the edits and questions they received on the draft were not unusual in any way and did not suggest there was any effort to manipulate or suppress facts or analysis. Management was clear that the delays were due to conflicts with other high priority projects that had mandatory deadlines, and a fairly normal slowness in the process of receiving back comments from the front office and later the Chairman's office. We found the witnesses credible on these points. We also note the author who wrote the related section of the draft review article has left the Commission, but agreed to be interviewed for this investigation and was certain that the related report would not have been controversial for policy reasons.

We also interviewed the individual who became Chief Economist shortly after this episode. The academic journal solicited that person for a similar article the next year and the Chief Economist wrote that year's article, which was submitted and published. That Chief Economists was not given any specific directions with regard to drafting the next year's review and was given a copy of the previous year's draft to use as she wanted. The Chief Economist considered the draft article competent and uncontroversial, and considered using some of it for the review she wrote, but the article's very tight peer review and publication schedule led her to decide to limit the article to the aspects of Commission economics she knew intimately. Based on the evidence collected in this investigation, our initial concerns on this matter did not play out and we did not find evidence that these were matters involving suppression.

The other situation suggested to us as a possible suppression of facts or analysis involved a change in methodology for another of the Commission's generally annual reports. There is no dispute that the change was imposed by senior management. Certain economists we spoke with did not agree that the change was appropriate with respect to the research data at issue and there appeared to be a possibility the change was made solely to suppress facts or analysis not supporting new management's different policy view. Our investigation, however, did not bear this out. The change appears to have been first suggested by the then-Chief Economist who viewed the previously used methodology as flawed and possibly misleading for its purpose. The most compelling facts that led us to conclude this was not a matter of suppression were, first, that the statistical facts necessary to analyze the data as the Commission had previously were presented in the released report at issue and available for others to analyze if they wish. Even more importantly for our conclusion, the change in methodology was fully highlighted and the rationale for the change detailed in the released report. We note that internal debate between and among staff and management is natural within an agency, and often of great value to the work of government. We also note that management decisions to alter past practices are not per se suppression, especially when as here, they are clearly identified and discussed in the public record.

Conclusions

We have found no evidence of a pattern or practice of any commissioner or anyone in the Commission's senior management to suppress reports, facts, analysis, or any other material because it was contrary to a result desired by that person. We investigated the leads relating to possible suppressions of reports, facts, analysis or other material and did not find evidence of such suppression. Although we did not have the time or resources to examine fully the two isolated historical instances of possible suppression that were mentioned to us, we did not find even the suggestion of a pattern of practice of suppression by any commissioner or anyone in senior management, now or in the past.

Appendix A

The Local TV News Report

Appendix A: The Local TV News Report

Eight draft versions of the Local TV News Report[1] came to light in the course of the instant investigation.[2] The following summarizes the most salient features of the report, focusing on the last known version and the most serious criticisms made by the senior economists reviewing it.

I. Summary of the Local TV News Report

As stated above, the report went through at least eight different drafts with changes varying from slight cosmetic alteration to substantive revision. The broad substantive conclusions of the report remained consistent, but the regression techniques used changed among the various versions, and the number of additional minutes aired of local news, on-location local news, and total news per half hour that were attributable to local ownership varied, depending on the regression technique used, from 4 to 5.5 minutes, 5 to 3 minutes, and 3 to 6.5 minutes, respectively. All versions of the report concluded that locally-owned TV broadcast stations air more seconds of total, local news, on-location local news per sample half-hour broadcast than do non-locally-owned stations. Two explanations were proposed for drawing a relationship between relatively greater production amounts total and local news and local ownership: 1) economies of scale that arise from broadcasting identical national news programs from several stations provide a disincentive to multi-station owners to broadcast local news stories; and, 2) local owners might have "additional local interests" or incentives of a personal or business nature to feature news about local events.[3]

A. Conclusions of the Report

The last version of the report, dated July 2004, summed up its conclusion thus:

> [L]ocal ownership of television stations adds almost five and one-half minutes of local news and over three minutes of local on-location news.

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[1] We understand that economists would term this a paper or study, rather than a report. It was described by the Senators and Congress members and in the media as a report, however, so we use that term despite its technical imprecision.

[2] The drafts were dated January 15, 2004; February 18, 2004; February 27, 2004; March 26, 2004; March 29, 2004; May 12, 2004; June 17, 2004; and July, 2004. The drafts up to and including June 17, 2004 were provided to reviewers at roughly the same time as the dates on the drafts. The report dated July 2004 was provided to the supervisor of the authors in March 2005, apparently for purposes of performance appraisal review.

[3] This explanation was present in all but the first version, which did not address the subject of causation.

Our results, however, are sensitive to our specification. ... divergent ownership patterns induce differing cost structures, advertising access and agency problems each of which, separately and interactively, produce different levels of local news among these firms. The data we have presented do not contradict this hypothesis. One caveat of note is that because our data consist only of the three original network affiliates/O&Os [owned and operated], we cannot predict the effect of ownership structure on the amount of local news that newer network (Fox, UPN, WB) affiliates/O&Os air ... FCC media ownership rule-makings and subsequent Congressional action may affect the composition of local news broadcasts ... [the Local TV News Report] generate[s] two testable hypotheses for further research ...[1] advertisers and/or consumers substitute between radio and television local news content, especially when that local content is not on-location...[and 2] joint ownership of a television and radio station by a local owner would increase the amount of local news aired on the radio station.

B. Description of the Data

According to the July 2004 version of the report, the data analyzed in the report was from "local news broadcasts" in 1998, originally gathered by the Project for Excellence in Journalism (PEJ). They "consist[ed] of 4,078 individual news stories...from five different days and sixty stations" selected based on Nielsen Media Research market rankings from 20 Demographic Market Area (DMA). It states that the authors "observ[ed] all of the original three network affiliates/O&Os in [their] sample DMAs." The authors of the report evaluated and categorized each story as local news, a subset of on-location local news, and non-local news. They defined local as that which is "of at least marginally greater importance to the mean individual residing within the given DMA."

C. Policy and Context Discussion

Various historic, legal and policy descriptions were presented as a backdrop to the empirical analysis in early versions of the study, but were discarded by the final drafts. The later drafts limited such observations to a reference to Chairman Powell's announcement of the Localism Task Force, and some description of recent works by other economists that that the authors thought highlighted the political-economic implications and importance of local broadcast content. The July 2004 version referenced a study for the proposition that economies of scale in program distribution favor non-local content and another study for the observation that "there exist complementarities between local news coverage and local advertising [that] may induce the local owner to favor local programming."[4]

[4] Owen, B. and Wildman, S. (1992). *Video Economics*, Harvard University Press, Cambridge, Massachusetts; Brown K, and Cavazos, R., (2005) "Why is This Show so Dumb? Advertising Revenue and Program Content of Network Television.," *Review of Industrial Organization*, 27(1), 17-34;

D. Economic Analysis

The drafts used various multiple regression analyses in different versions of the report to determine whether a statistical relationship existed between metrics of local news, on-location news and total minutes of news and various station and ownership characteristics. The regression techniques, however, changed among the reports and reached differing conclusions about the various numbers of additional aired news minutes attributable to local ownership. The number of additional minutes aired of local news, on-location local news, and total news per half hour that were attributable to local ownership varied, depending on the regression technique used, from 4 to 5.5 minutes, 5 to 3 minutes, and 3 to 6.5 minutes, respectively. The July 2004 version concluded that local ownership added almost five and one half minutes of local news, three minutes of on-location local news, and six minutes of total news.

The statistical techniques incorporated into the study varied substantially among the drafts: the first version employed negative binomial regression (NBR); the second and third versions substituted a number of techniques for the NBR: ordinary least squares (OLS) models to estimate local and total news seconds, a Tobit model for on-location seconds and a fractional logit model for the ratio of local to total news. Versions four and five added robust regression to the OLS equations to adjust for possible outliers. Versions six, seven and eight continued to employ two OLS models estimating the effect of station characteristics on total news seconds and local news seconds, the Tobit model for on-location news, but dropped the fractional logit model and any consideration of the ratio variable which the first five versions had found to be statistically significant. No draft provided narrative description of the use of differing statistical methodologies, or why the results as to which explanatory variables affected local news production varied depending on which of the various techniques was used.

As presented in the July 2004 version, the dummy variables addressed 13 independent variables (of specified station characteristics) for the purpose of determining the influence each exerted on the extent of local news coverage. The July 2004 version employed 97 dummy variables taking the values 1 or 0: 1 signifying something as true such as whether or not the TV station was a UHF station or whether or not the TV station owner also cross-owned a radio station in the same DMA. The independent variables in the statistical model changed for a number of equations in different specifications among different versions of the report, including some of the statistically significant variables.

II. Summary of Most Serious Unaddressed Criticisms

During the winter and early spring of 2004, several Commission economists provided comments about the Local TV News Report to its authors. Some of the comments addressed material omissions and others suggested various optional enhancements to improve the quality of the report. The authors provided additional material responsive to some of the perceived omissions as they redrafted the report; however, they did not address the majority of the questions regarding unexplained characteristics of the database, and they did not include a mathematical model. The absences of a fuller explanation of the database characteristics and of a theoretical model were regarded as significant flaws by the senior economists reviewing it.

The essence of the criticism was that the conclusions drawn in the report were too general given the characteristics of the database. Reviewers found that concerns raised by the characteristics of the database required greater explanation as to both data and methodology, including: 1) more complete explanation was needed to describe what the term "news story" encompassed (*e.g.*, were they weather reports, farm reports, local fund raisers, sports scores, etc.); 2) a fuller description of the dates and times of the samples was necessary (*e.g.,* were the samples taken during the weeks that rating agencies used, during weekends, at the same times across the DMAs); 3) an explanation was needed for apparent discrepancies between the network station data used for the report and that collected by PEJ (the former included no Fox stations and drew from 5 days whereas the latter appeared to include Fox stations and draw from 10 days; and 4) the report needed an explanation of how the network broadcast data used in the report was or was not representative of broadcasts as a whole

The database, as it was described in the report, did not appear to the reviewers to be a statistically reliable sampling of the national radio broadcasts: it was thus thought to suffer from sample selection bias. As noted above, many attributes of the database were not clarified in the report so that its applicability to the very general conclusions was considered unsubstantiated. For example, the times and dates of the samples were insufficiently described, and it appeared they might be inadequately typical representations of local news broadcasts, the markets from which the stations were selected appeared to be disproportionate, as there were very few small and no very small markets included, and samples from non-original three network stations or non-affiliated stations were also not included. One critic also stated that the report should provide more explanation regarding its conclusions in light of the apparent existence of a statistical outlier station that broadcast an exceptional amount of local content. The reviewers stated that the authors should more fully describe the database characteristics and then limit the report's conclusions to those that might be consequently extrapolated. The authors did not provide sufficient additional information or explanation regarding the sample content. In response to the comment, the next version of the report did use robust regression to address outlier data, but provided no descriptive analysis or explanation of its significance or lack thereof.

The other omission deemed serious by the senior economists reviewing the report, and that remained unaddressed in the last version, was the absence of a sufficient economic structural hypothesis expressed in the statistical model. The Media Bureau Director of Research who reviewed this work believed that the research efforts of the report were intriguing but that the conclusions were too general, insufficiently precise and required economic specification. Although some economic research work released by the Commission did not include theoretical mathematical models, the Director of Research's view was that a properly devised model could work around statistical imperfections of the database and express a suitably limited but useful conclusion for purposes of this work.

Appendix B

The Draft 2003 Radio Report

Appendix B: The Draft 2003 Radio Report

In general, the Review of the Radio Industry, 2003 ("Draft 2003 Radio Report") and its predecessors were relatively sparse in wording, and served primarily as vehicles for describing the statistical changes and trends in radio ownership that had developed since the Telecommunications Act of 1996 and focusing on the time since the preceding review. Each of the five Radio Reviews was organized into five parts entitled: 1) Overview: 2) Changes in the Radio Industry-A National View, 3) Changes in the Radio Industry- A Local View, 4) Radio Industry Financial Performance, and 5) Other Trends in the Radio Industry (hereinafter, collectively, referred to as the "Radio Reviews"). The following summarize the data presented in each of the four substantive sections of the reviews.

I. Changes in the Radio Industry-A National View

The number of commercial radio stations increased from 1996 though March 2003 by approximately 5.94 percent.[1] The number of owners dropped, at a declining rate, from 1996 though March 2003, to an overall total of approximately 35.26 percent.[2] The number of large group owners increased from March 1996 to March 2003 with the number of entities owning 20 or more stations increasing from 25 to 49.[3] The number of stations owned by the two largest owners increased from 1996, when each group consisted of fewer than 65 stations, to 1,233 and 256 stations, as of March 2003.[4] During this period, the third, fourth and fifth largest owner group sizes showed little overall change, though the average size of fourth ranked owners grew by 22 stations and the size of third and fifth ranked owners decreased collectively by 46 stations.[5]

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[1] From the baseline of 10,257stations in March 1996, to 10,776 in March 1997, to 10,779 in March 2000, to 10,776 (adjusted from 10,983) in March 2001, to 10,807 in March 2002, to 10,866 in March 2003. The figures set forth here are found in Appendix A of each review. The main text of several of the reviews expressed the rate of increase for each period. The initial year following passage of the 1996 Telecom Act saw the highest rate of increase (6.7 percent). The appearance of the 2002 statistical drop was caused by reassignment of a large number of stations to non-commercial status by the commercial entity, BIA Publications, Inc., providing the data used. No attempt was made by the author to adjust for previous years.

[2] From the baseline in March 1996: by 6.7 percent as of November 1997; by an additional 5.8 percent as of November 1998; by an additional 11.2 percent during the two year period ending March 2000; by an additional 4.2 percent by March 2001; to a cumulative total of 34 percent in March 2002; and 35 percent in March 2003.

[3] As of March 1996, 25 entities owned 20 or more stations; as of November 1997, 31 entities; as of March 2000, 39 entities; as of March 2001 46 entities; as of March 2002, 50 entities; as of March 2003, 49 entities.

[4] The interim statistics were: over 440 each as of March 2000; 972 and 257, as of March 2001; and, 1156 and 251, as of March 2002.

[5] The third, fourth, and fifth largest owners held 240, 162, and 120 respectively by March 2000; by March 2001: 210, 185, and 97; by March 2002: 206, 184, and 100; and by March 2003: 213, 184, and 102.

II. Changes in the Radio Industry- A Local View

Between November 1997 and March 2003, the percentage of commercial radio stations licensed to communities in Arbitron markets (roughly equivalent to the more populous seventy-five percent of the U.S.) increased by about 13 percent. Each of the reviews depicted in graph form a great increase in market share concentration of revenue increased between March 1996 and November 1998, attributing the change to the relaxation of the local radio ownership rules required by the Telecommunications Act of 1996. The trend steadily tapered during subsequent years.

In general, this concentration, as measured according to percentage share of advertising revenue, was more pronounced in smaller markets (which, it was remarked, was to be expected since smaller markets have fewer stations). In the fifty largest markets, the revenue market share of the top two revenue earners remained stable.[6] The collective share of the third and fourth ranked entities dropped by two percent. The commensurate revenue market share in the 100 smallest Arbitron markets rose during this period for the top-ranked entity and diminished for the third and fourth ranked entities (considered collectively, rather than individually).[7] Another sampling indicated that throughout the period covered in the Radio Reviews, in about 60 percent of the markets, one entity controlled more than 40 percent of the market's radio advertising revenue.[8] Viewed another way, the combined power (in terms of revenue) of the top two entities improved during this period: their collective control of more than 80 percent of the advertising revenue rose in number of markets from 79 to 97 markets.[9]

Ownership diversity, as measured by the number of independent owners of radio stations per Arbitron Metro market, declined in a general trend across all categories of market size. The bulk of the decline occurred between 1996 and 1998 and was in the largest markets.[10] The Radio Reviews noted a trend of increasing format diversity in smaller markets and of slightly declining diversity in the largest markets. There was no

[6] As of March 2000, in the 50 largest markets: the top earning entity held 35 percent of the market revenue; in March 2001, 36 percent; in March 2002, 35 percent; and March 2003, 35 percent. The second-ranked entity held 24 percent in March 2000; 28 percent in March 2001; 26 percent in March 2002; and 25 percent in March 2003. The five reviews do not provide data on these subjects for earlier periods.

[7] In March 2000, the-top ranked entity controlled 50 percent, the second, 27 percent and third and fourth split 19 percent; in March 2001, the percentages were 50, 28, and 17; in March 2002, 54, 27, and 17; and in March 2003, 53, 28, and 14 respectively. The five reviews do not provide data on these subjects for earlier periods.

[8] The first radio review (which used data from November 1997) was less detailed on this subject and noted only that the top four radio owners generally accounted for 90 percent of their Metro markets' total revenue.

[9] The top two entities' 80 percent control applied to 79 markets in March of 2000 and 2001 and 93 and 97 markets in March of 2002 and 2003, respectively.

[10] The temporal disproportion was much more marked than that between market sizes. In March 1996, the average number of owners in a Metro market was about 13.5; in March 2000, the average number of owners across all Metro markets was 10.7 (ranging from an average of 7.5 in the smallest to 26.3 in the "top 10"); in March 2001, the average was 10.3 (with a commensurately defined range of 7.3 to 25.4); in March 2002, the average was 9.9 (with a range of 6.7 to 25.4); and, in March 2003, 9.7 (with a range of 6.7 to 24.9).

universal trend of nationwide change in the average diversity of radio programming available to consumers.[11]

III. Radio Industry Financial Performance

The five Radio Reviews compared the financial performance of the radio industry over temporal intervals and with the performance of the Standard & Poor's index of 500 companies ("S&P 500").[12] During 18 of the preceding 30 quarters, the earnings before interest and taxes ("EBIT"), or gross profit margins, of the publicly traded radio broadcast companies were greater than those of the S&P 500.[13] The five Radio Reviews noted strong yearly, seasonal patterns and, that in comparison with the S&P 500 average, performance to have been very strong until the fourth quarter of 2000. Throughout 2001, they remained below that of the S&P average; they rebounded throughout 2002, but fell to the S&P level at the outset of 2003.

The net profit margin indicated that the radio companies generally netted less than the benchmark S&P 500, and most especially 2001. The Radio Reviews attributed the performance disparity to the fact that the radio companies generally used debt to finance operations and growth more than did the typical S&P 500 company. Likewise, the significantly greater on-going volatility of the radio-sector earnings compared to those of the S&P 500 companies arose from the comparatively high use of debt. Each review noted that, while not generating the same level of net income to interest expense as other companies, the publicly traded radio companies appeared to generate enough cash flow to meet their interest obligations. The Draft 2003 Radio Report found that the radio companies' average market to book ratio, an indicator of a company's prospects for future growth and profitability, compared favorably to the S&P 500 until 2000. It noted that thereafter, the ratio itself remained in a stable state perhaps reflecting imperfect market conditions, such as the weakness of substitutes for radio advertising.

The Radio Reviews evaluated the stock market returns of the publicly-traded radio and S&P companies by measuring stock price appreciation and dividend payments to shareholders. Viewed from 1996 though September of 2003, it appeared radio company returns had varied more than that of the typical S&P 500 company. Radio

[11] The diversity is measured by number of formats per market and depicted in Chart IV of the latter four of the five Radio Reviews. Average numbers per market are not described in the accompanying narratives; however, roughly estimated, it appears that trend of increase in format number holds true for markets from as high as approximately the 35th ranking, where the increase is of less than one per market to slightly more than one per market for those small markets ranked at approximately 100 and lower.

[12] The Radio Reviews used Standard & Poor's Compustat database to obtain data on publicly traded companies having a primary SIC classification of radio broadcasting. Thus, quarterly data was used to calculate financial ratios for 25 large, publicly traded radio companies which, together, generate a majority of the total reviewed radio industry revenue: about 63 percent in March 2000 and 52 percent in March 2003. The reason for this decline in revenue share for the large publicly traded sector was not explained in the Radio Reviews. The Radio Reviews noted that since most of these companies were larger station-group owners, the analysis might not reflect the performance of smaller owners. Similar financial ratios were calculated for Standard & Poor's 500 companies for the purpose of measuring the relative performance of the Radio Broadcast Sector.

[13] EBIT is a tool for determining how efficiently a firm generated profits and minimized the operating, personnel and administrative costs of its operations.

company stocks, overall, outperformed the broader market until 2000, and underperformed thereafter. The causes offered in explanation were declining growth in consumer spending, the slowing of the radio industry's consolidation as fewer opportunities for increased profit through radio mergers present themselves, and that investors'
declining demand may have depressed the value of the radio industry's stock.

IV. Other Trends

Other trends observed in the radio industry were addressed variously in the series of Radio Reviews.[14] The Review of the Radio Industry, 2000 addressed the performance of single- and small-group radio stations in small radio markets. The Radio Industry Review, 2002, and the Draft 2003 Radio Report addressed trends in listener and advertising rates. They found that the average number of listeners to radio had fallen since the fall of 1998 by about 3.5 percent as of March 2002, but by about 2.8 percent as of September 2003. The reports suggested that the decline might be attributable to a shift in consumer choice of CDs or MP3s over radio, and stated that they did not suggest a link between the decline and recent consolidation in the industry. The reports noted that, since March 1996, the average radio advertising prices had increased, at an uneven rate, to almost 87 percent as of September 2003, as compared to an increase in the consumer price increase of only 17 percent. The reports stated that the advertising price increase might be attributable to an improved bargaining position of radio industry members resulting from the consolidation trend.

[14] The scope of consideration applied only to stations located in Arbitron radio metro markets.