HOW LOCAL TV NEWS IS SURVIVING DISRUPTION AS NEWSPAPERS FAIL: LESSONS LEARNED

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INTRODUCTION

Despite the sharp decline in the number of local newspapers, it's important to

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understand that other legacy news-delivery platforms—particularly local TV news—have not been suffering the same degree of loss. Pew Research Center found that local TV news actually saw its audience *increase* across the evening and late-night timeslots in 2020, and that local TV companies earned more revenue than the previous year.[1] In fact, local TV was deemed to be on par with or outpacing cable and network TV. Pew survey data show more Americans still prefer to get their local news from television than from any other medium, including online. Even with an increasing preference for digital delivery, "local television stations have retained a strong hold in the local news ecosystem."[2]

Why and how has local TV news managed to stay afloat while local newspapers close their doors? Even as we mourn the loss of local news from print media, we should not overlook its surviving sibling that continues to churn out news to small and medium markets. Why do some media survive in the face of competition from new, disruptive media technologies? What lessons might be learned? Is there a role that government might play? Yet with the loss of local newspapers, are broadcast stations and online platforms adequate substitutes for providing local news? Or is local broadcast news actually just on a slower decline compared to newspapers?

I. Surviving Disruption

Much of the blame for the fall of the newspaper industry rests with the rise of the Internet and online competition. For example, digital offerings have cannibalized the editorial side of the business as online aggregators. Social-media sites have become the alternate entry point for daily news as readers rapidly migrate to social media.

Newspapers have also been hit with a loss of advertising revenue to online companies like Facebook and Google.[3] The most devasting blow is from the online siphoning of roughly $5 billion in classified ad revenues—a critically important revenue source for newspapers.[4] Dedicated online businesses, such as Craigslist, and

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[1] *Local TV News Fact Sheet*, Pew Rsch. Ctr. (July 13, 2021), https://perma.cc/37JZ-XNHC.

[2] *For Local News, Americans Embrace Digital but Still Want Strong Community Connection*, Pew Rsch. Ctr. (Mar. 26, 2019), https://perma.cc/C86L-ZD43.

[3] Jon Wertheim, *Local Newsrooms Strained by Budget-Slashing Financial Firms*, CBS News: 60 Minutes (Feb. 27, 2022), https://perma.cc/27GS-7EL7.

[4] Alexis Madrigal, *Local News Is Dying, and Americans Have No Idea*, Atlantic (Mar. 26, 2019), https://perma.cc/N44P-SVZ8.

social-media companies, like Facebook, are able to easily provide less-expensive access to their online "Marketplace" for individuals and merchants to buy and sell goods and services.

As a result, cost-cutting ownership practices[5]—particularly by hedge-fund owners[6]—have led to a death spiral for newspapers. Granted, trends have shown that revenue growth from advertising expenditures had been weakening and not keeping up with inflation enough to be sustainable.[7] But newspapers' shrinking page counts, staff layoffs, and general financial crises are largely due to the advent of the Internet and the online business competitors it spawned.

II. UNDERSTANDING LOCAL TELEVISION NEWS SUCCESS

To understand how local television news has fared compared to local newspapers, we should examine distinguishing factors such as regulation and technology, as well as other market forces, including consumer behavior.

A. Regulation

Both industries have faced similar disruptive effects over the years, but the one element that most notably separates broadcasting from the newspaper industry is federal regulation and oversight. Governmental authority has shaped the broadcast industry in terms of invention, competition, and content, including how it serves local communities with news and information. It has controlled but also protected local broadcast stations in ways that may explain their continued success in the digital age.

1. Local and educational coverage requirements

Unlike newspapers, TV and radio stations have always been and continue to be subject to federal licensing requirements. Since broadcasting signals naturally cross state lines,[8] the U.S. government's authority over broadcasting comes from the Commerce Clause,[9] which provides for oversight of interstate commerce. A period

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[5] *Town by Town, Local Journalism Is Dying in Plain Sight*, CNBC (Mar. 10, 2019), https://perma.cc/4RND-LP25.

[6] Wertheim, *supra* note 3.

[7] Robert Picard, *Shifts in Newspaper Advertising Expenditures and Their Implications for the Future of Newspapers*, 9 JOURNALISM STUD. 704 (2008).

[8] Even if a signal does not migrate across a state's borders, federal regulation pertains.

[9] U.S. CONST. art. I, § 8.

of chaotic interference by early radio entrepreneurs during the 1920s prompted calls for some sort of licensing and coordination of the airwaves akin to a traffic cop. The rationale for supporting licensing was then based on the legal premises of the scarcity doctrine and public ownership of the airwaves. Simply put, the range of frequencies in the electromagnetic spectrum that broadcasting stations use to transmit their signals is a limited resource, and that resource belongs to the public.[10]

As a result, one regulatory distinction is the assurance that all communities are served by at least one TV station. The federal government intentionally created a system of channel allocations that would ensure small markets are served.[11] Congress was concerned that licenses would become concentrated around major cities and would thus leave remote and less populated areas of the country without service.[12] The Federal Communication Commission (FCC) believed that the public interest would best be served by ensuring that every community had its own television station that was locally oriented and controlled.[13] So, a "Table of Allotments" was created that established a formula for the geographical distribution of local television and commercial FM radio frequencies across the country.[14] These channel assignments are set. Unlike newspapers, stations cannot abandon their local communities and move to larger markets or regionalize the scope of their coverage. They must serve their local communities of license.

The FCC further ensured that local communities would be served by increasing the number of stations available. Given the limited number of allocated broadcast TV channels and the high costs of entry into the market, the Low Power Television Service (LPTV) system was established, which provided flexible and less-expensive entry into television broadcasting while also permitting fuller use of the broadcast

[10] Red Lion Broad. Co. v. F.C.C., 395 U.S. 367 (1969).

[11] Section 307(b) requires the FCC to "make such distribution of licenses, frequencies, hours of operation, and or power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b).

[12] *See, e.g.*, David M. Silverman & David N. Tobenkin, *The FCC's Main Studio Rule: Achieving Little for Localism at a Great Cost to Broadcasters*, 53 FED. COMM. L.J. 469 (2001).

[13] *Id.*

[14] Sixth Report and Order on Television Allocations, 41 F.C.C. 148 (1952). *See* 47 C.F.R. § 73.606. This included standards for operation, such as allowable power and antenna height.

spectrum.[15] This was "primarily intended to provide opportunities for locally-oriented television service in small communities, . . . delivering programming tailored to the interests of viewers in small localized areas, providing a means of local self-expression."[16] As a result, many communities are served by LPTV stations that are "operated by diverse groups and organizations, including high schools and colleges, churches and religious groups, local governments, large and small businesses, and individual citizens."[17] Today, these stations provide local news, community affairs, weather, and emergency information to millions of viewers across the country, particularly in small markets and rural areas.[18]

Along similar lines, the federal government in its frequency-allocation system required certain channels be set aside for noncommercial, educational broadcasting.[19] This meant that markets would be served by TV stations that are unconstrained by the quest for advertising dollars.[20] This also lead to a system of federal financial support for noncommercial stations when Congress recognized the need for federal funding in 1962 to help facilitate the development of such stations by passing the Educational Television Facilities Act.[21] In 1967, Congress also passed the Public Broadcasting Act, which considerably broadened the federal role in noncommercial broadcasting through the creation of the Corporation for Public Broadcasting (CPB), a nongovernmental and nonprofit corporation, to provide

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[15] *Low Power Television (LPTV)*, FCC (last updated June 15, 2021), https://perma.cc/V2CD-QU7T .

[16] *Id.*

[17] *Low Power Television Service*, FCC (last updated Dec. 9, 2019), https://perma.cc/6PJG-7CKH.

[18] *Proposed Bill Would Allow LPTVs To Seek Class A Status*, RADIO & TELEVISION BUS. REP. (Dec. 20, 2021), https://perma.cc/JKC4-T7AK.

[19] The FCC revised its table of frequency allocations in 1952 to spur the development of educational television broadcasting. It set aside 242 channels for exclusive use of noncommercial educational television (ETV), increasing that number to 329 by 1966. *Federal Support Educational Broadcasting*, STATEUNIVERSITY.COM EDUC. ENCYCLOPEDIA, https://perma.cc/4Y7Z-XBE6. *See* 47 C.F.R. § 73.621.

[20] *Id.* at § 73.621(e), which prohibits promotional announcements on behalf of for-profit entities in exchange for consideration. However, acknowledgements of contributions can be made.

[21] *Federal Support*, *supra* note 19.

public broadcasting and network interconnection needs.[22] Notably, the CPB receives a federal appropriation for public broadcasting that it distributes to member stations. The CPB's role is to shield stations from political influence while delivering federal support in a way that allows stations to operate independently.[23] Their taxpayer-funded support in the form of direct station grants amounted to about 18.3% of the average public television station's total revenue in 2020.[24] Other federal funds may come from the National Telecommunications and Information Administration (NTIA) at the Department of Commerce as well as through programming grants from various federal agencies such as the National Science Foundation.[25] The remaining station revenue comes from public donations and underwriting. While these stations have national sources for programming such as PBS and its *PBS Newshour*, they also produce their own programming. A few public television stations—albeit in the largest markets—each provide a daily local-news program that is 30 minutes or longer.[26]

Newspapers, on the other hand, are typically for-profit enterprises, highly dependent on diminishing advertising revenue and without government support. There is, however, a movement by nonprofit outfits to take over or start news outlets. In fact, several notable publications are now run as nonprofits, such as the *Chicago Sun-Times*, which in 2018 was acquired by Chicago Public Media—a noncommercial/public radio broadcaster.[27] The deal moved a money-losing investment into the nonprofit tax space where revenue—including advertising, donations, and membership fees—are tax-exempt, and the need to please stockholders is eliminated.[28] Congress has even introduced legislation to help make it easier for

[22] *Id.*

[23] *About Public Media*, CPB, https://perma.cc/86NB-DMKC.

[24] *Federal Appropriation*, CPB, https://perma.cc/RJ5J-MFJT.

[25] *Federal Support*, *supra* note 19.

[26] Adam Ragusea, *Topple the Towers: Why Public Radio and Television Stations Should Radically Reorient Toward Digital-First Local News, and How They Could Do It*, KNIGHT FOUND. (2017), https://perma.cc/MWE4-JDJQ.

[27] Jack Shafer, *Your Newspaper's Not Making Money? Make It Permanent as a Nonprofit!*, POLITICO (Jan. 25, 2022), https://perma.cc/DV3T-ZU76. Other newspapers that have turned nonprofit include the *Texas Tribune*, *Baltimore Banner*, and *Salt Lake Tribune*.

[28] *Id.*

newspapers to become nonprofits.[29] But while the CPB provides funding for TV stations, there is no comparable source of federal funding for newspapers. Still, Congress has introduced legislation that could help ease some financial concerns for local newspapers. Instead of direct grants, a series of tax credits has been proposed that would: (1) provide a tax credit of up to $250 for consumers to subscribe or donate to local newspapers; (2) provide a payroll tax credit to local news organizations for each local news journalist employed; and (3) provide a tax credit to small businesses that advertise with local newspapers—as well as local radio and television stations.[30] Although there appears to be some bipartisan support, [31] such measures would need to be passed, and it's not clear whether tax credits may be "too little, too late" for local newspapers on life support. There is also concern that this content-neutral approach may have unintended consequences of benefiting and spurring the creation of hyper-partisan aggregation sites that only mimic local newspapers while promoting political agendas, contrary to the spirit of the legislation.[32]

2. Ownership limits

For broadcasting, structural regulation has ensured a diversity of local voices through broadcast ownership limits. Initially adopted in 1964, the Local Television Ownership Rule restricted the number of local television stations that any one entity can own in a single market. This ensured that TV stations in a market cannot be bought out by one another, effectively reducing the number of stations and the diversity of viewpoints serving a community.

Contrast this with the treatment of the newspaper industry, which at the time was seeing a sharp decline in the number of cities and towns with two or more competing newspapers. In 1970, Congress passed the Newspaper Preservation Act to

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[29] Saving Local News Act, H.R. 6068, 117th Cong. (2021). The bill makes possible the publication of written news articles as a tax-exempt purpose for organizations. It amends section 501(c)(3) of the Internal Revenue Code of 1986 by including "publication (including electronic publication) of written news articles." A local news resolution (H. Res. 821) was also introduced to recognize the importance of local media outlets to society and urge Congress to help stop the further decline of local media.

[30] Local Journalism Sustainability Act, H.R. 3940, 117th Cong. (2021).

[31] Margaret Sullivan, *Congress May Be About to Help Local News. It Can't Happen Soon Enough*, WASH. POST (Aug. 31, 2021).

[32] *Id.*

enable the Justice Department to make antitrust exceptions so that two newspapers in a community could combine their non-editorial functions to reduce costs.[33] Yet despite this regulatory effort to keep a second newspaper voice alive by allowing newspaper joint agreements, few survived.[34] For broadcasting, the local TV ownership limit continues, albeit modified slightly.

3. Localism and public interest requirements

Another regulatory distinction from newspapers is the requirement that, as licensees of the public's airwaves, broadcast stations must serve the public interest. When Congress enacted the Communications Act of 1934,[35] it created the FCC to license broadcast stations that would serve in the "public interest, convenience, or necessity."[36] Broadcasters are essentially granted a limited-term "lease" to serve as public trustees of the airwaves.

A cornerstone of this public-interest requirement is a commitment to "localism."[37] Licensees must air programming that is responsive to the needs and interests of their communities of license. For years, broadcasters were required to conduct detailed ascertainments of their local communities and to indicate how their stations were addressing community problems through programming and outreach.[38] They even had to dedicate a percentage of their programming to local programs, news, and public affairs.[39] At one point, TV stations had to observe the Prime Time Access Rule, which effectively required them to carry at least one hour of non-network programming each night in an FCC effort to promote independent

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33 DOUGLAS GOMERY, THE FCC'S NEWSPAPER-BROADCAST CROSS-OWNERSHIP RULE: AN ANALYSIS (2002).

34 *Id.*

35 47 U.S.C. § 151 *et seq.*

36 47 U.S.C. § 307(a).

37 Sixth Report and Order, 17 Fed. Reg. 3905 (1952).

38 Report & Statement of Policy Re: Commission En Banc Programming Inquiry, 44 F.C.C. 2303, 2314 (1960); see, e.g., Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 F.C.C. 2d 650 (1971).

39 Delegations of Authority to the Chief, Broadcast Bureau, 59 F.C.C. 2d 491, 493 (1976). The guidelines required TV stations to air at least five percent total local programming, five percent informational (news and public affairs) programming, and ten percent total non-entertainment programming.

and locally originated programming.[40] Although the FCC deregulated many of their behavioral rules in the 1980s and '90s in favor of marketplace forces, the Commission has continued its commitment to ensuring licensees achieve the goal of localism. For example, stations must provide public inspection files of their operations and service to their community, which include quarterly lists of the most significant programs they have aired concerning issues of importance to their community.[41]

Of course, this is not to say that newspapers are not dedicated to or are uninterested in serving the public interest and their local communities. Quite the contrary, as this is a core part of their journalistic principles.[42] But newspapers are unregulated and enjoy greater First Amendment protections to make editorial decisions about their content than TV stations.[43] This can open the door to brazen abuse by a wave of hedge-fund owners and others who can ignore the public interest without government penalty. Indeed, evidence shows that community service by newspapers has been giving way to corporate profit centers over the years.[44] This situation produces a newspaper aimed not at the whole community it serves but at an audience valued by advertisers who provide roughly three-quarters of their revenues.[45]

For broadcasters, however, the consequences of ignoring the public interest can be dire. Licenses must be renewed, and the FCC will review applications to see if

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[40] Prime Time Access Rule, 47 C.F.R. § 73.638(k) (repealed in 1995).

[41] 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3527(e)(8).

[42] The Society of Professional Journalists Code of Ethics states, for example, that journalists should "[r]ecognize a special obligation to serve as watchdogs over public affairs" and "[s]upport the open and civil exchange of views." *SPJ Code of Ethics*, SOC'Y PRO. JOURNALISTS (Sept. 6, 2014), https://perma.cc/K48S-5YWR.

[43] *See* Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241 (1974) (unanimously striking down a Florida law granting a right to reply to political candidates whose personal character or official record had been attacked by newspapers). This decision giving the print media constitutionally protected editorial autonomy is sharply contrasted to the treatment of broadcast media in Red Lion Broad. Co. v. F.C.C., 395 U.S. 367 (1969), where the Court upheld a regulation (the Fairness Doctrine) that required broadcasters to (among other things) give free reply time to persons attacked on the air.

[44] *See, e.g.*, GOMERY, *supra* note 33.

[45] *Id.*

"the station has served the public interest, convenience, and necessity" and not violated any rules and regulations.[46] If an applicant for renewal has not met the standards, the Commission can deny or condition the application, including reducing the license term.[47] This has implications for any potential hedge-fund buyers since licenses may not be granted to or renewed for broadcast stations that engage in layoffs and cost-cutting measures to maximize profits, failing to serve the public interest.

4. Regulatory protections

Compared to newspapers, the greatest regulatory distinction for broadcasting may be less about constraints and more about the regulatory *protections* that broadcasting has uniquely enjoyed. The sustainability and growth of television broadcasting has been supported by government regulation, primarily in the name of localism. Such regulatory protections have not been afforded to newspapers.

For example, laws were created to ensure that TV stations would be receivable by all Americans. In 1962, Congress passed the "All Channel Receiver Act," requiring television manufacturers to produce TV receivers capable of receiving both

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[46] 47 C.F.R. § 309(k)(1).

[47] *Id.* at § 309(k)(4). Losing a license for failure to serve the public extremely rare, however. In fact, the only time a television station owner permanently lost their license was in the well-known case of WLBT in Jackson, Mississippi, when during the 1950s and 60s the station's pro-segregationist owner made racist programming decisions such as preempting, ostensibly on the grounds of "technical difficulties," any network programs that covered the Civil Rights Movement, addressed racial injustice, or otherwise depicted African-Americans in a positive light. Civil rights protesters had filed formal complaints and lawsuits. The U.S. Court of Appeals for the D.C. Circuit ruled that the public had the right to take part in FCC license renewal hearings in order to protect the public interest. Office of Commc'n of the United Church of Christ v. F.C.C., 359 F.2d 994 (D.C. Cir. 1966).

VHF and UHF signals.[48] This meant that Americans would have free and ready access to stations in the UHF band (channels 14 and above).[49] Later, when the industry transitioned from analog to digital in 2009, the federal government spent over $2 billion to ensure that Americans with analog TV sets could receive the new digital signals with $40 digital converters.[50]

In the same vein, Congress and the FCC required—and continue to require—cable-television systems to carry all local TV stations in their cable-TV channel lineup. These "must-carry" rules were upheld by the Supreme Court as being consistent with the First Amendment.[51] TV stations have a right to be carried for free or to negotiate carriage for a price.[52] Such "retransmission consent fees" are now a significant and rapidly growing revenue source for TV stations,[53] accounting for roughly a quarter of the average station's revenue.[54]

This is in sharp contrast to what the newspaper industry faces. Newspapers do not benefit from such guaranteed content-redistribution revenues unless, for ex-

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[48] 47 U.S.C. § 303(s); All Channel Receiver Act of 1962, Pub. L. No. 87-529, 76 Stat. 150. "All television broadcast receivers manufactured after April 30, 1964, and shipped in interstate commerce or imported from any country into the United States, for sale or resale to the public, shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service." *All-Channel Television Broadcast Receivers*, 27 Fed. Reg. 11,698, 11,700 (Nov. 28, 1962); 47 C.F.R. § 15.70(a) (1962) (current version at 47 C.F.R. § 15.117(b)).

[49] The UHF band originally consisted of 70 channels (14–83), although that number was reduced when the less desirable channels 70–83 were reallocated in 1983 and when the recent digital transition completed in 2020 "repacked" the channels and reduced the usable UHF channels to 14–36 in the U.S.

[50] Ernie Smith, *The Long, Weird Transition from Analog to Digital Television*, ATLAS OBSCURA (Oct. 25, 2016), https://perma.cc/S7HM-R25Z.

[51] The Court ruled that the FCC's interest "in preserving a multiplicity of broadcasters" was not a violation of cable's freedom of speech. Turner Broad. Sys., Inc. v. Federal Commc'ns Comm'n, 520 U.S. 180 (1997).

[52] Cable Television Consumer Protection and Competition Act of 1992, H.R. 4850, 102nd Cong. (1992).

[53] Brad Adgate, *Why Are TV Stations up for Sale?*, FORBES (Mar. 5, 2019), https://perma.cc/TVQ2-2JAT.

[54] KNIGHT FOUND., *The Future of Local TV News: Part 4*, *in* LOCAL TV NEWS AND THE NEW MEDIA LANDSCAPE 116 (2020), https://perma.cc/7V5S-6MSX.

ample, they are successful in collecting copyright-licensing fees from news aggregators which otherwise claim fair use.[55] The rise of online news aggregators—which have captured an increasing share of the news-consumer market[56]—is considered one of the significant reasons for the crisis facing the newspaper industry.[57]

Protectionist rules were also created to ensure that TV broadcasting would remain successful in the face of competition. Early subscription television services and cable television were seen as disruptive threats to the preservation of local broadcast service, which prompted the FCC to impose onerous rules that hindered their development. Competing content was restricted. Early rules prevented cable systems from carrying most movies and local sporting events in order to give local TV stations the opportunity to carry such programming.[58] Cable systems were also prevented from carrying distant television stations that were in competition with local stations.[59] Duplicate network signals still cannot be imported by cable systems or satellite carriers in competition to local network affiliates.[60] And, in order to protect local TV broadcasters from viewers migrating to cable channels, cable systems and satellite carriers are also prevented from carrying syndicated programming that

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[55] *Ten Reasons Why It Makes No Sense to Try to Charge News Aggregators*, ENRIQUE DANS (Apr. 19, 2014), https://perma.cc/S8YF-W84L. *But see, e.g.*, Associated Press v. Meltwater U.S. Holdings, Inc., 931 F. Supp. 2d 537 (S.D.N.Y. 2013) (holding that a company's conduct in scraping and aggregating copyrighted news articles was not protected by fair use).

[56] Already as to online news traffic alone, a study from 2009 found news media users were more likely to turn to an aggregator (31 percent) than to a newspaper site (8 percent). Another study from 2015 found aggregators such as Google News, Buzzfeed and Huffington Post attracted 80% of the online news traffic. Doh-Shin Jeon, *Economics of News Aggregators* (Toulouse Sch. of Econ., Working Paper No. 18-912, 2018), https://perma.cc/6H23-399D.

[57] Reporters Comm. for Freedom of the Press, *Content Aggregation: Spreading or Stealing the News?* (2012), https://perma.cc/QTT7-39M4.

[58] Home Box Office, Inc. v. F.C.C., 567 F.2d 9 (D.C. Cir. 1977), *citing* 47 C.F.R. §§ 73.643, 76.225 (1975). The stated purpose of these rules was to prevent competitive bidding ("siphoning") away of popular program material from free broadcast television service. *Id.* In 1977, the U.S. Court of Appeals held that the FCC had exceeded its jurisdiction and that the cable television rules were inconsistent with the First Amendment. *Id.*

[59] First Report and Order, 38 F.C.C. 683 (1965).

[60] *Network Nonduplication Rule*, 47 C.F.R. § 76.92, which gives a local station the exclusive right to distribute a network program, meaning that a cable system cannot carry a duplicate network program from a distant station. This also applies to satellite carriers. 47 U.S.C. § 339; 47 C.F.R. § 76.122 (Satellite Network Non-Duplication).

is licensed exclusively to local TV stations.[61]

B. Technical Advantages

The continued success of broadcast-television news stations may also be explained by certain technological advantages inherent to the medium. Their method of delivery has enjoyed certain efficiencies and steady costs. Local TV stations have also more easily adapted to digital delivery, allowing them to meet and embrace Internet disruption head on.

In the first place, advances in technology have led to noticeably lower operating costs for TV stations. While newspapers have struggled with rising print costs, TV stations have benefited from steadily dropping prices for cameras, computers, and transmission equipment.[62] On average, the annual operating expenses for U.S. television stations have remained fairly steady since 2013.[63] In contrast, newspapers have been stricken with newsprint costs that have soared by over 50% in just a matter of months.[64] This comes after having reduced the size of their papers and losing their supportive partnerships with paper mills.[65]

Local TV news stations are also highly—if not more—suited to adapt to the digital revolution, given their technological roots. They have already transitioned from electronic to digital media production with cameras, editing, switching, and other equipment. TV stations also successfully weathered the very-expensive transition from analog to digital delivery when the government required all terrestrial TV signals in the U.S. to be transmitted in digital format by 2009.[66] TV stations have

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[61] 47 C.F.R. § 76.101 (Cable Syndicated Program Exclusivity), § 76.123 (Satellite Syndicated Program Exclusivity).

[62] *Id.*

[63] Macrotrends reports that U.S. broadcast television's annual operating expenses in 2013 were $462 million, reached a high of $522 million in 2018, and then dropped to $400 million by 2020. They were $466 million in 2021. *Television Broadcasts Operating Expenses 2010–2021*, MACROTRENDS, https://perma.cc/Q4XW-95J9.

[64] *Soaring Newsprint Costs Make Life Even Harder for Newspapers*, ECONOMIST (Nov. 6, 2021), https://perma.cc/CZ9T-6ZN3.

[65] *Id.*

[66] *See Digital Television*, FCC (last updated Dec. 9, 2016), https://perma.cc/AT9D-SG66. It would cost TV stations between $5 million and $10 million to make the conversion, "with little to no return on a station owners' investment." Rich Kirchen, *Digital TV: It's Too Expensive and You Can't Get It*, MILWAUKEE BUS. J. (Oct. 24, 1999), https://perma.cc/99SE-G3YG.

the workforce and the workflow to embrace new distribution opportunities, from news video for social media, to over-the-top (OTT) news clips, to streaming news coverage.[67]

These moves into the digital realm have especially positioned television stations to be able to innovate and adopt new strategies. For example, digital antennas are now being promoted as the next frontier of TV viewing that will meet the needs of consumers who are shifting to streaming services but want to supplement their maxed-out monthly subscription services with free, local TV station content that includes local news and sports.[68] Already 40% of Americans own a digital antenna, up from 29% at the end of 2019 and pre-pandemic quarantines. Digital technology has also allowed TV stations to generate additional revenue from "multicasting"—transmitting additional digital TV signals that typically carry low-cost programming and provide more opportunities to sell advertising.[69] As much as 5% of some TV stations' *total* revenue now comes from multicasting.[70] Some local TV-station groups have also introduced their own national OTT service that uses a data platform to provide local and national advertisers with advanced audience targeting and automated buying, thus giving stations an additional, growing source of revenue.[71]

Most importantly, digital television can seamlessly integrate with the Internet and directly challenge online competition. Consumers can use virtually any screen—and even the same screen at the same time—to watch TV, browse the Internet, or engage with social media. In fact, multiscreen use is one of the most significant changes in modern media consumption.[72] It has long been expected that television and the Internet would effectively merge, and television entrepreneurs

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[67] KNIGHT FOUND., *The Future of Local News Video: Part 3*, *in* LOCAL TV NEWS AND THE NEW MEDIA LANDSCAPE, *supra* note 54, at 93.

[68] Alex Sherman, *How Local TV Stations Plan to Remain Relevant as Viewers Shift to Streaming*, CNBC (Apr. 24, 2021), https://perma.cc/ZUS3-QHF8.

[69] KNIGHT FOUND., *The State of the Industry: Part 1*, *in* LOCAL TV NEWS AND THE NEW MEDIA LANDSCAPE, *supra* note 54, at 1.

[70] *Id.*

[71] Adgate, *supra* note 53.

[72] Peter Hirshberg, *First the Media, Then Us: How the Internet Changed the Fundamental Nature of the Communication and Its Relationship with the Audience*, *in* CH@NGE: 19 KEY ESSAYS ON HOW THE INTERNET IS CHANGING OUR LIVES (2013), https://perma.cc/4JXQ-PPVV.

have been successful in developing technologies to capitalize on this integration.[73] Most notable is NextGen TV, or ATSC 3.0, which is the next generation of local TV services approved for implementation by the FCC in 2017.[74] NextGen TV is essentially 4K TV that merges over-the-air antenna TV with the Internet.[75] It allows local stations to personalize their news, sports, live events, and shows with interactive features that give viewers the content that is most relevant to them.[76] And it gives advertisers the ability to geo-target viewers with addressable advertising.[77] Aside from picture and audio improvements, NextGen TV gives viewers the ability to watch broadcast content on phones, tablets, and in cars.[78] It can be repurposed for streaming at a time when the creation of streaming options, especially for mobile devices,[79] is particularly important as more people turn to the Internet for their television content.[80]

Of course, many print newspapers have also successfully responded to digital disruption by going digital themselves—creating e-editions, news websites, and digital news services for mobile access, often with video and audio. Traffic on newspaper websites has steadily increased—at least for the top 50 daily newspapers in the U.S.[81] Thus, making the technical shift to digital production has not been a barrier to success for most newspapers. Instead, economic failure is primarily attributed to waiting too long to make the transition, trying to hold on to a traditional print model.[82]

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[73] GOMERY, *supra* note 33.

[74] Adgate, *supra* note 53.

[75] Sherman, *supra* note 68.

[76] *Id.* (citing NextGen's website).

[77] Adgate, *supra* note 53.

[78] Sherman, *supra* note 68.

[79] *Id.*

[80] KNIGHT FOUND., *The Future of Local TV News*, *supra* note 54.

[81] *Newspapers Fact Sheet*, PEW RSCH. CTR. (June 29, 2021), https://perma.cc/7T4T-3BH3. In the fourth quarter of 2020, there was an average of 13.9 million monthly unique visitors (across all devices) for the top 50 newspapers. This was up 14% from 2019, which itself was 5% higher than in 2018. *Id.* Measuring the digital audience for the rest of the newspaper industry is difficult, since many daily newspapers do not have enough website traffic to be measured by data company Comscore. *Id.*

[82] Ray Glenn, *Reports of Newspapers' Demise Have Been Greatly Exaggerated*, NW. FL. DAILY

Nonetheless, most local television stations have similarly developed station websites and embraced social media, and some are outperforming their local digital newspaper competitors.[83] TV-station websites have become an important and increasingly profitable distribution platform for local news video.[84] Local TV has an advantage over newspapers and other competitors on digital platforms in that it is already equipped to better deal with breaking news and video. Local TV newsrooms know best how to engage in video storytelling, and most will post these videos to the web as part of their daily workflows.[85] Given an increasing consumer demand for video news, some stations now boast about having the top news website in their city, with 50% more daily visitors than the local newspaper site.[86] Although both newspapers and television websites earn about the same amount of advertising dollars per online visitor,[87] some advertisers are willing to pay more to be featured with online video than text.[88]

TV stations are also using social media more fully. While newspapers tend to focus more on Twitter, some are arguably ceding Facebook and other social media.[89] TV broadcasters enjoy a social-media presence advantage, being responsible for a significant portion of the news video published on social media, especially Facebook.[90] One study has shown that the median social-media share for TV was 85.5%, while the median share for newspapers was only 11.7%.[91] While newspapers certainly have extensive content to offer, social media is said to particularly play well to TV's strengths, namely "timely, emotional, video" content.[92]

NEWS (Feb. 13, 2022), https://perma.cc/39KY-USSY.

[83] A study by the Knight Foundation found that of 37 small markets analyzed, television websites came out on top in 23 while newspapers came out on top in 13. KNIGHT FOUND., *The State of the Industry*, *supra* note 69.

[84] KNIGHT FOUND., *The Future of Local News Video*, *supra* note 67.

[85] KNIGHT FOUND., *The Future of Local TV News*, *supra* note 54.

[86] *Id.* WBAY-TV in Green Bay, Wisconsin, is an example of a station that in five years became the top website in Green Bay.

[87] *Id.*

[88] KNIGHT FOUND., *The Future of Local News Video*, *supra* note 67.

[89] KNIGHT FOUND., *The Future of Local TV News*, *supra* note 54.

[90] KNIGHT FOUND., *The Future of Local News Video*, *supra* note 67.

[91] KNIGHT FOUND., *The State of the Industry*, *supra* note 69.

[92] *Id.* at 20 (citing Sean McLaughlin, Vice President of Content at E.W. Scripps).

C. Consumer and Advertiser Demand

Consumer and advertising demand further distinguish broadcast television from newspapers when it comes to the ability to thrive in the local news-media market. Factors such as the growing demand for video, promotional opportunities, a sense of community, and economic value tend to favor broadcast television. These factors also help give broadcast television a more competitive footing against rival Internet services.

Overall, a majority of Americans choose local TV news as their go-to news source. Roughly 50% of U.S. adults say they often get their news from local television, compared to only 18% from print newspapers and 25% from radio.[93] The margin for online news sources has tightened, but trails at 43%.[94] Also reinforcing the popularity of local TV news is the fact that adults are watching more minutes of news in a typical week and spending more of their TV-viewing time (18.2%) watching news.[95]

A key advantage that sets TV apart from newspapers in general is its visual storytelling appeal and the increasing demand for video. Videos have become the most popular choice for content consumption.[96] Nearly a quarter billion people in the U.S. watched digital videos in 2020—a number that far exceeded expert predictions.[97] This has certainly been driven by online use. But while the Internet and smartphones are increasingly popular platforms for video-viewing, television has dominated with the most content and the most time spent viewing.[98] Americans watch TV an average of five hours per day, largely consuming live content,[99] while watching videos online for about two hours per day.[100] This is also the case for

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[93] *Id.* This is according to Nielsen television data.

[94] *Id.*

[95] *Id.* Up from 14.7% in 2015.

[96] Maryam Mohsin, *10 Video Marketing Statistics*, OBERLO (Apr. 13, 2022), https://perma.cc/ZG68-BSSH.

[97] *Id.* The number of people watching digital videos in the U.S. reached 244.4 million in 2020.

[98] KNIGHT FOUND., *The State of the Industry*, *supra* note 69.

[99] *Id.*

[100] Mohsin, *supra* note 96. In 2019, users spent a weekly average of six hours and 48 minutes watching online videos. This is an increase of 59% from 2016. A more recent study by Wyzowl says that people watch an average of 16 hours of online videos per week. Jacinda Santora, *Video Marketing Statistics: What You Must Know for 2022*, OPTINMONSTER (Jan. 7, 2022), https://perma.cc/

video-news consumption, where Americans "show a clear preference for getting news on a screen, and the TV screen still leads the way."[101] The average adult spends nearly six hours each week watching TV news.[102] It's therefore not surprising that 90 percent more local news is being broadcast today than 20 years ago, and that viewers can find local news on 39% more TV stations.[103]

Of course, disruptive Internet services—such as various streaming services, YouTube, and social-media sites like Instagram, Snapchat, and TikTok—are quickly gaining market share in competition to both TV broadcasters and newspapers. One-third of all online activity is spent watching videos, and the vast majority of global Internet traffic is from streaming videos and downloads.[104] In fact, it is suggested that more video content is being uploaded in just 30 days than what the major television networks in the U.S. have created in the past 30 years.[105] Online video consumption is up for all age groups, but especially teens and young adults.[106] Yet, as previously mentioned, local TV websites are also increasingly popular and are ideally suited to deliver online news videos, giving them a strong, competitive grip in the online market.

The video advantage also helps broadcasters when it comes to advertising, particularly on their local TV websites. The preference for video content is not just limited to entertainment and news; it extends to brands. More than two-thirds of consumers say they prefer video over text when learning about a product or service.[107] And studies show that more than half of consumers want to see more video content from the brands or businesses they support.[108] Advertisers recognize the power of video when it comes to convincing consumers to purchase a product or

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8VFM-HUC4.

[101] KNIGHT FOUND., *The State of the Industry*, *supra* note 69, at 6 (quoting a 2016 Pew Research Center study, *The Modern News Consumer*).

[102] *Id.* The amount of time spent consuming TV news is 5:47 per week.

[103] *Id.*

[104] Sarika, *135 Video Marketing Statistics You Can't Ignore in 2022*, INVIDEO (June 20, 2022), https://perma.cc/4LZQ-AVLG.

[105] *Id.*

[106] KNIGHT FOUND., *The State of the Industry*, *supra* note 69, at 6.

[107] Santora, *supra* note 100.

[108] Mohsin, *supra* note 96.

service.[109] They prefer video ads because people are more likely to pay attention to them than to audio and written content, which they may otherwise skip or skim.[110] Advertisers often try to tell visual stories within their ads to create an emotional impact on viewers.[111] This means giving TV websites the preferred nod to carry their ads. Indeed, digital advertising revenue for local TV stations has been growing, increasing 6% in 2020 alone.[112]

Television also draws in large numbers of viewers, which means greater promotional and cross-promotional opportunities for its local news product. Since roughly 2000, television has been in a second "Golden Age," enjoying an era of "Peak TV"[113] with the creation of a wider array of critically acclaimed content leading to more viewers watching—and even binging—on more television than ever before.[114] This resurgence in television entertainment programming has attracted more viewers, many of whom will also end up watching a station's local newscasts. Not only does popular entertainment content provide an effective lead-in and lead-out programming strategy for local newscasts, it also serves as an excellent vehicle for station newscast promotions that can be strategically placed throughout the programming schedule. Cross promotions may also run on other Multichannel Video Programming Distributors (MVPDs). This benefit also applies to a station's website, which draws users for its entertainment program listings and social engagement and then captures interest in its local news content and on-air newscasts. Newspapers, on the other hand, do not enjoy a similar cross-promotional advantage. Aside from some entertaining columnists, comic strips, puzzles, and entertainment-related supplements, newspapers generally do not have a comparable cache of non-news options to attract readers to their news product, and this also applies to their news websites.

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[109] Sarika, *supra* note 104 (reporting that 72% of customers say they would rather learn about a product or service by way of video, and 84% say they have been convinced to buy a product or service after watching a brand's video).

[110] Mohsin, *supra* note 96.

[111] Neil Kokemuller, *What Is the Advantage of Using TV & Radio Media for Advertising?*, CHRON. (Feb. 4, 2019), https://perma.cc/RBT7-ERCL.

[112] PEW RSCH. CTR., *Local TV News Fact Sheet*, *supra* note 1.

[113] Alex Mell-Taylor, *From The Sopranos to BoJack Horseman: The End of the Second Golden Age of Television*, CULTURE CORNER (Mar. 10, 2020), https://perma.cc/SK5X-UFD8.

[114] Hirshberg, *supra* note 72.

For the same matter, television programming is effective at cultivating fan-based communities and is a driver for social-media interaction, which offers even more cross-promotional opportunities for local news. Among the most widely discussed topics on social media is television.[115] TV viewers like to interact with one another about their favorite shows over Facebook, Twitter, and TV-network websites. In fact, over 40% of viewers watch TV while also using a social network,[116] and nearly 24% will post, vote, share, or otherwise comment on a TV show on social media.[117] These communities of fans share a common experience, which is important to the success of television. These communities will then connect favored programs with the networks, streamers, and stations that distribute them. And once again, local television news can indirectly benefit from the promotion of shows carried on their station, potentially converting those users into local broadcast-news consumers.

Generating a sense of trust and local community is another advantage for local television stations, although this is also true for newspapers, distinguishing both legacy media from their online competitors. Nearly eight in ten Americans say they have more trust in their local news to give them information they need to get involved in their community.[118] In addition, they are almost twice as likely to express trust in local news as compared to national news.[119] Still, broadcast news may have an edge when it comes to trust. Aside from reaching the largest share of local news consumers, there is some sense that TV provides viewers with more accurate news that is from professional journalists.[120] Television-oriented local-news consumers also appear to have a stronger attachment to their preferred source of news than those with digital preferences do. U.S. adults who prefer getting local news online

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[115] Hirshberg, *supra* note 72.

[116] L. Ceci, *Frequency of U.S. Smartphone Social Usage While Watching TV 2019*, STATISTA (2019), https://perma.cc/ZUV8-KVNG.

[117] Troy Dreier, *24% of U.S. Adults Use Social Media to Comment on TV Shows*, STREAMING MEDIA (Apr. 14, 2017), https://perma.cc/QPN3-R5ST.

[118] Sarah Fioroni, *Local News Most Trusted in Keeping Americans Informed About Their Communities*, KNIGHT FOUND. (May 19, 2022), https://perma.cc/FLN9-NRM5.

[119] *Id.*

[120] Nakedi Phala, *Three Reasons Why TV Is Still the Best for News Consumption*, MEDIA UPDATE (Mar. 6, 2020), https://perma.cc/54XW-LWSG. There is still a demand for credible and authentic information.

are less likely to follow local news very closely, compared to those who prefer television news.[121]

Perhaps the greatest distinguishing factor for local television news, however, is its cost and perceived value by consumers. Simply put, local over-the-air TV stations have always been and continue to be available for free. There are no subscriptions, messy contracts, or onerous online agreements with terms and conditions.

Local print newspapers, on the other hand, customarily charge subscription and per-issue fees, and even their digital newspapers employ some type of paywall model. While some well-known national newspaper outlets have had success charging subscribers, local publishers have been much less successful in converting their online readers into paying subscribers.[122] Yet it's important for digital newspapers to attract a large base of subscribers in order to have a sustainable business model. One analysis found that small towns of less than 10,000 residents will not have enough subscribers to support the operation of a digital publication.[123] If the price point is set at only $5, for example, 20% of the town's population would need to subscribe to cover the publication's overhead, salaries, and other expenses. Unfortunately, most local outlets are already only converting less than one percent of their population.[124]

Value is also a top consideration for advertisers. Both TV stations and newspapers rely heavily on advertising revenues, and both have seen a decline in advertising over the years. But for local TV, the loss of ad revenue is far less concerning than it is for newspapers. Television stations reap the benefits of political-advertising revenue in election years, for example. Although this revenue is cyclical, in election year 2020, local TV over-the-air advertising revenue actually increased by 8% over 2019.[125] In the meantime, additional income is generated by the increasing fees

[121] *For Local News, Americans Embrace Digital but Still Want Strong Community Connection*, PEW RSCH. CTR. (Mar. 26, 2019), https://perma.cc/VL7J-SKX6. This is 21% compared to 40% for those who prefer TV. *Id.*

[122] Simon Owens, *Why Local News Outlets Struggle with Digital Subscriptions*, WHAT'S NEW IN PUBL'G (Feb. 28, 2020), https://perma.cc/3P33-JJH6.

[123] *Id.*

[124] *Id.* Even big city digital news publications with their larger editorial staff to support are only able to convert one or two percent of the populations they serve. The *Seattle Times*, for example, has only converted 1.2% of the population it serves to digital subscribers. *Id.*

[125] PEW RSCH. CTR., *Local TV News Fact Sheet*, *supra* note 1.

related to retransmission consent from MVPDs, as mentioned earlier. TV does not depend on subscription or circulation revenues, and there is less reliance on digital-ad revenue, which accounted for only 7% of total TV ad revenue in 2020.

For newspapers, however, total advertising revenues have been dropping significantly. In fact, 2020 saw a 25% decline from 2019.[126] Even the top six publicly owned newspaper chains, which own and operate more than 300 daily newspapers, reported a 42% advertising revenue loss.[127] For the first time, advertising revenue was less than newspaper-circulation revenue,[128] which has also been in decline.[129] Digital advertising now comprises 39% of newspapers' remaining ad revenue. This is particularly troublesome when the Big Tech companies of Facebook and Google have reportedly siphoned away 77% of the digital ad revenue in local markets.[130] Moreover, while traffic has increased, consumers are spending less time on newspaper websites, with the average number of minutes per visit for the top fifty daily newspapers dropping to less than two minutes in 2020.[131] This, along with the use of online paywalls, impacts the attractiveness of local news websites for advertisers, resulting in the dreaded revenue death spiral for newspapers.[132]

III. DISCUSSION

It's clear that, while newspapers are struggling economically, local television news enjoys a number of comparative advantages that have kept it afloat. Of course, it is unclear how long these advantages will continue and whether they will be enough to counter the disruptive forces of the Internet. And if local TV news does continue to thrive, it is additionally unclear whether it and competing online news platforms would be sufficient substitutes for the loss of a strong newspaper presence in their respective communities. There have been various approaches suggested to help the newspaper industry readjust, recover, and possibly regain market share and its important role of watchdog journalism. Looking to local TV news as

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[126] PEW RSCH. CTR., *Newspapers Fact Sheet*, *supra* note 81.

[127] Mike Vorhaus, *Traditional TV Advertising Is Growing—Unlike Newspapers*, FORBES (Nov. 29, 2020), https://perma.cc/5Q39-JP7Z.

[128] PEW RSCH. CTR., *Newspapers Fact Sheet*, *supra* note 81.

[129] Vorhaus, *supra* note 127.

[130] Owens, *supra* note 122. This is compared to a digital ad revenue loss of 58% nationwide. *Id.*

[131] PEW RSCH. CTR., *Newspapers Fact Sheet*, *supra* note 81.

[132] Vorhaus, *supra* note 127.

a model is one approach to consider.

A. Sustainable Success?

It is important to first recognize, however, that the success of local TV news may not be sustainable. Disruption is a process, after all, and for television, this may simply be a slower process than it has been for newspapers. In fact, some have suggested that local television as an industry has been "very, very mildly contracting."[133] It's quite possible that TV stations could face declining audiences and revenues, and fail to adapt. Or the disruption may not only be slow, but incomplete.

B. Following a TV-News-Station Model

Nonetheless, local TV news appears to have the only media-revenue model likely to sustain itself for at least the next decade.[134] Covering local news continues to earn a profit for at least two-thirds of local stations that run local news.[135] In fact, TV news directors report that 55% of station revenues come from their news operations, even though news constitutes less than a quarter of a station's daily broadcast schedule.[136]

Although there are inherent differences between TV- and newspaper-delivery platforms, there are some lessons that can be gleaned from the TV-news business model that may help newspapers going forward. While newspapers have responded to TV competition in the digital realm by adding audio and video, for example, they should evaluate what is working well for local television news and consider adopting those winning strategies where possible. Newspapers could model themselves more on what has helped sustain local TV news in the face of Internet competition. Taking a page from their TV competitor's playbook, so to speak, could open the door to new opportunities and ultimately success for the industry.

For example, newspapers might lower their technology costs by eliminating their expensive print-newspaper operations and going all digital. Small-town newspapers, in particular, should make the digital leap and even let go of their legacy print model entirely. As with broadcasters, this would take advantage of lower-cost video equipment and other production technologies.

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[133] Madrigal, *supra* note 4.

[134] KNIGHT FOUND., *The Future of Local TV News*, *supra* note 54. This will be largely aided by retransmission revenue, increasing political revenue, and industry consolidation.

[135] *Id.*

[136] *Id.*

Newspapers need to take full advantage of digital technology and its opportunities for instantaneous, breaking-news posts and live streams, including audio and video. To be competitive with broadcasters and digital platforms, newspapers will need to meet them where they're at by excelling at visual storytelling by incorporating more video in their online stories. This will also give advertisers more video options for their ads, which they prefer.

Daily newspapers would then need to continue increasing their digital readership and significantly bolstering their website traffic, attracting users to their sites as well as keeping those users engaged for a longer time in order to yield more views on revenue-supporting advertising. This might mean engaging in "clickbait" strategies, pushing more enticing headlines and incorporating more entertainment/non-news elements alongside higher social-media engagement. In order to compete with more-popular local-television websites, newspapers will need to find additional exclusive or niche content that they can promote. Journalists are excellent storytellers and they can capitalize on that strength. The additional content could also help with effective promotions, which newspapers need in order to draw users to their digital news sites, especially younger users whom advertisers covet. More cross-promotional arrangements with other media outlets could also be explored.

Newspapers should also borrow from broadcasting's revenue model and rethink their reliance on subscription revenue. Even digital newspapers struggle with getting a large enough base of subscribers to be sustainable. Paywalls have not been as successful an approach for smaller daily papers as they have been for national newspapers, such as *The New York Times* and *Washington Post*.[137] Charging a fee for base access simply makes it hard to compete with freely available television news and other online news offerings.

Of course, removing or reducing subscription revenue would require a greater reliance on advertising revenue, which the newspaper industry has already fought hard to grow with limited success. The industry has earned more than twice as much money in digital advertising than local TV has, but after factoring in daily visitor use, both newspapers and TV are earning the same amount of advertising money per online visitor.[138] Content improvements, including producing more video, could help turn the tables and pull digital-advertising revenue away from

[137] *Id.*

[138] *Id.*

Facebook, Google, and the like. Newspapers might further bolster advertising revenue by embracing more sponsored content or "native advertising" on their digital sites,[139] which—similar to broadcasting's "infomercials"—can be offered while adhering to the journalistic ethical principles that require news and advertising be distinguished from one another."[140] They might also take a cue from broadcasting and find a way to capture the cyclical but highly lucrative political-advertising revenue. Ever since the U.S. Supreme Court in 2010 opened the political-advertising floodgates with the *Citizens United* case, the broadcasting industry has seen their political-ad revenue shoot to over $3 billion in 2020.[141] By creating a space for effective audio and video political ads, newspapers could capture a piece of this revenue pie.

Newspapers might also follow the trend of becoming nonprofit enterprises, much like noncommercial public-broadcasting stations. As mentioned earlier, this would allow newspapers to generate revenue that would be tax-exempt. Legislation such as the *Saving Local News Act* would make this possible by amending the Internal Revenue Code to include "publication (including electronic publication) of written news articles."[142] In addition, nonprofit newspapers could receive additional federal support with something comparable to a federally funded Corporation for Public Broadcasting that distributes funds to them. This could be in the form of grants, just as the CPB provides to public-broadcasting stations, which constitutes about 18.3% of their annual revenue.[143] There would have to be provisions and oversight to ensure that such nonprofits were not just hyper-partisan aggregation sites mimicking local newspapers. There could be conditions that require that they, like broadcasters, serve the public interest to ensure that funding recipients are responsive to their local communities. These conditions might go as far as requiring that a certain percentage of the news-editorial content be locally originated

[139] Freddy Mayhew, *Shifting to a Digital-First Strategy and the Steps to Making it Pay For Publishers*, PRESS GAZETTE (Jan. 19, 2022), https://pressgazette.co.uk/digital-first-strategy-and-steps-making-it-pay-for-publishers/.

[140] *SPJ Code of Ethics*, *supra* note 42. Publishers need to "Act Independently" by being sure to "distinguish news from advertising and shun hybrids that blur the lines between the two. Prominently label sponsored content." *Id.*

[141] KNIGHT FOUND., *The Future of Local TV News*, *supra* note 54.

[142] Saving Local News Act, H.R. 6068, 117th Cong. (2021).

[143] CPB, *Federal Appropriation*, *supra* note 24.

as opposed to syndicated or aggregated. Like broadcast stations, any nonprofit newspapers that receive government funding might be expected to provide regular reports indicating the issues and needs of the community and how these were addressed by the newspapers. Of course, care would need to be taken to ensure that this funding approach was content-neutral and did not violate First Amendment rights. Another condition for funding might require that owners and staff, including journalists, live in the community they serve. This would help ensure the involvement of local editorial voices and commitment. Having nonprofit status and local ownership would also ward off hedge-fund owners and other corporate profit centers that are currently crippling the newspaper industry.

Some of the regulatory protectionist policies of the FCC for broadcasting, however, cannot be extended to newspapers. For example, it would not be possible to mandate a system whereby all Americans receive at least one local newspaper as they do with the allocation of regulated television signals. Moreover, aggregators and other media outlets cannot be required to carry local newspapers on their services like MVPDs are required to carry local TV broadcast stations, nor can they be required to negotiate retransmission fees. Such fees, as noted, constitute a significant part of broadcast-station revenues. Yet, it's possible that some creative regulatory approach could be taken to at least assist newspapers in collecting fees from online news aggregators, similarly to broadcasting's retransmission fees from MVPDs.

Likewise, there is no regulatory authority to protect newspapers and promote a diversity of local voices with structural ownership rules for newspapers. The Newspaper/Broadcast Cross-Ownership rule that existed up until recently was an FCC regulation that applied to broadcasting. That said, elimination of that broadcast rule creates new possibilities for the survivability of local newspapers. Taking advantage of the opportunity to now merge with local TV news stations in the same market may prove to be the ultimate solution for saving newspapers. And despite concerns that consolidation will result in a diminution of local voices, some believe that cross-ownership could actually lead to *more* coverage of local issues. The synergies produced by such a merge could also balance the playing field, stimulate investment, and potentially save local news media.

Conclusion

Even if local TV news remains resilient to Internet disruption and is the last local-news medium standing, there is concern that it is not a perfect substitute for the kind of journalism that daily print newspapers have traditionally provided. Since TV-station coverage areas largely encompass towns and cities, smaller communities and even neighborhoods will likely not receive the same level of journalistic attention as would their weekly print newspaper. TV stations may employ fewer and less experienced reporters. Many fear that deeper forms of reporting and investigative explorations that make civic journalism valuable to communities will be lost.[144]

Still, if local TV news proves to be the model of success for legacy media, local journalism will remain available for most communities nationwide. TV news stations can ensure that large "news deserts" do not develop, where citizens become even more politically polarized, less engaged civically, and lose their ability to hold government officials accountable.[145] But this situation is made much better if local newspapers—even co-owned with broadcasters—are enabled to prosper.

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[144] Madrigal, *supra* note 4.

[145] Sullivan, *supra* note 31.