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May 3, 2007

Rodger Woock
Director and Chief Information Officer (Acting)
Information Technology Center
Federal Communications Commission
445 12th Street, S.W.
Room 1-C264
Washington, DC 20554

Re: The Ramifications of the Data Quality Act's Third-Party Provisions for Defining Localism in the FCC's Media Ownership Rulemakings

Dear Mr. Woock:

I am writing with respect to a study submitted to MB Docket No. 06-121 on September 12, 2006, "Do Local Owners Deliver More Localism? Some Evidence From Broadcast News," ("Localism Study").¹

The Data Quality Act ("DQA")² applies to all third-party data which the Commission uses and relies on as well as to the FCC's own information dissemination products. As OMB noted in remarks to a National Academy of Sciences workshop, "If a government agency wishes to rely upon and cite information from industry in support of a decision, that information must meet the same quality standard that information generated by the agency must meet."³

Since the third-party provisions of the DQA are an integral element of the statute's implementation, as discussed in Section II, third-party data, including the Localism Study, cannot be used by the FCC in developing their analytic conclusions and associated rules unless, through its pre-dissemination review and substantiation process, the Commission determines that it meets the requirements set forth in the FCC and Office of Management and Budget ("OMB") guidelines implementing the Act.

¹ http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518462392.

² 44 U.S.C. 3516, notes.

³ John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, "OMB's Role in Overseeing Information Quality," Remarks to Public Workshop on Information-Quality Guidelines, Sponsored by Committee on Data Quality, Science, Technology and Law Program, National Research Council/National Academy of Sciences, Washington, DC, March 21, 2002 found at http://www.whitehouse.gov/omb/info-reg/info-quality_march21.pdf.

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The Center for Regulatory Effectiveness (“CRE”) has already provided comments to the media ownership dockets discussing the Commission’s duty to adhere to the DQA in evaluating the record.⁴ This letter provides an illustrative example by applying the FCC and OMB information quality standards to a widely cited study.

CRE selected the Localism Study as a case example for applying the DQA to third-party data because: 1) it deals with two of the core issues in the rulemaking, defining and measuring localism; and 2) the Localism Study is an influential document that has been cited in support of their policy recommendations by major stakeholders in comments to the Commission including:

- ▶ The joint comments of Consumers Union, Consumer Federation of America and Free Press;⁵
 - In their comments, Consumers Union, *et. al.* used the Localism Study as the basis for claiming that:

*The Commission’s own research has demonstrated what Americans have long known intuitively—locally owned broadcast stations provide more local and community news than non-locally owned stations. ... This is a real-world difference that should inform and drive the decision to hold ownership limits in place to promote localism.*⁶

- ▶ The joint comments of the AFL-CIO and Department for Professional Employees, AFL-CIO;⁷
- ▶ The joint comments of the Office of Communication of United Church of Christ, National Organization for Women, Media Alliance, Common Cause and Benton Foundation;⁸ and
- ▶ The reply comments of the Newspaper Association of America.⁹
 - The Newspaper Association’s reply comments highlighted that several commenters used the Localism Study “to support their calls for strict ownership regulation” even though it might not “be deemed reliable by the Commission.”¹⁰

⁴ http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518711206.

⁵ http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518535444.

⁶ Ibid., p. 10. [Footnote omitted] [Emphasis added.]

⁷ http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518536670.

⁸ http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518535278.

⁹ http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518720789.

¹⁰ Ibid, p. 34. [Footnote omitted]

I. The Data Quality Act – Background

A. *Longstanding Federal Commitment to Data Quality*

The Federal Government has had a statutory commitment to improving the quality of data it uses and disseminates since the mid-1990s. One of the purposes of the Paperwork Reduction Act of 1995 (“PRA”) is to “improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.”¹¹

Moreover, the PRA directed OMB, “[w]ith respect to information dissemination”, to “develop and oversee the implementation of policies, principles, standards, and guidelines to-- (1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated....”

B. *The Data Quality Act: A Brief Legislative History*

Because OMB did not implement the Data Quality requirements of the PRA, Congress in 1998, through report language, directed OMB to develop “rules providing policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies....” and to “require Federal agencies to develop, within one year... their own rules consistent with the OMB rules.” These rules were to “contain administrative mechanisms allowing affected persons to petition for correction of information....”¹² OMB still did not issue the required Data Quality standards.

Congress continued to insist that OMB implement the Data Quality elements of the PRA. Following a March 28, 2000 Congressional hearing by the House Appropriations Committee, House Report 106-756 of July 18, 2000, in a section titled DATA QUALITY, stated the “Committee has included statutory language (Section 515) which requires the Office of Management and Budget to develop...guidelines providing policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal agencies...in fulfillment of the purposes and provisions of the Paperwork Reduction Act of 1995....”

Statutory language, based on the House Report, became Section 515 of the Public Law 106-554, the Consolidated Appropriations Act for FY 2001. The law again directed OMB, this time within a specific time frame, to develop quality standards and an administrative

¹¹ http://www.cio.gov/documents/paperwork_reduction_act_1995.html, Sec. 3501(4).

¹² H.R. Rep. No. 592, 105th Cong., 2d Sess., June 22, 1998, at 49-50. The language in the House Report was incorporated in the Conference Report 105-789, October 7, 1998.

process allowing affected parties to “seek and obtain” correction of information disseminated by Federal agencies.

C. *How the Data Quality Act is Administered*

1. *OMB’s Government-Wide Information Quality Guidelines*

The DQA gives OMB responsibility for developing, coordinating and managing Data Quality policy implementation across the Executive Branch. Specifically, OMB was directed to issue guidelines “under sections 3504(d)(1) and 3516 of title 44” of the US Code, the PRA. Following notice and comment, OMB issued government-wide guidelines¹³ on February 22, 2002:

- Defining utility, objectivity and integrity as the elements of quality;
- Requiring agencies establish a pre-dissemination review process for ensuring the quality of agency disseminated and sponsored data; and
- Setting the requirements for an information correction process.

Agencies were directed to develop and implement their own agency-specific guidelines based on OMB’s template.

OMB has also issued supplemental information quality guidance – including guidance on the applicability of the DQA to data agencies receive from third-parties, an issue discussed in Section II.

2. *FCC Implementing Guidelines: A Focus on Transparency*

In October 2002, the FCC published their own rigorous agency-specific information quality guidelines (“FCC Guidelines”)¹⁴ These guidelines establish procedures for “reviewing and substantiating the quality, objectivity, utility, and integrity of information before it is disseminated by the Commission.”¹⁵

The FCC Guidelines emphasize the need for transparency. The Commission provides a specific definition of transparency which is explained as referring to,

¹³ <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>

¹⁴ <http://www.fcc.gov/omd/dataquality/>.

¹⁵ FCC Guidelines, FCC 02-277, p. 3.

*practices of describing the data and methods used in developing an information dissemination product in a way that it would be possible for an independent reanalysis to occur by a qualified individual or organization.*¹⁶

Transparency is also incorporated directly into the definition of information quality. For example, the FCC's definition of Objectivity states,

*where appropriate, data should have full, unbiased, reliable, accurate, transparent documentation....*¹⁷

The FCC's definition of "reproducibility" inherently requires that the source material be transparent with respect to data and specific analytic methodology. The Commission states,

With respect to analytic results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

The Commission's commitment to transparency is also evident in the FCC's extensive Pre-Dissemination Information Review and Substantiation Process. As the FCC Guidelines explain, for each information product covered by the Guidelines,

*Quality will be demonstrated through the incorporation of a methodological section or appendix that describes, at a minimum...the pre-release review of the information dissemination product for clarity, completeness, accuracy, and reliability.*¹⁸

Furthermore, for information products "that contain analytic results, the FCC is committed to applying rigorous robustness checks and will document what checks were undertaken as part of the required methodological section or appendix."

¹⁶ Ibid., p. 8.

¹⁷ Ibid., p. 7.

¹⁸ Ibid.

II. The DQA Applies to Third-Party Data

A. *OMB: The Need for Third-Party Data to Comply with DQA Requirements*

OMB's government-wide information quality guidelines state that if an agency uses data from third-party sources, that data must comply with the DQA standards:

if an agency, as an institution, disseminates information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to these guidelines.¹⁹

In remarks to a National Academy of Sciences workshop on information quality guidelines, OMB further discussed the need for studies provided by third-parties to comply with information quality standards if they are to be used by an agency:

If a government agency wishes to rely upon and cite information from industry in support of a decision, that information must meet the same quality standard that information generated by the agency must meet. Thus, the OMB guidelines apply to any information disseminations by an agency, regardless of the original source of the information.²⁰

The need for third-party data to comply with an information quality guidelines is also made clear by OMB in a Memorandum to the President's Management Council which includes a section titled "Coverage of 'Third-Party' Information Under the Guidelines" that cites examples of such coverage in OMB and agency-specific guidelines.²¹

B. *Third-Party Compliance Implementation Example: DOT Federal Register Notices*

To assist third-parties in complying with Data Quality requirements when filing comments on a proposed rulemaking, the Department of Transportation ("DOT") included a "Data Quality Act Statement" in the Notice of Proposed Rulemaking explaining,

¹⁹ 67 FR 8454, February 22, 2002.

²⁰ John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, "OMB's Role in Overseeing Information Quality," Remarks to Public Workshop on Information-Quality Guidelines, Sponsored by Committee on Data Quality, Science, Technology and Law Program, National Research Council/National Academy of Sciences, Washington, DC, March 21, 2002 found at http://www.whitehouse.gov/omb/inforeg/info-quality_march21.pdf.

²¹ John D. Graham, Memorandum for the President's Management Council, "Agency Draft Information Quality Guidelines," June 10, 2002 found at http://www.whitehouse.gov/omb/inforeg/iqg_comments.pdf.

Pursuant to the Data Quality Act, in order for substantive data submitted by third parties to be relied upon and used by the agency, it must also meet the information quality standards set forth in the DOT Data Quality Act guidelines. Accordingly, members of the public should consult the guidelines in preparing information submissions to the agency. DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.²²

III. The Localism Study Does Not Meet FCC and OMB Data Quality Standards

The Localism Study is not just another comment in the docket. As mentioned, it is an influential study which has been cited in the comments of at least eleven major organizations that represent millions of Americans.²³

A. *The Localism Study is a Third-Party Study*

The Localism Study itself was submitted to the docket and also has been cited in public comments by numerous organizations in support of their policy recommendations. Although a number of commenters attribute the study to the FCC, there is no indication that the document is a “Commission-initiated or sponsored distribution of information intended for the public” or went through the Commission’s Pre-Dissemination Information Review and Substantiation Process. Thus, under the DQA, the Localism Study is a third-party study, not an FCC information product. As the following analysis demonstrates, the study does meet the Commission’s information quality standards and, therefore, it cannot be relied upon and used by the Commission.

B. *No Supporting Data*

The Localism Study does not include the data used in the analysis. Data which should have been provided includes:

- The specific news stories considered by the study; and
- Which news stories were classified as local and as non-local.

²² 71 FR 54735, September 18, 2006.

²³ The AFL-CIO alone currently has about ten million members while Consumers Union’s Consumer Reports magazine has over seven million subscribers.

How the Study's Lack of Data Violates FCC and OMB Information Quality Guidelines

FCC's definition of the substantive element of Objectivity requires that "where appropriate, data should have full, unbiased, reliable, accurate, transparent documentation..."²⁴

OMB's government-wide information quality guidelines are also explicit on the need for documents to present their supporting data absent a compelling reason otherwise such as protecting personal privacy or trade secrets,

*the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a...statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users.*²⁵

Because the study provides *no* supporting data, even though there are no confidentiality or privacy issues, it fails to comply with FCC and OMB information quality standards.

C. *Arbitrary Definition of Localism*

The study defines localism by using a three-part test to determine if a broadcast news story is local. A story is considered local if:

1. The story takes place in the station's Designated Market Area (DMA) as defined by Nielsen Media Research; and
2. "if the story is of at least marginally greater importance to the mean individual residing within the DMA and..."
3. "*if we believe* the mean individual residing within the DMA would identify the story as local."²⁶

The Study's Definition of Localism Conflicts with the FCC

The Commission's definition of localism, "programming that is responsive to the needs and interests of their communities of license" is robust and accommodates diverse public

²⁴ FCC Guidelines, FCC 02-277, p. 7.

²⁵ 67 Fed. Reg. 8459, col. 3, February 22, 2002.

²⁶ Boxer Study, p. 5. [Emphasis added.]

information preferences. In contrast, the study's definition of localism excludes a range of programming, including local news stories, that respond to the needs and interests of specific communities.

For example, if a station were to broadcast a story about a local resident currently serving away from home in the armed forces (or participating in an out of town competition, etc.) the story would be deemed non-local by the study since it takes place outside the DMA even though it concerns the local community. As will be discussed, even stories which originate in a DMA and are responsive to the community's particular interests may still not be classified as local by the study based on the author's views of whether community members would consider the story as local.

Moreover, the study's definition of localism is defined through an arbitrary, non-reproducible methodology that conflicts with FCC and OMB Data Quality standards.

How the Study's Definition of Localism Violates FCC and OMB Guidelines

The study makes no clear separation between its definition of localism and its measurement of localism since stories are counted as local or non-local during the classification process. To clarify discussion of the study's compliance with FCC and OMB guidelines, Data Quality issues that are inherent in the three-part test described above will be discussed in this section while other Data Quality issues will be discussed in the Measurement section below.

What Is A "Mean Individual"?

The study's definition of localism rests on the author's beliefs about the perceptions of a "mean individual" without ever defining the term. Is the study referring to mean age? Mean income? Mean length of residence? Mean hours of involvement in community activities? The study uses a term that sounds as if it were based on an objective statistical calculation but provides no clue as to how it is determined. Since a key element of the study's definition of localism is undefined, the definition itself is meaningless and does not comply with the Commission's standards for Utility and Objectivity.

Aside from the lack of specificity as to how the author defined a mean individual is the equally significant problem that the study does not indicate if or how the attributes of the mean individual varied between communities. If the term localism is to have any meaning at all, then localism needs to reflect specific community needs and interests.

Failure to Recognize Diversity Between Communities

The final part of the study's definition rests on the ultimate arbitrary variable, the author's belief about whether the undefined mean individual would identify various news stories

as local. The methodology is arbitrary since it rests on the author's case-by-case subjective judgement. On the positive side, the methodology does highlight the need for studies to contain complete and transparent data as discussed in Section A. Since the study does not include the list of stories categorized by the author as local and non-local, it is impossible to even speculate on whether there is any consistency to how the author judge's the localism of news stories.

By imposing an outsider's view of what various communities consider as local stories, the study, perhaps inadvertently, highlights an issue crucial to defining and measuring localism within the context of the FCC policy – the need to consider the actual communities of license, each with their own specific needs, interests, and culture. The study does not use the views of representative members of the various communities being studied. There is also no indication that the author made any attempts to learn about needs and interests of each community being studied before passing judgement on what they would consider a local story.

Instead of taking into account community-specific needs and interests, the Localism Study appears to dismiss such an approach. The study provides a single example of the author's judgement as to whether a story is local. The example concerns a hypothetical story in the Washington, DC area concerning federal budget negotiations. While the study recognizes the story takes place locally and that “given the large population of local interested parties, the mean individual in the Washington, D.C., DMA is likely more interested in the Federal budget negotiations than the mean individual in other DMAs” it denies that the story is local because “even the mean individuals in the Washington, D.C., DMA would likely perceive the Federal budget negotiations as a national issue.”

While some persons outside the beltway may be amused by reference to the “mean individuals in Washington, D.C.” the example demonstrates the study's disregard for local news being responsive to the specific needs and interests of each community – the foundation of the FCC's definition of localism. Community members express their views on news and other programming meeting (or not meeting) their needs and interests through multiple mechanisms including but not limited to their shifting choice of sources for local news among various television and radio broadcasts, newspapers, websites and cable/satellite offerings. Any definition and measurement of localism that is consistent with Commission policy needs to take into account the people who actually live in the communities of license being studied.

Unsound Statistical Methodology

With respect to Utility, the FCC has defined it as referring “to the usefulness of the information to its intended users....” Since the study's definition of localism is based on the author's personal beliefs about the views of an undefined mean individual, the definition lacks usefulness and does not comply with the Commission's information quality guidelines.

With respect to Objectivity, the Commission has said that in a “statistical context, substantive objectivity means that the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods. Presentational objectivity involves a focus on ensuring unbiased clarity, accuracy, completeness, and reliability.”

In that the study’s definition of localism relies largely on the author’s discretion on a case-by-case basis, it fails to comply with both the substantive and presentational elements of Objectivity. The definition of localism is not sound and reliable since it is arbitrary and capricious.

D. *Arbitrary Measurement of Localism*

In addition to the problems associated with the study’s definition of localism, the study’s measurement of localism arbitrarily excludes relevant data and, thus, does not comply with FCC and OMB information quality standards. Specific examples of the study’s exclusion of relevant data from its measurement of localism include:

- Exclusion of almost all local news programming, other than one-half hour per day, from the analysis;
- Exclusion of sports and weather stories;
- Inclusion of only the “original three” broadcast networks; and
- Exclusion of Local Newspaper Cross-Ownership.

Exclusion of Most Local News Broadcasts

The study excluded over 90% of local news programming from the analysis. Instead, the analysis considered *only* “the highest-rated half-hour timeslot for news.” By contrast, stations in the Washington, DC area affiliated or owned by the “original three” networks air an average of 6 and one-third hours of local news programming per weekday.²⁷

From a statistical perspective, the problem is not that the sample is necessarily too small but that it is not randomly selected. There is no indication that the high-rated half hour of local news is representative of the mix of local/non-local stories in other time slots. To the contrary, the highest-rated timeslot may contain a greater proportion of national stories than other local news programming since it may be the only broadcast news for some viewers, particularly those for whom the network news is not convenient. No discussion is included

²⁷ Source: WashingtonPost.com, March 2007.

as to how use of only highest-rated half-hour timeslot may bias or otherwise affect the study's calculations.

Exclusion of Sports and Weather

The localism study excluded regular sports coverage from its measurements, including coverage of high school and other teams of local interest that receive little or no national attention. Weather coverage, except for catastrophic events, was also excluded. In a footnote, the study stated that "Everyday weather and sports were not included in the original data set, and are not reflected in our analysis."²⁸ Local news broadcasts, however, compete heavily based on their coverage of weather and sports. The study does not discuss or otherwise note that excluding coverage of certain types of local stories may bias the document's calculations.

Competition based on sports coverage is not unique to broadcast stations. Intense competition between satellite radio stations has resulted in one satellite network offering every major league baseball game as well as every college football and basketball game from four major conferences while the other satellite network offers every professional football and basketball game and college sports from other conferences. The satellite stations are currently responsive to the fact that many listeners' define their "local team" based where they grew up or went to school, not necessarily where they reside.

Inclusion of Only the Original Three Networks

The study considered only broadcasts by "the original three network affiliates/O&Os...." Exclusion of a fourth broadcast network, Fox, is a statistically relevant consideration based on the study's description of its own methodology. Specifically, the study stated:

the original three networks air national news broadcasts and air a 10:00PM-11:00PM hour of network programming, both of which provide their local stations with two unique characteristics that lead all of these stations to air local news at particular times during the day. This implies that if we did observe all of the characteristics of all of the stations in all of our markets...being an "original three" network O&O/affiliate (or, equivalently, having the unique characteristics thereof) would be a perfect predictor of selection success. We can therefore employ a sample consisting only of "original three" network affiliates and employ standard regression techniques....²⁹

²⁸ Localism Study, p. 5.

²⁹ Localism Study, p. 11. [Emphasis added]

From a statistical perspective, the problem with excluding Fox broadcasts is that their programming and news schedules do *not* have “the unique characteristics” of the original three. Specifically, the patterns of network and local news programming is substantially different for Fox than for the original three networks.

Using Washington, DC as an example, the original three air a half-hour network news show in the evening and broadcast a half-hour local news program at 11:00pm. By contrast, the local Fox broadcast station does not air a local evening network news show but does air a one-hour local news show from 10:00-11:00pm and an additional half-hour local news program from 11:00-11:30pm.³⁰ Since Fox has a unique news programming pattern, standard regression techniques using a sample of only the original three networks cannot be applied.

Exclusion of Local Newspaper Cross-Ownership

The study defines the variable “Owns Newspapers” as referring to “the case where the broadcaster owns one or more newspapers outside the DMA.”³¹ There is no variable, however, for cases where the broadcaster owns a newspaper *within* the DMA. This lack of within DMA newspaper cross-ownership is important since the study speculates on the potential relevance of other cross-ownership relationships to local news content. For example, with respect to a broadcaster owning newspapers in another DMA, the study states “Our priors in this instance are that the broadcaster would produce less local news...since the broadcaster would reduce costs by utilizing news stories covered by the non-local paper.”³²

The implication of study’s statement is that local newspaper cross-ownership would increase local news coverage by reducing the costs of obtaining the news. Thus, the study’s reasoning implies that local newspaper cross-ownership may be significant but the issue is not addressed. One reason for excluding local newspaper cross-ownership could be that the limited database may not have included any examples of this situation. However, the author should have explained the implications of this limitation in a discussion of the potential sources of error and bias in the study.

How the Study’s Measurement of Localism Violates FCC and OMB Guidelines

The study’s measurement of localism violates standards for both objectivity and utility. As explained above, use of only the highest rated half-hour news timeslot for stations

³⁰ Source: WashingtonPost.com, March 2007.

³¹ Localism Study, p. 8.

³² Ibid.

owned or affiliated with the original three networks and exclusion of cross-owned local newspapers and sports and weather programming introduces myriad biases and sources of error and do not constitute a “sound statistical method,” thus violating the Objectivity requirement. Furthermore, “error sources affecting data quality”³³ were not discussed or disclosed. As OMB explains, Objectivity “includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner.” This standard is violated by the incomplete and biased measurements.

It should also be noted that the data is from 1998 and from only five different days. There is no indication in the study as to how the small data set, changes in the broadcast industry, and changes in how the public obtains their news over the last decade, may have impacted the current relevance of the study’s findings.

Since the measurements used by the study are biased and incomplete (and there is no explanation of how these shortcomings may have impacted the results) the study is not useful to Commission or the public and lacks Utility.

Furthermore, it is not clear that what the study is attempting to measure has any utility. The localism study is not examining the quantity of local news broadcasts during a given time period, the number of local stories broadcast, the diversity found within those broadcasts or any other metric of potential public interest. Instead, the study only considers the relation between several ownership-related characteristics³⁴ and the number of seconds of some types of local news within a certain half-hour broadcast. Thus, not only does the study’s measurement methodology lack utility but also, so does its goal.

E. *The Study’s Conclusions Are Contradicted By Its Data Source*

A study which is inaccurate does not comply with Commission and OMB standards for objectivity and utility. An analysis that was far larger and more comprehensive than the Localism Study, but using the same data source, produced quite different results. Specifically, the localism study notes that the data was “originally gathered by the Project for Excellence in Journalism (hereafter PEJ).” A year before the date on the Localism Study, PEJ published a major study examining possible effects of ownership on local news

³³ FCC Guidelines, FCC 02-277, p. 7.

³⁴ The study’s basic concept of “local owner” is itself deeply flawed. The study defines “local owner” as referring to “the location of the corporate headquarters of the broadcaster.” While the location of a station’s *management* may be significant for broadcast decisions, the actual owners are individual and institutional shareholders located around the country and the globe.

coverage, “Does Ownership Matter in Local News? A Five Year Study of Ownership and Quality.”³⁵

The results from the five year study by PEJ contradict the results of the five day study using PEJ data. Specifically, the Localism Study stated that “local ownership added almost five and one-half minutes of local news....”³⁶ The study made this claim even though the already-published PEJ study stated:

Many critics of large, chain ownership over the years have postulated that local ownership is better because the people who run the company would be more concerned with the community if they lived there. This, the argument went, would lead to more sensitive, serious and informed coverage of local concerns.

*The data offer no support of this argument.*³⁷

PEJ found that the percentage of local stories aired by local owners was slightly less than the percentage of local stories aired by non-local owners (78% for local owners, 80% for non-local owners). The Localism Study does not explain or discuss the significant differences between its conclusions and those of PEJ.

IV. About CRE

The CRE is a regulatory watchdog established in 1996 by former senior career officials from the Office of Management and Budget, http://www.thecre.com/pdf/Tozzi_Bio_Historical_2.pdf. In its role as a watchdog, CRE intervenes from time to time in regulatory proceedings through the comment process, filing Data Quality Petitions, and/or other mechanisms. CRE was the primary proponent of the DQA, http://www.thecre.com/pdf/20021111_fedtimes-tozzi.pdf.

CRE has identified the Media Ownership rulemakings as a landmark regulatory proceeding since:

- ▶ The Commission’s decisions in the rulemakings will affect virtually everyone in the United States;
- ▶ As a watchdog, CRE closely monitors regulatory actions affecting print journalists, America’s preeminent group of watchdogs, <http://www.thecre.com/wdw/2006/20061023.html>; and

³⁵ PEJ, “Does Ownership Matter in Local Television News? A Five-Year Study of Ownership and Quality,” April 29, 2003, found at <http://www.journalism.org/node/243>.

³⁶ Localism Study, Abstract.

³⁷ PEJ, at <http://www.journalism.org/node/256>.

- ▶ Data Quality will be driving the Commission's decisions in the rulemakings.

V. Addressing Third-Party Studies Under the Data Quality Act

Agencies have several options for addressing data quality concerns that are raised concerning third-party studies:

1. *Memorandum to the Record*

When notified that a third-party study does not comply with the DQA, the agency has the option of analyzing the issue and writing a Memorandum explaining their preliminary conclusions of whether or not the study complies with agency and OMB information quality guidelines.

By placing the Memorandum in the record, the agency provides all interested parties the opportunity to comment on their preliminary conclusions regarding the relevance of the study.

2. *Responding in the Final Regulatory Document*

Instead of a Memorandum to the Record, agencies can choose to respond to the Data Quality concerns in their response to all comments received as part of their final regulatory document. EPA took this approach with respect to a Data Quality petition seeking correction of an agency risk assessment of the herbicide atrazine. Specifically, the petition explained that the

*Environmental Risk Assessment should be corrected to state that there is no reliable evidence that atrazine causes endocrine effects in the environment.*³⁸

The primary reason for making this request for correction was that there “are no validated endocrine-effects tests for atrazine.”

EPA, in their response to all comments received, EPA discussed the issues raised under the Data Quality Act and stated,

*The revised assessment does not suggest that endocrine disruption, or potential effects on endocrine-mediated pathways, be regarded as a legitimate regulatory endpoint at this time. ... In response to the CRE, we revised the chapter which clearly states that based on the existing data uncertainties, the chemical should be subject to more definitive testing once the appropriate testing protocols have been established.*³⁹

³⁸ <http://thecre.com/pdf/petition-atrazine2B.pdf>.

³⁹ http://www.thecre.com/pdf/2807Response_03_27_03.pdf, see pp 18-20.

One drawback to agencies waiting to respond to data quality concerns until they publish the final regulatory document is that interested parties, including those who may have cited the data, do not have the opportunity to provide their views on the issue. As discussed below in Section VII, CRE has provided a copy of this letter to the organizations we have been able to identify as citing it in their comments to enable them to respond if they so choose.

3. *Replying to the Party of Interest: The HHS/WHO Example*

When third-party Data Quality issue are brought to their attention, agencies also have the option of responding to the party submitting or responsible for the study. The letter the Department of Health and Human Services (“HHS”) wrote to the World Health Organization (“WHO”) is a case example.

CRE informed HHS and USDA that the agencies could not rely, as planned, on a WHO study in developing their dietary guidelines.⁴⁰ CRE explained that “Before USDA and HHS are, under the Data Quality Act, legally able to rely on any of the facts and analyses supporting the scientific recommendations in the WHO Report, both USDA and HHS will have to carry out a predissemination review....”⁴¹ The letter to the agencies also noted that “After that review, either USDA and HHS or WHO will have to supplement this WHO Report with corrections before USDA and HHS will be able to base policy guidance on any scientific recommendations and associated facts and analyses stated in the WHO Report.”

To address the Data Quality problems with the WHO study, CRE recommended that the agencies,

write to the World Health Organization (WHO) and the U.N. Food and Agriculture Organization (FAO), the sponsors of the WHO Report. The Secretaries of USDA and HHS need to point out that the U.S. Government (and its agencies) cannot base their policy decisions on any facts and analyses supporting scientific recommendations stated in a WHO Report, such as this one, until the facts and analyses supporting scientific recommendations in WHO reports can be shown, through a predissemination review, to meet the U.S. Government’s data quality standards.

After evaluating the WHO/FAO study, HHS wrote to the Director-General of WHO (cc: FAO) explaining that,

under the U.S. Data Quality Act, USG agencies operate under guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public. These guidelines require agencies to...develop a process for

⁴⁰ http://www.thecre.com/quality/20030908_who.html.

⁴¹ http://www.thecre.com/pdf/20030908_usda.pdf.

reviewing the quality of information before disseminating it.... Excerpts from the HHS Agency Guidelines are located at ANNEX A.

The consultation process of the development of the WHO/FAO Report and the resulting Report itself would not meet these current U.S. data quality standards, as the process lacked a high degree of transparency, and the data and analytic results contained in the Report were not subject to formal, independent, external peer review, among other criteria.⁴²

VI. Conclusions

- ▶ The Localism Study is a third-party information submission that does not comply with FCC and OMB information quality standards because it:
 - Defines localism using an arbitrary and non-replicable methodology;
 - Measures localism using a biased protocol; and
 - Does not provide its underlying data.
- ▶ The Commission cannot rely upon or otherwise use the Localism Study in developing its policies.

VII. Communication With Stakeholders

CRE recognizes that numerous stakeholders have cited the Localism Study in their comments and therefore may have an interest in knowing its status under the DQA. Thus, CRE is providing a copy of this letter to the eleven organizations we have identified as citing the study in their comments, using the contact information they provided. Copying these organizations will enable them, at their discretion, to respond to the Data Quality concerns discussed in this letter.

Sincerely,

/s/

Jim Tozzi

Member, Board of Advisors

⁴² <http://thecre.com/pdf/HHS-WHO.Letter.pdf>, see page 2 of the attachment to the cover letter.
[Emphasis added]

Center for Regulatory Effectiveness

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cc: Gene Kimmelman/Consumers Union
Mark Cooper/Consumer Federation of America
Ben Scott/Free Press
Paul Almeida/Department for Professional Employees, AFL-CIO
David Cohen/Department for Professional Employees, AFL-CIO
Joel Yudken, Ph.D./High Road Strategies
Marvin Ammori, Esq./Institute for Public Representation, Georgetown University Law Center
Angela J. Campbell, Esq./Institute for Public Representation, Georgetown University Law Center
John F. Sturm/Newspaper Association of America
Paul J. Boyle/Newspaper Association of America
Laura Rychak/Newspaper Association of America