matters of common interest to a wide range of citizens in various geographic areas. Thus, to rigidly equate these two types of media in terms of message, audience and influence plainly is inconsistent with reality.

Accordingly, if the Commission does not conclude, as it manifestly should, that the perceived reasons for adopting the newspaper/broadcast cross-ownership rule have ceased to exist altogether, it should, at a minimum, redefine the way the rule is applied, particularly as to broadcast stations and newspapers in suburbs or outlying cities which only tangentially address the same audiences. It makes no sense to apply the rule where the target audiences of the two media are so significantly different. To continue to apply the newspaper/broadcast cross-ownership rule in a manner that totally ignores such key considerations is arbitrary, unproductive and illogical.

III. NEWSPAPER/BROADCAST COMBINATIONS DO NOT THREATEN VIEWPOINT DIVERSITY.

A. In 1975, the Commission's Speculative Diversity Rationale for the Newspaper/Broadcast Cross-Ownership Rule Was Highly Questionable -- and Developments Since Then Have Made It Clear That This Rationale Cannot Support an Outright Ban on Newspaper Ownership of Broadcast Stations.

As discussed above, even when it adopted the newspaper/broadcast cross-ownership rule, the Commission recognized that co-located newspaper-owned television stations generally provided more news and public affairs programming than other stations[48] and noted the "long

[48] See supra Sec. II.A. (discussing the programming superiority of newspaper-owned television stations). Ironically, then, the newspaper/broadcast combinations banned by the (Continued...)

records of service to the public" that a number of such newspaper/broadcast combinations had provided.[49] Nonetheless, the Commission based its prospective ban on newspaper/broadcast combinations on its speculation that cross-ownership somehow hinders programming diversity.[50]

In reviewing the FCC's 1975 Order, the D.C. Circuit, noted that the record contained "little reliable 'hard' information" and concluded that "[t]he Commission enacted the[] [cross-ownership] rules without compiling a substantial record of tangible harm."[51] Similarly, although it ultimately affirmed the FCC's cross-ownership ban, the U.S. Supreme Court recognized that "the Commission did not find that existing co-located newspaper-broadcast combinations had not served the public interest, or that such combinations necessarily 'spea[k] with one voice' or are harmful to competition."[52]

(...Continued)
Commission were shown to have done a better job of creating local non-entertainment, informational programming -- the type of programming at the very core of the Commission's diversity concerns -- than non-commonly owned stations.

[49] 1975 Multiple Ownership Report, 50 FCC 2d at 1078, 1080.

[50] Failing to provide any concrete evidence that cross-ownership actually harms diversity and offering only its belief that licensing newspaper owners to operate broadcast stations "is not going to add to already existing choices, is not going to enhance diversity[,]" the Commission itself described its rationale as a "mere hoped for gain in diversity." Id. at 1075, 1078.

[51] National Citizens Comm. for Broad., 555 F.2d at 944.

[52] National Citizens Comm. for Broad., 436 U.S. at 786 (citation omitted); see also Mallary Statement at 4 (indicating that newspaper owners effectively serve the public interest because "any efforts to curb journalistic independence . . . would be quickly and vigorously challenged by [those trained in the newspaper] profession[]").

In the years since the adoption of the cross-ownership ban, the Commission's speculative diversity rationale has been the target of increasing criticism. For example, in his statement accompanying the agency's NOI in this proceeding, Commissioner Powell characterized the FCC's ownership rules as being "hinged on considerations loosely call[ed] diversity."[53] Commissioner Powell called for a more concrete articulation of the government's diversity objective, lamenting that current diversity standards are "bathed in difficult subjective judgments and debated in amorphous terms."[54] The Commissioner also urged the FCC to "explain[] the link between ownership restrictions and [its] asserted diversity objectives."[55]

Similarly, in Lutheran Church-Missouri Synod v. FCC, the D.C. Circuit recently faulted the Commission for the heavy and illogical burden it has placed on an unproven diversity rationale.[56] Indeed, the Court noted that "[t]he Commission never defines exactly what it means by 'diverse programming'" and that the government's attempt to define the diversity interest "seems too abstract to be meaningful."[57] The Court concluded that "the proposition that there is any link between broad employment regulation and the Commission's

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[53] Notice of Inquiry (Separate Statement of Commissioner Michael Powell, at 1).

[54] Id.

[55] Id. at 2.

[56] 141 F.3d 344 (D.C. Cir. 1998). The Court held that the FCC's unproven assumptions regarding the desirability of diverse ownership were inadequate to support the agency's EEO regulations. Id. at 356.

[57] Id. at 354.

avowed interest in broadcast diversity" had been completely "undermined."[58] Gannett submits that the proposition that diversity of ownership sufficiently correlates with diversity of viewpoint or program content similarly is far too dubious to support an outright ban on newspaper/ broadcast cross-ownership -- especially in a world where virtually all other media entities are free to own multiple communication outlets.

B. Newspaper Owners Who Also Own Television Stations Have a Commitment to Quality News and Informational Broadcast Programming as Well as the Economic Incentive to Provide Diverse Offerings in Order to Attract the Broadest Aggregate Audience.

When the adoption of the newspaper/broadcast cross-ownership rule was being debated, the argument was advanced that "newspaper owners, coming from a tradition of journalism rather than entertainment, have set high standards of emphasis upon informative broadcasting with extensive news staffs and upon dedication to meeting community needs and advancing community projects."[59] In fact, as noted above, the Commission expressly acknowledged that newspaper-owned television stations tended to be superior licensees in terms of locally-oriented service and in terms of their ability to offer broadcast programming in the public interest.[60] Gannett submits that the current public interest program offerings of grandfathered combinations demonstrate that newspaper/broadcast cross-ownership continues

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[58] Id.

[59] 1975 Multiple Ownership Report, 50 FCC 2d at 1064.

[60] See supra Sec. II.A. (discussing the superior performance of co-located newspaper-owned television stations).

to foster more and better local news and public affairs broadcast programming.[61] Indeed, a newspaper company dedicated to covering the issues and events affecting the local community would likely be equally committed to providing local news and informational programming over its commonly owned broadcast facility.

Moreover, the desire to attract the largest aggregate audience for the commonly owned media entities will give the owner of a daily newspaper and broadcast station in the same market economic incentive to diversify the news and informational offerings of the two entities. The Commission itself has observed that

> where . . . [individual media owners] are [the] competing parties, each of their strategies would be to go after the median viewer with the "greatest common denominator" programming, leaving minority interests unmet. But where one party owned all the [radio] stations in a market, its strategy would likely be to put on a sufficiently varied programming menu in each time slot to appeal to all substantial interests.[62]

That is, a common owner of multiple media sources in a particular market will often have greater incentive than an individual media owner to diversify its offerings; in order to attract the largest possible overall market share, co-owners will have the economic incentive to

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[61] See NAA Comments at Sec. VII.B. (citing recent evidence that grandfathered cross-owners of commonly-owned newspaper/broadcast operations typically provide more and better local news and public affairs programming).

[62] Review of the Commission's Regulations Governing Television Broadcasting, 10 FCC Rcd 3524, 3551 (1995) (Further Notice of Proposed Rulemaking); see also Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2772 (1992) (Report and Order) ("In addition, commentators tend to agree with the Notice that greater combination will not harm diversity because . . . a single owner might try to program different stations to appeal to different audience segments in order to maximize its total audience size."); Mallary Statement at 2 ("[T]here are fundamental differences in the ways that news and information are organized and presented by [newspapers and broadcast stations]. . . . Newspapers typically . . . expand on details and treat news reports in more depth.").

diversify their content offerings, while individual media owners will have incentive to compete for the same, most lucrative "mainstream" segment of the market. There is no reason to believe that this logic would not hold for common owners of daily newspapers and broadcast stations in the same market, thereby furthering the Commission's goal of increasing and improving the quality of news and informational broadcast television programming.

C. Given the Explosion of Media Outlets in Recent Years, Newspaper/ Broadcast Combinations Would Not Threaten Diversity and, In Fact, Should Be Encouraged to Utilize Their Resources and Expertise to Expand Informational Program Offerings and Develop Additional Outlets and Innovative New Services.

1. As a Result of Technological Advances and Market Forces, Access to Unfettered Public Discourse Is Virtually Unlimited, and No Local Market Could Be Dominated Today By Any Single Broadcast Station Owner or Daily Newspaper Publisher.

When the newspaper/broadcast cross-ownership rule was adopted over twenty years ago, publishing and broadcasting were almost exclusively the province of multi-million dollar publishing houses and a limited number of television and radio stations. Today, however, almost anyone can afford to participate in public debate by "publishing" or "broadcasting" his/her views to a mass audience via the Internet. The advent of the Internet has so greatly reduced the cost of publishing that almost anyone with an opinion can now afford to communicate the written word to a mass audience.[63] Similarly, the advent of tape recorders and home video cameras and video cassette recorders has made it possible for the average American to record audio and video programming. Anyone with access to an audio card-

[63] NAA Comments at Sec. VI.A.2.

equipped computer and a modem can broadcast Internet-based audio programming, and anyone with access to a video camera and a PC can broadcast video programming via the Internet. Clearly, the Internet has transformed publishing and broadcasting in a way unimaginable when the newspaper/broadcast cross-ownership rule was adopted. These developments virtually assure that any citizen, regardless of the popularity of his/her message, now has a remarkable opportunity to participate in public discourse.[64]

Apart from the innumerable opportunities for communication via the Internet, there are an extraordinary number and variety of commercial information outlets available to consumers in today's media marketplace.[65] Thus, even in markets where newspaper/broadcast combinations exist, these combinations have not prevented other broadcast stations, newspapers, and other media from successfully entering the market. The entrance of these new competitors make it clear that a broadcast station owner or daily newspaper publisher could not effectively dominate any local market in today's multi-outlet world.

2. Newspaper Publishers and Broadcast Station Licensees Should Not Be Precluded From Taking Advantage of Operational Synergies, While Virtually All of Their Competitors are Free to Pursue Such Advantageous Cross-Media Relationships.

In today's highly competitive marketplace, the Commission should not frustrate the ability of newspaper publishers and broadcasters to take advantage of operational synergies,

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[64] See id. (discussing how the Internet now affords citizens the opportunity to communicate easily with a mass audience).

[65] See generally supra Sec. III.C. (discussing the explosion of media outlets in recent years); NAA Comments at Sec. VI. (same).

while nearly all of their competitors are free to pursue these advantageous cross-media relationships. Such a restriction on newspaper/broadcast cross-ownership is discriminatory and arbitrary and serves only to deprive the public of expanded and diversified broadcast and newspaper content offerings as well as new and additional services that can be created drawing upon the combined resources of publishers and station owners.

a) In numerous other contexts, the FCC has eliminated or substantially relaxed restrictions on common ownership, recognizing that such ownership benefits the public by enhancing the availability and diversity of informational programming.

When the newspaper/broadcast cross-ownership rule was adopted, the Commission was implementing a "one outlet per party per market" regulatory policy based on its belief that a limited number of broadcast television stations and daily newspapers dominated local markets. During the past decade, however, the Commission has significantly altered the regulatory landscape to account for the tremendous increase in the number and diversity of competing media made possible by technological advances and the public benefits that can flow from combined media ownership.[66] Accordingly, the agency has eliminated or substantially relaxed most of its cross-ownership restrictions -- rendering newspaper publishers and broadcast

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[66] See, e.g., Revision of Radio Rules and Policies, 7 FCC Rcd 6387, 6387 (1992) (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking) (citing "the dramatic increase in competition and diversity in the radio industry over the last decade" as a basis for relaxing the radio ownership rules); Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd 3282, 3288 (1993) (Second Report and Order) (concluding that programming diversity is no longer at risk given the increased competition both to television networks and in the television programming market); Review of Prime Time Access Rule, 11 FCC Rcd 546, 556-57 (1995) (Report and Order) (holding that, "given the profound changes" in the mass media marketplace, repeal of PTAR would "not jeopardize the competition and diversity goals that prompted the Commission to adopt the rule").

station licensees virtually alone today among major information providers facing an absolute barrier to cross-ownership.[67] Moreover, in the course of eliminating and relaxing its ownership restrictions, the Commission repeatedly has concluded that media cross-ownership increases the availability and diversity of informational programming, thereby serving the public interest.[68]

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[67] Specifically, the FCC now permits common ownership of up to 8 radio stations in a market, depending on the number of voices in the market. Newspaper/Radio Cross-Ownership Waiver Policy, 11 FCC Rcd 13003, 13009 (1996) (Notice of Inquiry). The Commission has also completely eliminated the numerical limits on total radio and television station ownership. See Broadcast Radio Ownership, 11 FCC Rcd 12368, 12368-69 (1996) (Order) (eliminating numerical limits on national radio ownership); Broadcast Television Ownership, 11 FCC Rcd 12374, 12375-77 (1996) (Order) (eliminating numerical restriction on national television ownership). Additionally, the FCC has substantially relaxed its one-to-a-market rule, adopting the "top 25/30 voices" presumptive waiver standard under which common ownership of television and radio stations is routinely permitted in larger markets, Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, 4 FCC Rcd 1741, 1751, 1754 (1989) (Second Report and Order) ("Broadcast Multiple Ownership Rules"), recons. granted in part and denied in part, 4 FCC Rcd 6489 (1989), and, under its "case by case" standard, the Commission regularly issues permanent waivers allowing common ownership of a television station and up to 4 radio stations in the same market, see, e.g., BREM Broadcasting, 9 FCC Rcd 1333, 1335 (1994) (Memorandum Opinion and Order) (allowing common ownership of 1 TV, 2 AM and 2 FM in the same market). Moreover, the FCC is currently considering whether to eliminate or further relax the one-to-a-market rule, Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations, 11 FCC Rcd 21655, 21681-89 (1996) (Second Further Notice of Proposed Rulemaking) ("Review of TV Regulations"), and, in the interim, has granted numerous conditional waivers permitting combinations of television stations and multiple radio stations, see, e.g., Stockholders of Infinity Broadcasting Corp., 12 FCC Rcd 5012, 5053-57 (1996) (Memorandum Opinion and Order).

[68] See, e.g., Golden West Broadcasters, 10 FCC Rcd 2081, 2084 (1995) (Memorandum Opinion and Order) (emphasis added) ("[I]n both the one-to-a-market . . . and the radio ownership proceeding[s], the Commission expressly determined that combinational efficiencies derived from common ownership of same service radio stations in local markets were presumptively beneficial and would strengthen the competitive standing of the combined stations, [which] would enhance the quality of viewpoint diversity by enabling such stations to invest additional resources in programming and other service benefits provided to the public."); Broadcast Multiple Ownership Rules, 4 FCC Rcd at 1744 ("[A] broadcaster who

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Thus, Gannett submits that the Commission is acting in a discriminatory and arbitrary manner by continuing to prohibit one type of co-owned local combination -- local newspaper/broadcast combinations -- while permitting a broad range of other such combinations. Accordingly, the FCC should eliminate the anachronistic newspaper/broadcast cross-ownership ban, thereby granting the same freedom to newspaper publishers and broadcasters that it has afforded other local media owners. In doing so, the Commission will help to ensure that newspaper publishers and broadcasters, like their competitors, will be able to seize upon operational synergies and economic efficiencies that result from cross-ownership to enhance the availability and diversity of their informational programming and to develop new information outlets and services.

b) New service offerings and additional outlets developed by newspaper/cable and broadcast/cable combinations demonstrate how the public can benefit from the utilization of combined media resources.

As discussed above, lacking any concrete factual basis, the Commission's policy since 1975 has presumed that program diversity will be jeopardized when one owner controls multiple local media outlets. The recent emergence of a number of joint ventures and other innovative "new media" services, however, provides strong support for a contrasting view -- specifically that significant efficiencies can be gained by combining news resources to form

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seeks to operate a station in a market may, because of economies of scale and cost savings inherent in radio-television combinations in the same market, produce or purchase more informational programming than would two separate stations.").

new media outlets such as local cable channels and Internet web sites.[69] According to this growing view, the public receives significant benefits from media cross-ownership in the form of expanded and diversified program and content offerings produced by media services and outlets ancillary to the main business of the newspapers and broadcast stations which create them -- without compromising the editorial autonomy of those entities.

The attached study prepared by Charles River Associates Incorporated discusses the development of additional and complementary media outlets by cooperative ventures and explains why common ownership -- as opposed to the joint venture form -- is best suited to such activities.[70] Specifically, the study describes the economic benefits that can be achieved when a cooperative venture utilizes news and information that was initially gathered for dissemination via another outlet.[71] Such an additional use often requires that the news and information first be appropriately modified and tailored to presentation by the second (or third) outlet.[72] As the study indicates, the original investment of the media entities that initially

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[69] See Mallary Statement at 5 ("[N]ewspapers and television stations . . . have begun to offer novel forms of joint news outlets for local or regional news delivered via [I]nternet websites or cable. Indeed, a few Gannett television stations have working relationships with local and/or nearby non-Gannett newspapers for sharing news resources, and at least one station is working on assisting a local newspaper's website.").

[70] Stanley M. Besen and Daniel P. O'Brien, Charles River Associates Incorporated, An Economic Analysis of the Efficiency Benefits from Newspaper-Broadcast Station Cross-Ownership (July 21, 1998) (prepared for Gannett Co., Inc.) (attached hereto as Appendix B) ("CRA Study").

[71] See generally id. at 2-5 (discussing the basic economics of information provision).

[72] See id. at 3 (stating that an "efficiency may occur when a work created for one medium is modified in some manner and marketed through another medium").

gathered the information is amortized as the entities obtain additional revenues from each use of the information.[73]

In this manner, newspapers and/or broadcast stations can achieve substantial economic efficiencies when the news and information they collect for traditional print and/or broadcast purposes is recast in one way to become part of a cable news program and in yet another way to accommodate display on a web site.[74] For example, "The Sun-Sentinel and WPLG-TV are . . . partners in a 50-50 joint venture 24-hour cable news and information channel called The South Florida Newschannel."[75] Similarly, "The San Jose Mercury News (owned by Knight-Ridder), five dailies owned by Contra Costa Newspapers, and KPIX-TV, a CBS-owned and -operated station in San Francisco, are engaged in a [w]eb site joint venture. The arrangement involves 'a combination of resources designed to enhance all of the media, including the online offerings.'"[76]

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[73] See id. at 2 ("If producers can find additional markets for information that has already been produced, almost all of the additional revenues collected in those markets add to their profits.").

[74] See generally id. at 8-14 (discussing examples of television stations, newspapers and other media entities cooperating to offer new media services such as Internet web sites and cable news channels).

[75] Id. at 9; see also id. at 11 (describing a similar cable news channel joint venture in Sarasota, Florida).

[76] Id. at 9-10 (quoting San Francisco's Latest Media Convergence, Editor & Publisher, Apr. 25, 1998); see also id. at 10 (describing similar web site joint ventures in Raleigh, North Carolina, and Lexington, Kentucky). Because a web site requires both text and video, it provides a particularly good opportunity for cooperative efforts by newspapers and television stations. See Mallary Statement at 5 ("The fast rise of local website news is probably the most dramatic example of multiplying and novel alternative resources for coverage of local news.").

Similar new media ventures have been undertaken by some commonly-owned newspapers and broadcast stations. For example, Chronicle Publishing, which operates The San Francisco Chronicle, a daily newspaper, and KRON-TV, a network-affiliated television station, recently combined the separate web pages of these two media entities, along with the web page of a cable television news service associated with KRON-TV, into a single operation known as The Gate.[77] The Gate allows The San Francisco Chronicle and KRON-TV "to share information among, and develop complementary content for, the [w]eb pages of the daily newspaper, television station, and cable television news service that are accessible through this new site[,]"[78] which helps the newspaper and television station to better serve the interests of consumers in the San Francisco area. Opportunities for common owners to engage in such ventures, however, are extremely limited by the existing cross-ownership ban -- despite the numerous public interest benefits they can offer to consumers.

Not only do new web sites and cable channels increase the quantity of media services and outlets, thus providing consumers with a greater choice of sources for the dissemination of news and information, but also they expand the amount of information that is communicated as each new source tailors and augments the information for its readers and/or viewers.[79] Consumers further benefit from the improved quality of programming as participants in such

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[77] CRA Study at 12.

[78] Id.

[79] See id. at 3 ("Consumers may also benefit from greater diversity in the outlets through which information is available.").

new media ventures exploit the efficiencies of joint operations.[80] Given these significant public interest benefits, it seems inappropriate for any governmental regulation to obstruct development of new and additional information outlets.

However, the cross-ownership rule may prohibit local daily newspapers and broadcast stations from combining resources and information in the most effective manner in order to create ancillary media services and outlets. Restricting the methods of achieving efficiencies in ancillary media to joint ventures between otherwise independent entities overlooks the economic and public interest benefits that can flow from newspaper/broadcast common ownership as well as the significant handicaps that joint ventures face. For example, whereas a single owner is capable of making decisions based on only one set of priorities, joint venturers must constantly strive to coordinate their respective and often conflicting goals when making decisions.[81] In addition, each entity in a joint venture often has incentives to withhold private information and take actions that are in its own best interest (as opposed to that of the joint venture), while a single owner is free of such problems.[82] In light of these observations, the most efficient manner of developing new media outlets and services that complement, provide alternatives to, and compete with the more established media -- thereby serving the

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[80] See id. at 4 (indicating that "the nature and amount of the information that is produced are also likely to be [positively] affected" where there is multiple distribution of the same information).

[81] See id. at 15-16 (discussing the costs of reaching an agreement in joint ventures).

[82] See id. at 16-19 (discussing the incentives for joint venture participants to withhold private information and the difficulties in aligning the incentives of each participant with the best interests of the joint venture).

public interest -- may be through combined ownership of the news resources of co-located daily newspapers and broadcast stations.

Thus, by prohibiting common ownership of a daily newspaper and broadcast station in the same local market, the FCC can create a counterproductive barrier to the most efficient development of novel cross-media information services and outlets. Accordingly, Gannett submits, the Commission's rigid insistence on absolute separation of ownership of newspapers and broadcast stations represents a flawed public policy, as it hinders the development of new media outlets, thereby disserving the public interest by depriving consumers of expanded and more diverse media offerings.

3. With the Emergence of the Internet, Satellite-Delivered Programming and a Host of Other Alternative Information Providers, the Appropriate Regulatory Response Is Not to Impose or Maintain Cross-Media Restrictions, But to Remove Existing Limits on Established Players So That They Can Compete More Effectively in Today's Multi-Channel, Multi-Outlet World.

As described above, substantial technological advances and market forces have effected enormous growth and brought about wholly unanticipated changes in the media marketplace since the newspaper/broadcast cross-ownership rule was adopted. Traditional media sources such as daily newspapers, broadcast stations and cable television have matured and now offer a rich selection of competitive media choices. Moreover, new media, such as DBS, DARS, SMATV, MMDS, VCRs and the Internet, have added to the phenomenal range of local, regional and national news, entertainment and information options. Not only do these new media provide alternative outlets for the dissemination of information and entertainment, but also they have evolved into legitimate competitors with the traditional media -- erasing any

realistic prospect that a newspaper/broadcast combination could adversely impact diversity or competition in a local market.

Given the level of diversity and competition in the local marketplace today, the Commission should take the necessary steps to "level the playing field" for the entire range of media competitors. Gannett agrees with NAA, however, that the appropriate FCC response is not to adopt additional restrictions that will impede the development of new news and information outlets or to maintain restrictions that are currently preventing established media from serving the public interest most effectively.[83] Rather, akin to the path it has taken with virtually all other ownership restrictions, the Commission should eliminate or, at a minimum, substantially relax existing limits on traditional media such as daily newspapers and broadcast stations. As one media analyst aptly stated: "If a competitive imbalance exists because a new technology is not subject to the same regulatory constraints as a competing older technology, the answer should be reduced regulation of the older technology. . . . The ultimate objective . . . should be less regulation for all [media] . . . ."[84]

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[83] NAA Comments at Sec. VII.A.

[84] Kevin Werbach, Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper Series No. 29, at 47 (March 1997); see also Notice of Inquiry (Separate Statement of Commissioner Michael Powell, at 1-2) ("We have a duty to . . . answer whether in light of significant changes in competitive conditions [our ownership] rules continue to have vitality. . . .); id. (Separate Statement of Commissioner Harold W. Furchtgott-Roth, at 1) ("Congress wanted the Commission to consider the very real possibility that competitive forces have eliminated or decreased the need for ownership regulation. . . ."); id. (In assessing "whether a regulation is 'necessary in the public interest as the result of competition,' . . . it would be useful to consider: . . . how any changes in competitive market conditions between the time the rule was promulgated and the present might obviate, remedy, or otherwise eliminate the concerns that originally motivated the adoption of the rule."); David Bartlett, The Soul of a News Machine: Electronic Journalism in the Twenty-First Century, 47 Fed. Comm. L.J. 1, 5 (1994) ("It remains to be seen whether the new regulatory structures that will

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The newspaper/broadcast cross-ownership rule clearly subjects older technologies (i.e., daily newspapers and broadcast stations) to regulatory constraints not imposed upon most of their established competitors, much less the emerging new media technologies, and forecloses any benefits the public otherwise might have received from the common ownership of a daily newspaper and a broadcast station in the same local market. Accordingly, the Commission should eliminate the newspaper/broadcast cross-ownership rule, thereby removing the agency from its unnecessary and counterproductive involvement in this area and permitting newspaper owners and broadcasters the freedom to compete more effectively in today's multi-channel, multi-outlet world.

D. If the Newspaper/Broadcast Cross-Ownership Rule Is Retained, the Commission Should, at a Minimum, Adopt a Presumptive Waiver Standard Based on a "Number of Voices" Test.

Given the expansion of traditional print and broadcast outlets in the past two decades, along with the emergence of new media outlets such as cable, DBS, and the Internet, Gannett submits that a newspaper/broadcast combination could be introduced in nearly any U.S. market today without jeopardizing the healthy diversity and competition that is already present. Accordingly, the newspaper/broadcast cross-ownership rule clearly is no longer in the public interest (and arguably never was), and thus should be repealed. However, in the event that the Commission is unwilling to eliminate the rule altogether, the agency should, at a

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emerge in response to changing technological and economic circumstances will help or hinder the development of a more efficient and competitive marketplace."); Donald E. Lively, Modern Media and the First Amendment, 67 Wash. L. Rev. 599, 601 (1992) ("As new media continue to evolve and expand, . . . the selective attention to and limitation of broadcasting seems even more anachronistic and counterproductive.").

minimum, immediately adopt a liberal waiver policy employing a "number of voices" test. A liberal waiver policy not only makes sense in light of the enormous marketplace changes that have taken place since the rule was adopted, but also would be consistent with the waiver approach taken by the FCC nine years ago in the one-to-a-market context.

Thus, in 1970, the Commission adopted the one-to-a-market rule to prohibit a single entity from commonly owning both a radio and television station in the same market.[85] As was the case with the newspaper/broadcast cross-ownership rule, which was adopted in the same time frame, the Commission's primary objective in promulgating the one-to-a-market rule was to "promot[e] diversification of programming sources and viewpoints."[86] In 1989, however, the Commission radically relaxed its application of the one-to-a-market rule by adopting a "top 25/30 voices" presumptive waiver standard. Using this approach, the FCC repeatedly has granted waivers of the rule in cases involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination.[87] This liberalized

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[85] 47 C.F.R. § 73.3555(b); Amendment of Section 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard FM and Television Broadcast Stations, 22 FCC 2d 306, 308 (1970) (First Report and Order).

[86] Further Notice of Proposed Rulemaking, 10 FCC Rcd at 3528.

[87] See, e.g., BREM Broadcasting, 9 FCC Rcd at 1335 (permitting common ownership of 1 TV, 2 AM, and 2 FM in the Pensacola, Florida - Mobile, Alabama market); Louis C. DeArias, Receiver, 11 FCC Rcd 3662, 3666 (1996) (Memorandum Opinion and Order) (permitting common ownership of 1 TV, 2 AM and 2 FM in the Spokane, Washington market).

application of the one-to-a-market rule was so successful that, in 1996, Congress directed the Commission to extend its presumptive waiver policy to the top 50 markets.[88]

The Commission made this dramatic departure from its rigid enforcement of the one-to-a-market rule in 1989 because it recognized that any potential public interest benefits the rule could provide "ha[d] been reduced by the increased availability of media outlets, especially in markets with the largest number of owners or voices."[89] In examining the effects of eased enforcement of the one-to-a-market rule on viewpoint diversity, the Commission noted the growth in traditional radio and television broadcasting, the "substantial increase in the availability of alternative media systems," and the development of new technologies.[90] Relying on these fundamental marketplace changes, the FCC conceded that "the joint ownership of two or more media outlets in the same market does not necessarily lead to the commonality of viewpoints by those outlets."[91] In fact, as discussed above, the Commission has found repeatedly that the opposite is generally true -- owners of multiple media outlets have great incentive to provide varied and diverse coverage of issues and events.[92]

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[88] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(d), 110 Stat. 56, 111 (1996); see also Review of the Commission's Regulations Governing Television Broadcasting, 11 FCC Rcd 21655, 21685 (1996) (Further Notice of Proposed Rulemaking) (In discussing implementation of the expanded waiver policy, the Commission recognized that, because "[t]he 30 independently owned voices test ha[d] proven effective in safeguarding . . . diversity . . . in the Top 25 markets," application of the presumptive waiver policy to the top 50 markets would likewise ensure sufficient diversity of media voices.).

[89] Broadcast Multiple Ownership Rules, 4 FCC Rcd at 1750.

[90] Id. at 1743.

[91] Id. at 1744.

[92] See supra Sec. III.B. (noting that owners of multiple media outlets have economic

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Gannett submits that the Commission's reasoning in relaxing the one-to-a-market rule is applicable in the newspaper/broadcast cross-ownership context -- and with even greater force today given the tremendous growth in media diversity and competition over the past two decades. The FCC relaxed the one-to-a-market rule because it found that the number and variety of alternative media outlets in 1989 were sufficient to prevent radio/television combinations from threatening diversity in large markets. In today's vastly more diverse marketplace, media combinations -- whether they be radio/television or newspaper/broadcast -- pose even less of a threat to diversity.

Moreover, the Commission has recognized that the cost benefits gained from common ownership "contribute to programming benefits to the extent that there may be more news, public affairs, or other non-entertainment programming."[93] As shown above, permitting joint ownership of daily newspapers and broadcast stations in large markets will result in similar tangible cost savings that will yield substantial public benefits in terms of enhanced public service programming and innovative new media offerings. In this way, relaxation of cross-ownership rules serves the Commission's traditional goal of encouraging media outlets to provide a wide selection of programming. Thus, the benefits of joint ownership in terms of increased efficiency and lower costs "far outweigh any minimal impact on the number of

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(...Continued)
incentive to provide diverse offerings in order to attract the broadest overall audience); see also Broadcast Multiple Ownership Rules, 4 FCC Rcd at 1749 (same).

[93] Broadcast Multiple Ownership Rules at 1748; see also id. ("Group ownership will enhance programming diversity, especially with respect to the type of programming that the multiple ownership rules were intended to encourage -- news, public affairs, and non-entertainment programming.").

separate voices in a market" and effectively demonstrate that one media entity plus one more media entity does not always have to equal only two such entities-- it can equal three (or more).[94]

Logically, this rationale supports, at a minimum, modification of the current newspaper/broadcast cross-ownership rule to include a presumptive waiver approach in the larger markets. Consequently, if it is unwilling to repeal the rule entirely, the FCC should adopt a presumptive waiver policy for newspaper/broadcast combinations for all broadcast markets where there will be at least 30 independent voices remaining after the proposed combination.[95] Moreover, the Commission should define "voices" in this case to include all significant print and broadcast sources -- including daily newspapers, weekly newspapers, broadcast television and radio stations, and independently-owned, locally-oriented cable channels and Internet sites.

IV. CONCLUSION

For the reasons set forth above and in the comments filed today by the NAA and the NAB, the Commission should promptly initiate a rulemaking proceeding to repeal the newspaper/broadcast cross-ownership rule. The prohibition is wholly unnecessary to ensure diversity or competition in the current information marketplace and unfairly limits the ability

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[94] Id. at 1743.

[95] It is the availability, not the popularity, of independent voices that is paramount. NAA Petition at Sec. V.D. A presumptive waiver policy specifically ensures that a sufficient minimum number of voices remain available after a proposed newspaper/broadcast combination.

of publishers and broadcasters to compete effectively and develop improved and innovative new services and media outlets. In the event the Commission is unwilling to eliminate the rule altogether, it should, at a minimum, modify the rule to prevent its arbitrary application in situations involving suburban or neighboring city newspapers or broadcast stations and adopt a presumptive waiver approach for large markets.

Respectfully submitted,

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Appendix A

Statement of Richard A. Mallary

STATEMENT OF RICHARD A. MALLARY

My name is Richard A. Mallary. I am Senior Vice President of Gannett Television, a division of Gannett Co., Inc. ("Gannett"), with primary responsibility for consulting with the news operations of Gannett's 21 television stations. I have held this position since February, 1989. Prior to that time I held a similar position for Cox Broadcasting in Atlanta, Georgia for five years (1975 to 1980). I served as News Director for Cox's television station WSB-TV in Atlanta from 1980 to 1983. I am providing this statement to explain the working relationships between commonly-owned newspapers and broadcast stations as reflected in my long experience with Cox and Gannett.

I wish to address in particular the FCC's apparent premise in adopting the newspaper/broadcast rule -- that there is a potential threat to the editorial and/or journalistic autonomy and decisionmaking of local newspapers and television stations when they are controlled by the same owner. I doubt that this premise was valid when the rule was adopted in 1975, and I am sure that it is erroneous today.

During my eight years in broadcast news positions with Cox Broadcasting, neither I nor station management had contacts with the commonly-owned Cox newspapers in Atlanta. We regarded them as our competitors. The feeling was mutual.

I believe the FCC's assumption about the negative effects of common ownership may be based on intuition rather than experience. There are many reasons why common ownership should not be expected to affect the autonomy of newspapers and television stations.[1/]

Most significantly, local newspapers and television stations function in a climate of intense competition for news and public acceptance. They must build audiences to take advertiser patronage away from one another. While I am aware of a few isolated instances where some sharing of personnel and/or news resources occurs -- e.g., newspaper-broadcast cooperation on developing internet websites -- I believe the record will show that these are always incidental to the main economic activities of local papers and TV stations.

Moreover, there are fundamental differences in the ways that news and information are organized and presented by these two media. TV news is highly concentrated, visually oriented and very concise. Newspapers typically have the space to expand on details and treat news reports in more depth. In practice these differences make it extremely difficult to meld the two types of content and presentation, even assuming a discernible motive to do so.

A useful concrete example is furnished by my experience with the Gannett News Service ("GNS"), which is a combination of a Washington bureau and a wire service linking

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1/ This statement centers on newspaper-television because my recent experience has been dedicated far more to television operations than radio. However, I have had extensive experience in supervision of radio news personnel, and my conclusions herein are fully applicable to that medium.