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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 21 1997

In the Matter of	)	
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Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197
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To: The Commission

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REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

John F. Sturm
President and Chief Executive Officer
David S. J. Brown
Senior Vice President/Public Policy and General Counsel
E. Molly Leahy
Legislative Counsel
NEWSPAPER ASSOCIATION OF AMERICA
529 14th Street, N.W.
Suite 440
Washington, D.C. 20045-1402

Richard E. Wiley
James R. Bayes
WILEY, REIN & FIELDING
1776 K Street, N.W.
Suite 1100
Washington, D.C. 20036
202/429-7000

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SUMMARY

In its initial comments, the Newspaper Association of America ("NAA") demonstrated that the newspaper/broadcast cross-ownership restrictions were based largely on unproven assumptions about diversity in the broadcast marketplace, without any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest. Moreover, since the rules were adopted in 1975, a vast array of independent voices have become available, producing a highly diverse and competitive media marketplace. Thus, the rules clearly are not necessary to ensure diversity or safeguard competition. Newspaper and broadcast station owners today are virtually alone among the major information providers in facing an absolute barrier to common ownership, and perpetuation of the restrictions in the current competitive environment raises serious constitutional concerns regarding the rights of newspaper publishers and broadcasters to speak in each other's markets.

A number of commenters representing a wide range of information providers agree that the newspaper/broadcast cross-ownership restrictions are anachronistic, and accordingly join the NAA in urging the Commission to use this proceeding to look toward outright repeal of the newspaper/broadcast cross-ownership restrictions. Most commenters in this proceeding also share NAA's view that, at a minimum, the Commission should adopt specific measures that will allow newspaper/broadcast combinations to be maintained or created more easily. As ABC states, in view of the highly diverse and competitive nature of the modern information marketplace, the long-term "maintenance of a more restrictive policy on newspaper/radio combinations is simply not tenable."

Specifically, several commenters advocate a presumptive waiver standard similar to that endorsed by NAA, under which the Commission would automatically approve proposed newspaper/radio combinations in markets in which the cross-owned properties would not pose a threat to competition or diversity. Generally, the comments support NAA's view that newspaper/radio combinations should be evaluated on the basis of the number of available independent media "voices" or information sources in a particular market, irrespective of market size or rank. In addition, several commenting parties join NAA in asking the Commission to develop a broader definition of the competitive marketplace that will take a wider variety of competing media outlets into account. Moreover, NAA submits that the initial comments reflect a general consensus that the Commission should define the geographic market realistically, using accepted industry standards.

NAA reiterates its position that, as contended by several other commenters as well, it is the mere availability in the market of alternative media outlets -- not their relative strength or success in the marketplace -- that ensures diversity. Notwithstanding the unsubstantiated concerns of a handful of parties, there is no evidence to support the notion that newspaper/radio combinations will have undue market power or otherwise behave in an anticompetitive manner.

Finally, NAA agrees with the commenting parties who generally support granting waivers to permit the transfer or reacquisition of formerly co-owned stations and failing stations, or where other specific public interest benefits can be shown. Where the threshold standard for presumptive waiver is met, however, applicants should not be required to make any additional programming commitment or other showing of "special circumstances."

In short, for the reasons set forth in its initial comments and in these reply comments, NAA submits that, pending the ultimate elimination of the newspaper/broadcast cross-ownership restriction, the Commission should adopt a broad and flexible waiver policy that takes into account the full scope of diversity and competition present in virtually every market. Adoption of such a policy will enable newspaper publishers and radio station licensees to compete more effectively and bring to their audiences the acknowledged public interest benefits that flow from joint ownership.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Newspaper/Radio Cross-Ownership Waiver Policy	))))))	MM Docket No. 96-197

To: The Commission

REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

The Newspaper Association of America ("NAA") hereby submits its reply comments in response to the Notice of Inquiry, FCC 96-381, released October 1, 1996[1] in the above-captioned proceeding ("Notice of Inquiry"), which was initiated by the Commission to consider changes to its policies concerning waiver of the newspaper/radio cross-ownership restriction set forth in Section 73.3555(d)(1)-(2) of the Commission's Rules.

For the reasons set forth herein and in its opening comments, filed February 7, 1997, NAA submits that the Commission should promptly initiate further proceedings to repeal the newspaper/broadcast ownership restrictions outright. Pending their repeal, however, and as a minimum first step in this proceeding, the Commission should adopt a liberal waiver policy

[1] 11 FCC Rcd 13003 (1996).

for newspaper/radio combinations that recognizes the enormous growth in the number and variety of competing media over the past two decades, and will allow newspaper publishers and broadcast licensees to compete more effectively and bring the proven benefits of common ownership and operation to the public.

I. THE COMMENTS REFLECT BROAD SUPPORT FOR REPEAL OR SUBSTANTIAL RELAXATION OF THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP LIMITATIONS.

A. NAA and a Substantial Number of Other Commenters Support the Complete Elimination of the Newspaper/Broadcast Cross-Ownership Restrictions.

In its initial comments, NAA demonstrated that the newspaper/broadcast cross-ownership restrictions were based largely on unproven assumptions about diversity in the broadcast marketplace as it existed in 1975, without any record evidence that cross-owned stations engaged in anti-competitive practices or otherwise failed to serve the public interest.[2] Moreover, NAA showed that in today's rapidly-expanding multichannel/multimedia environment -- with a vast array of independent media voices that have produced highly competitive publishing and broadcast markets -- the newspaper/broadcast cross-ownership rules are not necessary to ensure diversity or safeguard competition. Moreover, perpetuation of these restrictions in the current environment raises serious constitutional concerns.[3]

A number of commenters representing a wide range of information providers, ranging from owners of small broadcasting operations to large nationwide broadcast/publishing groups,

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[2] See Comments of the Newspaper Association of America ("NAA Comments") at 4-8.

[3] Id. at 8-26.

agree that the newspaper/broadcast cross-ownership restrictions are "an anachronistic relic of a long-extinct media world."[4] Moreover, these parties note that "newspapers and broadcast station owners are virtually alone among the major information providers in facing an absolute governmental barrier to common ownership."[5] Accordingly, several parties join in urging the Commission to "use this proceeding to begin the long-overdue process of dismantling the newspaper/broadcast cross-ownership restrictions."[6]

NAA respectfully submits that the record established in the opening comments in this proceeding fully justifies initiation of a broader proceeding looking toward outright repeal of the newspaper/broadcast cross-ownership restrictions. Radio and television broadcasters and newspaper publishers today are unnecessarily handicapped by these outdated limitations, which prevent them from competing on a "level playing field" with an ever-expanding host of competitors who are not subject to similar "single outlet" limitations. Initiating a proceeding to eliminate the newspaper/broadcast cross-ownership rules would help to preserve broadcast

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[4] Joint Comments of Cox Enterprises, Inc. and Media General, Inc. ("Cox Comments") at 1. See also Comments of National Association of Broadcasters ("NAB Comments") at 2-3; Comments of Donrey Media Group ("Donrey Comments") at 1-2; Comments of Pulitzer Publishing Company ("Pulitzer Comments") at 1-2.

[5] Comments of Gannett Co., Inc. ("Gannett Comments") at 2.

[6] Gannett Comments at 2-3. Other commenters also note that "the rationales cited by the Commission for reviewing its policies with regard to radio-newspaper combinations apply even more strongly to television," and support the NAA's call for the Commission to "expand its review of the cross-ownership rule to include television-newspaper combinations." Comments of Knight-Ridder, Inc. ("Knight-Ridder Comments") at 2-3.

stations and daily newspapers as viable voices, and speed their development into more diversified and innovative participants in the information marketplace.

B. Most Commenters Agree That the Commission Should, at a Minimum, Substantially Relax Its Newspaper/Radio Cross-Ownership Waiver Policy.

Most commenters in this proceeding also share NAA's view that, at a minimum, the Commission should substantially relax the cross-ownership restrictions by instituting a presumptive waiver policy for newspaper/radio cross-ownership and adopting other specific measures that will allow newspaper/broadcast combinations to be maintained or created more easily. Specifically, several commenters advocate a presumptive waiver standard similar to that endorsed by NAA, under which the Commission would automatically approve proposed newspaper/radio combinations in markets in which the cross-owned properties would not pose a threat to competition or diversity.[7] Generally, these parties agree with NAA that newspaper/radio combinations should be evaluated on the basis of the number of available independent media "voices" or information sources in a particular market, irrespective of market size or rank.[8]

In addition, a broad spectrum of commenting parties join NAA in asking the Commission to employ a broader and more realistic definition of the competitive marketplace that would take into account the wide variety of competing media outlets present in virtually

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[7] See, e.g., Comments of ABC, Inc. ("ABC Comments") at 12-14; Comments of The Scranton Times, L.P. at 3-4.

[8] See, e.g., Cox Comments at 11; Comments of Reading Eagle Company ("Reading Comments") at 7, 14-15.

every community[9] and rely at least in part on an accepted industry standard (such as the Neilsen DMA) rather than a narrower community of license or contour test to determine the relevant area for assessing the level of media diversity.[10] The commenters also generally support granting waivers to permit the transfer or reacquisition of formerly co-owned stations and failing stations, or where other specific public interest benefits can be shown.[11]

As indicated in its initial comments and as discussed further below, NAA agrees that adoption of a liberal waiver policy is an important first step for the Commission in this proceeding. As ABC, Inc. ("ABC") states, in view of the highly diverse and competitive nature of the modern information marketplace, the long-term "[m]aintenance of a more restrictive policy on newspaper/radio combinations is simply not tenable."[12] Accordingly, pending the ultimate elimination of the newspaper/broadcast cross-ownership restriction, NAA submits that the Commission in this proceeding should adopt a broad and flexible waiver policy that takes into account the full scope of diversity and competition present today in virtually every market and the acknowledged public interest benefits that flow from joint ownership.[13]

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[9] See, e.g., ABC Comments at 24-27; Cox Comments at 13-16; Comments of Malrite Communications Group, Inc. ("Malrite Comments") at 4-5.

[10] See, e.g., ABC Comments at 27-31.

[11] See, e.g., Cox Comments at 21.

[12] ABC Comments at 6-7.

[13] As discussed more fully below, some advocacy groups and a few broadcast/publishing interests urge the FCC to limit the availability waivers. For example, several advocacy groups (Continued...)

II. A MORE FLEXIBLE NEWSPAPER/RADIO WAIVER POLICY WILL PROMOTE BOTH DIVERSITY AND COMPETITION IN THE BROADCAST MARKETPLACE.

A. The Enormous Growth and Universal Availability of the Traditional Broadcasting Media, Newspaper Publishing, and Cable Television Have Transformed the Media Marketplace Over the Past Two Decades.

An overriding theme of the comments submitted in this proceeding is that the enormous growth in the media of mass communications -- including traditional broadcasting, cable television, newspaper publishing, and the deployment of new communications technologies -- has created the "hoped for" diversity and competition that were the premises for the initial adoption of the newspaper/broadcast cross-ownership rule in 1975. For example, Pulitzer Publishing Company ("Pulitzer"), like NAA, demonstrated that the traditional mass media of radio and television have continued to flourish in the new media marketplace.[14] Not only has the number of stations risen, but broadcasting has increasingly become a critical source for news coverage and discussion of matters of public import. This is particularly the case with

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(...Continued)

ask the FCC to require waiver applicants to demonstrate specific and quantifiable public interest benefits. See, e.g., Comments of Black Citizens for a Fair Media et al. ("BCFM Comments") at 28-30; Comments of Mid-West Family Stations ("Mid-West Comments") at 5-6. The suggestions of these parties ignore, however, the increasingly competitive information marketplace. Moreover, their arguments are based largely on the outmoded assumption that diversity of ownership is required to achieve programming diversity, or that "51 voices are necessarily better than 50." As NAA and others point out, however, diversity is actually encouraged by the economic incentive of cross-owners to differentiate their "products" to appeal to a larger total audience. See NAA Comments at 31-32.

[14] Pulitzer Comments at 5-6.

radio, which, with the explosion in the popularity of call-in "talk radio," has emerged as a "preferred medium for public discussion of current events."[15] Pulitzer correctly observes that "[w]hatever shortcomings this brave new world of interconnected mass communication may exhibit, lack of diversity and competition are [sic] not among them." [16]

Many commenters also provided detailed information confirming NAA's showing that, in addition to the growth in the number and variety of broadcast stations, there has been substantial growth in local non-daily print and other media that compete with daily newspapers. For example, ABC as well as NAA noted the growth of weekly newspapers and the rise of alternative weekly publications which avowedly seek to express diverse viewpoints at odds with those of the "establishment" media.[17] Moreover, ABC and others noted that new technologies such as cable television, wireless cable, direct broadcast satellite and others have made significant competitive inroads and have introduced to consumers an astonishing variety of audio and video programming channels and multimedia capabilities.[18] In addition, as Gannett Co., Inc. ("Gannett") explained, entry into video programming by telecommunications carriers soon may offer consumers another "chorus of independent and diverse media voices."[19] A number of other commenters also joined NAA in citing the rapid evolution of the

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[15] Id.

[16] Id. at 4.

[17] See ABC Comments at 9.

[18] See id.

[19] Gannett Comments at 3. See also NAA Comments at 19-20.

Internet and computer networking as constituting an important supplement to traditional media sources in ways unimaginable at the time the newspaper/broadcast cross-ownership restrictions were first promulgated.[20]

NAA submits that its opening comments and those of the substantial majority of other commenting parties demonstrate that the present mass-media landscape is a dynamic, vibrant, and competitive marketplace offering consumers a wealth of local news and information sources as well as a multitude of options for participating in public debate. The past two decades of astonishing growth, distinguishing today's information marketplace from that of 1975, should alleviate any remaining concerns that further newspaper/broadcast combinations might lead to undue concentration, have any appreciable effect on diversity, or thwart competition. Accordingly, the Commission can move forward with confidence in this proceeding to relax the newspaper/radio waiver policy.[21]

B. A Relaxed Waiver Standard Will Enable Newspaper Publishers and Broadcast Stations to Compete More Effectively and Provide Improved Services to the Public.

A handful of commenters argue -- incorrectly -- that the Commission should not relax the current newspaper/broadcast cross-ownership waiver policy because the recent changes to national and local broadcast ownership limits and the subsequent consolidation in the radio and

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[20] See Comments of Journal Broadcast Group, Inc. ("Journal Comments") at 9; NAA Comments at 20-23.

[21] See Pulitzer Comments at 3-7.

television industries might imperil diversity.[22] Without debating the merits of the elimination of national ownership limits for radio or the new duopoly and local multiple ownership rules, NAA submits that the trend toward broadcast consolidation in fact cuts in favor of liberalizing the newspaper/broadcast cross-ownership rules. Indeed, when viewed in the context of recent radio industry structural changes, the propriety of allowing newspaper/radio combinations is even more apparent.

At present, the Commission's refusal to allow newspaper owners to have a voice in the broadcast market often serves to limit diversity. Newspaper publishers are uniquely qualified to address issues of local concern, and newspaper/radio combinations can make use of resources that often are simply not available to other broadcasters to provide coverage of local news events and issues. For example, one of the commenting parties, the Lexington Herald-Leader, notes that a single owner group has purchased seven radio stations in Lexington, Kentucky as well as six stations in nearby Cincinnati and six others in Louisville.[23] Notwithstanding such consolidation in the radio market, only a single commercial radio station in Lexington currently maintains an independent news operation.[24] Allowing cross-ownership of newspapers and broadcast operations would better serve the public by encouraging use of the journalistic resources of the publishers involved as well as the broader efficiencies

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[22] See BCFM Comments at 13-17; Comments of The Tennessee Association of Broadcasters at 2-5.

[23] See Comments of The Lexington Herald-Leader at 1-2.

[24] See id. at 2.

available to cross-owners to improve the news and informational programming of the stations involved.[25]

Other commenters also confirm that the savings produced by joint operation of newspaper and radio properties can be used to improve programming. Pulitzer, for example, states:

> "Lifting the artificial impediment of the cross-ownership restriction, and enabling newspapers to integrate these existing news resources with a broadcast operation would engender efficiencies and operational economies such as colocated facilities, common staffing, and reduced equipment and maintenance expenses. The savings produced [could be used]. . . to fund experimentation and innovation in new programming areas. . ."[26]

In short, as NAA urged in its opening comments and as the Commission has previously recognized, ownership of multiple media outlets can serve not only to increase the quantity but also to "enhance the quality of viewpoint diversity by enabling the stations involved to invest additional resources in programming and other service benefits provided to the public." See, e.g., Golden West Broadcasters, 10 FCC Rcd 2081, 2084 (1995). A local newspaper dedicated to covering the issues and events affecting its community can be expected to be equally committed to and uniquely capable of providing local news and informational programming over a commonly-owned broadcast facility. Accordingly, the unsupported concerns of a few commenters with respect to potential harm to diversity should not dissuade

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[25] See id.

[26] Pulitzer Comments at 11.

the Commission from relaxing its waiver standard to facilitate local newspaper/radio combinations.

C. Newspaper/Radio Combinations Will Not Impair Competition in the Broadcast Marketplace.

As might be expected, some commenters warn of the supposed danger of "market power" or cross-subsidization between newspapers and broadcast outlets.[27] This argument is unpersuasive, however, for several reasons. First, it is clear that both newspaper publishers and radio station licensees face intense advertising competition from a wide range of sources, including television stations, other radio stations (including groups), cable television, and other large multichannel providers that may have their own efficiencies and joint selling advantages. Moreover, as NAA noted in its initial comments, neither the national nor the local advertising marketplace is a monolithic arena. Advertisers utilize different media for different purposes, and strength in one area does not necessarily result in strength in other segments. Thus, there is no realistic basis for the assumption that newspapers have the power to raise radio advertising rates, or advertising rates in general, above market prices, or otherwise to exercise "market power."

To the contrary, as ABC demonstrates in its comments, there is extensive evidence to suggest that advertisers who use daily newspapers also consider a wide range of media and promotional devices, including direct mail, weekly papers, Yellow Pages, television

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[27] See, e.g., Mid-West Comments at 2-4.

advertising, radio spots and outdoor advertising.[28] Given these alternatives available to potential advertisers, along with direct competition from other radio stations (including multi-station groups), it is unlikely that newspapers have, or could have, the market power to affect competition adversely. In any event, as NAA urged in its opening comments, any concerns with respect to market power issues that may arise in particular circumstances should be left to the Department of Justice or the Federal Trade Commission, which are charged with responsibility for administration of the antitrust laws.

III. THE COMMENTS SUPPORT ADOPTION OF A PRESUMPTIVE WAIVER POLICY BASED ONLY ON THE PRESENCE IN THE MARKET OF A SUFFICIENT NUMBER OF INDEPENDENT MEDIA VOICES TO ENSURE DIVERSITY.

A. Most Commenters Agree That the Commission's New Waiver Policy Should Include a Presumptive Waiver Standard.

In its opening comments, NAA urged the Commission to adopt a new waiver standard under which a proposed transaction would be presumed to be in the public interest if a specified number of independently owned voices would remain after the transaction was consummated.[29] The majority of other commenting parties also support such a presumptive standard as a principal component of a relaxed waiver policy. For example, ABC points out

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[28] See ABC Comments at 36-38. In addition, ABC submitted a study demonstrating that an advertising market must be defined broadly to include more advertising sellers than just newspapers and radio stations. See id. at 37 and Appendix C.

[29] NAA Comments at 42.

that establishing a presumptive waiver standard "promotes clarity and consistency in the Commission's waiver standards."[30]

Journal Broadcast Group, Inc. ("Journal"), while advocating relaxation of the waiver standard, encourages the Commission to review waiver requests on a market-by-market basis. Journal expresses concern that "[e]stablishing fixed criteria to govern waiver requests unnecessarily limits the Commission's ability to consider the special circumstances of each case."[31] Journal is concerned with maintaining the Commission's discretion and providing the applicant "the flexibility to demonstrate other public interest factors that support a waiver."[32] As an example, Journal argues "that an acquisition that reduces the number of voices may be outweighed by the fact that the acquirer has a long history of service to the community and a demonstrated commitment to matters of local concern." [33]

NAA certainly shares Journal's concern that waivers should not be mechanistically limited to situations meeting whatever threshold the FCC may establish for entitlement to a "presumptive" waiver. The two approaches, however, are not mutually exclusive. Thus, NAA submits that the Commission can and should maintain the discretion to waive the cross-ownership restrictions on a case-by-case basis even when the presumptive criteria are not

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[30] ABC Comments at 14.

[31] Journal Comments at 10.

[32] Id.

[33] Id.

met.[34] The lack of predictability of a purely case-by-case waiver approach, however, would make it difficult for parties to structure transactions and place unnecessary burdens on the Commission's resources. Accordingly, NAA submits, the case-by-case analysis should be a supplement to, and not a substitute for, an appropriate presumptive standard.

B. Size or Rank of Market Is Irrelevant in Determining the Extent of Diversity; Availability of Alternative Voices Is the Critical Factor.

A few commenting parties argued that waivers of the newspaper/radio restriction should be limited to the top 25 markets. For example, Mid-West opposes any relaxation, but argued that "if the Commission is absolutely committed to relaxing its waiver standard through the use of some "bright-line" test, the Commission should look instead to the market rank factor" because it would be "simple administratively."[35] Similarly, Black Citizens for a Fair Media et al. ("BCFM") argues that waivers should only be granted in Top 25 markets.[36] Most commenters, however, share NAA's view that a presumptive waiver policy should be based only on a minimum number of voices, regardless of market size. Gannett, for example, urges the Commission to adopt a presumptive waiver standard "based upon a simple and straightforward `minimum number of voices test,' without reference to the market's numerical ranking and without any arbitrary `cap' on market power."[37]

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[34] See also ABC Comments at 35 ("where the presumptive standard is not met, the Commission should consider waiver requests case-by-case").

[35] Mid-West Comments at 5.

[36] BCFM Comments at 24-25.

[37] Gannett Comments at 4. See also Cox Comments at 11; ABC Comments at 15-16.

Indeed, as NAA and many other commenters pointed out, the critical test should be the level of diversity/competition in the community after the proposed combination takes effect. "[M]arket rank is ultimately irrelevant to the central issues, which should turn on the number of independent media enterprises that would remain if a given cross-ownership were allowed."[38] Or, as one commenter noted, "a small city advertiser [or listener] who can select from among [a given number of] independently-owned media outlets has the same choices as an advertiser [or listener] in a larger community."[39]

Finally, NAA supports the several commenters who argue that the number of radio stations involved also is not relevant to the basic issue of whether cross-ownership should be allowed. ABC, for example, argues persuasively that there is "no diversity reason to make restrictions on newspaper/radio combinations turn on the number of radio stations involved."[40] As ABC points out, it is the presence of alternative outlets -- measured by the number of <u>competing</u> media -- that ensures adequate diversity and provides protection against any prospect of market dominance. Indeed, "[t]he critical question for diversity purposes is one of

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[38] ABC Comments at 15-16.

[39] Cox Comments at 11. Further, as several commenters point out, in the age of the information superhighway, the concept of "local market" is becoming increasingly elusive in assessing viewpoint diversity and economic competition. Rather, "[t]he residents of every market . . . receive information and opinion from distant sources located outside any conceivable definition of 'the market' on an incredible variety of matters relevant to local issues." Reading Comments at 14. Thus, as Reading advocates, "it makes little difference whether a market is designated `number 15' or `number 150'," since residents of either would have access to a wide variety of information from distant sources. <u>Id.</u>

[40] ABC Comments at 22.

the number of independently owned media sources to which the public can turn -- not the number of radio stations controlled by any particular party."[41]

Similarly, NAA agrees with ABC that "concentration in the broad advertising product market where newspapers and radio stations compete is unlikely to be increased significantly by the addition of some fraction of radio's small share to that of a daily newspaper."[42] Moreover, as ABC also points out, radio advertising prices are further constrained by competition imposed by other available media outlets.[43] Accordingly, competition, along with enforcement of the existing antitrust laws, should suffice to prevent any one owner from exercising excessive market power.[44]

C. All Significant Competing Sources of Information Should Be Taken Into Account in Calculating the Number of Voices.

A substantial number of commenters agree with NAA that the count of "voices" under a presumptive waiver standard should not be arbitrarily restricted to traditional broadcast outlets. For example, Gannett states that "any analysis of diversity must include noncommercial stations as well as the non-broadcast media, including daily and weekly newspapers and cable system operators and programmers addressing local needs."[45] In a

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[41] Id.

[42] Id.

[43] Id. at 23.

[44] See NAA Comments at 53-55.

[45] Gannett Comments at 4. In addition, Gannett agrees with NAA "that it would be inappropriate for the Commission to evaluate whether a particular speaker (e.g., any particular
(Continued...)

similar vein, Cox Enterprises, Inc. and Media General, Inc. argue that the Commission's Notice of Inquiry "itself recognizes that cable systems must provide access channels that serve as forums for discussions of issues of local concern."[46]

The majority of commenters also recognize that many alternative media are competing with broadcasters and newspaper publishers in their local markets. Malrite Communications Group, Inc. correctly suggests that "[i]f a particular media source has the potential to reach a consumer, it should be considered a diversity enhancing source of information and/or entertainment."[47]

In contrast, BCFM urges the Commission to exclude non-broadcast media, arguing that "[m]ost non-broadcast media do not have the capacity to reach a general, mass audience and do not broadcast programming on local issues."[48] BCFM also argues that these media outlets merely "increase the `noise' level without adding significant local viewpoints."[49] Even BCFM must concede, however, that "cable television and the Internet may have the potential to facilitate antagonistic debate on local issues," but argues that they "are underutilized."[50]

(...Continued)

newspaper, radio or television station) carries more or less weight than another." Id.

[46] Cox Comments at 13.

[47] Malrite Comments at 6.

[48] BCFM Comments at 26.

[49] Id. at 18.

[50] Id. at 19.

While they may or may not be underutilized, however, it is the very availability of additional avenues for local information that ensures diversity. As NAA urged in its initial comments, the "very availability of an alternative media 'voice' serves to ensure diversity."[51] It is this availability of a sufficient number of voices in a market, "not the identity or strength of the speakers or the messages they currently deliver," that is the key to a determination that adequate diversity exists and should be the primary if not sole focus for the Commission in evaluating a waiver request.[52]

Where a sufficient number of voices exists, the public will have access to a diversity of information providers and advertisers will have a host of alternatives. As discussed above, the initial comments of NAA and the great majority of other commenting parties demonstrated that newspaper publishers and broadcasters are subject to intense competition from a wide and rapidly expanding variety of media outlets. The Commission should recognize the reality of the modern information marketplace and adopt a presumptive standard that takes into account not only traditional broadcast voices but the full range of alternative information providers present in virtually every market.[53]

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[51] NAA Comments at 55.

[52] Id. at 46.

[53] See Id. at 46-48.

D. The Comments Reflect a Broad Consensus That the Commission Should Define the Geographic Market Realistically, Using Accepted Industry Standards.

In its comments, NAA urged the Commission to define the relevant geographic market for purposes of newspaper/radio waiver requests by reference to both the radio contour overlap rules and the broadcast industry standards that are used in counting "voices" under the one-to-a-market rules.[54] The majority of the other commenting parties agreed that the FCC's current waiver standard is inadequate in this regard, and urged adoption of a more realistic geographic market definition along the lines suggested by NAA. As Gannett observed, "there is no legitimate reason to define the relevant geographic market for purposes of newspaper/radio cross ownership requests more narrowly than it is defined for purposes of the radio contour overlap or one-to-a-market rules."[55]

Accordingly, NAA again urges the Commission to include in its "voices" count, in addition to those voices identified through use of the contour overlap method, (i) any television station licensed to a community within the same DMA; (ii) any radio station licensed to a community within the "metro" portion of the DMA; and (iii) any daily newspaper published in a community within the DMA. Further, the Commission should include the significant non-broadcast media present in these geographic areas as well. Through use of these combined tests, the Commission will be better able to arrive at a realistic assessment of the level of diversity in the economic market in which the newspaper or radio station in question operates.

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[54] See Id. at 49-51.

[55] Gannett Comments at 4-5.