BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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

**COMMENTS OF**
**WEST VIRGINIA MEDIA HOLDINGS, LLC**


Michael Hammer
Michael G. Jones
Stephanie L. Podey
**WILLKIE FARR & GALLAGHER**
Three Lafayette Centre
1155 21st Street, NW
Suite 600
Washington, D.C. 20036
(202) 328-8000


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**COMMENTS OF**
**WEST VIRGINIA MEDIA HOLDINGS, LLC**

West Virginia Media Holdings, LLC ("West Virginia Media") hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

## I. INTRODUCTION AND SUMMARY

West Virginia Media, created in 2001, is an entity managed and primarily funded by West Virginians. Its purpose is to acquire and operate West Virginia media properties with the goal of significantly improving the quality and quantity of news and public affairs coverage focused on the local interests and issues important to West Virginians. West Virginia Media plans to accomplish this result by combining the economic base supporting these media operations and thereby generating economies of scale and synergies in both advertising sales and news, public affairs, and other content production.

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1 Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235, *Order and Notice of Proposed Rulemaking*, FCC 01-262 (rel. Sept. 20, 2001) ("Notice").

The importance of this undertaking to West Virginians cannot be overstated. The existing media operations in West Virginia perform their critical function as well as they can—given the resources presently available to them. Most are hampered by lack of sufficient scale; some also suffer from the fact that they are owned by out-of-state corporations that for whatever reason have not made the investment in their West Virginia properties necessary to create local news, public affairs, and entertainment content. West Virginia Media is convinced that, given sufficient scale, West Virginia markets can justify such investments and support viable, profitable, and competitive media that provide the high-quality local content West Virginia citizens deserve. To this end, West Virginia Media has begun to acquire media properties in the state. For example, West Virginia Media sought and obtained Commission approval to acquire WBOY-TV in Clarksburg, West Virginia.[2]

West Virginia Media believes the record of this proceeding will demonstrate that the newspaper/broadcast cross-ownership rule has outlived its usefulness and now stands as an unnecessary impediment to efficiency-enhancing media combinations. This is true for all markets across the United States. However, it is especially critical that the Commission eliminate the newspaper/broadcast cross-ownership rule in smaller markets because these are the very markets where the efficiencies to be gained from cross-ownership are needed most to promote the production of local news and information. West Virginia Media describes below a representative West Virginia market where news and information is generated predominantly from national services, such as Associated Press, and out-of-state media, such as Pittsburgh broadcast stations imported by cable. In this market, as is typical of other smaller markets, the

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[2] *See* Public Notice, Broadcast Actions, Report No. 45104, File No. BALCT-20010904ABE (Nov. 2, 2001).

coverage of local news and information lacks significant depth and breadth. West Virginia Media further describes the efficiencies that can be achieved through cross-ownership of a television station and a newspaper in these markets and how those efficiencies would allow a combined entity to focus greater attention on the coverage of local news and information. West Virginia Media also demonstrates that elimination of the newspaper/broadcast cross-ownership prohibition will not threaten either competition or diversity because even in small markets there are a sufficient number of media voices—and that number is growing steadily—to ensure that there will not be domination by a small number of voices.

In short, because elimination of the cross-ownership rule will allow combinations that promote greater coverage of local news and information where it is needed most in small markets, and because there is little chance that such combinations will harm competition or diversity, the Commission should eliminate the rule in all markets, not just larger markets.

## II. THE COMMISSION SHOULD ELIMINATE THE CROSS-OWNERSHIP RULE IN SMALLER MARKETS BECAUSE IT WOULD ALLOW EFFICIENCY-ENHANCING COMBINATIONS AND THEREBY PROMOTE GREATER COVERAGE OF LOCAL NEWS AND PUBLIC AFFAIRS.

Elimination of the newspaper/broadcast cross-ownership rule would allow common owners of such media to realize efficiencies and synergies that would provide the necessary resources to increase investment in the production of local news and public affairs programming. While these efficiencies and synergies are important in all markets, they are particularly significant in smaller markets where lack of resources often forestalls significant coverage of important local issues.

### A. Elimination Of The Cross-Ownership Rule Would Create Efficiencies And Synergies That Are Particularly Necessary In Smaller Markets To Support Increased Coverage Of Local News And Information.

The fact that joint newspaper and television ownership can result in substantial efficiencies is certainly not a new concept. In the Notice, the Commission acknowledged that a newspaper/broadcast combination in a local market allows the owner to lower expenses by, among other things, combining sales operations and staff.[3] The Commission pointed out that these savings could result in several important benefits, including improved coverage of news and public affairs and lower advertising rates.[4] The Commission has acknowledged the benefits of joint ownership efficiencies in other contexts as well.[5] Indeed, it recently relaxed several joint ownership restrictions because it recognized that the public interest benefits of joint ownership are substantial.[6]

Numerous economists have documented the efficiencies of joint ownership of local newspapers and broadcast stations and have explained how these efficiencies translate into

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3 *See* Notice ¶ 25.

4 *Id.*

5 *See, e.g.*, Review of the Commission's Regulations Governing Television Broadcasting, *Report and Order*, 14 FCC Rcd 12903, ¶ 36 (1999) ("Local TV Ownership Report and Order") (stating "the cost savings of joint station ownership may contribute to programming benefits, including more news, public affairs, and other non-entertainment programming as well as enhanced entertainment programming choices for viewers and listeners").

6 *See, e.g.*, Amendment of Section 73.658(g) of the Commission's Rules - The Dual Network Rule, *Report and Order*, 16 FCC Rcd 11114, ¶ 43 (2001) (concluding that "aggregation of the possible efficiencies of both vertical and horizontal integration that provide the resources for viewer and advertiser benefits support our decision to abolish today that part of the dual network rule that prohibits the merger of one or more emerging networks with a major television network").

tangible consumer benefits. Economists have concluded, for example, that newspaper/broadcast cross-ownership can result in economies of scale in news gathering, advertising sales, financing, and management, resulting in lower average and marginal costs.[7]

Economists have also noted that joint newspaper/broadcast ownership provides synergies which facilitate greater coverage of local news and information.[8] This occurs for two reasons. First, joint ownership creates opportunities to reuse news and information products or to "repurpose" them in derivative forms.[9] For example, an in-depth news story produced by a newspaper reporter can efficiently be developed into a series of "investigative reports" aired by a commonly-owned broadcast station. Similarly, a newspaper/broadcast combination can realize "complementary" efficiencies, such as when a television story is complemented with further details in a newspaper story, or on a news website.[10] In such cases, each product is more

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7 *See* James Ferguson, "Daily Newspaper Advertising Rates, Local Media Cross-Ownership, Newspaper Chains, and Media Competition," 26 J. L. & Econ. 635, 636, 639 (1983) (finding that "ownership of a television station by a daily newspaper in the same market significantly decreases daily newspaper milinch advertising rates (rates per column inch per thousand circulation) and significantly increases daily newspaper circulation").

8 *See generally* Stanley M. Besen and Daniel P. O'Brien, "An Economic Analysis of the Efficiency Benefits from Newspaper/Broadcast Station Cross-Ownership" (July 21, 1998), App. B to Comments of Gannett, MM Dkt. No. 98-35, filed July 21, 1998 ("Besen and O'Brien").

9 *See* Besen and O'Brien at 2-3; *see also* Bruce M. Owen and Steven S. Wildman, Video Economics 173-74 (1992) (stating that "in a competitive environment, the substantial fixed cost of newsgathering operations cannot be sustained without multiple broadcast or other vehicles to make the news available to a large audience and to generate sufficient advertising revenue").

10 *See* Besen and O'Brien at 4-5. With the advent of the Internet, economists have reported an increased value in the efficiencies and synergies of local media cross-ownership. *See id.* at 1, 5-8 (explaining that joint ownership efficiency potential has always existed, but

valuable and the incentive to produce them rises accordingly. Second, the cost savings improve the overall financial health of both the newspaper and the broadcast station. Therefore, the combined entity has greater ability to invest more heavily in its overall news operation. This increases not only the amount of coverage of local issues of importance, but the quality as well.[11]

Indeed, this conclusion is supported by a Commission staff study of "grandfathered" newspaper/broadcast combinations conducted when the Commission first considered the cross-ownership restriction. In that study, the staff study found that "on the average, co-located newspaper-owned TV stations programmed 6% more local news, 9% more local non-entertainment, and 12% more total local [programming] including entertainment than do other TV stations."[12]

These efficiencies are particularly important for consumers in small markets. The resources available to media entities in large markets are such that even niche issues are frequently covered. Efficiencies can provide important benefits in such markets, but largely at the margin.[13] On the other hand, in smaller markets there is often a lack of adequate coverage of

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new media outlets are presenting additional benefits to joint ownership because characteristics of both print and broadcast news are developing in a single medium).

11 *See* Revision of Radio Rules and Policies, *Memorandum Opinion and Order and Further Notice of Proposed* Rulemaking, 7 FCC Rcd 6387, ¶ 9 (1992) (finding that "relaxation of national caps may actually enhance the quality of viewpoint diversity, as economies of scale from group ownership provide additional resources to invest in programming").

12 Amendment of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, *Second Report and Order*, 50 FCC 2d 1046, 1094, App. C, *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom.* FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775 (1978) ("Second Report and Order").

13 This does not mean that elimination of the cross-ownership rule is not justified in larger markets. West Virginia Media supports elimination of the rule in all markets, not only

local news and information because the economics of the market do not allow existing media to generate the resources necessary to devote to such coverage.[14] Thus, to the extent that a combined newspaper/broadcast operation in a smaller market can capture efficiencies and, therefore, devote greater resources to the coverage of important local issues, the impact on that market will be disproportionately large.[15]

An economic study conducted by Bond and Pecaro illustrates the important effect of efficiencies in smaller markets.[16] The analysis concludes that "[a]lthough the efficiencies of a television/newspaper consolidation are significantly less than those estimated in larger markets, they are much more significant in relative terms, given the small revenue base and lower levels of profitability which characterize these properties."[17] The study found that relaxing the cross-ownership rules would increase large market operating cash flow by 10.3%, medium market operating cash flow by 12.6%, and small market operating cash flow by 16.5%.[18] Bond and

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because it would increase efficiencies, but because elimination would not cause any harm and, therefore, the rule is an unnecessary anachronism.

14 *See* James D. Squires, Read All About It! 216 (1993) (stating that expanding local news coverage is the "most costly and labor intensive of content improvements").

15 Audience research often shows that "what would attract the most readers or viewers is expanded news coverage, particularly of local areas." *Id.*

16 Bond & Pecaro, Inc., "A Study to Determine Certain Economic Implications of Broadcasting/Newspaper Cross-Ownership," at 1 (July 21, 1998), Attachment to Comments of the National Association of Broadcasters, MM Dkt. No. 98-35, filed July 21, 1998 (the objective of the study was to measure economic advantages of new newspaper and broadcasting combinations in different market areas).

17 *Id.* at 25.

18 *Id.* at 22, 24, 26. Large markets are those ranked 20 and above by Nielsen, medium markets are those ranked 21-100, and small markets are ranked 101 and above. *Id.* at 1.

Pecaro conclude that "these data indicate that relaxation of the restrictions upon newspaper/television cross-ownership could have a significant impact on the efficiency of operations in smaller markets, especially for marginally performing newspapers and television stations."[19]

### B. News Operations In West Virginia Markets Would Benefit Tremendously From Elimination Of The Cross-Ownership Rule.

Clarksburg, West Virginia, the 165th largest U.S. market, exemplifies a smaller market that would benefit from the efficiencies made possible by elimination of the newspaper/broadcast cross-ownership rule.[20] Clarksburg is in a region formerly dependent on coal mining and manufacturing, that is now becoming economically diversified with the entrance of some high-technology businesses. Higher education has a strong presence in the region. Colleges and universities include West Virginia University, two public colleges, and four private institutions. The market is highly rural and has only three population centers exceeding 15,000 people: Clarksburg, Fairmont, and Morgantown.

The Clarksburg television market is served by four daily newspapers. However, these newspapers devote a relatively low level of resources to news and public affairs, particularly <u>local</u> news and public affairs. An analysis of the content of these daily newspapers conducted by West Virginia Media found that the Clarksburg newspapers on-average devote over 60% of their total available space to non-advertising content. However, an extremely small percentage of this

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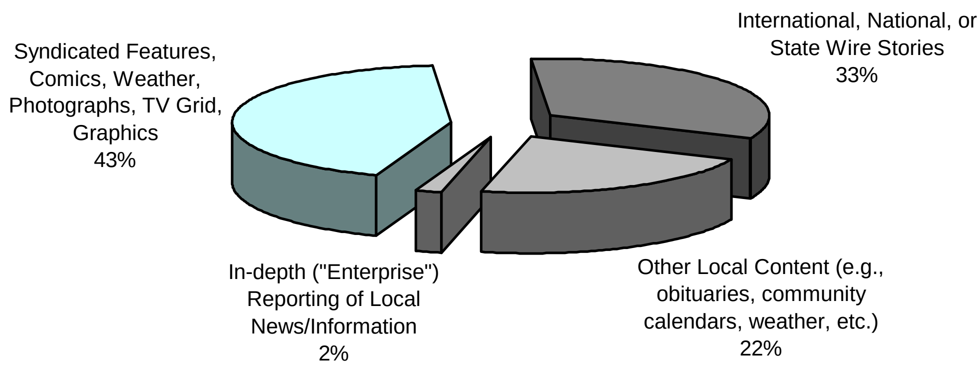
The study states that "[o]perating cash flow is the most prevalent measure of operating efficiency in the communications and media industries." *Id.* at 3.

19 *Id.* at 26.

20 Nielsen Media Research national rankings. For ease of reference, we refer to the Clarksburg-Weston market herein as the Clarksburg market.

space is devoted to in-depth coverage of issues of local importance, so-called “enterprise reporting.” Among the four daily newspapers, enterprise reporting ranged from 0.7% to 2.1% of non-advertising content, with an average of 1.6%. By contrast, a large amount of the non-advertising space is devoted to national wire service stories, national syndicated columns, photographs, and comics. To the extent local issues are addressed, the coverage primarily involves club and organization news, obituaries, school menus, weather maps, TV listings, community and arts calendars, photos, and the like. In short, the in-depth coverage of local community issues affecting the economy, education, health and safety, and other important topics is virtually non-existent.

**Approximate Allocation of Non-Advertising Space**
in the Clarksburg-Weston Market
Daily Newspapers




This is not surprising, because the Clarksburg newspapers are not unlike many small daily newspapers which lack the resources necessary to develop and sustain strong local news coverage. Pay for reporters, the backbone of daily newsgathering personnel, typically is low. In fact, yearly salaries for reporters of $16,640 to $20,800 per year are common. Editors are often resigned to hiring young reporters who aspire to careers with larger media organizations. Often, the more talented personnel eventually leave for larger market newspapers with higher salaries and superior resources. Each of the four daily newspapers in the market appears to make use of part-time writers to supplement its reporting capacity. In addition, small market newspaper news departments often do not regard staff training as a high priority, because they cannot spare the limited resources available to them. As a result, newsroom morale and performance levels tend to be low in small markets.

None of the four Clarksburg newspapers has a bureau in Charleston, the state capital, or Washington, D.C. Because government leaders in each capital routinely act on substantive issues that have important local consequences, Clarksburg residents are likely missing out on valuable information. The Clarksburg newspapers use wire service coverage of issues from Washington and Charleston, but the coverage is generic and not geared to the local Clarksburg audience.

Clarksburg TV stations are similarly resource-constrained. For example, the salaries for on-air talent and news reporters are substantially below what is available even in moderate-sized markets. In Clarksburg, West Virginia, one TV station news director has a yearly salary of below $40,000 and the station's news anchors earn between $15,000 and $28,000 per year.[21] By way of comparison, in the top 51 markets, the median salary for news directors is $75,000, and

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[21] These salaries are consistent with the annual Radio-Television News Directors Association & Foundation/Ball State University Survey of news personnel salaries. The survey found the median salary for a TV news director in a 150+ market is $43,500 and the median TV news anchor salary is $25,000. RTNDA, 2001 Radio and Television Salary Survey, *at* <http://www.rtnda.org/research/salaries.shtml> (visited Nov. 26, 2001).

the median salary for news anchors is $55,000.[22] In the top 25 markets, the median salary is $150,000 for news directors and $173,000 for news anchors.[23] As a result, news personnel in Clarksburg tend to be very young and generally leave the market early in their career for promotions and better pay in larger markets. While they are in Clarksburg, they lack the experience to undertake meaningful in-depth coverage of news and public affairs. Moreover, because news personnel tend not to stay long in Clarksburg, they never really gain a sophisticated understanding of the market so that they can provide insightful coverage of important local issues.

Also, like the Clarksburg newspapers, the TV stations do not have the financial resources to establish news bureaus in the state capital or Washington, D.C. Thus, they are limited to reading generic wire service stories of events that occur in these locations or omitting coverage entirely, notwithstanding that these events often have significant and unique local impact. For example, currently the West Virginia legislature is in its third special session involving medical malpractice issues and the Clarksburg media, both newspapers and TV stations, are providing very little coverage, and certainly no live, in-depth coverage, of this important controversy.

Finally, as is typical of smaller markets, Clarksburg TV stations often lack the resources to provide the state-of-the-art equipment of their rivals in medium and large markets. For example, WBOY-TV in Clarksburg does not have a satellite truck that will allow remote coverage of local events.[24] Consequently, during the terrorist attack of September 11, it was

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22 *Id.*

23 *Id.*

24 In West Virginia, this is particularly important because the mountainous terrain often precludes the use of microwave transmissions as a substitute for satellite transmissions.

unable to provide live coverage of the plane crash in Pennsylvania, notwithstanding that it occurred approximately 125 miles from Clarksburg.

West Virginia Media believes that the efficiencies resulting from the combination of broadcast stations and newspapers would create the financial wherewithal to increase salaries and thereby attract and retain more experienced news personnel, create bureaus in the state capital and Washington, D.C., purchase more advanced equipment, enhance web-based news operations, and expand significantly the depth and breadth of local news coverage. As noted, the economics of larger markets already justify this type of sophisticated, high-quality news operation. It is critical that the Commission eliminate the newspaper/broadcast cross-ownership prohibition in smaller markets, like Clarksburg, so that consumers in these markets can similarly benefit from vigorous coverage of local issues of public importance.

### C. Elimination Of The Newspaper-Broadcast Cross-Ownership Rule Will Not Harm Diversity In Smaller Markets.

The newspaper/broadcast cross-ownership rule was adopted to promote a diversity of viewpoints in support of core First Amendment values.[25] The rule seeks to achieve this goal indirectly by regulating the structure of local media markets on the premise that increasing the number of independent owners will increase the number of diverse viewpoints.[26] However, as the Commission recognized in the Notice, there is increasing reason to doubt the validity of this rationale.[27]

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[25] *See* Notice ¶ 16.

[26] *See id.*

[27] *See id.* ¶ 17. More generally, then-Commissioner Powell has explained that "diversity is very hard to define, and is at some level a visceral concept." Local TV Ownership Report and Order, at 12987 (separate statement of Commissioner Michael K. Powell).

Critics have questioned "the vagueness of [the] diversity standard,"[28] and observed that "we cannot say with assurance that the diversity of programs offered will constantly increase with the number of firms in the market."[29] In other words, the use of a structural ownership rule to create a granular local media ownership structure may not in fact result in greater diversity.

Moreover, as the Clarksburg market demonstrates, one cannot conclude that efforts to maximize the raw number of independent "voices" by imposing cross-ownership rules necessarily will ensure "robust discussion of issues of public concern"—the ultimate goal of the newspaper/broadcast prohibition.[30] In fact, such rules can so atomize media ownership that, given the economics of small media markets, it can actually reduce the media's ability to create local news and public affairs information of any significant depth or breadth. A large number of independent voices that lack the resources to create and publish news and public affairs information of importance to the community can hardly be said to further the public discourse so central to the First Amendment values the Commission desires to protect. Rather, removing the newspaper/broadcast cross-ownership ban, and thereby allowing local media entities to create modest combinations to realize the efficiencies and synergies described above, is much more likely to promote robust public discourse. Such combinations will provide the resources

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28 Lili Levi, "Reflections on the FCC's Recent Approach to Structural Regulation on the Electronic Mass Media," 52 Fed. Comm. L.J. 581, 603-04 (2000).

29 Thomas G. Krattenmaker and Lucas A. Powe, Regulating Broadcast Programming 43 (1994); *see also* Schurz Comm. Inc. v. FCC, 982 F.2d 1043, 1054-55 (7th Cir. 1992) (stating that "[i]t has long been understood that monopoly in broadcasting could actually promote rather than retard programming diversity").

30 Notice ¶ 17.

necessary for the creation of locally-focused news and public affairs reporting where little or no such reporting exists today.

However, even if the Commission were to adopt a narrow view of diversity based on a simple count of "voices," it does not follow that diversity would be diminished in smaller markets by elimination of the newspaper/broadcast cross-ownership rule. As the Commission has acknowledged, since the adoption of the newspaper/broadcast cross-ownership rule more than 25 years ago, there has been a "proliferation" of new media outlets.[31] Cable television has grown dramatically.[32] At the inception of the rule, direct broadcast satellite was not even launched, and the Internet was a total unknown.[33] There were only three national broadcast networks in 1975, and there are seven today.[34] The number of local broadcast stations and radio stations has also risen significantly.[35] In short, the media landscape today is much more vibrant than it was in 1975 when the cross-ownership rule was adopted, and far less likely to be negatively impacted by newspaper/broadcast combinations.

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31 *See id.* ¶ 11.

32 *See id.* (reporting that in 1974 cable served only 13% of TV households, and in June 2000, cable served 67.4% of TV households, or 67.7 million people).

33 *See id.* ¶¶ 11-12. The FCC reports that DBS has grown "rapidly" and now serves over 15% of MVPD households, or almost 13 million subscribers. *Id.* ¶ 11. The FCC also states that 56% of Americans had Internet access at home as of November 2000. *See id.* ¶ 12.

34 *See id.* ¶ 9.

35 *See id.*

The changes in the media have impacted small markets as well as their larger counterparts. Consider, for example, the Clarksburg, West Virginia market:

- There are four local daily newspapers serving the market with a total weekday circulation of 63,830 and a total Sunday circulation of 56,679. Fifteen local weekly newspapers serve the region with a combined circulation of 57,137. Several counties are served by more than one weekly newspaper. In addition, a number of regional and national newspapers are commonly available in Clarksburg, including the Pittsburgh Post-Gazette, the Wall Street Journal, the New York Times, and USA Today.
- There are three local commercial television stations serving the market—WBOY (NBC-Clarksburg), WDTV (CBS-Weston), and WVFX (Fox-Clarksburg). In addition, there are several large-market (Pittsburgh) commercial television stations with a presence in the market. These include CBS, ABC, FOX and NBC affiliates.[36]
- There are two public television stations in the market, West Virginia public broadcasting (WNPB), and Pittsburgh public broadcasting (WQED).
- Forty-two AM and FM radio stations serve the market, offering a diverse array of formats.

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36 Pittsburgh stations present in the relevant local market include: KDKA (CBS-Pittsburgh); WTAE (ABC-Pittsburgh); WPXI (NBC-Pittsburgh ); WPGH (FOX-Pittsburgh); and WCWB (WB-Pittsburgh). These stations are available on most local cable systems.

- There are several cable systems in the market, including Fairclark Cable TV, Inc. (Time Warner), Alliance Communications Partners, and Adelphia Communications. The cable operators provide programming from several sources including the local broadcast television stations, many of the Pittsburgh broadcast stations, and a wide array of cable program services such as CNN, Fox News, MSNBC, C-SPAN, the Weather Channel, A&E, BET, The Food Network, AMC, MTV, ESPN, and Lifetime. Typically, cable channel line-ups in the area carry at least 70 channels.
- Both EchoStar and DirecTV are available nationally, and these DBS providers are especially important in Clarksburg and other rural markets. In fact, it is reported that since DBS was introduced in 1996, "service penetration in rural territories has grown to approximately 24%, with roughly 7.2 million of the 16 million current DBS subscribers residing in rural America."[37]

As this description demonstrates, Clarksburg is served by a variety of media voices. Other rural markets are similarly situated. Diversity in these markets will not suffer if the newspaper/broadcast cross-ownership rule is eliminated. To the contrary, as shown above, elimination of the rule will create the financial underpinning necessary to enhance diversity, particularly in the critical area of in-depth coverage of local news and public affairs.

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[37] Credit Suisse First Boston, Ty P. Carmichael, Jr. & Alison Birch, "Natural Selection, DBS Should Thrive As the Fittest to Serve Rural America," 32 (Oct. 12, 2001).

## III. CONCLUSION

For the reasons set forth above, West Virginia Media urges the Commission to eliminate the daily newspaper/broadcast cross-ownership prohibition. The rule unnecessarily prohibits combinations that will allow an owner to realize efficiencies and to apply these efficiencies to the enhancement of local news and public affairs information available in the community. These efficiencies are critical in smaller markets where coverage of local news and public affairs is often lacking. Elimination of the rule is particularly justified because the proliferation of media in the last two decades ensures that the rule is no longer needed to protect diversity or competition in small or large markets.

Respectfully submitted,

**WEST VIRGINIA MEDIA HOLDINGS, LLC**

______________________________

Michael Hammer
Michael G. Jones
Stephanie L. Podey
**WILLKIE FARR & GALLAGHER**
Three Lafayette Centre
1155 21st Street, NW
Suite 600
Washington, D.C. 20036
(202) 328-8000

Its Attorneys

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