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Before the
Federal Communications Commission
Washington, D.C. 20554

2001 SEP 21 P 2: 57

In the Matter of	)	
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197
	)	

RECEIVED

ORDER AND NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 2001 **Released:** September 20, 2001

Comment Date: December 3, 2001
Reply Comment Date: January 7, 2002

By the Commission: Commissioner Copps issuing a statement.

INTRODUCTION

1. The Commission committed to initiate this *Notice of Proposed Rulemaking* to consider revisions to its newspaper/broadcast cross-ownership rule in the June 2000 *Biennial Review Report* on broadcast ownership rules. In this proceeding, we seek comment on whether and to what extent we should revise our cross-ownership rule that bars common ownership of a broadcast station and a daily newspaper in the same market. The rule was designed to promote two of the Commission's longstanding goals in broadcast regulation – competition and diversity of information sources. The Commission first adopted the rule in 1975, when there were approximately 1,700 daily newspapers, 7,500 radio stations, and fewer than 1,000 TV stations. Three national commercial broadcast networks that had a combined prime time audience share of 95%.[1] Today, the multimedia environment in which broadcast stations and newspapers operate is significantly different. Although there are now fewer than 1,500 daily newspapers, there are not only many more broadcast stations, but also wholly new programming networks and distribution platforms. There are more than 12,000 radio stations, and more than 1,600 full-power TV stations. Commercial TV stations distribute the programming of seven national commercial networks, and cable television systems and satellite carriers distribute multiples of that number. In the current 2000-2001 TV season just completed, the four largest broadcast networks have a combined prime time audience share of 50%, and basic cable networks have a combined prime time audience share of 42%.[2] This proceeding seeks comment on the relevance of the various changes in the multimedia environment to the newspaper/broadcast cross-

[1] Nielsen Media Research.

[2] *Id.*

ownership rule. We note that currently there are approximately fifty grandfathered newspaper/broadcast combinations and 4 permanent waivers of the cross-ownership rule. We urge commenters to provide specific information about the effects these combinations have had in their markets. This data will enable the Commission to analyze the issues based on a solid and complete factual foundation and make decisions accordingly. As the Commission stated when it adopted the rule, "[t]he Commission is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was."[3]

BACKGROUND

2. The newspaper/broadcast cross-ownership rule prohibits common ownership of a full-service broadcast station and a daily newspaper when the broadcast station's service contour encompasses the newspaper's city of publication.[4] As the Commission explained when it adopted the rule, "[t]he multiple ownership rules," such as the newspaper/broadcast cross-ownership rule, "rest on two foundations: the twin goals of diversity of viewpoints and economic competition."[5] The Commission largely based the newspaper/broadcast cross-ownership rule in particular on the diversity goal, explaining that "it is essential to a democracy that its electorate be informed and have access to divergent viewpoints on controversial issues."[6] The Commission reasoned that structural regulation, such as the newspaper/broadcast cross-ownership rule, promotes diversification of ownership that in turn promotes diversification of viewpoint, because "it is unrealistic to expect true diversity from a commonly owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[7] The Supreme Court agreed, upholding the newspaper/broadcast cross-ownership rule against a First Amendment challenge. The Supreme Court explained that "notwithstanding the inconclusiveness of the rulemaking record, the Commission acted rationally in finding that diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints."[8]

3. In adopting its rule, the Commission had not only prohibited future newspaper/broadcast combinations, but also required existing combinations in highly concentrated markets to divest holdings to come into compliance within five years. The Commission grandfathered combinations in other markets, so long as the parties to the combination remained the same. The Commission, however, contemplated waiving the rule, for existing or future combinations, if: (1) a combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and

[3] Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Docket No. 18110, *Second Report & Order*, 50 FCC 2d 1046, 1075 (1975) (*Second Report & Order*), *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (*NCCB*).

[4] 47 C.F.R. § 73.3555(d). For AM radio stations, the service contour is the 2mV/m contour, *id.* § 73.3555(d)(1); for FM radio stations, the service contour is the 1mV/m contour, *id.* § 73.3555(d)(2); for TV stations, the service contour is the Grade A contour, *id.* § 73.3555(d)(3). A daily newspaper is defined to be one that is published in the English language four or more times per week. *Id.* § 73.3555 n.6.

[5] *Second Report and Order*, 50 FCC 2d at 1074.

[6] *Id.*

[7] *Id.* at 1079-1080.

[8] *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 796 (1978) (*NCCB*).

operation of a newspaper and a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved.[9] In upholding the rule, the Supreme Court noted the availability of waivers to underscore the reasonableness of the rule.[10] The Commission has granted only four permanent waivers in the twenty-six years since it adopted the rule.[11]

4. For a number of years in the 1980s and 1990s, Congress prohibited the Commission from spending any of its appropriations "to repeal, retroactively apply changes in, or to begin or continue a reexamination of the rules and the policies established to administer" the newspaper/broadcast cross-ownership rule.[12] In the Commission's 1994 appropriation, however, Congress permitted the Commission to revise its policies with respect to waivers for newspaper/radio combinations.[13] Beginning with the Commission's 1996 appropriation, Congress has not restricted the Commission's review of either its waiver policies or the rule itself.[14]

5. Following the changes in the Commission's appropriations legislation and to develop issues raised by the merger of Capital Cities/ABC and The Walt Disney Company,[15] the Commission

[9] *Second Report & Order*, 50 FCC 2d at 1085.

[10] *NCCB*, 436 U.S. at 820 n.20.

[11] Kortes Communications, Inc., *Memorandum Opinion & Order*, 15 FCC Rcd 11846 (2000) (allowing co-ownership of newspaper and AM station, based on the fact that the station was financially troubled and might go off the air, and was a small participant in the market); Columbia Montour Broadcasting Co., *Memorandum Opinion & Order*, 13 FCC Rcd 13007 (1998) (allowing co-ownership of newspaper and small station, based on the fact that the AM station was financially troubled and could not be sold, and was a small participant in a competitive, diverse market); Fox Television Stations, Inc., *Declaratory Ruling*, 8 FCC Rcd 5341 (1993) (allowing co-ownership of newspaper and TV station in large market, based on the fact that the TV station was reacquiring the newspaper such that the combination did not constitute a new ownership pattern, and the newspaper might not be financially viable on its own), *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995); Field Communications Corp., 65 FCC 2d 959 (1977) (allowing co-ownership of two newspapers and TV station, based on the fact that the newspapers were reacquiring the TV station such that the combination did not constitute a new ownership pattern, and the TV station had only recently become financially viable).

[12] *See, e.g.*, Departments of Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, 1989, Pub. L. No. 100-459, 102 Stat. 2186 (1988); Departments of Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, 1990, Pub. L. No. 101-162, 103 Stat. 988, 1021 (1989); Departments of Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, 1991, Pub. L. No. 101-515, 104 Stat. 2101, 2136 (1990); Departments of Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, 1992, Pub. L. No. 102-140, 105 Stat. 782, 797 (1991); Departments of Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1846 (1992). The newspaper/broadcast cross-ownership rule was codified at 47 C.F.R. § 73.3555(c) until 1992, at which time it was codified at 47 C.F.R. § 73.3555(d).

[13] Departments of Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, 1994, Pub. L. No. 103-121, 107 Stat. 1153, 1167 (1993). Congress intended to permit the Commission to waive the rule for newspaper/radio combinations only in the top 25 markets where at least 30 independent broadcast voices would remain after the combination. *Id.*

[14] Omnibus Consolidated Rescission and Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321 (1996).

[15] Capital Cities/ABC, Inc., *Memorandum Opinion & Order*, 11 FCC Rcd 5841 (1996). The Commission granted the applicants temporary waivers of the rule, and committed to reexamining its waiver policies for newspaper/radio combinations in a subsequent proceeding.

issued a *Notice of Inquiry* in 1996 to seek comment on possible revisions to its newspaper/radio cross-ownership waiver policies.[16] In the *Newspaper/Radio NOI*, the Commission asked whether it should revise its waiver policy in ways that might make it less stringent and/or more objective. For example, it asked whether the Commission should adopt a policy to waive the rule when a transaction involves parties in a market of a particular rank and/or a certain number of independently owned voices would remain in the market after a proposed newspaper/radio combination.[17]

6. In February 1996, the Telecommunications Act of 1996 also became law.[18] Section 202 instructed the Commission to revise particular ownership rules and waiver policies, but the newspaper/broadcast cross-ownership rule and waiver policies were not among them.[19] In fact, the legislative history of the 1996 Act shows that Congress expressly considered but rejected making changes to the newspaper/broadcast cross-ownership policies.[20] At the same time, section 202(h) of the 1996 Act instructs the Commission to review each of its ownership rules biennially, to determine whether the rule is "necessary in the public interest as a result of competition" and repeal or modify any rule it finds is no longer in the public interest. In sum, Congress has directed the Commission to review its newspaper/broadcast cross-ownership rule as part of its biennial review process, but has not directed it to take any particular action.[21]

7. As required by section 202(h) of the 1996 Act, the Commission examined the newspaper/broadcast cross-ownership policies more broadly in its first biennial review proceeding on

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[16] Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197, *Notice of Inquiry*, 11 FCC Rcd 13003 (1996) (*Newspaper/Radio NOI*). The issues raised by the *Newspaper/Radio NOI* are subsumed within this proceeding, which considers both rule and waiver changes for both newspaper/radio and newspaper/TV combinations. Accordingly, we will terminate the *Newspaper/Radio NOI* proceeding.

We are aware, however, that the Commission in a handful of cases has waived the newspaper/broadcast cross-ownership rule, subject to the outcome of the *Newspaper/Radio NOI*. For example, in 1997, the Commission waived the rule to permit Cox Radio, Inc. to own a newspaper that was published in a community within the signal contour of a commonly owned radio station, until six months after the issuance of a final order in the *Newspaper/Radio NOI* proceeding. Because we terminate that proceeding today, this waiver and all similar waivers will now be subject to the outcome of the instant proceeding, initiated by this *Notice of Proposed Rulemaking*.

[17] *Newspaper/Radio NOI*, 11 FCC Rcd at 13009-13010, ¶ 10.

[18] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[19] For example, sections 202(a)-(f) instructed the Commission to eliminate its national radio ownership rule, and to revise its local radio ownership rules, national TV ownership rule, radio/TV cross-ownership waiver policies, dual network rule, and cable system/broadcast network cross-ownership rule.

[20] 141 Cong. Rec. E1571 (Aug. 1, 1995) (indicating that Congressman Stearns had proposed an amendment to repeal the newspaper/broadcast cross-ownership rule).

[21] Last year, the Commission concluded that, "while the Commission now has the authority and the obligation to reevaluate the newspaper/broadcast cross-ownership rule, and its policy regarding waivers thereof, there is no explicit Congressional guidance on how that authority should be exercised." 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Report*, 15 FCC Rcd 11058, 11102, ¶ 83 (2000) (*Biennial Review Report*).

broadcast ownership rules. The Commission adopted another *Notice of Inquiry* in 1998,[22] and issued a report last year, on six of its broadcast ownership rules, including the newspaper/broadcast cross-ownership rule. The Commission concluded that the newspaper/broadcast cross-ownership rule continues to serve the public interest because it furthers diversity, and therefore should be retained.[23] However, the Commission also noted that the rule might not be necessary to achieve its intended public interest benefits under certain circumstances. More specifically, the Commission stated that "[t]here may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed."[24] Thus, the Commission committed to undertaking a rulemaking proceeding to tailor the rule accordingly.[25]

DISCUSSION

8. Since the Commission adopted the newspaper/broadcast cross-ownership rule over twenty-five years ago, the local media marketplace has changed dramatically. We focus on the *local* media marketplace because this is the marketplace with which the Commission's newspaper/broadcast policies have been concerned: the rule prohibits common ownership of broadcast stations and newspapers within the same community. In this proceeding, we seek to examine our newspaper/broadcast cross-ownership policies in the context of these changes in the local media marketplace, evaluating the extent to which the rule is, in the language of section 202(h) of the Act, "necessary in the public interest as a result of competition," and taking into account our diversity and competition goals.[26] We therefore seek comment on how the changes in the local media marketplace impact our competition and diversity goals, and whether these changes should impact our newspaper/broadcast cross-ownership rule and waiver policies.

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[22] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Notice of Inquiry*, 13 FCC Rcd 11276 (1998) (*Biennial NOI*). The Commission incorporated the record from the *Newspaper/Radio NOI* into the record of the *Biennial NOI*. *See id.* at 11286, ¶ 30.

[23] *Biennial Review Report*, 15 FCC Rcd at 11105-11108, ¶¶ 89-93.

[24] *Id.* at 11105, ¶ 88. The Newspaper Association of America challenged the Commission's decision not to repeal the rule. *Newspaper Ass'n of America v. FCC*, Case No. 00-1375 (D.C. Cir. filed Aug. 16, 2000). By order dated August 30, 2000, the court held the case in abeyance, and requires periodic status reports from the parties.

[25] *Biennial Review Report*, 15 FCC Rcd at 11105, ¶ 88. In its 2000 biennial regulatory review proceeding, the Commission did not alter the recommendations it had made with respect to the newspaper/broadcast cross-ownership rules in the 1998 biennial review proceeding. *See* 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Report*, 16 FCC Rcd 1207 (2001). In the Updated Staff Report, Appendix IV, Part 73, the staff noted that the comments of Newspaper Association of America filed in the 2000 biennial regulatory review proceeding would be placed in the record of this proceeding. We hereby include these comments in the instant record.

[26] The Commission recently engaged in a similar review and revision process with its local TV multiple ownership rules, ultimately amending those rules to permit common ownership of two TV stations under certain circumstances, and at least one TV station and one or more radio stations, within the same area. Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, *Report and Order*, 14 FCC Rcd 12903 (1999) (*Local TV Ownership Report & Order*). Common ownership of a newspaper and even a single broadcast station within the same area, however, remains prohibited.

9. Current Status of the Media Marketplace. The number of local media outlets has grown substantially since 1975. A significant portion of this growth has occurred within the broadcast industry itself. A total of 7,785 radio stations were on the air as of January 1, 1975;[27] as of June 30, 2001, the Commission had licensed 12,932 radio stations.[28] A total of 952 TV stations were on the air on January 1, 1975;[29] as of June 30, 2001, the Commission had licensed 1,678 full power television stations, 2,396 low power TV stations, and 232 Class A TV stations.[30] In 1975, there were three national commercial broadcast networks, and today there are seven such networks. Although the number of broadcast networks and stations has increased, however, the relative viewership of them has declined. The prime time audience share of the affiliates of the three major broadcast networks (ABC, CBS, NBC) was 95% in 1975; today, the prime time audience share of all commercial television stations (affiliates of ABC, CBS, Fox, NBC, PaxNet, UPN, WB, and independent stations) is only 61%. We seek comment on the relevance of these developments to our newspaper/broadcast cross-ownership policies.

10. Changes in the newspaper industry since 1975 have been more mixed. Although the number of daily newspapers has decreased since 1975, the number of weekly newspapers has increased. The number of daily newspapers has declined from 1,756 in 1975, to 1,422 in 2000.[31] The total circulation of morning and evening daily newspapers has declined by about 8% from 60.6 million in 1975 to 55.8 million in 2000.[32] However, the combined circulation of smaller, more targeted newspapers, often published weekly, has more than doubled: 7,612 weekly newspapers had a circulation of approximately 35.9 million in 1975, whereas 7,915 such newspapers had a circulation of approximately 81.6 million in 1996.[33] These weekly newspapers are often the source of local information. We seek comment on these figures and their significance to our newspaper/broadcast cross-ownership rule, as well as any other data we should consider.

11. Besides the changes in the broadcast and newspaper industries, there has been a proliferation of other outlets in the local media marketplace. In 1975, cable television systems served only 13% of TV households.[34] By June 2000, they served 67.4% of TV households, or 67.7 million people.[35] There are over 200 video programming services available on cable systems.[36] In October 2000, 99% of all cable customers subscribed to systems with capacities of 30 channels or more, and over 68% subscribed to systems with capacities of 54 of more channels.[37] More than 6% subscribed to systems with a channel

[27] *Broadcasting & Cable Yearbook 2000*, at D-718.

[28] FCC News Release "Broadcast Station Totals as of June 30, 2001," July 13, 2001.

[29] *Broadcasting & Cable Yearbook 2000, supra* note 27, at B-250.

[30] FCC News Release "Broadcast Station Totals as of June 30, 2001," July 13, 2001.

[31] SRDS, *Circulation 2001*, at 1038.

[32] *Id.*

[33] Newspaper Ass'n of America, Petition for Rulemaking, at 24 (filed Apr. 28, 1997) (NAA Petition).

[34] National Cable Television Association, Cable Television Developments at 2 (Fall 1996).

[35] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 00-132, *Seventh Annual Report*, 16 FCC Rcd 6005, 6017, ¶ 19 (2001) (*Seventh Annual Report*).

[36] *Id.* at Table B-5.

[37] *Id.* at 6018, ¶ 21.

capacity of 91 or more channels.[38] The combined audience share of basic and premium networks is 48%.[39] Other multichannel programming distributors (MVPDs), most notably direct broadcast satellite (DBS) providers, now compete in the marketplace but were nonexistent in 1975. DBS has grown rapidly, and now serves nearly 13 million subscribers, or over 15% of MVPD households.[40] Other MVPDs serve another nearly 4 million subscribers. All of these MVPDs distribute the programming of many networks. Today, almost 84% of all TV households subscribe to an MVPD.[41] We seek comment on the impact of these alternative media outlets on our newspaper/broadcast cross-ownership policies.

12. As of November 2000, 56% of Americans had access to the Internet from home,[42] which was not commercially available in 1975. The Internet has the potential to be a significant source of local and national news and information, and, to a limited though increasing extent, audio and video programming. The Internet may provide advertisers with alternative means of reaching their potential customers. We seek specific data on the impact of the Internet in the local media marketplace.

13. Although the number of media outlets has grown, so has the concentration in their ownership. Historically, the Commission has had both local and national ownership limits for broadcast stations. In 1975, on the local level, the Commission prohibited common ownership of two radio stations within the same type of service, or two TV stations when their signal contours overlapped. On the national level, the Commission prohibited common ownership of more than seven AM, seven FM, and seven TV stations. Pursuant to the 1996 Act, the Commission eliminated any national ownership limit on radio stations, and relaxed the national TV ownership limit to permit common ownership of TV stations that reach as many as 35% of TV households. It also relaxed its local radio ownership rules, and in 1999, its local TV multiple ownership rule. The result is that, while in 1975 a single entity could not own more than fourteen radio stations nationwide, today one entity owns more than 1,000 radio stations nationwide.[43] In addition, at approximately the same time that the 1996 Act became law, there were approximately 5,100 owners of commercial radio stations, while now there are only approximately 3,800 owners, a decrease of 25%. Moreover, in 1995 there were 543 entities that owned commercial TV stations,[44] while today there are only 360.[45] We seek comment on the relevance of consolidation in the broadcast industry to our newspaper/broadcast cross-ownership policies, and additional data on how this consolidation has impacted the local media marketplace.

14. Diversity. As noted above, the Commission adopted the newspaper/broadcast cross-ownership rule largely to promote and protect a diversity of viewpoints.[46] The Commission has sought to ensure that the public has access to a diversity of viewpoints to promote First Amendment values. In the

[38] *Id.*

[39] Nielsen Media Research, *2000 Report on Television*, at 17.

[40] *Seventh Annual Report*, 16 FCC Rcd at 6037, ¶ 61.

[41] *Id.* at 6008, ¶ 6.

[42] *Id.* at 6054, ¶ 107.

[43] BIA MasterAccess Database, Mar. 2001.

[44] *Broadcasting & Cable Yearbook 1995*, at A98-A123.

[45] BIA MasterAccess Database, Mar. 2001.

[46] *See supra* ¶ 2.

words of the Supreme Court, "[t]hat Amendment rests of the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . ."[47] The Commission historically has sought to promote its goal of viewpoint diversity indirectly through structural regulation, such as ownership rules.[48] We note that the Commission goal of diversity of viewpoint has been particularly important in the context of newspaper/broadcast cross-ownership, given the reliance the public has placed on these media as sources of local news and information.[49]

15. As we evaluate our newspaper/broadcast cross-ownership rule, we begin by asking whether the newspaper/broadcast cross-ownership rule continues to be necessary to protect a diversity of viewpoints. As noted above, consumers today have many media outlets from which to obtain news and information. While the number of daily newspapers has declined, the number of weekly newspapers has doubled since 1975. In addition, approximately 77% of commercial TV stations provide local news.[50] Virtually all affiliates of ABC, CBS, and NBC provide local news, and approximately one third of other broadcast TV stations do.[51] This latter group includes stations affiliated with the Fox network, which did not even exist in 1975. As of 1999, approximately thirty regional cable news networks provided news and information targeted to more local areas than their national counterparts, such as CNN.[52] These networks did not exist in 1975. Recent studies also show that the Internet is becoming an increasingly significant source of news and information. Indeed, these studies suggest that some Americans are turning to the Internet for news instead of TV, in particular broadcast TV.[53] We seek comment on what information consumers actually access and how successful independent Internet-based providers of information have been. Are the data different for different types of local markets, or for different demographic and income groups? If so, what is the relevance of those differences for purposes of evaluating the newspaper/broadcast cross-ownership rule? Are there still other media that are sources of local news and information? Does the proliferation of these new media mean that the newspaper/broadcast cross-ownership rule is no longer necessary to ensure that consumers of news and information have access to

[47] *Associated Press v. United States*, 326 U.S. 1, 20 (1945) (*Associated Press*).

[48] In the past, the Commission also used direct techniques of programming regulation to achieve its goal. *See* Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, *Further Notice of Proposed Rulemaking*, 10 FCC Rcd 3524, 3547-3549, ¶¶ 58-59 (1995) (*TV Further Ownership Notice*).

[49] According to a 1998 survey, 41% of Americans cited television as their primary source of local news, 17% cited newspapers, and 11% cited radio stations. *See* RTNDA, *Americans Rely on Local Television News, Rate It Highly, and Consider It Fair*, available at <www.rtnda.org/issues/survey.htm#download>. We seek additional and updated information on the relative importance of various media to the public in terms of where it turns for local news and information.

[50] Vernon Stone, *News Operations at U.S. TV Stations*, available at <web.missouri.edu/~jourvs/gtvops.html>.

[51] *Id.* Professor Stone last formally surveyed stations in 1994, and updated those results with estimates in 2001. The general percentage of stations with news operations is an estimate; the specific percentages for network affiliates is based on the 1994 survey data, which he believes are still accurate: "over the 1994-2000 period, new shops appear to have offset shutdowns, leaving little net change in the numbers."

[52] Deborah D. McAdams, *Cable News Nets Go Small*, Broadcasting & Cable at 42-50 (Sept. 27, 1999). Although some of these regional cable news networks are new independent sources of information within their service areas, many are not, because they are owned and operated by co-located broadcast stations or newspapers.

[53] Pew Research Center, *Investors Now Go Online for Quotes, Advice: Internet Sapping Broadcast News Audience*, available at <www.people-press.org/media00rpt.htm>.

diverse ideas and viewpoints?[54]

16. Although the number of media outlets has increased, the Commission traditionally has focused on the number of different owners, as opposed to the number of media outlets, because as noted, the Commission has thought that diversity in ownership promotes diversity in viewpoint. According to this theory, common ownership of media outlets means that they are one and the same for purposes of viewpoint diversity. Under this view, the growth in the number of broadcast outlets is counterbalanced by the consolidation in ownership of them. Accordingly, the development of regional cable news networks might not be considered especially important in terms of diversity analysis, because more than half of them are owned by co-located broadcast stations or newspapers.[55] In addition, the growth of news-oriented websites likewise might not be considered particularly significant, because many do not focus on local news and information, and those that do are often operated by existing local media, such as broadcast stations and newspapers.[56] We seek comment on the level of independence of other media, including the Internet.

17. The relationship between ownership diversity and viewpoint diversity is the subject of considerable debate. The Commission has noted the argument that "the greater the concentration of ownership, the greater the opportunity for diversity of content."[57] Under this view, competing parties in a market have a commercial incentive to air "greatest common denominator" programming, while a single party that owns all stations in a market has a commercial incentive to air more diverse programming to appeal to all substantial interests. On the other hand, there also is the argument that the existence of multiple owners competing in a market is likely to provide viewpoint diversity – rather than content diversity – providing the "divergent viewpoints on controversial issues" which the Commission has stated is "essential to democracy."[58] We seek comment on these competing theories of the relationship between ownership diversity and viewpoint diversity. Are commercial incentives adequate to protect the public's access to a variety of viewpoints from commonly owned media? Is there a difference between the relevance of the competing theories in terms of diversity of entertainment programming and news or public affairs programming? Or as applied across different media? We note that the Commission has suggested that the theory that consolidation promotes diversity in content might apply to entertainment programs and formats, but not to news and public affairs programming.[59] Should the Commission give greater weight to viewpoint diversity in the latter area because it serves core First Amendment values of helping to ensure robust discussion of issues of public concern?[60] Are there ways that the Commission can attempt to promote viewpoint diversity beyond structural regulation? What role if any do other legal requirements, for

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[54] We note, however, that although the number of radio stations has increased over the years, the number with newsrooms has dropped from approximately 5,500 in 1994 to 4,500 in 2001. Vernon Stone, News Operations at U.S. Radio Stations, available at <web.missouri.edu/~jourvs/graops.html>

[55] Deborah D. McAdams, *supra* note 52, at 44-50.

[56] Howard Kurtz, *Is Online Journalism On Its Way Out? Web Sites Struggle Financially Despite Millions of Visitors*, Washington Post, Feb. 21, 2001. Moreover, many online journalism companies have recently left the marketplace due to capital problems. *Id.*

[57] *TV Further Ownership Notice*, 10 FCC Rcd at 3551, ¶ 63.

[58] *Second Report & Order*, 50 FCC 2d at 1074.

[59] *Id.*

[60] *See, e.g., Associated Press*, 326 U.S. at 20 ("The First Amendment . . . rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . .").

example those that require broadcasters to provide political candidates access to their facilities under certain conditions,[61] or that require cable systems to set aside channel capacity for certain uses (*e.g.*, PEG, leased access),[62] play in promoting diversity? Historically, broadcast stations and newspapers have been viewed as the gatekeepers in the local marketplace of ideas. Given the significant changes in the local media marketplace, is this viewpoint still accurate?

18. In addition to comments on the competing theories of viewpoint diversity described above, we seek comment on and data about actual and potential effects on diversity of the newspaper/broadcast cross-ownership rule and our proposed options for modifying the rule. Is it possible that the effect on diversity will be different depending on the size of the markets involved, or the predominance of newspapers and broadcast stations in a particular local market? Would the increase or decrease in access to diverse viewpoints affect different demographic or income groups differently? Is there some other variable that would affect the relationship between ownership diversity and viewpoint diversity? Commenters arguing for or against these theories are encouraged to provide specific analyses and data to support their arguments.

19. Competition. Our multiple ownership rules traditionally have been designed to serve the "twin" goals of competition and diversity.[63] In addition, section 202(h) of the 1996 Act instructs the Commission to review each of it ownership rules, including the newspaper/broadcast cross-ownership rule, biennially to determine whether the rule is "necessary in the public interest as a result of competition," and then to tailor the rule accordingly. As we review our newspaper/broadcast cross-ownership policies, we therefore seek information about the economic impact of maintaining or modifying the rule. As we do so, we focus on the primary economic market in which broadcast stations and newspapers may compete: advertising. As the Commission stated in its recent proceeding relaxing the dual network rule, the Commission has historically considered and promoted competition in advertising markets in order to enhance the welfare of listeners and viewers of broadcast services.[64] This is because advertisers provide all of the financial support for programming on broadcast stations, and have a commercial incentive to prefer programming with widespread appeal, all other things remaining the same.[65] As more and more Americans, however, subscribe to MVPDs, and thus do not receive their television service free and over-the-air, it may be appropriate for the Commission to reexamine its approach to and emphasis on the advertising market.[66] Who benefits from lower advertising rates? Is it the role of the Commission to ensure these benefits? What are the other economic markets in which broadcast stations and newspapers compete? Is there a better measure of the state of economic competition than the advertising market?

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[61] 47 U.S.C. § 312(a)(7) (authorizing the Commission to revoke a broadcaster's license for failure to provide legally qualified candidates for federal office access to its facilities); 47 U.S.C. § 315(a) (requiring a licensee to provide equal opportunities to all legally qualified candidates for a political office to use its facilities).

[62] 47 U.S.C. §§ 531, 532.

[63] *See, e.g., Biennial Review Report*, 15 FCC Rcd at 11061, ¶ 5; *Local TV Ownership Report & Order*, 14 FCC Rcd at 12911-12917, ¶¶ 17-27.

[64] *See* Amendment of Section 73.658(g) of the Commission's Rules – the Dual Network Rule, MM Docket No. 00-108, *Report & Order*, 16 FCC Rcd 11114, 11122, n.44 (rel. May 15, 2001) (*Dual Network Report & Order*).

[65] More precisely, advertisers have an incentive to reach customers who are likely to buy their products. They thus have an incentive to reach the widest audience possible for their product at the lowest price.

[66] *Dual Network Report & Order*, 16 FCC Rcd at 11122, n.44.

20. Competition analysis requires us to define the relevant product and geographic markets in which broadcasters and newspapers compete, as well as the market share of the participants within the relevant market, and then weigh the competitive benefits of consolidation (*e.g.*, economies of scale and scope that may lead to lower costs and prices or superior products) against the harms (*e.g.*, the exercise of market power).[67] We seek information that would help us conduct our analysis.

21. Our first task is to define the relevant product market. Measured on an aggregate, national basis, advertisers spend about 45% of all local advertising dollars on newspapers, about 16% on radio stations, and about 15% on broadcast TV stations.[68] There is considerable debate, however, on the extent to which advertising in one of these media is a substitute for advertising on another, and thus the extent to which they are in fact in the same product market.[69] We seek comment on this issue. To what extent is advertising on a broadcast station a substitute for advertising in a newspaper, *i.e.*, to what extent do advertisers shift their expenditures between broadcast stations and newspapers as one medium raises the prices it charges for advertising? Does the answer depend on whether the broadcast medium is radio or television? Does the answer depend on whether the newspaper is published daily or weekly? Do advertisers seek to use broadcast media and newspapers to reach different demographic groups? We also note that classified advertising appears to be a type of advertising for which broadcast stations do not compete with newspapers. What other types of advertising should be viewed as a separate market? Have the decrease in the number of daily newspapers, and the increase in the number of broadcast stations, affected the way in which these media compete? We note that when the Commission adopted the newspaper/broadcast cross-ownership rule, it observed that the Department of Justice defined the relevant product market to include newspapers and broadcast stations.[70] Currently, however, the Department of Justice views radio as a separate product market.[71] Courts have likewise concluded that the local newspaper advertising market is a distinct antitrust market from the local media advertising markets.[72] We seek comment on these views.

22. Are other media reasonable substitutes for advertising on broadcast stations, newspapers or both, such that these other media should be considered in the same product market? Measured on an aggregate national basis, advertising on cable now accounts for nearly 4% of the total of all local advertising dollars.[73] Cable systems' share of the local advertising market thus appears small currently,

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[67] *TV Further Ownership Notice*, 10 FCC Rcd at 3532, ¶ 16.

[68] U.S. Advertising Volume 2000-2001, prepared for Advertising Age by Robert J. Coen, Universal McCann. TV networks and stations have a much higher percentage of all national advertising dollars.

[69] *See, e.g.*, *Second Report & Order*, 50 FCC 2d at 1056-1057. *Compare* Robert Ekelund, George Ford, and John Jackson, *Is Radio Advertising a Distinct Local Market? An Empirical Analysis*, 14 Review of Industrial Organization, 239 (1999) (concluding that radio advertising constitutes a distinct antitrust market) *with* Barry Seldon, R. Todd Jewell, Daniel O'Brien, *Media Substitution and Economics of Scale in Advertising*, 18 Int'l Journal of Industrial Organization 1153 (2000) (finding a high degree of substitutability at the national level) *and* James Ferguson, *Daily Newspaper Advertising Rates, Local Media Cross-Ownership, Newspaper Chains, and Media Competition*, 26 Journal of Law & Economics 635 (1983) (concluding that newspapers and TV advertisements are substitutes).

[70] *Second Report & Order*, 50 FCC 2d at 1056-1057.

[71] *See, e.g.*, *United States v. Jacor Communications Inc.*, 1996 WL 784589, *10 (S.D. Ohio 1996). *See also* Joel Klein, Assistant Attorney General/Antitrust Division, Address at ANA Hotel on DOJ Analysis of Radio Mergers (Feb. 19, 1997), available at <www.usdoj.gov/public/speeches/jlk97219.htm>.

[72] *Community Publishers Inc. v. Donrey Corp.*, 892 F. Supp. 1146, 1155-1157 (W.D. Ark. 1995).

[73] U.S. Advertising Volume 2000-2001, *supra* note 68.

but it is continuing to grow. For example, cable systems' share of the local advertising market was only 1% in 1990, meaning that it has quadrupled in the last decade.[74] Does the availability of advertising on cable systems constrain broadcast stations' and newspapers' ability to raise their advertising prices? Do other MVPDs such as DBS compete with broadcast stations and newspapers in the local advertising market? Do they have plans to do so? How do banner ads on websites affect the relevant product market? How substitutable is Internet advertising for other forms of media advertising? Are there other media that should be included in the relevant market?

23. When analyzing the potential competitive effects of a proposed newspaper/broadcast combination, what is the relevant geographic market? The relevant geographic market is some local area, but what are the precise parameters of that area? We note that antitrust analysis defines the relevant geographic market as the region where a hypothetical monopolist that is the only producer of the relevant product in the region could profitably raise the price of the relevant product.[75] Under the Commission's current rule, newspaper/broadcast combinations are prohibited when the broadcast station's service contour encompasses the entire community in which the newspaper is published. If local advertisers would respond to an advertising price increase in the community in which the newspaper is published by shifting to alternative suppliers located outside this geographic area, the relevant geographic market should be larger than the community in which the newspaper is published. We seek comment on how to define the relevant geographic market for purposes of our newspaper/broadcast cross-ownership analysis.

24. Once we define the relevant product and geographic markets, how should we measure the market share of those that compete in the market? Market share is often measured by revenue. Local advertising revenue, however, is often not publicly available for some media. Should we therefore instead rely on circulation and ratings information, which presumably correlate to advertising rates, and therefore overall revenue and share? Commenters arguing against reliance on circulation or ratings information should propose alternative bases of measurement. Industry-accepted ratings services report on how many listeners and viewers "consume" particular content of broadcast stations. The Arbitron Company reports on the radio marketplace, and Nielsen Media Research reports on the TV marketplace. Other entities, such as SRDS, provide data on the circulation of newspapers. Based on these reports, it is possible to determine how many listeners or viewers tune in to a broadcast station for a particular program, and how many people purchase a newspaper within a particular area. How should we compare newspaper circulation with radio and television ratings?

25. What are the benefits of newspaper/broadcast combinations, not only to the combinations, but also to advertisers, and the public? The joint operation of a broadcast station and a newspaper may create efficiencies and synergies. For example, the efficiencies of a merger may enable a broadcast station and a newspaper to combine sales operations and staff, and thereby save expenses or reduce advertising prices. At least some of these savings could be passed on to advertisers in the form of lower advertising rates. Some of the additional savings in advertising expenses could also be passed on to listeners, viewers, and subscribers in the form of enhanced content. Is there a difference in efficiencies between combining a newspaper and a radio station, as compared to combining a newspaper and a TV station? Commenters in our 1998 biennial review proceeding stated that common ownership produces cost savings in business administration.[76] We seek information on the nature and scope of efficiencies combinations might realize,

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[74] *Id.*

[75] U.S. Dep't of Justice & FTC, *1992 Horizontal Merger Guidelines*, § 1.21 (revised 1997).

[76] Others claimed, however, that businesses do not need to combine to realize these efficiencies because they could simply form a joint venture. Independent Free Papers Comments at 2-4.

and the nature and magnitude of benefits that flow through to advertisers and ultimately to consumers.[77] We seek evidence that newspaper/broadcast combinations produce efficiencies that flow through to advertisers and consumers. Studies showing that advertising rates for newspaper/broadcast combinations are significantly lower than advertising rates for separately owned newspapers and broadcast stations would be particularly useful.

26. What economic harms might newspaper/broadcast combinations bring? The potential harms of such combinations include creating and exercising market power. A particular combination may garner such a share of the local advertising market that advertisers believe they must advertise on the combination's media in order to reach consumers, such that the combination can charge anticompetitive prices. We seek additional information on the nature and scope of the economic harms that newspaper/broadcast combinations might bring. Studies and other evidence showing that advertising rates for newspaper/broadcast combinations are significantly higher than advertising rates for separately owned newspapers and broadcast stations would be particularly useful. It would also be useful to identify the associated harm to consumers.[78]

27. We have sought comment above on the degree to which broadcast stations and newspapers compete for advertising dollars. Are there other markets in which broadcast stations and newspapers compete? For example, broadcast stations and newspapers compete to provide news. They do so to attract readers, listeners, and viewers, in order to attract advertisers. Do they compete to provide news for other reasons that should be relevant to our analysis? How should the non-advertising economic markets in which broadcast stations and newspapers compete affect our newspaper/broadcast cross-ownership policies?

28. Existing Newspaper/Broadcast Combinations. As we consider the environment in which broadcast stations and newspapers operate, we seek comment in particular on the experience of existing newspaper/broadcast combinations. As noted above, the Commission grandfathered most combinations that existed at the time it adopted its rule, and approximately fifty of these remain today. In addition, the Commission has granted four permanent waivers of the rule. We seek further comment on the experience of co-located newspaper/broadcast combinations, because they provide concrete examples of how the marketplace may be affected by changes to our rule. What sorts of public interest benefits or harms have these combinations produced?

29. How have combinations affected advertising rates? Have the combinations sold advertising at lower rates than their competitors? Or are advertising rates higher in these markets? Has there been a difference between combinations involving newspapers and radio stations, as opposed to newspapers and TV stations? At least one study concluded that common ownership of a newspaper and a TV station in the same market significantly decreases newspaper advertising rates, but common ownership of a newspaper and a radio station does not.[79]

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[77] For profit-maximizing firms, including monopolies, facing many customers, reductions in fixed costs that do not affect marginal cost ordinarily do not create an incentive to lower price. *See 1992 Horizontal Merger Guidelines, supra* note 75, at § 4. If, however, the firm faces just one or few customers, then the seller may bargain with the customer or customers over price and other terms of sale. In this case, then reductions in the seller's fixed costs may be "shared" with the customers to an extent that reflects the relative bargaining power of the seller and buyer.

[78] This depends on how advertisers respond to higher rates, and the proportion of total "production" costs that are accounted for by advertising expenditures.

[79] Ferguson, *supra* note 69, at 636.

30. How have combinations affected news? Have the combinations brought additional news outlets to the marketplace, or otherwise enhanced news coverage? We note that commenters in our 1998 biennial review proceeding stated that common ownership has enabled them to provide more news, to distribute it through new media (such as cable systems and websites), and to treat subjects in more depth.[80] What sorts of harms have the combinations produced? Even if the amount or quality of news has increased, has viewpoint diversity decreased?

31. Legal Issues. As we consider our competition and diversity goals in the context of newspaper/broadcast combinations, we note the recent decision of the U.S. Court of Appeals for the D.C. Circuit striking down two ownership rules that the Commission had adopted to implement the Cable Act of 1992.[81] One of these rules restricted the number of subscribers that a given multiple system operator can serve to 30% of MVPD subscribers,[82] and the other prohibited cable systems from filling more than 40% of their channel capacity with affiliated programming networks.[83] In analyzing petitioners' arguments that these rules interfered with their speech in violation of the First Amendment, the court applied the "intermediate scrutiny" test on review. Under that test, a regulation will be upheld if "it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."[84] Consistent with earlier holdings of the Supreme Court,[85] the D.C. Circuit found the Commission's interest in "the preservation of competition" and "the promotion of diversity in speech and ideas" important government interests.[86]

32. The D.C. Circuit also found, however, that the Commission had not provided the "substantial evidence" necessary to show how its rules furthered its interest in "the preservation of competition," and remanded the matter to the Commission. The court explained that "[s]ubstantial evidence does not require a complete factual record – we must give appropriate deference to predictive judgments that necessarily involved the expertise and experience of the agency."[87] Holding that the Commission had not satisfied the applicable test, it remanded the matter to the Commission for further proceedings. We seek comment on the relevance of the *Time Warner* decision to the competition goals that inform our newspaper/broadcast cross-ownership policies. Are the First Amendment interests at stake here the same as in *Time Warner*? As commenters advocate particular public policy options, we encourage them to consider the level of proof required to support them under *Time Warner*, and whether these standards are applicable in the newspaper/broadcast context.

33. We note that the court in *Time Warner* held that the Commission could not rely on its

[80] Belo Comments at 11-13; Chronicle Comments at 16; Gannett Comments at 22; Tribune Comments at 60-65.

[81] *Time Warner Entertainment v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001) (*Time Warner*).

[82] 47 C.F.R. § 76.503.

[83] *Id.* at § 76.504.

[84] *United States v. O'Brien*, 391 U.S. 367, 377 (1968).

[85] *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 662-63 (1994).

[86] *Time Warner*, 240 F.3d at 1130.

[87] *Id.* at 1133.

diversity goal alone to support the horizontal and vertical restraints at issue in that case.[88] We also note, however, that the court's holding was based on its interpretation of the specific provision of the Cable Act of 1992 authorizing adoption of the cable limits, which focused on competition; the statutory source of the newspaper/broadcast cross-ownership policies, on the other hand, is the broad public interest standard of Title III. As discussed above, the Supreme Court upheld the Commission's predominant reliance on the diversity rationale to support its newspaper/broadcast cross-ownership policies.[89] We seek comment on the impact of the *Time Warner* case on our diversity analysis, and how the marketplace changes that have occurred since the Supreme Court upheld the newspaper/broadcast cross-ownership rule may affect the First Amendment analysis.

OPTIONS

34. As the Commission stated in the *Biennial Review Report*, "we believe that there may be circumstances in which the rule may not be necessary to achieve its intended public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly."[90] We outline below a variety of different approaches that might serve the public interest. We seek comment on each of the options below.

Modification of Rule or Waiver Policies

35. We could modify our newspaper/broadcast cross-ownership rule in a number of ways to ensure that it best serves our competition and diversity goals. Should the Commission adopt any changes by amending the rule or by modifying its waiver policies? Amending the rule, including adopting clearly defined waiver standards, would provide greater guidance and predictability to the public. Modifying our waiver policies, however, would allow the Commission to fashion the most appropriate solution to any given situation. We seek comment on how we can best modify our cross-ownership rule or waiver policies to serve the public interest.

36. We outline below possible modifications we could make to the newspaper/broadcast cross-ownership rule. These proposals are based largely on revisions the Commission has made to other multiple ownership rules. Commenters supporting adoption of one or more of these proposals should explain how the proposed modification would advance our public interest goals of promoting competition and diversity. Similarly, commenters proposing modifications not discussed in this *Notice* should explain why the public interest supports their proposal.

37. Redefining the Geographic Area. As explained above, the current rule prohibits common ownership of a broadcast station and a newspaper when the broadcast station's service contour encompasses the newspaper's city of publication. We seek comment on whether to redefine the geographic area in which the rule operates to that local area in which broadcast stations and newspapers compete, without regard to contour overlap. Under this approach, combinations would be permitted so long as the broadcast station and the newspaper are in different markets. This change could be made on its own, or in conjunction with other modifications, such as the ones set forth below. We seek comment on defining the relevant geographic area. In particular, we seek comment on how to define the market in which a particular

[88] *Id.* at 1135-1136.

[89] *NCCB*, 436 U.S. at 797.

[90] *Biennial Review Report*, 15 FCC Rcd at 11105, ¶ 88.

newspaper competes. We have recognized that the commonly accepted geographic market for TV is the Designated Market Area, or DMA, defined by Nielsen Media Research.[91] Does a newspaper compete throughout a DMA? A commonly accepted geographic market within the radio industry is the radio metro, defined by The Arbitron Company.[92] Does a newspaper compete throughout a radio metro? How should we treat radio markets that are not located in a radio metro? What will be the effect of any proposed changes in the geographic market definition on competition and diversity?

38. "Market Concentration" Standard. When the Commission revised the TV duopoly rule, it decided not only to redefine the geographic scope of the rule to enable stations in separate markets to combine, but also to permit smaller stations in the same market to combine with each other or with a larger station. One option for modifying our newspaper/broadcast cross-ownership policies therefore might be to adopt a "market concentration" standard of some kind. For example, the Commission might permit combinations between broadcast stations and newspapers, so long as their combined or individual market shares do not exceed a certain level.

39. We seek comment on a "market concentration" standard. What is the appropriate measure of "market concentration" for broadcast stations and newspapers, advertising or audience share? How should we define the broadcast stations and newspapers with the largest market share? With respect to newspapers, should we identify the largest participants in a local area by their circulation? What circulation should count as large, and what newspaper publications should count as being in the market? As we asked above, what should be the geographic boundaries of the local area over which we measure newspaper circulation?

40. We seek comment on how we should define the top ranked TV stations in a market. We note that, in revising the TV duopoly rule, the Commission decided to prohibit combinations between stations when both are ranked within the top four in the DMA.[93] The Commission explained that "[t]hese stations generally have a large share of the audience and advertising in their area, and requiring them to operate independently will promote competition. In addition, our analysis has indicated that the top four-ranked stations in each market generally have a local newscast, whereas lower-ranked stations often do not have significant local news programming, given the costs involved. Permitting mergers among these two categories of stations, but not among the top four-ranked stations, consequently might pose less concern over diversity of viewpoints in local news presentation, which is at the heart of our diversity goal."[94] We seek comment on the relevance of this reasoning to our newspaper/broadcast cross-ownership policies.

41. We also seek comment on how to define the top ranked radio stations in a market. We note that, according to our Mass Media Bureau's most recent report on the radio industry, "[t]he two largest radio firms in each radio market have, on average, 70 percent of the market's radio advertising revenue."[95] Would it therefore be appropriate to prohibit combinations between the two largest radio station owners, or radio station owners with stations that have an advertising or audience share that exceeds a certain limit, and the largest newspapers in the same market? We also note, however, that in revising its

[91] *Local TV Ownership Report & Order*, 14 FCC Rcd at 12926-12929.

[92] *See, e.g.*, Definition of Radio Markets, MM Docket No. 00-244, *Notice of Proposed Rulemaking*, 15 FCC Rcd 25077, 25081 ¶ 10 (2000).

[93] 47 C.F.R. § 73.3555(b)(2)(i).

[94] *Local TV Ownership Report & Order*, 14 FCC Rcd at 12933, ¶ 66.

[95] FCC Mass Media Bureau, Policy & Rules Division, *Review of the Radio Industry, 2000,* at 2 (Jan. 2001).

radio/TV cross-ownership rule, the Commission treated all radio stations similarly, and thus permitted TV stations to combine with radio stations up to a voice-dependent numerical limit, without regard to the radio station's market share. Would it therefore be appropriate not to restrict the type of radio stations that can combine with newspapers? Regardless of whether we limit the kind of radio station that a newspaper may acquire, should we limit the number of radio stations it may acquire? How many radio stations should we permit to be commonly owned with a newspaper? Should any limit depend on the market share of the radio station(s) involved? Should the appropriate number depend on the other media properties attributed to the radio station owner, such as broadcast TV or cable systems? We seek comment on the mechanism that will best serve the public interest.

42. "Voice Count" Standard. Another option for modifying the newspaper/broadcast cross-ownership policies would be to permit combinations so long as a certain number of independently owned media "voices" would remain in the market post-merger. This approach would be consistent with the recently revised radio/TV cross-ownership rule, which permits common ownership of a TV station and up to four radio stations if at least ten media voices would remain in the market, and up to six radio stations if at least twenty media voices would remain in the market.[96] Several commenters in the 1998 biennial review proceeding favored such an approach.[97] Under our current radio/TV cross-ownership rule, media "voices" include TV stations within the DMA, radio stations within the radio market within the DMA, newspapers published four or more days a week with a circulation of 5% or more within the DMA, and cable (as one voice) if generally available in the DMA.[98] This approach would ensure a "floor" of independently owned outlets, regardless of market size. However, since the requirement that a minimum number of voices remain in a market necessarily disfavors combinations in markets with fewer voices, are there alternative approaches that might provide relief in these markets but still preserve our competition and diversity goals? If we were to adopt a voice count approach, how should we resolve mutually exclusive applications, *i.e.*, applications filed at the same time both of which could not be granted without reducing the "floor" that our policy would be designed to protect against?

43. One particular formulation of the newspaper/broadcast cross-ownership policy might treat a daily newspaper as the equivalent of a TV station, and thus permit common ownership of newspapers and several radio stations, or one TV station, if a certain number of voices would remain in the market. Or are newspapers a sufficiently distinct medium of expression, such that they should not be treated similar to a TV station? We seek comment on whether it would be appropriate to adopt a voice count test in the newspaper/broadcast context, and if so, on how many voices we should require, and what voices should qualify. In revising the radio/TV cross-ownership rule, the Commission decided to count toward the number of voices necessary for a particular transaction only those newspapers published at least four days a week with a circulation of 5% or more in the DMA.[99] The Commission explained that "[o]ur intent in this regard is to include only those newspapers that are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable portion of the population. Although we recognize that other publications also provide a source of diversity and competition, many of these are targeted to particular communities and are not accessible to, or relied upon by, the population throughout the local market."[100] Is this rationale equally appropriate for determining the newspapers with such a significant

[96] 47 C.F.R. § 73.3555(c)(2).

[97] *See, e.g.*, Gannett Comments at 34-38.

[98] 47 C.F.R. § 73.3555(c)(3).

[99] *Id.* § 73.3555(c)(3)(iii).

[100] *Local TV Ownership Report & Order*, 14 FCC Rcd at 12953, ¶ 113.

market presence that we should not permit them to combine with co-located broadcast stations that also have a significant presence?

44. In the radio/TV cross-ownership context, the Commission decided to count cable systems because they provide some local information, but to count them as only one voice because, despite the many channels available on the systems, the cable operator either originates or selects almost all of the programming.[101] Should we give greater weight to the fact that many cable systems provide leased access and PEG channels,[102] which can provide local information, given that the cable system does not control the content of these channels? For the revised radio/TV cross-ownership rule, the Commission also decided not to count other media, such as other MVPDs and websites, because it concluded that they generally do not provide local news or were not widely available.[103] The Commission also decided not to count media such as billboards, direct mail, and yellow pages, because they are not meaningful sources of information on issues of local concern.[104] We seek comment on whether recent changes in the media marketplace, including DBS' potential for providing local news and information and the growing availability of local content on Internet websites, should impact these decisions.

45. We also note that, in revising the TV duopoly and radio/TV cross-ownership rules, the Commission decided to count only those TV stations that have service contours that overlap with the service contour of at least one of the stations in a proposed combination. The Commission did so because some TV stations in a DMA may serve very local communities, such that allowing them to combine based on circumstances elsewhere in the DMA disserved competition and diversity objectives.[105] If we decide to adopt a voice count standard for our newspaper/broadcast cross-ownership policies, should we similarly limit the circumstances in which a particular voice counts to ensure that the test adequately promotes our goals? If so, how could we accomplish this in the newspaper/broadcast context? For example, how could we ensure that the only local newspaper and the only local TV station that serve a community do not combine and threaten competition and diversity in the community?

46. "Market Concentration"/"Voice Count" Standard. Another option for modifying the newspaper/broadcast cross-ownership policies would be to combine the "market concentration" and "voice count" standards. Under this approach, a combination would be permitted so long as both parties do not have a certain market share (combined or individual), and so long as a minimum number of voices would remain in the market post-merger. This approach would be consistent with the recently revised TV duopoly rule, which permits common ownership of two TV stations within the same DMA if both are not ranked among the top four in the market, and at least eight independently owned TV stations would remain in the DMA post-merger.[106] As the Commission explained when it revised the TV duopoly rule, "the station rank

[101] *Id.*

[102] The Communications Act authorizes cable franchising authorities to require cable operators to provide channels for "public, educational, or governmental use" (PEG), 47 U.S.C. § 531, and "for commercial use by persons unaffiliated with the operator." 47 U.S.C. § 532. In either case, the cable operator is not permitted to exercise editorial control over the content provided on those channels, subject to several limited exceptions. 47 C.F.R. §§ 611(e), 612(c)(2).

[103] *Local TV Ownership Report & Order*, 14 FCC Rcd at 12954, ¶ 114.

[104] *Id.*

[105] Review of the Commission's Regulations Governing TV Broadcasting, *Memorandum Opinion and Second Order on Reconsideration*, 16 FCC Rcd 1067, 1072-1073, ¶¶ 16-19 (2001).

[106] 47 C.F.R. § 73.3555(b)(2).

and voice criteria are designed to protect both our competition and diversity concerns."[107] As the Commission further explained, the combined standard permits weaker market participants to combine with each other, or with a larger participant, and thereby preserves and strengthens their ability to compete.[108]

47. A particular formulation might blend the TV duopoly rule (which combines both a market concentration and voice count standard) with the radio/TV cross-ownership rule (which is a cross-media policy). For example, a combination of a smaller newspaper and a certain number of radio stations might be permitted so long as a minimum number of media voices would remain. We seek comment on such options, and on what level or market concentration, numerical limits, or media combinations would be appropriate.

48. Waiver Standards. As indicated, under current policy, the Commission presumes it is in the public interest to waive the newspaper/broadcast cross-ownership rule if: (1) a combination could not sell a station; (2) a combination could not sell a station except at an artificially depressed price; (3) separate ownership and operation of a newspaper and a station could not be supported in a locality; or (4) for whatever reason, the purposes of the rule would be disserved.[109] Should the Commission amend its waiver policies? What standards would best satisfy our competition and diversity goals?

49. We note that, in amending the TV duopoly and radio/TV cross-ownership rules, the Commission presumed it was in the public interest to waive the rules if at least one of the stations had failed. To prove that a station has failed, an applicant must show that: (1) the station has been dark for at least four months or is involved in involuntary insolvency proceedings and (2) the in-market buyer is the only entity willing and able to operate the station, and sale to an out-of-market buyer is impossible except at an artificially depressed price.[110] In addition, the Commission presumes that it is in the public interest to waive the TV duopoly rule if at least one of the stations is failing, or authorized but not yet constructed. To prove that a station is failing, an applicant must show that: (1) at least one of the merging stations has a low audience share; (2) the financial condition of at least one of the stations is poor; (3) the merger will produce public interest benefits that outweigh harm to competition and diversity; and (4) the in-market buyer is the only entity willing and able to operate the station, and sale to an out-of-market buyer is impossible except at an artificially depressed price.[111] To qualify for a waiver under the "unbuilt station" standard, the applicant must show that: (1) the combination will result in the construction of an authorized but as yet unconstructed station; (2) the permittee has made reasonable efforts to construct; and (3) the in-market buyer is the only entity willing and able to operate the station, and sale to an out-of-market buyer is impossible except at an artificially depressed price.[112] Should these standards be adapted to newspaper/broadcast cross-ownership policies, such that combinations would be permitted if one of the parties to the combination has failed, is failing, or if the combination would result in new service?

50. Retention Period. When the Commission adopted the newspaper/broadcast cross-ownership rule, the Commission had to grapple with the issue of how long a broadcast licensee could retain

[107] *Local TV Ownership Report & Order*, 14 FCC Rcd at 12933, ¶ 65.

[108] *Id.*

[109] *Second Report & Order*, 50 FCC 2d at 1085.

[110] 47 C.F.R. § 73.3555 note 7(1).

[111] *Id.* at note 7(2).

[112] *Id.* at note 7(3).

a daily newspaper it acquired in a community in which it already owned a broadcast station. It resolved this issue by stating:

> if a broadcast station licensee were to purchase one or more daily newspapers in the same market, it would be required to dispose of its stations there within 1 year or by the time of its next renewal date, whichever is longer. If the newspaper is purchased less than a year from the expiration of the license, the renewal application may be filed, but it will be deferred pending sale of the station, if necessary, until the year has expired.[113]

At the time this policy was adopted, the license period for broadcast stations was three years. Thus, a broadcaster obtaining a local daily newspaper was to be given until its next renewal, which was no more than three years away, or, at least one year, whichever period was longer, to divest itself of one of the media properties. Now, however, the license term for a broadcast station is eight years.[114] We seek comment on whether or not, if we decide to retain the newspaper/broadcast cross-ownership prohibition in some form, we should modify the retention policy that applies to acquisition of a newspaper by a broadcast licensee. We also seek comment on whether the Commission should require broadcast licensees to notify the Commission at the time they acquire a daily newspaper in a market in which they hold a television or radio station license. We also seek comment on whether, if we decide to shorten the length of time a licensee has to come into compliance after purchasing a newspaper, we should apply the current criteria to existing combinations.

51. Structural Separation. As stated above, we have modeled many of the above proposals after approaches the Commission has taken in amending other broadcast cross-ownership rules, such as the TV duopoly rule and the radio/TV cross-ownership rule. Should we, however, instead allow combinations subject to certain structural separation requirements? We note that the Canadian Radio-television Telecommunications Commission (CRTC) recently concluded to allow common ownership of newspapers and TV stations, but required the combinations to maintain separate management and presentation structures for the news operations of their newspapers and TV stations.[115] The CRTC noted that common ownership could create more efficient news operations,[116] but it also was concerned that common ownership "could potentially lead to the complete integration of the owner's television and newspaper news operations. This integration could eventually result in a reduction of the diversity of the information presented to the public and of the diversity of distinct editorial voices available in the markets served."[117] The CRTC thus required separation of news management functions, but not newsgathering activities.[118] Should we consider an approach similar to that of the CRTC? We note that, although the Commission traditionally has not promulgated structural separation requirements as part of its broadcast ownership

[113] *Second Report & Order*, 50 FCC 2d at 1076 n. 25.

[114] Section 203 of the Telecom Act, codified at 47 U.S.C § 307(c)(1).

[115] Canadian Radio-television Telecommunications Commission, Decision CRTC 2001-457 (Aug. 2, 2001), available at <www.crtc.gc.ca/archive/ENG/Decisions/2001/DB2001-457.htm> (visited Aug. 6, 2001) (*CRTC 457*); Canadian Radio-television Telecommunications Commission, Decision CRTC 2001-458 (Aug. 2, 2001), available at www.crtc.gc.ca/archive/ENG/Decisions/2001/DB2001.458.htm (visited Aug. 6, 2001) (*CRTC 458*).

[116] *CRTC 457* at ¶ 16; *CRTC 458* at ¶¶ 14, 117.

[117] *CRTC 457* at ¶ 95; *CRTC 458* at ¶ 107.

[118] *CRTC 457* at ¶ 113; *CRTC 458* at ¶ 122.

rules, it has in other contexts. For example, in order to approve the application of a Bell Operating Company (BOC) to provide in-region long-distance service, the Commission must find that the BOC will provide the service through a separate affiliate that satisfies a variety of statutory criteria.[119] Would structural separation requirements both allow broadcast stations and newspapers to realize the economic benefits of combined operations, but at the same time preserve the interest of the public in having access to distinct editorial viewpoints? Have grandfathered combinations been able to realize economic efficiencies from consolidating their broadcast and newspaper news operations, but still maintain editorial independence? What sort of protections and structural separation requirements would be necessary to ensure that editorial independence would not be compromised?

Elimination/Retention of the Rule

52. Some commenters in response to our *Biennial Review NOI* argued that the Commission should either completely eliminate or retain the newspaper/broadcast cross-ownership rule in its current form. Those who supported retaining the rule argued that many of the new media outlets do not add to viewpoint diversity on the local level, and that new programs by the same broadcasters do not add to viewpoint diversity.[120] They also pointed out that current policies already allow broadcast stations and newspapers to realize many economic efficiencies, because the current rule permits them to form joint ventures, and it permits broadcast stations to merge with newspapers when the broadcast station's service contour does not encompass the newspaper's city of publication.[121] Those who supported eliminating the rule argued that the multimedia markets are competitive and provide a wide variety of information sources.[122] They also contended that the efficiencies of combinations are not driven by consolidation of content or editorial decisions, and have enabled grandfathered combinations to air more extensive news and public affairs programming and to develop new media ventures.[123] If the rule were eliminated, newspaper/broadcast combinations would be permitted, subject only to the antitrust laws and Commission review of an application for grant, renewal, or transfer of a particular broadcast license. We seek comment on the appropriateness of either retaining or eliminating entirely our newspaper/broadcast cross-ownership rule. In particular, we seek comment on whether prophylactic, structural regulation remains necessary to maintain sufficiently competitive local advertising markets, as well as sufficiently diverse sources of local information. Are the antitrust laws sufficient to protect our competition goals? Is the rule necessary in its current form to protect our diversity goals?

53. Is there some rationale for eliminating the rule as it applies to certain combinations? For example, should we eliminate the rule for newspaper/radio combinations, but retain the rule in some form for newspaper/TV combinations? Are there different efficiencies from newspaper/radio combinations as compared to newspaper/TV combinations? Would the efficiencies of combinations allow radio stations to provide additional news programming? Would limiting deregulation to newspaper/radio combinations best serve our diversity goals, since Americans have reported that they rely more on TV stations and newspapers than radio stations for local news? In addition to the options presented above, we encourage commenters to propose additional options not suggested here.

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[119] 47 U.S.C. §§ 271(d)(3)(B), 272.

[120] *Biennial Review Report*, 15 FCC Rcd at 11104, ¶ 87.

[121] *Id.* at 11104-11105, ¶ 87.

[122] *Id.* at 11103, ¶ 86.

[123] *Id.* at 11104, ¶ 86.

CONCLUSION

54. The Commission adopted its newspaper/broadcast cross-ownership rule twenty-five years ago, when the local media marketplace was significantly different than it is today. Through this proceeding, we seek to examine our cross-ownership policies in the context of the current realities of today's local media marketplace, in order to ensure that our rules serve the public interest as effectively as possible.

ADMINISTRATIVE MATTERS

55. Comments and Reply Comments. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before December 3, 2001, and reply comments on or before January 7, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

56. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Post Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW, TW-A325, Washington, DC 20554. Parties who choose to file by paper should also submit comments on diskette. These diskettes should be addressed to: Wanda Hardy, 445 Twelfth Street SW, 2-C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, docket number of the proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy – Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, CY-B402, Washington, DC 20554.

58. The full text of this document, and comments and reply comments filed in this proceeding, are available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 Twelfth Street SW, Room CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, TTY (202) 418-2555, or bcline@fcc.gov. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat. The full text of this document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW, Room CY-B-402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via email qualexint@aol.com.

59. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418-7426, TTY (202) 418-7365, or bmillin@fcc.gov.

60. *Ex Parte* Rules. This is a permit-but-disclose notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

61. Initial Regulatory Flexibility Analysis. With respect to this *Notice*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *Notice*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the broadcasting and newspaper industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Notice*, but they must have a distinct heading designating them as responses to the IRFA.

62. Initial Paperwork Reduction Act Analysis. This *Notice* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the public to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarify of the information collected; (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on information collections contained in this *Notice* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street SW, 1-C804, Washington, DC 20554, or over the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street NW, Washington, DC 20503, or over the Internet to edward.springer@omb.eop.gov.

63. Additional Information. For additional information, contact Eric J. Bash, Mass Media Bureau, Policy and Rules Division, (202) 418-2130 or ebash@fcc.gov.

ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *Notice of Proposed Rulemaking* is ADOPTED.

65. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

66. IT IS FURTHER ORDERED that MM Docket No. 96-197 (Newspaper/Radio Cross-Ownership Waiver Policy) is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities the policies and rules proposed in this *Notice of Proposed Rulemaking* (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above in paragraph 55. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. § 603(a). In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

A. Need for, and Objectives of, the Proposed Rules

The goal of this proceeding is to consider possible revisions to the newspaper/broadcast cross-ownership rule, which prohibits common ownership of broadcast stations and newspapers within the same geographic area. The Commission adopted the rule in 1975 to preserve a diversity of information sources for the public. At that time, there were fewer local media outlets than there are today. The rule in its current form therefore may no longer be necessary to achieve its intended public interest benefits in certain circumstances. The Commission thus committed last year to initiate this proceeding

B. Legal Basis

Authority for the actions proposed in the *Notice* may be found in sections 1, 2(a), 4(i), 303, 307, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309 and 310, and section 202(h) of the Telecommunications Act of 1996.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[2] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[4]

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[1] *See* 5 U.S.C. § 603(3). The RFA, *see* 5 U.S.C. § 601 *et. seq.* has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. § 603(b)(3).

[3] *Id.* at § 601(6).

[4] *Small Business Act*, 15 U.S.C. § 632.

The newspaper/broadcast cross-ownership rule applies to daily newspapers and broadcast stations. As set forth in the *Notice*, as of the year 2000, there were 1,422 daily newspapers published.[5] The SBA defines a newspaper publisher with less than 500 employees as a small business.[6] According to the 1992 Economic Census, only 138 newspaper publishers had less than 500 or more employees. The data does not distinguish between newspaper publishers that publish daily and those that publish less frequently, and the latter are more likely to be small businesses than the former because of the greater expense to publish daily. Thus, since the newspaper/broadcast cross-ownership rule applies only to daily newspapers, it is likely that less than 138 small newspaper publishers would be affected by the rule.

As set forth in the *Notice*, as of June 30, 2001, the Commission had licensed 1,678 full-power TV stations, 2,396 low power TV stations, and 232 Class A TV stations.[7] The SBA defines television broadcasting establishments that have $10.5 million or less in annual receipts as a small business.[8] According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database on March 14, 2001, fewer than 800 commercial television broadcast stations have revenues of $10.5 million or less. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the newspaper/broadcast cross-ownership rule, because the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies.

As set forth in the *Notice*, as of June 30, 2001, the Commission had licensed 12,392 radio stations.[9] The SBA defines a radio station that has $5 million or less in annual receipts as a small business.[10] According to Commission staff review of BIA Publications Inc. Master Access Radio Analyzer Database on March 14, 2001, about 10,400 commercial radio stations have revenue of $5 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the newspaper/broadcast cross-ownership rule.

D. Description of Projected Recording, Recordkeeping, and Other Compliance Requirements

We anticipate that none of the proposals presented in the *Notice* will result in an increase to the reporting and recordkeeping requirements of broadcast stations or newspapers.

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[5] *See Notice* at ¶ 10.

[6] NAIC Code 511110.

[7] *See Notice* at ¶ 9.

[8] NAIC Code 513120.

[9] *See Notice* at ¶ 9.

[10] NAIC Code 513112.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[11]

This *Notice* invites comment on a number of alternatives to modify or eliminate the newspaper/broadcast cross-ownership rule. The Commission will also consider additional significant alternatives developed in the record.

With respect to modification of the rule, the *Notice* proposes five specific options. First, the Commission might redefine the geographic area in which the rule operates to allow broadcast stations and newspapers to combine if they are in different markets, without regard to whether the station's service contour encompasses the newspaper's city of publications (the current standard). This option might permit more entities, including small newspapers and stations, to combine. In the second option, the "market concentration" standard, the Commission would allow newspapers and stations to combine, provided their combined market share would not exceed a defined limit. Under the third option, the "voice count" standard, the Commission would permit combinations so long as a certain number of independently owned media "voices" would remain in the market. The fourth option would combine the "market concentration" and the "voice count" standards. In each of these several options, the Commission would limit the number and type of combinations in any market to ensure that no market participant attains unconstrained or unrivaled market power or otherwise controls the information sources available. These options would thus permit some smaller businesses to combine to realize economic efficiencies and strengthen their ability to compete, but at the same time ensure that the markets in which they operate do not become too concentrated. Under the fifth option, the Commission would permit newspapers and stations to combine, subject to a structural separations approach. This would permit newspapers and stations to combine and realize economic efficiencies but preserve editorial diversity.

In addition to, or as an alternative to, modifying the current rule, the circumstances under which the newspaper/broadcast cross-ownership rule should be waived could be enhanced. In particular, the *Notice* seeks comment on whether a waiver should be granted if one of the parties to the combination has failed, is failing, or if a new service would result. This would benefit small entities that wish to combine with another in order to save their business, compete more efficiently, or better realize economic efficiencies through economies of scale.

As an alternative to modifying the current rule and/or adding to the list of circumstances under which the rule should be waived, the rule could be eliminated entirely. The *Notice* seeks comment on this alternative. Under this alternative, entities, including small entities, would be subject only to the antitrust laws and the Commission's general public interest review when granting, renewing or transferring a license.

[11] 5 U.S.C. § 603(c).

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

The rules under consideration in this proceeding do not overlap, duplicate, or conflict with any other rules.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS ON NEWSPAPER/BROADCAST NPRM

The role of the news media in providing Americans with critical information is of the utmost importance to our society. Therefore, I welcome the Commission's intention to take a thorough look at the issue of the cross-ownership of newspapers and broadcast stations in local communities.

Broadcast stations and newspapers make up the center of the local marketplace of ideas, a function critical to a democratic society. As competing purveyors of ideas, they have the potential to present diverse viewpoints on issues important to their communities. As the *Red Lion* Court stated "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market."[1] In commencing our examination of the Newspaper/Broadcast cross ownership rules today, we must keep in mind the importance to the public interest of preserving diversity in the local marketplace of ideas.

In commencing this proceeding today, we solicit information from all stakeholders. Whether supporting the retention of the Newspaper/Broadcast cross-ownership prohibition or the relaxation or elimination of these rules, it is important that interested parties provide data to the Commission that will help us make an informed decision about the future of these rules. As the Commission considers the effect of our rules on industry, we cannot be left with a paucity of hard information about these industries. I have discussed with Chairman Powell the importance of collecting and compiling databases of information about the communications industries implicated by our rules. I think the Chairman, my colleagues and I all want the best possible data and analysis to base our judgments on. Having better information doesn't mean we will all agree on every issue at the end of the day; but it does mean that we will have to base our judgments on a corpus of facts reflecting the actual operation of the marketplace rather than on our various theoretical impressions.

I hope no stakeholders will say, "Let somebody else respond to this notice, I'm too busy with other things." Everyone is going to be living with the consequences of this rule-making exercise, probably for a long time, and I've always believed in the old adage that "decisions made without you are decisions against you."

I look forward to reviewing the information compiled in response to this NPRM. As always, I will review the record thoroughly, without prejudgment. If I am to support any changes to these rules – or any other rule – I expect to know with as much precision as possible how those proposed changes serve the public interest, convenience and necessity.

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[1] *Red Lion Broadcasting Company* v. *Federal Communications Commission*, 395 U.S. 367, 390, 89 S.Ct. 1794, 1806 (1969).