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

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

COMMENTS OF TRIBUNE COMPANY

Crane H. Kenney
Michael R. Lufrano
Charles J. Sennet
Tribune Company
435 N. Michigan Avenue
Chicago, Illinois
(312) 222-9100

R. Clark Wadlow
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, DC 20005
(202) 736-8215
Its Attorney

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Tribune Company ("Tribune"), the corporate parent of 23 major market television stations, four radio stations and eleven daily newspapers, hereby files the following Comments in response to the Notice of Proposed Rule Making ("Notice") issued by the Federal Communications Commission ("FCC" or "Commission") reviewing, inter alia, the daily newspaper-broadcast common ownership rule (the "Rule" or the "newspaper cross-ownership rule"), codified at 47 C.F.R. § 73.3555(d)(2000).[1]

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[1] Tribune, through subsidiaries, owns and operates the following television stations: WPIX, Channel 11, New York; KTLA, Channel 5, Los Angeles; WGN-TV, Channel 9, Chicago; WPHL-TV, Channel 17, Philadelphia; WLVI-TV, Channel 56, Cambridge, Massachusetts; KDAF, Channel 33, Dallas; WBDC-TV, Channel 50, Washington, D.C.; KSWB-TV, Channel 69, San Diego; WATL, Channel 36, Atlanta; KHWB, Channel 39, Houston; KCPQ, Channel 13, Tacoma, Washington; KTWB-TV, Channel 22, Seattle; WBZL, Channel 39, Miami; KWGN-TV, Channel 2, Denver; KTXL, Channel 40, Sacramento, California; WXIN, Channel 59, Indianapolis; WTIC-TV, Channel 61, Hartford, Connecticut; WTXX Channel 20, Waterbury, Connecticut; WXMI, Channel 17, Grand Rapids, Michigan; WGNO, Channel 26, New Orleans; WNOL-TV, Channel 38, New Orleans; WPMT, Channel 43, York, Pennsylvania; WEWB, Channel 45, Schenectady, New York. Through subsidiaries, Tribune also publishes the following daily newspapers: *Los Angeles Times*, Los Angeles; *The Chicago Tribune*, Chicago; *Newsday*, New York; *The Baltimore Sun*, Baltimore; *The Hartford Courant*, Hartford, Connecticut; *The South Florida Sun-Sentinel*, South Florida; *The Orlando Sentinel*, Orlando, Florida; *The Daily Press*, Newport News, Virginia; *The Morning Call*, Allentown, Pennsylvania; *The Advocate*, Stamford, Connecticut; *Greenwich Time*, Greenwich, Connecticut. Tribune also owns, through subsidiaries, WGN(AM), Chicago; KEZW(AM), Aurora, Colorado; and KKHK(FM) and KOSI(FM), Denver. See Tribune Company 2000 Report, available at www.tribune.com/report2000/tc2000ar19.html.

I. SUMMARY AND INTRODUCTION.

Within hours of the September 11 attacks on America, Susan Harrington and Diane Goldie, reporters for Tribune's *Newsday* newspaper, were on the telephone with Tribune television stations providing eyewitness accounts of the tragedy at the World Trade Center. In the days following the attacks, *Newsday* reporter Edward A. Gargan reported live from Pakistan to New York viewers over Tribune's WPIX. As stations across the country broadcast common network coverage of the terrorist attacks and their aftermath, WPIX and Tribune's other television stations used Tribune newspaper reporters to expand the public discourse by providing a local perspective of these historic and tragic days – a perspective produced by people from the local community.

Also on September 11, for the first time in its 154-year history, the *Chicago Tribune* delivered a special afternoon edition to the doorsteps of every one of its subscribers in the Chicago area. As the demand for news peaked, the newspaper elected to absorb a cost of more than $167,000 to produce a special edition - with no advertising – to meet the demands of its readers for news and information. In the current economy, as publishers suffer through the worst advertising environment since the Great Depression, such additional cost cannot be justified financially. It is justifiable only by a newspaper's commitment to its community and to delivering the news.

The news coverage of the events of September 11 and of the war on terrorism demonstrate how the media marketplace has changed dramatically since adoption of the newspaper/broadcast cross-ownership Rule in 1975. Never before has the American public had access to such a wide array of choices among sources of information. In 1975, the local media marketplace was a handful of shops in the village square: a few television stations, perhaps a dozen radio stations, and a daily newspaper or two. Today's marketplace is the modern mega-mall, a smorgasbord of television and radio stations, cable channels and Internet sites offering all manner of news, views and entertainment programming for targeted audiences and cultures; instantaneous access to local and distant newspapers, magazines, encyclopedias, and Internet-only news services on the World Wide Web; scores of national, international and local program services available over multichannel video program distributors such as cable and DBS; local daily and weekly newspapers, and a choice of national newspapers.

When it adopted the Rule in 1975, the Commission found newspaper publishers had a long record of public service and had provided more news and public affairs programming than other licensees. It had no evidence of actual harm from cross-ownership. Nonetheless, the Commission adopted the Rule in the hope it would foster some gain in diversity. The Supreme Court later predicted, correctly, that technological advances could obviate any perceived need for the Rule.[2]

Today, the market underscores the prescience of the Supreme Court's prediction. Never before has the media marketplace been so fragmented and so clearly incapable of domination. And never before have the providers of news and information had such need to be free of outmoded and unnecessary restrictions in order to be heard and to remain viable. As the media marketplace has fragmented, the ratings of individual broadcast stations and the circulation of individual newspapers have declined. At the same time, the costs of gathering news and of procuring programming have risen exponentially. This has put great pressure on news providers to maximize the use of their resources or reduce the scope of their coverage.

Tribune has 77 years of experience operating newspapers and over-the-air broadcast stations in Chicago.[3] These Comments focus on the five markets where Tribune has such combinations today: New York, Los Angeles, Chicago, South Florida, and Hartford.[4] Each has had an explosion in

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[2] FCC v. League of Women Voters, 468 U.S. 364, 376 n.11 (1984). The Supreme Court acknowledged it might need to reconsider rules premised on the scarcity doctrine upon "some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required."

[3] The *Chicago Tribune* is in its 155th year of publication; WGN(AM) went on the air in 1924; WGN-TV first broadcast in 1948.

[4] Tribune's cross-ownership in Chicago (*Chicago Tribune* and WGN-TV), has been grandfathered under the Rule since its adoption. Tribune's cross-ownership in South Florida (*South Florida Sun-Sentinel* and WBZL) is pursuant to a temporary waiver pending the outcome of this proceeding. See 1998 Biennial Regulatory Review, 15 FCC Rcd. 11058, 11109 (2000). In New York (*Newsday* and WPIX), Los Angeles (*Los Angeles Times* and KTLA), and Hartford (*The Hartford Courant*, WTXX and WTIC-TV), Tribune acquired the newspapers in June of 2000 and is expressly permitted, under applicable Commission policy, to hold those cross-ownerships until the next station license renewal dates. Amendment of Section 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard FM and Television Broadcast Stations, 50 FCC, 2d 1046 at n.25 (1975) ("Order").

television and radio stations, cable systems and other MVPDs, and national and locally tailored Internet sites since 1975. Each has fierce competition among publishers of daily and weekly local newspapers.

This competitive marketplace, not the Rule, is the best guarantor of diversity. Tribune's experience illustrates how cross-ownership actually increases the amount, quality and viewpoint diversity of local news and public affairs programming, and how common ownership is an asset not only to media companies but also to the public.

Tribune's experience also illustrates how the Rule is unnecessary and, worse, how it actually harms diversity. The Rule denies broadcast ownership to local newspapers, the entities which are the most dedicated to providing local news. Moreover, the Rule ignores the significant entry barriers that make launching a new local newscast impractical for most over-the-air stations. Tribune's experience in South Florida illustrates how the Rule discourages new voices: the temporary waiver allowing Tribune to purchase WBZL(TV), Miami, was conditioned on the station being held entirely separate from Tribune's *Sun-Sentinel* newspaper, published in Ft. Lauderdale, Florida. As a result, instead of creating a new voice, WBZL carries a news program produced by another television station in the market.

Joint ventures are not the answer. While they are permitted under the Rule, they seldom, if ever, realize the full potential of common ownership. The reality is that a joint venture never has the same commitment to capital and human resources as a wholly owned combination.

Given the realities of today's marketplace, the Rule is unconstitutional. The deferential standard of review under which the Rule was previously judged was premised on scarcity in the marketplace. Yet the Commission itself has found scarcity no longer relevant, undone by the mainstream adoption of cable as the dominant video delivery system. Indeed, the abundance of choices in the media marketplace has led the Commission to curtail so many other ownership restrictions that the Rule now impermissibly discriminates against newspapers – which, ironically, are entitled to the highest degree of First Amendment freedom. As demonstrated in the recent invalidation of the cable ownership limits, the courts provide a viable remedy if, through this proceeding, the Commission refuses to unlock the time capsule that has preserved the Rule for the past 26 years.

Finally, repeal of the Rule would serve the public interest better than any of the other options proffered by the Commission. Standards based on market concentration or voice counts, a "structural separation" requirement, or a liberalized waiver policy all suffer from a number of legal, administrative and constitutional flaws. Most notably, they would all necessitate increased Commission activity as a regulator of newspapers – an area not within its jurisdiction.

Until now, the Commission has been unable[5] or unwilling to extend its recognition of the new media landscape to allow broadcasters and publishers to combine. Given today's marketplace, the Commission should allow broadcasters to pursue the same programming efficiencies with news-committed newspaper publishers that it allows to occur within the broadcasting and cable industries. Failure to level the playing field so newspapers can compete with vertically and horizontally aligned broadcasters and cable operators will jeopardize the production of the news, children's, and public affairs programming the Commission has recognized serves the public interest.

Accordingly, the Commission should repeal the Rule.

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[5] From 1987 until 1996, Congress precluded the review of the Rule by prohibiting the Commission from using its funding to address any review. The unusual appropriations restriction intentionally shackled the Commission and forced it to continue the ban on newspaper publishers owning local television stations, regardless of whether the ban was necessary or justifiable. See, e.g. Pub. L. No. 100-102, 101 Stat. 1329 (Dec. 22, 1987).

II. THE RULE IS GROUNDED IN PERCEPTION, NOT FACT.

As the Commission considers the first revision to the Rule since its adoption 26 years ago, it is appropriate to begin by considering the fragile rationale used to bring the Rule into being in 1975. The Commission has often stated its laudable goals of enhancing viewpoint diversity, economic competition and quality programming services.[6] In adopting the Rule, the Commission sought to further these goals in much the same manner it did when it adopted bans against ownership of multiple radio stations and radio/television combinations in a single market.

However, the evidence obtained during the public rulemaking process provided little, if any, support for the Rule. Instead, the evidence showed broadcast stations owned by newspaper publishers had a "long record of service" in the public interest and produced a larger percentage of news, public affairs and other public service programming than did independently-owned stations.[7] The Commission also found newspaper owners should be credited for their pioneering efforts to launch both radio and television broadcasting.[8] Most importantly, the Commission did not find newspaper-broadcast combinations spoke with one voice, nor did it find such combinations were harmful to competition. In fact, the Commission expressly stated it found no pattern of abuse in existing cross-owned markets.[9]

These conclusions are not surprising, and are in fact consistent with the Commission's similar findings in its 1941 investigation of broadcasting/newspaper cross-ownership issues.[10] What is

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[6] Order, 50 FCC 2d at 1074. The Commission stated the twin goals in adopting multiple ownership rules were to enhance viewpoint diversity and economic competition. Later the Commission prioritized these goals and identified a third interest, stating that economic competition must sometimes yield to "the even higher goals of diversity and the delivery of quality broadcasting service to the American public." See also, Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-295 at ¶ 14 (2001). (" NPRM") ("the Commission adopted the newspaper/broadcast cross-ownership rule largely to promote and protect a diversity of viewpoints."), Id at ¶ 40 (diversity of viewpoints in local news presentation is at the heart of the Commission's diversity goal).

[7] Order at 1078 (¶ 109).

[8] Order at 1074.

[9] FCC v. National Citizens Comm. for Broad., 436 U.S. 775, 786 (1978).

[10] In March, 1941, the Commission opened a rulemaking intended to curtail radio ownership by newspaper publishers. High

surprising is the Commission's reaction to the vacuum of evidence it had in 1975: Despite the absence of any showing that commonly-owned media engaged in viewpoint constriction or anticompetitive practices, the Commission concluded that "even a small gain in diversity" justified adoption of the Rule.[11] In effect, the Commission decided to play a hunch that diversity would be enhanced, possibly by only the smallest of margins, by adopting the Rule.

The wisdom of adopting a sweeping proscription for such a speculative and incremental advance is now belied by a quarter-century of experience. What is most striking, however, is the unintended harm the Rule has wrought on the public interest principles it was adopted to protect. Tribune's experience in the past 26 years illustrates how the Rule weakens viewpoint diversity, reduces the quality of public interest programming and jeopardizes competition. The following sections highlight the vast number of media choices now available to the public, with special emphasis on media markets where Tribune owns both a newspaper and a television station. In doing so, they illustrate the choices available to consumers and the reality that diversity is enhanced by freeing newspapers to add their voice to the din of our nation's broadcast media marketplace.

III. THE FACTS: A DRAMATIC EXPLOSION IN MEDIA OUTLETS SINCE 1975.

As the Commission acknowledged in the Notice, the explosion of media voices since the Rule was adopted in 1975 has been deafening. The number of radio and television stations serving the public has increased dramatically in the intervening years and new media have emerged to add to the number of programming choices available. The only medium that has not experienced a quantitative expansion is daily newspapers, which have declined in number since 1975 and suffered circulation and readership losses as well.

Frequency Broadcast Stations (FM), 6 Fed. Reg. 1580 (Notice of Investigation and Hearings March 21, 1941). The FCC conducted hearings for more than a year, including sending investigators into communities to look for news bias on the part of commonly-owned properties. A similar study was independently conducted under the auspices of Columbia University. The only problem either study found was that in some small towns, newspapers that owned radio stations refused to print the program schedules of rival stations. Ultimately, the Commission closed the investigation without adopting any cross-ownership rule.

[11] Order at 1076, 1080 n. 30.

In 1975, there were 953 full power over-the-air television stations in the U.S. As of June, 2001, there were 1,678 full power stations and 2,396 low power stations.[12] There were 7,785 radio stations on the air in 1975 - 4,432 AM stations and 3,353 FM stations[13] – and FM radio was just gaining a toehold among the listening public. Today, there are 12,932 radio stations on the air, including 4,716 AM stations and 8,216 FM stations.[14] Of the 286 Arbitron markets in the U.S. today, 85% are served by 10 or more stations and 43% by 20 or more.[15]

The source of the greatest increase in programming options, however, is a medium that was in its infancy in 1975, cable television. For a majority of Americans, turning on the television each day opens the door to scores of cable networks and other programming selected by cable operators. In fact, the majority of Americans watch television via cable – not over the airwaves. The Commission acknowledged this fact when it noted, "cable service is generally available to households throughout the U.S."[16] In 1975, there were 3,506 cable systems in the U.S. with 9.8 million subscribers.[17] Today, some 10,466 cable systems afford nearly 70 million households access to more than 231 cable networks.[18] Cable penetration in the U.S. is currently 68% and cable is available to 96.7% of U.S. television households.[19]

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[12] FCC, *Broadcast Station Totals* (July 13, 2001), available at www.fcc.gov.mmb/asd/totals/bt010630.html.

[13] *Broadcasting & Cable Yearbook 2001,* at D-733.

[14] National Association of Broadcasters, *Radio Fast Facts*, available at www.nab.org/radio/radfacts.asp. See also, *Broadcasting & Cable Yearbook 2001*, at D-733 (citing 1/1/01 numbers of 12,717 radio stations, 4,685 AM and 8,032 FM).

[15] *Broadcasting & Cable Yearbook 2001*, at D-719 – D-726 (243 markets with 10 or more stations, 124 markets with 20 or more).

[16] Review of the Commission's Regulations Governing Television Broadcasting, 14 FCC Rcd. 12903, 12953 (¶ 113) (1999) ("Television Ownership Report and Order").

[17] National Cable Telecommunications Association ("NCTA"), *Industry Overview* (2001) available at www.ncta.com/industry_overview/indstats.cfm?statID=4. See also, http://users.skynet.be/sky91776/cablesat/cablehisus2.htm.

[18] *Industry Overview,* available at www.ncta.com/pdf_files/Ind_ovrw_060801.pdf, at 14.

[19] *Id.*

Other multichannel video program distributors ("**MVPDs**") have arrived and are adding still more choices for consumers: Direct broadcast satellite ("**DBS**"), satellite master antenna television ("**SMATV**"), C-Band satellite dishes, and multichannel, multipoint distribution service ("**MMDS**") were all virtually nonexistent in 1975. Today, they deliver video programming to about 16.9% of U.S. television households.[20] DBS serves more than 15.5 million subscribers, SMATV has 1.5 million subscribers, C-Band serves more than 1.1 million, and MMDS serves 700,000 subscribers.[21] Combining MVPD with cable, 85% of all U.S. television households use something other than over-the-air television for their video programming reception.[22] Satellite radio is also being rolled out across the country, offering hundreds more choices for news, entertainment and information, and will bring a wide variety of choices to even the smallest towns and most remote parts of the nation.[23]

Driving the rapid acceleration of cable and DBS subscriptions are the advantages of an enhanced picture and, more importantly, an almost endless array of programming choices. The entertainment options are well documented.[24] AOL/Time Warner's TBS Superstation reaches 86.1 million U.S. households (approximately 84% of the 102 million U.S. television households) and The Discovery Channel and Disney's ESPN each reach 85.2 million.[25] The additional news programming is equally astounding. For example, in 1975 New Yorkers could choose from 97 hours of local and national television news programming on over-the-air and cable channels each week. In 2000, that figure was

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[20] Number of MVPD users divided by all U.S. television households. Statistics from NCTA, *Industry Overview*.

[21] NCTA, *Industry Overview*, at 11.

[22] While a few households may have both cable and some form of MVPD, it is presumed such households are relatively few.

[23] See, e.g., Hugh Panero, chief executive of XM Satellite Radio, which began offering its services to customers this year: "We intend to do on radio what cable and direct satellite broadcasting did for TV. We plan to offer more choice and quality in programming from coast to coast." Howard Wolinsky, *Radio Finally Dials up High Tech*, Chi. Sun-Times, Nov. 12, 2001, at 55.

[24] Cable and DBS providers attempt to distinguish themselves through marketing campaigns that describe the nearly endless number of programming choices. Currently in Chicago, the digital cable service offered by AT&T offers 145 channels, including at least 58 entertainment channels offering non-stop movies, sitcoms, children's programming, music and other entertainment-related options. See, http://tvlistings2.zap2it.com/gridallprint.asp.

1,078.5.[26] In 2000, Chicagoans could choose from more than 1,097.5 hours of weekly news programming and Los Angelinos from 1,034.5 hours.[27] The choices in these markets include local and national 24-hour cable news channels such as NY1, News12, ChicagoLand Television News, CNN, CNNfn, MSNBC, CNBC, Fox NewsChannel and C-SPAN.

The latest media technology, the Internet, is quickly approaching the audience reach of cable. As recently as 1990, slightly more than one million American households were online.[28] By 2001, that number is 62.6 million, and by 2006 it is expected to be 86.3 million or 76% of total U.S. households.[29] For many, the Internet has taken the place of the daily newspaper as the primary source for news. Between 1995 and 2000, consumer time spent with online media increased 2,380%,[30] compared to a 9% decrease in time spent reading daily newspapers and a 7% decrease in time spent viewing network-affiliated TV stations.[31] Of the millions who use the Internet, 66% turn to television first for breaking news, with the Internet as the next most popular first choice.[32] Among this growing population, the Internet is tied with newspapers as the second most popular first choice, behind television, for

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[25] NCTA, *Industry Overview*, available at http://www.ncta.com/industry_overview/top20networks.cfm?indOverviewID=59.

[26] Nielsen Media Research, November 1975 and February 2000 Reports.

[27] Nielsen Media Research, November, 1975 and February, 2000 Reports. Other Tribune Markets offer an equally astounding number of choices. Hartford viewers had 924 hours of news programming each week to choose from, and South Florida viewers at least 802 hours.

[28] Jupiter Communications, Jupiter Consumer Survey, *US Online Demographics: Fundamentals and Forecasts* (Spring, 2000).

[29] Jupiter Media Metrix, *Market Forecast Report: Portrait of Online Consumers Through 2006*, at 1 (Nov. 16, 2001).

[30] Veronis, Suhler & Associates, *Communications Industry Forecast*, at 42-43 (July, 2001). See also, Clark, Martire and Bartolomeo, Inc., *Leveraging Newspaper Assets: A Study of Changing American Media Usage Habits, 2000 Research Report* (2000) (weekday newspaper readership has declined more sharply among those who use the Internet in the past week than among the general public at large).

[31] Veronis, Suhler & Associates, *Communications Industry Forecast*, (July, 2001).

[32] Jupiter Media Metrix, *Jupiter Consumer Survey Report: Entertainment and Media*, (September, 2001) (survey of consumers who report an "average" amount of Internet use).

national/international news. By 2005, consumer time online is projected to increase to 16 hours per month, while time spent with a daily newspaper is expected to decline to 12 hours a month.[33]

Just as the Internet's e-mail application has revolutionized personal communication, the Internet's news and entertainment options have revolutionized mass media. The Internet's vast expanse of views and perspectives has become the first stop for many seeking local news and information. The top Web sites in Chicago, Los Angeles, New York and Miami-Ft. Lauderdale are the sites owned by Yahoo, America Online and Microsoft. [34] These sites include pages that offer local news and entertainment and that compete directly with other local media, especially newspapers, for audience.

Whether on cable, MVPDs or the Internet, today's news consumers get real-time coverage of the events they used to wait to read about in the afternoon or morning edition of the daily newspaper. Since 1975, national circulation of daily newspapers is down 8%.[35] The once-ubiquitous evening edition is a rare sight in American cities. Venerable publications such as the *Washington Star*,[36] the *Chicago Daily News*, and the *Miami News* have been shuttered.

Even with the demise of the evening edition and certain local dailies, the print marketplace is experiencing the same audience fragmentation as the broadcast marketplace. National

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[33] Veronis, Suhler & Associates, *Communications Industry Forecast*, (July, 2001).

[34] The Media Audit, data from studies in local markets. Research conducted on a schedule around U.S. markets. For Chicago and New York, see, The Media Audit, July-August, 2001; For Los Angeles, see, The Media Audit, August-September, 2001; For Miami-Ft. Lauderdale, see, The Media Audit, June-July, 2001. See also, Jupiter Media Metrix, *Local Market Audience Ratings*, at Section II (October, 2001).

[35] Newspaper Association of America, *Facts About Newspapers* (2001) available at www.naa.org/info/facts01/16_usfailycirc/index.html. Circulation of daily papers, 1975: 60,655,431; Circulation of daily newspapers, 2000: 55,772,847.

[36] *The Washington Star* was one of the newspapers most affected by the adoption of the Rule. For decades, the Star shared common ownership with Washington, D.C., radio and television stations. In the 1970s, the newspaper fell into financial distress and was put up for sale along with the broadcast stations as a package. In 1974 Texan Joe Allbritton bought the paper, along with Channel 7, provided he was allowed to keep the television station to help finance the resuscitation of the newspaper. In 1978 *The Star* was sold independently to Time, Inc. and it folded three years later, subtracting a voice from the D.C. marketplace. See e.g., Harry F. Waters, Tom Joyce, Phillip S. Cook, *Perils of the Star*, Newsweek, (Aug. 11, 1975), at 81; Howard Kurtz, *A Star is Mourned*, The Washington Post, (Aug. 6, 1991) at E1.

publications like *USA Today*, *The Wall Street Journal* and *The New York Times* are now available for home delivery in local markets across the nation. Perhaps more importantly, weekly newspapers take on dailies in most major markets and their circulation has exploded since 1975.[37] These newspapers typically feature super-local coverage of a particular community and have independent news staffs and editorial pages. The daily newspaper today remains a relevant voice, but the explosion of voices in the marketplace has exposed the myth that any one voice can dominate public discourse.

A. Tribune's cross-media markets echo these national trends and illustrate why repeal of the Rule would be in the public interest.

1. **The New York marketplace**.

New York is the most populous metropolitan area in America, with 21.2 million people according to the 2000 census, and is the largest television DMA. In New York, Tribune publishes *Newsday* on Long Island, and owns and operates WPIX, Channel 11, an affiliate of The WB Network. The New York marketplace tops the nation for media voices. Nearly every major media player is represented. Competition hovers at a near-fever pitch on a daily basis, and being heard above the din is a rare and fleeting occurrence. Certainly no single media company, medium or media outlet dominates the New York market.

a. **Television competition**. WPIX is one of 22 over-the-air stations in the New York DMA and competes with affiliates of eight other networks (including network owned and operated stations): CBS, NBC, ABC, Fox, Pax, Univision, UPN and Telemundo. These 22 stations are owned by 20 distinct owners. So diverse are the voices that no one station has more than a 12 household share. By contrast, in 1975 the top station in New York had a 24 share. Today, the competition includes:

Station[38]	Owner	Network affiliation	Household share-1975[39]	Household share-2001[40]

[37] Weekly circulation went from 35,892,409 per week in 1975 to 74,457,621 in 1999. Newspaper Association of America, *Facts About Newspapers*, 2001. Available at http://www.naa.org/info/facts01/15_totalnondaily/index.html.

[38] Chart includes all over-the-air stations with greater than a one share, sign-on to sign-off, plus commonly owned stations with shares of less than one.

WNBC, Channel 4 WNJU, Channel 47 WPXN-TV, Channel 31	NBC/General Electric Telemundo[41] Paxson Communications[42]	NBC Telemundo Pax	24 <1 not on air	12 2 1
WABC-TV, Channel 7	ABC/Walt Disney	ABC	18	12
WPIX, Channel 11	Tribune	WB	8	8
WCBS-TV, Channel 2	CBS/Viacom	CBS	22	8
WNYW, Channel 5[43] WWOR-TV, Channel 9	Fox/News Corp.	Fox UPN	14 10	6 6
WXTV, Channel 41 WHSE-TV, Channel 68	Univision	Univision	<1 not on air	3 <1
WNET, Channel 13	Educational On air Grp.	PBS	3	2

The market's commitment to local news is equally strong. Together, New York over-the-air television stations produce 171.5 hours of local news programming each week.[44] Like other New York stations, Tribune's WPIX produces far more news today than it did in 1975. At that time, WPIX aired only 5.5 hours of news programming per week.[45] Today, in response to consumer demand for news and information, it broadcasts nearly four times that amount (19.5 hours). This heightened competition in news can be seen in household ratings, where the highest-rated evening newscast reaches only 8.2% of households today, compared with 13% in 1975.[46]

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[39] Share points represent the percentage of households watching television that were watching the station. Share numbers are from the Nielsen Station Index, May, 1975.

[40] Share numbers are from Nielsen Station Index May 2001 Report, except as noted.

[41] NBC recently announced its intent to purchase Telemundo. See, Press Release, General Electric, NBC to acquire Telemundo Communications Group, Inc. (Oct. 11, 2001), available at http://www.ge.com.

[42] NBC owns approximately 32% of Paxson Communications and has an option to purchase up to 49% after Feb. 1, 2002. See, General Electric, Form 10-K, available at www.ge.com/investor/1999_10k.htm.

[43] 1975 number represents share for then-Channel 5, WNEW.

[44] Based on the number of local news shows listed in the November 19-25, 2001, TV listings. Zap2It TV Listings, available at www.Zap2It.com. Does not include local news updates or inserts in national newscasts (e.g., five-minute local news segments on morning news shows).

[45] Nielsen Station Index Average Week Estimates, (May, 1975).

[46] Nielsen Station Index, May, 1975.

Station[47]	Network Affiliation	Hours of local news per week-2001	Late evening news rating-1975[48]	Late evening news rating-2001[49]
WNBC, Channel 4	NBC	25.5	13	8.2
WNJU, Channel 47	Telemundo	18	no late news	1.8
WPXN-TV, Channel 31	Pax	2.5	not on air	0.6
WABC-TV, Channel 7	ABC	27	10	7.5
WCBS-TV, Channel 2	CBS	32	11	4.5
WNYW, Channel 5[50]	Fox	27	8	4.2
WWOR-TV, Channel 9	UPN	7	no late news	3.9
WPIX, Channel 11	WB	19.5	2	2.9
WXTV, Channel 41	Univision	13	no late news	2.1

b. **Radio competition**. The number of radio stations in New York is nothing short of astronomical. There are 49 AM and FM radio stations in the market, owned by a total of 24 different entities.[51] Despite many stations being commonly owned,[52] these stations provide extraordinarily diverse programming. Radio choices in New York include alternative rock, modern rock, Spanish, nostalgia, 80s hits, Christian, album-oriented rock, classical, oldies, urban, soft rock, inspiration, jazz, country, sports/talk, news/talk, Polish, Korean and children's programming. In all, New York offers listeners 29 different formats. And as a result of this diverse menu of programming, the highest-rated radio station in New York, WLTW-FM, garners only a 6.2 share, compared to 7.8 for the 1976 leader, WABC(AM).[53]

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[47] All stations in the market producing original local newscasts in 2001.

[48] Rating points represent the percentage of all television households in the market watching the program. Data from Nielsen Station Index, May, 1975.

[49] Rating numbers are from the May, 2001, Nielsen Media Research Report, unless otherwise noted.

[50] 1975 rating reflects then-Channel 5, WNEW.

[51] Duncan's American Radio, *Spring 2001 Ratings Report*, at 221 (September, 2001).

[52] Notably, Clear Channel Communications and Infinity Broadcasting Corp., each own six stations in the market, each of which has a different format.

[53] See, Duncan's American Radio, *Spring 2001 Ratings Report*, at 221 (September, 2001); Duncan's American Radio, *Fall Report 1976*, at 10.

c. **Cable/DBS television competition**. Cable television in New York reaches 75% of the households in the DMA, a far cry from the 5% of homes that had cable in 1975.[54] Cablevision reaches 51% of the cable subscribers in the marketplace, Time Warner reaches 28%, and Comcast, 14%.[55] Satellite delivery is used by 5.5% of New Yorkers.[56] Combining satellite and cable with other MVPDs, 82.2% of television watchers in New York use something other than over-the-air delivery.[57]

The programming choices these providers offer take ratings and market share from the broadcast networks. In New York today, 33 cable networks register a share of one or greater, including Nickelodeon with a most-recent share of six, Lifetime Network with a share of three, and the Arts & Entertainment Network, TBS, TNT and USA, each with a share of two.[58] Each of these networks reaches a share of New York households equal to or greater than 11 of New York's over-the-air stations.[59]

Subscribers to Cablevision, the leading cable provider in the marketplace, can receive 91 channels. Time Warner's New York cable subscribers can receive 95 different channels, and Comcast offers 80 channels. With respect to news coverage, New Yorkers can choose from national all-news networks such as CNN, CNNHeadlineNews, MSN, CNBC and FoxNewsChannel, and can get local news from all-news networks NY1 and News12. Sports programming is carried on ESPN, ESPN2 and ESPNClassic, as well as on local networks, MSG and Fox Sports Net New York. The new Yankees Entertainment and Sports cable network debuts in 2002 with even more sports programming.

d. **Newspaper competition**. New York is the center of the competitive world of newspapers. Consumers choose daily among *The New York Times*, the *New York Post*, *New York Daily*

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[54] *Broadcasting & Cable Yearbook 2001*, at C-4; Nielsen Media Research, May, 1975.

[55] Nielsen Media Research (July, 2001).

[56] Nielsen Media Research (July, 2001).

[57] Nielsen Media Research, DMA Household Universe Estimates, 2001, July, 2001.

[58] Comparison of data based on Nielsen Station Index May 2001 Report.

[59] Id.

News, *Newsday* and dozens of other daily newspapers in the area.[60] Major publishers compete every day for stories, readers and advertisers. In terms of circulation, *The New York Times* has the largest share, but three other local newspapers have daily circulation in excess of 500,000.[61]

Top Daily Newspapers.[62]	1975	2001
Daily News	1,967,116	734,473
The New York Times	870,510	1,109,371
New York Post	583,892	533,860
Newsday	452,012	577,354

However, amidst this fierce competition, another trend can be seen. As illustrated above, while the competition for newspaper readership remains fierce in New York, there has been a drop-off in combined circulation of the top three newspapers since 1975. The point is clear: Fewer people turn to the daily newspaper for news coverage. And this is true even while the population of the New York metropolitan area has grown by 2.3 million residents since 1980.[63] In fact, since 1975, the New York Post has been on life-support twice, as acknowledged by the Commission through the permanent waiver of the Rule to permit Fox's owner to acquire the Post in 1993.

Circulation declines can be attributed at least in part to the emergence of real-time coverage offered by cable outlets and the Internet and intense competition from hyper-local weekly newspapers. New Yorkers choose from hundreds of weekly newspapers. These newspapers typically feature super-local coverage of a particular community, have separate news staffs and editorial pages. The

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[60] Editor and Publisher International Yearbook, 2001.

[61] See, Audit Bureau of Circulations, *Fas-Fax*, at 57 (Sept. 2001). *The Wall Street Journal* circulation in New York also exceeds 400,000.

[62] Audit Bureau of Circulations, *Fas-Fax*, March, 1975 and Sept. 2001 (*Newsday* 1975 numbers are from Audit Bureau of Circulations, *Fas-Fax* Sept. 1975). Includes circulation outside a newspaper's designated market area, so that increases in national circulation contribute to a higher number. For example, fully 42% (469,367) of The New York Times current circulation is outside its designated market area, while a much lower circulation was outside the market in 1975. See Audit Bureau of Circulations, Fas-Fax, Sept. 2001, March, 1975.

[63] Population of greater New York metropolitan area 1980=18,905,705; 2000 = 21,199,865. U.S. Census Bureau, Census 2000 Redistricting Data (P.L. 94-171) Summary File and 1990 Census.

immense growth in the number of weekly newspapers indicates the value readers place on hyper-local and special interest coverage. And advertising follows readership.

e. **Internet**. On the Internet, the top reach in the New York market belongs to sites owned by America Online, Microsoft and Yahoo. Each of these sites has local sections designed specifically for the New York market. These local sections include news pages on New York news and entertainment, and offer search features popular with many users. AOL leads the pack, as its sites reach 86.4% of Internet users in the market.[64] Microsoft has 72.6% reach and Yahoo 66.9%. The New York Times Web site, despite the tremendous reach of the newspaper compared to other print products, reaches only 19.4% of online users, which does not even place it in the top 50 sites visited most often by New Yorkers.[65] *Newsday.com*, the Web site of Tribune's *Newsday*, is visited less often than 200 other sites in the latest measurement.[66]

2. **The Los Angeles marketplace**.

Los Angeles is the second-largest U.S. DMA. In Los Angeles, Tribune publishes the *Los Angeles Times* and owns and operates KTLA, Channel 5, an affiliate of The WB Network. Like New York, the voices and diversity of Los Angeles have multiplied exponentially since 1975.

a. **Television competition**. There are 25 over-the-air television stations in Los Angeles today, compared with 15 that were available in 1975.[67] These 25 stations are owned by 21 distinct owners. Each of the four major networks has an owned and operated station, and no station has more than a 12 household share. By contrast, the highest-rated station in 1975 earned a 22 share. The competition includes:

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[64] Jupiter Media Metrix, *Local Market Audience Ratings* (October, 2001).

[65] *Id.*

[66] *Id.*

[67] *Broadcasting & Cable Yearbook*, 1975 at 889-90.

Station[68]	Owner	Network affiliation	Household share-1975[69]	Household share-2001[70]
KNBC, Channel 4	NBC/General Electric	NBC	22	12
KVEA, Channel 52	Telemundo	Telemundo	<1	3
KPXN, Channel 30	Paxson Communications	Pax	<1	1
KWHY-TV, Channel 22	Telemundo	Telemundo	<1	1
KABC-TV, Channel 7	ABC/Walt Disney	ABC	20	11
KCBS-TV, Channel 2	CBS/Viacom	CBS	21	7
KTTV, Channel 11	Fox/News Corp.	FOX	12	7
KCOP, Channel 13		UPN	4	5
KTLA, Channel 5	Tribune	WB	9	7
KMEX-TV, Channel 34	Univision	Univision	<1	7
KHSC-TV, Channel 46			<1	<1
KCAL, Channel 9	Young	Ind.	7	5
KCET, Channel 28	Community TV of So.Cal.	PBS	not on air	3
KTBN-TV, Channel 40	Trinity On air Grp.	TBN	<1	1
KDOC-TV, Channel 56	Golden Orange	Ind.	not on air	1

Together, Los Angeles over-the-air television stations produce at least 237 hours of local news programming each week. Tribune's KTLA produces 24.5 hours of local news - far more than the five hours it programmed back in 1975.[71] As a result of the tremendous amount of local news programming available in the market, no station reaches more than 7.6% of Los Angeles' households with its evening news programming.

Station[72]	Network Affiliation	Hours of local news per week - 2001	Late evening news rating-1975[73]	Late evening news rating – 2001[74]

68 Includes all over-the-air stations with a greater than one market share, plus co-owned stations with shares of less than one.

69 Nielsen Station Index, May, 1975, Reflects stations existing in 1975. Call letter differences as follows: Channel 2, then-KNXT; Channel 9, then-KHJ; Channel 30, then-KHOF; Channel 46, then-KBSA; Channel 52, then-KBSC.

70 Share numbers are from the May, 2001, Nielsen Research Report, unless otherwise noted.

71 Nielsen Station Index, May, 1975.

72 All stations in the market producing original local newscasts in 2001.

73 Nielsen Station Index, Program Audience Averages, May, 1975. Reflects station existing in 1975. See, supra, at n. 69 for changed call letters.

74 Rating numbers are from the May, 2001, Nielsen research, unless otherwise noted.

KNBC, Channel 4 KVEA, Channel 52 KWHY-TV, Channel 22 KPXN, Channel 30	NBC Telemundo Telemundo Pax	37 19.5 12.5 2.5	10 no late news no late news no late news	7.6 1.4 0.8 0.5
KABC-TV, Channel 7	ABC	34	9	7.0
KTLA, Channel 5	WB	24.5	3	5.3
KCBS-TV, Channel 2	CBS	28.5	9	4.5
KTTV, Channel 11 KCOP, Channel 13	FOX UPN	24.5 6	5 1	4.0 2.2
KMEX-TV, Channel 34	Univision	17	1	3.5
KCAL, Channel 9	Independent	31	2	2.9

b. **Radio competition**. There are 47 commercial and non-commercial AM and FM radio stations in the Los Angeles market, owned by 19 separate entities. [75] The diversity in programming includes 17 Spanish-language radio stations and 27 formats in all.[76] As a result of the variety of radio options in Los Angeles, the top-rated station in the market, KROQ-FM, achieves a 5.1 share, compared to the 6.7 top-rated KABC(AM) earned in 1976.[77]

c. **Cable/DBS television competition**. Nearly 65% of Los Angelinos have access to cable television, with Adelphia having the largest subscriber base.[78] Other MVPDs are used by an additional 12% of the market.[79] Twenty-eight cable networks garner at least a one share in the Los Angeles market, including Nickelodeon with a 4 share and Cartoon Network with a three.[80] These cable networks, as well as A&E, Disney, Lifetime, TBS, TNT, USA and 20 others each have audience shares equal to or greater than 18 of the over-the-air broadcast stations in the market. Cite Adelphia cable offers

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[75] Duncan's American Radio, *Spring 2001 Rating Report*, at 175 (September, 2001).

[76] *Id.* at 175-77.

[77] *Id.* at 175-77; James Duncan, *American Radio Fall Report*, (1976).

[78] *Broadcasting & Cable Yearbook 2001*, at C-4; Nielsen Media Research, July, 2001.

[79] Nielsen Media Research, July, 2001.

[80] Nielsen Station Index, May 2001 Report.

its subscribers 75 different cable channels, while AT&T offers 88.[81] Local sports are seen on regional sports channels Fox Sports West I and II, and Fox Sports West en Espanol.

d. **Newspaper competition**. Tribune's *Los Angeles Times* joins the *Los Angeles Daily News*, the *Orange County Register*, the (Riverside) *Press-Enterprise* and other daily newspapers vying for consumers' time. As in New York, the combined circulation of the leading daily newspapers has fallen since 1975. Daily circulation of the top three newspapers is down 5.7%, even as the population of Los Angeles has grown from 11,497,548 in 1980 to 16,376,645 in 2000. The migration of readers to other media for news and entertainment is partly responsible for the cessation of most afternoon editions.

Top daily newspapers.[82]	1975	2001
Los Angeles Times	1,000,866	1,001,610
Herald-Examiner	398,421	Not published
Orange County Register	195,385	324,056
L.A. Daily News[83]	not published daily	178,156

With the largest Latino population in the country, Los Angeles also offers strong Spanish-language newspapers, including *La Opinion*, with a daily circulation of 127,576.[84] Hundreds of weekly newspapers are published in Los Angeles, adding to the chorus of print voices.

e. **Internet**. On the Internet, sites owned by AOL, Yahoo and Microsoft lead the pack. As they do in New York, each of these sites has a local edition, which includes news pages and comprehensive entertainment information designed specifically for the Los Angeles market. AOL reaches 84.6% of Internet users in the market.[85] Microsoft has 74.8% reach and Yahoo 69.2%. Tribune's *latimes.com*, despite the powerful reach of the print newspaper, reaches only 15.3% of Los Angeles'

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[81] *Zap2It TV Listings*, November 19, 2001, available at www.zap2it.com.

[82] Audit Bureau of Circulations, *Fas-Fax*, September, 1975 and 2001.

[83] The L.A. Daily News began seven-day-a-week publication in 1979. Prior to that, it was called the Valley News and Green Sheet. See, L.A. Daily News, *Celebrate Our 90th Year*, (Sept. 24, 2001) available at www.dailynews.com/life/articles/0901/24/90bday.asp.

[84] Audit Bureau of Circulations, *Fas-Fax*, Sept., 2001. *Tribune* owns 50% of *La Opinion*.

[85] Jupiter Media Metrix, *Local Market Audience Ratings*, October, 2001.

online users - less than one-fifth that of AOL – and is visited by Los Angelinos less often than more than 70 other web sites.[86]

3. **The Chicago Marketplace.**

In Chicago, the nation's third-largest metropolitan area and third-largest DMA, Tribune owns the *Chicago Tribune*, WGN-TV, Channel 9, an affiliate of The WB network, WGN(AM) radio, and ChicagoLand Television News ("**CLTV**"), a 24-hour cable news channel. Like New York and Los Angeles, Chicago's landscape is filled with intense competition involving virtually every major media player in the country.

a. **Television competition**. There are 16 over-the-air broadcast stations in Chicago, exceeding the 10 available in 1975. These 16 stations are owned by 15 distinct owners.[87] Each of the four major networks has an owned and operated station, and Chicago boasts one of America's most-watched public television stations, WTTW. Only two stations attract more than 10% of the television viewers on average. Although WGN-TV is the third-ranked station in the Chicago market, its audience share is just over half what it was in 1975.[88] The competition includes:

Station[89]	Owner	Network affiliation	Household share-1975[90]	Household share-2001[91]
WLS-TV, Channel 7	ABC/Walt Disney	ABC	22	15
WMAQ-TV, Channel 5	NBC/General Electric	NBC	26	11

[86] *Id*.

[87] Nielsen Media Research.

[88] Nielsen Station Index, May, 1975.

[89] Includes all over-the-air stations with a greater than one market share, plus co-owned stations with shares of less than one.

[90] Nielsen Station Index, Day Part Audience Summary, May, 1975. Reflects stations existing in 1975. Call letter differences as follows: Channel 20, then-WXXW; Channel 50, then-WCAE.

[91] Share numbers are from the Nielsen Station Index May, 2001 Report unless otherwise noted.

WCPX, Channel 38 WSNS, Channel 44	Paxson Communications Telemundo	Pax Telemundo	not on air 3	2 2
WGN-TV, Channel 9	Tribune	WB	17	9
WBBM-TV, Channel 2	CBS/Viacom	CBS	24	7
WFLD, Channel 32	Fox/News Corp.	FOX	5	8
WPWR-TV, Channel 50	Newsweb Corp.	UPN	<1	5
WTTW, Channel 11	Window to the World Com.	PBS	3	4
WCIU-TV, Channel 26	Weigel Communications	WB Kids	<1	4
WGBO-TV, Channel 66 WEHS-TV, Channel 60	Univision	Univision	not on air not on air	4 <1
WYCC, Channel 20	City Colleges of Chicago	PBS	<1	1

Reflecting Chicago's strong tradition for news and reporting, the highest-rated stations in Chicago all have well-established news departments. Together, Chicago over-the-air television stations produce at least 160 hours of local news programming each week. Tribune's WGN-TV produces 27 hours of local news – nearly four times the mere seven hours it programmed back in 1975.[92] However, no station has higher than a 14.2 rating for its evening news programming, a significant drop from the 20 rating WLS-TV achieved in 1975.[93]

Station[94]	Network Affiliation	Hours of local news per week-2001	Late evening news rating-1975[95]	Late evening news rating - 2001[96]
WLS-TV, Channel 7	ABC	30	20	14.2
WMAQ-TV, Channel 5 WSNS, Channel 44 WCPX, Channel 38	NBC Telemundo Pax	29.5 5 2.5	16 no late news not on air	10.5 0.6 1.1
WGN-TV, Channel 9	WB	27.0	9	6.3
WBBM-TV, Channel 2	CBS	23.5	14	4.7
WFLD, Channel 32	FOX	33	no late news	4.3
WGBO-TV, Channel 66	Univision	7	not on air	2.1
WTTW, Channel 11	PBS	2.5	no late news	1.3

[92] Nielsen Station Index, May, 1975.

[93] Nielsen Station Index, May, 1975; Nielsen Media Research, May, 2001.

[94] All stations in the market producing original local newscasts in 2001.

[95] May, 1975, Nielsen Station Index. Reflects station existing in 1975. See, supra at n. 90 for changed call letters.

[96] Rating numbers are from Nielsen Station Index, May, 2001 Report, unless otherwise noted.

b. **Radio competition**: There are 46 separate commercial and non-commercial radio stations in the Chicago market, controlled by 21 different entities.[97] Like residents of New York and Los Angeles, Chicagoans can choose to listen to the gamut of radio formats, 37 in total.[98] Tribune's WGN(AM) is the highest-rated station in the market, but reaches only a 7 share, a distant echo of the 13 share it earned in 1976.[99]

c. **Cable/DBS television competition**: AT&T today controls an astounding 95% of the DMA's cable subscribers - more than 1.6 million television households.[100] Cable penetration in Chicago is 65%.[101] Other MVPDs reach an additional 8% of Chicagoans.[102] On the content side, 28 cable networks earn at least a one share of total-day, total-television household viewing in the Chicago DMA. These 28 networks equal or out-perform seven of the commercial UHF stations in the DMA.[103] AT&T's Chicago cable subscribers have 80 channels available, with as many as 262 available on AT&T's digital services.[104] As discussed more fully below in Section IV.B.2., Tribune-owned ChicagoLand Television News, a 24-hour local cable news network, was launched in 1993 as a direct result of Tribune's cross-ownership in Chicago.

d. **Newspaper competition**. The Chicago market also features intense newspaper competition that includes two large-circulation dailies and several successful suburban daily newspapers. Following the trend in other major cities, overall weekday circulation of the top three daily newspapers is down 27.5% since 1975.

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[97] Duncan's American Radio, *Spring 2001 Ratings Report*, at 61-63 (September, 2001), available at www.duncanradio.com.

[98] *Id* at 61.

[99] See, *id* at 61; James Duncan, *American Radio Fall Report* (1976).

[100] Nielsen Media Research, (February, 2001).

[101] *Broadcasting and Cable Yearbook 2001*, at C-2.

[102] Nielsen Media Research, July, 2001.

[103] Nielsen Media Research, *Total Activity Report*, May, 2001.

Top Daily Newspapers.[105]	1975	2001
Chicago Tribune	806,083	675,847
Chicago Sun-Times	567,780	480,920
Chicago Daily News	425,220	not published
Daily Herald[106]	11,717	148,375

As in most other major markets, afternoon editions of the major daily newspapers have been shuttered since 1975. The venerable *Chicago Daily News* ceased publication entirely. Also taking readership from the daily newspapers are hundreds of weekly newspapers, many of which have been launched since 1975. The leader in this category is Pioneer Press, a subsidiary of Hollinger International, Inc., owner of the *Chicago Sun-Times*. Pioneer publishes 48 separate weekly papers in communities around Chicago and claims a combined weekly circulation of 196,622.[107]

e. **Internet**. On the Internet, sites owned by America Online, Microsoft and Yahoo once again lead the market, and each has local sections designed specifically for Chicagoans. AOL reaches 78.8% of the online community in the market.[108] Microsoft has 72.8% reach and Yahoo 65.7%. Chicagotribune.com reaches a mere 18.2% of Chicago's online community.[109]

4. **The South Florida marketplace**.

South Florida boasts one of the most competitive media markets in the country, with a diversity of voices second to none.[110] The Miami-Ft. Lauderdale DMA is the 15th largest in the country,

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104 *Zap2It TV Listings*, November 19, 2001, available at www.zap2it.com.

105 Audit Bureau of Circulations, *Fas-Fax*, Sept. 2001, March 1975.

106 Reflects predecessor, *Arlington Heights Herald* in 1975.

107 See, *Pioneer Press*, available at www.pioneerlocal.com/cgi-bin-ppo-about.

108 Jupiter Media Metrix, *Local Market Audience Ratings*, October, 2001.

109 *Id.*

110 "South Florida" as used herein includes the Census Bureau's MSA/CMSA for both Miami-Ft. Lauderdale and West Palm Beach, immediately to its north.

and the West Palm Beach DMA immediately to the north is the 43rd largest.[111] Tribune publishes the *South Florida Sun-Sentinel* and, pursuant to a temporary waiver of the Rule, owns WBZL, Channel 39.

a. **Television competition**. The South Florida television market is intensely competitive. Its two largest counties are part of the Miami-Ft. Lauderdale DMA, which has 15 broadcast television stations and in 1994 had the lowest HHI of any of the top 50 television markets based on average all-daypart ratings.[112] The West Palm Beach DMA has 10 more stations. This is a far cry from the eight stations available to viewers in 1975, and the two available in West Palm Beach at that time.[113]

The 15 stations in the Miami-Ft. Lauderdale DMA are owned by 13 distinct owners. Reflecting the diversity of the South Florida marketplace, television competition is led by Univision's WLTV. So competitive is the market that no station earns more than an 11 share. Tribune-owned WBZL is a WB Network affiliated UHF station that competes against a number of well-financed stations owned by major broadcast groups, including four VHF affiliates of the four major networks. The competition includes:

Station[114]	Owner	Network affiliation	Household share-1975[115]	Household share - 2001[116]
WLTV, Channel 23 WAMI, Channel 69	Univision	Univision Ind.	2 not on air	11 2
WPLG, Channel 10	Post-Newsweek	ABC	21	10
WFOR-TV, Channel 4 WBFS-TV, Channel 33	CBS/Viacom	CBS UPN	35 not on air	9 6
WTVJ, Channel 6	NBC/General Electric	NBC	9	9

111 Nielsen Media Research, 2001-02, UE.

112 Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, 11 FCC Rcd. 546 at Table D-1 (1995) ("PTAR Report & Order") The Herfindahl-Hirschman Index ("HHI") is used by the Dept. of Justice and the Federal Trade Commission to measure concentration in the market.

113 *Broadcasting & Cable Yearbook 1975*, at B43, B-72.

114 Includes all over-the-air stations with a greater than one market share, plus co-owned stations with shares of less than one.

115 Nielsen Station Index, May, 1975, Reflects stations existing in 1975. Call letter differences as follows: Channel 4, then-WTVJ; Channel 6, then-WCIX; Channel 7, then-WCKT; Channel 45, then-WFCB; Channel 51, then-WKID.

116 Share numbers are from the May, 2001, Nielsen Research Report, unless otherwise noted.

WSCV, Channel 51 WPXM, Channel 35	Telemundo Paxson Communications	Telemundo Pax	<1 not on air	7 1
WSVN, Channel 7	Sunbeam Television Corp.	FOX	31	8
WBZL, Channel 39	Tribune	WB	not on air	5
WPBT, Channel 2	Community TV Found. So.Fla.	PBS	2	2
WLRN-TV, Channel 17	Dade County Public Schools	PBS	<1	1
WHFT-TV, Channel 45	Trinity Broadcasting Network	TBN	<1	1

South Florida may be the best example in the country of the perverse impact the Rule has on competition and diversity. NBC/General Electric programs newscasts on three stations in Miami-Ft. Lauderdale – its O&O, WTVJ; its partially owned station, WPXM; and Tribune's station, WBZL. Similarly, CBS's WFOR-TV programs its own newscast as well as that of co-owned WBFS-TV. In contrast to the permitted duopolies and news-sharing alliances in South Florida, Tribune's acquisition of WBZL offered the prospect of a new local newscast supported by the vast resources of the *Sun-Sentinel* newsroom. Instead of recycled news from another station, this combination could introduce a valuable new voice to the South Florida airwaves. However, the Rule and the terms of the waiver granted by the Commission prohibit use of *Sun-Sentinel*'s resources and effectively silenced a new voice.

Together, the over-the-air television stations in the Miami-Ft. Lauderdale DMA produce at least 156 hours of local news programming each week. WSVN programs the most news, at 42 hours per week. Next comes WTVJ. Only four local stations programmed late news in 1975, whereas today news can be seen on nine different stations. As more and more stations have begun to program local news, the ratings for each station have dropped dramatically.

Station[117]	Network Affiliation	Hours of local news per week- 2001	Late evening news rating- 1975[118]	Late evening news rating - 2001[119]
WTVJ, Channel 6 WSCV, Channel 51 WPXM, Channel 35	NBC Telemundo Pax	30 14.5 2.5	3 no late news no late news	7.3 4.8 0.5
WFOR-TV, Channel 4	CBS	24.5	11	7.1

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117 All stations in the market producing original local newscasts in 2001.

118 Nielsen Station Index, May, 1975. Reflects station existing in 1975. See, supra at n. 115 for changed call letters.

119 Rating numbers are from the May, 2001, Nielsen research, unless otherwise noted.

WBFS-TV, Channel 33[120]		3.5	not on air	2.9
WPLG, Channel 10	ABC	24	11	6.3
WSVN, Channel 7	FOX	42	16	6.0
WLTV, Channel 23	Univision	12	no late news	5.9
WBZL, Channel 39	WB	3.5	not on air	2.2

b. **Radio competition**. There are 35 commercial and non-commercial AM and FM radio stations available in the Miami-Ft. Lauderdale-Hollywood radio market, controlled by 16 separate entities.[121] Ten of these stations went on the air after the Commission adopted the Rule in 1975. Twelve stations program Spanish-language formats, and in all, 27 formats are available to Miami listeners.[122]

c. **Cable/DBS television competition**. Cable reaches 74% of households in the Miami-Ft. Lauderdale DMA and can deliver in excess of 75 channels. [123] Like Chicago, the cable marketplace in Miami-Ft. Lauderdale is dominated by AT&T, which controls 75% of the subscribers. MVPDs reach an additional 10% of the market. [124] Combined with cable subscribers, roughly 84% of the Miami-Ft. Lauderdale audience receives video programming from an alternative to over-the-air television.

No fewer than 28 cable channels earned total television household shares of one or higher, equaling or exceeding the shares of five commercial over-the-air stations in the market. Florida news can be found on cable at FNC (the Florida News Channel). Local sporting events and sporting news is carried on Fox Sports Florida and the Sunshine Network.

d. **Newspapers**. South Florida residents can read seven local daily newspapers, including two Spanish-language papers. In addition to Tribune, these publishers include two well-

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[120] WBFS-TV began its evening newscast in August, 2001. Numbers reflect October, 2001, data.

[121] Duncan's American Radio, *Spring 2001 Ratings Report*, at 195 (September 2001).

[122] *Id* at 195.

[123] *Broadcasting & Cable Yearbook 2001*, at C-4; Nielsen Media Research, July, 2001.

[124] Nielsen Media Research, July, 2001.

financed, national companies, Knight-Ridder and Cox Enterprises. Circulation in South Florida is competitive:

Top Daily Newspapers.[125]	1975	2001
Miami Herald	375,745	300,377
Sun-Sentinel	96,616	236,095
Miami News	77,568	not published
El Nuevo Herald	n/a	86,096

South Florida, with its many coastal communities, is also a robust market for weekly newspapers. Multitudes of community and demographic groups in South Florida can point to one or more weekly publications targeted to their geographic community, affiliation or interest. Among the publications are *Le Francophile International*, *Miami New Times*, the *Coral Gables Gazette*, *El Nuevo Patria*, and *Shalom Today*.

e. **Internet**. On the Internet, sites owned by America Online, Microsoft and Yahoo once again lead the market, and each has local sections designed specifically for the Miami-Ft. Lauderdale area. Microsoft's sites lead, reaching 75.6% of the online users in the market.[126] AOL has 74.4% reach and Yahoo 60.9%. Tribune's Sun Sentinel sites finishes 12th *with a reach of* merely 11.6%.

5. **The Hartford/New Haven marketplace**.

The Hartford metropolitan area is the nation's 42nd largest in population,[127] and the Hartford-New Haven DMA is the 28th largest in the U.S.[128] Located in the congested East Coast corridor between Boston and New York, Hartford residents have access to local television stations from four different states: Connecticut, Massachusetts, New York and Rhode Island. Tribune publishes *The*

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[125] Audit Bureau of Circulations, *Fas-Fax* (Sept. 2001).

[126] Jupiter Media Metrix, *Local Market Audience Ratings* (October, 2001).

[127] The population of the Hartford CMSA topped one million for the first time in the 2000 census, where it was recorded at 1,183,110. See U.S. Census, 2000.

[128] Nielsen Media Research, 2001-02, UE.

Hartford Courant and owns and operates WTIC-TV, Channel 61, an affiliate of the Fox Network, and WTXX, Channel 20, an affiliate of The WB network.

a. **Television competition**. Discussion of the Hartford over-the-air television marketplace is really a hypothetical exercise given that more than 90% of its residents use cable or another MVPD. Cable systems together offer 30 television stations from Hartford-New Haven, New York, Boston, Providence, RI-New Bedford, MA and Springfield, MA, in addition to national cable networks.[129] There are 11 local over-the-air stations available in the Hartford DMA (up from the six stations available in 1975[130]), owned by nine different owners. More importantly, as in the other Tribune markets, no single station commands a dominant household share. The competition for broadcast viewership includes:

Station[131]	Owner	Network affiliation	Household share-1975[132]	Household share-2001[133]
WFSB, Channel 3	Meredith Broadcasting Group	CBS	34	14
WVIT, Channel 30	NBC/General Electric	NBC	15	13

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[129] See, *TV Week*, The Hartford Courant, Nov. 3, 2001 at 2. Stations available in Hartford DMA include the following (combines all cable systems; some channels are not available on all systems):

WCBS-TV, New York	WGBH-TV (PBS), Boston	WFSB-TV (CBS), Hartford
WNBC-TV, New York	WBZ-TV (CBS), Boston	WNYW-TV (Fox), New York
WCBS-TV, New York	WGBH-TV (PBS), Boston	WFSB-TV (CBS), Hartford
WNBC-TV, New York	WBZ-TV (CBS), Boston	WNYW-TV (Fox), New York
WCVB-TV (ABC), Boston	WLNE-TV (ABC), New Bedford	WABC-TV, New York
WTNH-TV (ABC), New Haven	WWOR-TV (Ind.), New York	WJAR-TV (NBC), Providence
WPIX-TV (WB), New York	WPRI-TV (CBS), Providence	WNET-TV (PBS), New York
WRDM-LP (Telemundo), Hartford	WUVN-TV (Univision), Hartford	WTXX-TV (WB), Waterbury
WWLP-TV (NBC), Springfield	CPTV (PBS), Hartford	WHPX-TV (PAX), New London
WVIT-TV (NBC), New Britain	WSBE-TV (PBS), Providence	WSBK-TV (UPN), Boston
WGGB-TV (ABC), Springfield	WEDN-TV (PBS), Norwich	WLVI-TV (WB), Boston
WGBY-TV (PBS), Springfield	WCTX-TV (UPN), New Haven	WTIC-TV (Fox), Hartford

[130] *Broadcasting & Cable Yearbook 1975*.

[131] Includes all over-the-air stations with a greater than one market share, plus commonly owned stations with shares of less than one.

[132] Nielsen Station Index, May, 1975, Reflects stations existing in 1975. Call letter differences as follows: Channel 20, then-WATR; Channel 30, then-WHNB.

[133] Share numbers are from the Nielsen Station Index, May, 2001 Report, unless otherwise noted.

WHPX, Channel 26	Paxson Communications	PAX	not on air	1
WTNH-TV, Channel 8 WCTX, Channel 59	LIN Television Corp. K-W TV/LMA with LIN	ABC UPN	23 not on air	10 2
WTIC-TV, Channel 61 WTXX, Channel 20	Tribune	FOX WB	not on air <1	7 2
WEDH, Channel 24	Connecticut Public On air	PBS	<1	2

Together, the over-the-air television stations in the Hartford DMA produce at least 109 hours of local news programming each week. In 1975, only three stations programmed local news;[134] today, more than eight do. As more stations have begun programming local news, the market share for each station has dropped. No newscast earned higher than a 7.7 rating.

Station[135]	Network affiliation	Hours of local news per week - 2001	Late evening news rating - 1975[136]	Late evening news rating - 2001[137]
WVIT, Channel 30 WHPX, Channel 10 WRDM, Channel 13	NBC Pax Telemundo	30 5 2.5	4 not on air not on air	7.7 0.4 <1
WFSB, Channel 3	CBS	33.5	13	6.2
WTNH-TV, Channel 8 WCTX, Channel 59	ABC UPN	24.5 3.5	11 not on air	5.1 1.4
WTIC-TV, Channel 61 WTXX, Channel 20	FOX WB	6.5 3.5	not on air no late news	5.1 1.2

b. **Radio competition**. There are 25 commercial and non-commercial AM and FM radio stations available in the Hartford market, owned by 10 separate entities and offering 13 different formats to Hartford residents.[138]

c. **Cable/DBS television competition**. Hartford is a unique cable market. Cable reaches 88% of households in the Hartford-New Haven DMA - the second-highest penetration of any top-50 television market.[139] Other MVPDs reach an additional 2.5% of the market,[140] meaning over-the-air

[134] A fourth station, WHCT-TV, Channel 18 may also have broadcast a de minimus amount of local news programming in 1975.

[135] All stations in the market producing original local newscasts in 2001.

[136] Nielsen Station Index, May, 1975. Reflects station existing in 1975. See, supra at n. 135 for changed call letters.

[137] Rating numbers are from the Nielsen Media Research, May, 2001, unless otherwise noted.

[138] Duncan's American Radio, *Spring 2001 Ratings Report*, at 131 (September, 2001).

[139] *Broadcasting & Cable Yearbook 2001*, at C-3.

distribution of television is little used in Hartford. There are 24 cable systems in the Hartford DMA,[141] and the systems deliver a minimum of 80 channels. Thirty-six cable networks earn at least a one share in the Hartford DMA, equaling or outperforming three of the broadcast stations.

d. **Newspaper competition**. Daily newspapers published in the Hartford DMA include *The Hartford Courant*, the *New Haven Register* and the (Bridgeport) *Connecticut Post*. *The Boston Globe*, *The New York Times* and other regional newspapers are also offered for home delivery.

Top Daily Newspapers.[142]	1975	2001
The Hartford Courant	179,569	198,651
New Haven Register	100,903	100,108
(Bridgeport) Connecticut Post[143]	89,705	76,045

Weekly publications include *The Hartford Business Journal*, four weekly African-American and Hispanic publications, the *Catholic Transcript*, and the *Jewish Ledger*.

e. **Internet**. The local channels of national portals and the local newspaper Web sites compete fiercely in the Hartford market. *The Hartford Courant*'s ctnow.com has to compete not only with other local newspaper and television sites, but also with breaking news on AOL, MSN, Netscape and Web sites of many other broadcasters and print media. In this market it is hard for any news source to be heard.[144]

B. The increase in choices has fragmented the marketplace. Market shares for all media have dropped. As a result, no one voice, and no small number of voices, reach more than a fraction of the market, let alone dominate it.

The data make an unmistakable statement: as consumers are offered a growing number of media choices, they divide their time among those choices. No single medium or programmer can

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[140] Nielsen Media Research, July, 2001.

[141] NCTA, *State Data as of December* (Updated Nov. 23, 2001) available at http://www.ncta.com/industry_overview/indStats.cfm?statID=16.

[142] Audit Bureau of Circulations, *Fas-Fax*, March, 1975, and Sept. 2001.

[143] Known as Bridgeport Telegram-Post in 1975.

dominate the advertising marketplace or the marketplace of voices and ideas. In fact, no two or three voices combined can dominate any given marketplace.

1. **Ratings for individual broadcast television stations decline**. The abundance of choices for viewers has meant a sharp downturn in ratings and share for broadcasters at the national and local levels. All four major national broadcast networks have experienced substantial ratings declines. CBS has taken the biggest hit, dropping 59% from a total prime time rating of 20.9 in 1975 to 8.6 in 2001.[145]

In local markets, the effect on ratings and share is equally pronounced. In May, 1975, weekly average share for the top-rated station in the New York market, WNBC, was 24. By May, 2001, the top-rated station in New York earned only a 12 share. That is, despite the fact the population in the New York DMA has increased 7% since 1975, there were 660,889 fewer homes watching the top-rated TV station in May, 2001, than in May 1975.[146] This fragmentation is consistent across American television markets. In Los Angeles, top-rated KNBC registered a 22 share in May, 1975, but saw that melt to 12 in May, 2001. In Chicago, top-rated WMAQ-TV earned a 26 share of the market in May, 1975, but in May, 2001, top-rated WLS-TV had only a 15 share. In Miami-Ft. Lauderdale, the top-rated station in 1975 was WTVJ with a whopping 35 share. Today's top-rated Miami-Ft. Lauderdale station, WLTV, attracts only an 11 share. In Hartford, top-rated WFSB had a 34 share in May, 1975. It retains the top rating in May, 2001, but had only a 14 share.

Fragmentation is also evident with respect to local evening newscasts. From 1993 to 2000, the number of Americans who say they regularly watch local television news fell from 77% to

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[144] See, The Media Audit, August-September, 2001.

[145] Nielsen Media Research, 1975, 2001.

[146] Nielsen Station Index, May 1975 vs. Nielsen Media Research, May, 2001. There were 6,221,510 households in the New York DMA in 1975; there were 6,935,610 in 2001.

56%.[147] In New York, WNBC's late news led the market in May, 1975, with a 13 rating. Today, WNBC leads the market, but has only an 8.2 rating. Local news ratings have dropped in all markets where Tribune owns a newspaper and television station. In Chicago, WLS-TV led among late, local evening newscasts in 1975 with a 20 rating. It still tops the ratings in 2001, but has only a 14.2. In Hartford, WFSB led the late local evening newscasts in 1975 with a 13 rating. In 2001, WVIT tops the market with only a 7.7 rating.

2. **Share for individual radio stations declines**. Radio listener shares have plunged dramatically since 1975 as well. In Hartford, market leader WTIC(AM) had an 11 share in the Spring of 2001.[148] This is only a fraction of the 30.3 share it earned when it led the market in 1976.[149] In Chicago, WGN(AM) led all radio stations in 1976 with a 13 share. It remains atop the list in 2001, but its share has dropped to 7.[150] KROQ-FM is the 2001 leader in the Los Angeles market with a mere 5.1 share.[151] Even with the consolidation in radio, no radio station – owned by any party - in New York, Los Angeles, Chicago, South Florida or Hartford, earned higher than an 11 share.[152]

3. **Number and circulation of daily newspapers decline**. In the face of the fragmenting marketplace, daily newspapers have suffered most. In 1975, there were 1,756 daily newspapers in America. In 1999, there were 1,483.[153] While the U.S. population increased 27.4% during

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[147] The Pew Research Center for the People and the Press, *Investors Now Go Online for Quotes, Advice* (2001), available at http:www.people-press.org/media00rpt.htm.

[148] Duncan's American Radio, *Spring 2001 Ratings Report*, at 131 (Sept. 2001). Tribune owns WTIC-TV in Hartford, but not WTIC radio.

[149] James Duncan, *American Radio Fall Report*, (1976)

[150] Duncan's American Radio, *Spring 2001 Ratings Report* at 61.

[151] *Id* at 175.

[152] *Id* at 131.

[153] Newspaper Association of America, *Facts About Newspapers*, (2001).

this period, from 215,973,199 to 275,130,000,[154] daily newspaper circulation dropped 8% - from 60,655,431 in 1975 to 55,772,847 by 2000.[155] From 1975 to 2000, total weekday circulation for the top three daily newspapers fell by 29.5% in New York, by 5.7% in Los Angeles, and by 27% in Chicago.[156] But as a reflection of consumer demand for content that is more local, the number of weekly newspapers increased 6.9% from 1975 to 1999, from 7,612 to 8,138.[157] More tellingly, circulation of weekly newspapers has more than doubled from 35,892,409 in 1975 to 74,457,621 in 1999.[158]

4. **Emergence of a true viewpoint gatekeeper.** Today, through efficient clustering of cable systems, single operators control cable distribution to entire metropolitan areas. In Chicago, for instance, 95% of all cable homes take their service from AT&T. The same is true in other metropolitan communities.

As the Commission has noted, "the cable operator either originates or selects almost all of the programming" viewed in the market. As a result, cable system operators have virtually unbridled discretion to control or limit viewpoint diversity, without governmental interference. The recent highly-publicized dispute in Fairfax County, Virginia, over carriage of WJLA and NewsChannel8, highlights the control cable operators have over the access of local cable news channels to their viewing audience. If the Commission has a concern for viewpoint diversity in today's media marketplace, it should focus on the viewpoint gatekeeper, the cable system operator, not on the publisher of the local newspaper.

C. The cost of newsgathering has increased dramatically for all media, and the cost of other programming has greatly affected independent stations.

At the same time market share is declining and competition increasing for traditional media, the cost of newsgathering has grown exponentially. Today more than ever, the news of the day requires

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[154] U.S. Census Bureau, Population Estimates Program, 1975 and 2000 estimates.

[155] Audit Bureau of Circulations, 1975 and 2001; Editor & Publisher Year Book, 1976; Editor & Publisher International Year Book, 2001.

[156] Audit Bureau of Circulations, *Fas-Fax*, 1975 and 2000. Circulation for the market's top three daily newspapers.

[157] Newspaper Association of America, *Facts About Newspapers*, (2001).

complex coverage of international events and intensely local coverage of community affairs. The war in Afghanistan is relevant to every American and coverage in that region is difficult and costly. The belief in 1975 that independent over-the-air stations could provide this global coverage is folly. Today, only the broadcast networks, cable news networks and newspapers have the resources to provide comprehensive coverage of national and international events.

At the same time, traditional core cities and suburbs have given way to sprawling, multi-county metropolitan areas, requiring larger news staffs to cover the local events. More than any other medium, newspapers are committed to the huge and expensive undertaking of reporting on the hundreds of municipal government boards, local school boards and other public bodies. In Chicago, the *Chicago Tribune* employs 650 editorial staffers and hundreds of freelance writers -- hundreds more than any other news organization -- to cover these local stories. [159] In addition to these labor costs, newspapers have invested heavily in plant and equipment to offer zoned editions that do justice to local news across large areas.

On the broadcast side, it will cost WGN-TV $14 million in 2001 to produce 27 hours of news a week in Chicago. This cost includes 21 reporters and anchors, photographers, editors, producers and other news-related staff, as well as several microwave and satellite trucks, and a helicopter to cover news throughout the Chicago area. Tribune's KTLA in Los Angeles will spend $18.9 million and WPIX in New York will spend $14.7 million.

The cost of entertainment programming has grown even more dramatically and is further draining resources at many broadcast stations. In 1975, without competition from cable operators, first-run entertainment programming was developed largely for the three existing networks. At that time, the number one television program was *All in the Family*, which cost about $90,000 per episode to

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[158] Newspaper Association of America, *Facts About Newspapers*, (2001).

[159] Current newsroom staffing at Tribune newspapers: *Los Angeles Times*, 1,130; *Chicago Tribune*, 650; *Newsday*, 556; *The Hartford Courant*, 340; *South Florida Sun-Sentinel*, 346.

produce.[160] Today, seven networks compete for hit programming and cable operators use their dual revenue streams to acquire top-rated syndicated programming and produce award-winning original content. Today's prime-time leader, *ER*, airs for $13 million per episode.[161] Syndicated shows, once independent television's programming mainstay, now also appear in cable's domain. The same can be said for sports. And cable's success in developing content can be seen in the 2001 Emmy Awards, where *Sex and the City* won the best comedy award and cast members of *The Sopranos* won awards for outstanding lead actor and actress in a drama series.[162]

IV. IN A FRAGMENTED WORLD, THE RULE HARMS DIVERSITY.

Tribune's experience in this fragmented media environment illustrates how ownership of a newspaper and one or more broadcast stations in a market enhances viewpoint diversity, encourages superior journalism, expands the amount of local news and public-interest programming available, and creates a more competitive media landscape. Today, the Rule is not only unnecessary, but actually harms the diversity of viewpoints it professes to protect.

A. The Rule is unnecessary.

1. The challenge for any media company competing in the American marketplace today is not about dominating the local market. The challenge is to be heard at all.

The breadth of competition in the video programming market is reason enough to repeal the Rule. Today's cable channels often enjoy higher local audience shares than broadcast stations. For example, in New York, 33 cable channels earn a share of one or higher, and cable's Nickelodeon earns a television household share of six - equal to Fox's WNYW and UPN's WWOR, and greater than Paxson's WPXN, Telemundo's WNJU, and Univision's WXTV. In Los Angeles, 28 cable channels earn a share of one or above – a rating equal to or greater than 18 over-the-air stations. In each of Chicago and South

[160] Robert LaFranco, *A Rich History*, Forbes, Sept. 21, 1998, at 210.

[161] *See*, Jim Rutenberg and Bill Carter, *NBC Ponders Its Options: Grow or Else*, N.Y. Times, May 14, 2001, at C1.

[162] Outstanding Lead Actor in a Drama Series: James Gandolfini as Tony Soprano; Outstanding Lead Actress in a Drama Series: Edie Falco as Carmela Soprano. See, www.emmys.com.

Florida, fully 28 cable channels earn a share of one or higher. In Hartford, 36 cable channels earn a share of one or higher and Nickelodeon and the Cartoon Network each reach more television households than Tribune's WTXX, Univision's WUVN, UPN's WCTX and two other stations. All of these cable services compete with broadcast stations for audience and for the broadcasters' only source of revenue – advertising.

In analyzing marketplace diversity today, any count of the number of voices must include each available cable network, as well as all newspapers, radio, television, Internet and other video delivery systems available to consumers in the market. It is simply illogical to continue to count only broadcast stations in any market analysis and disregard a cable channel that is being watched by more people. As the Commission recognized when it relaxed the One-to-a-Market rule in 1999, daily newspapers and cable systems "are an important source of news and information on issues of local concern and compete with radio and television, at least to some extent, as advertising outlets."[163] Similarly, there is no reason to ban combinations with daily newspapers, while permitting combinations with weekly newspapers that have greater circulation and readership.

Moreover, given the multiplicity of outlets of information, opinion and entertainment available to the public, the combination of one newspaper and one or more broadcast stations will have no more than a de minimus impact on the range of views available in any market. Add the weekday circulation of *Newsday* (577,354) to the number of television homes watching the average WPIX late evening local newscast (201,132[164]) and the result is still a small fraction of the total New York metropolitan area. The same calculation holds true in each of the other markets where Tribune owns a television station and a newspaper. It is ridiculous to conclude that merely by owning a newspaper,

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[163] Television Ownership Report and Order, 14 FCC Rcd. at 12953 (¶ 57).

[164] Number of television households in the New York DMA (6,935,610) x rating of WPIX late local newscast (2.9%). See discussion of the New York market, above.

Tribune or anyone else might control a disproportionate or unacceptable share of the marketplace of ideas.[165]

2. The market - not proscriptive regulation - is the best guarantor of viewpoint diversity.

Before signing up a single subscriber, DBS providers invested millions of dollars in technology based on the insatiable appetite for diverse programming in America, both urban and rural. Similarly, cable systems have invested billions of dollars in new technology to provide hundreds of channels on new digital platforms. America's demand for diverse programming justifies investments that were unfathomable in 1975. These outlays also evidence a paradigm quite different from the supposition

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[165] The Commission's conclusion in its 1998 biennial review that a commonly-owned broadcast station and newspaper cannot produce true diversity to the same extent as two media outlets that are "antagonistically run" is irrelevant, even if it were true. See, 1998 Biennial Regulatory Review, 15 FCC Rcd. 11058, 11100 (2000).

To another point, the Commission observes in the Notice that broadcast stations and newspapers were once viewed as the gatekeepers in the local marketplace of ideas. NPRM ¶ 17. This argument is outdated. It presages the fear that only through the megaphone of broadcast media can an individual speak to the mass market. This long-outdated notion is based on the same premise that led to the Fairness Doctrine - that regulation of speech is justified by the need to fairly ration the limited technology means available. But just as the Fairness Doctrine has dissolved, so, too, should this argument as applied to newspaper-broadcast common ownership. See, Inquiry Into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees, 102 FCC 2d. 142 (1985) ("Inquiry Into the Fairness Doctrine")

First, the power of the newspaper or broadcast station to act as gatekeeper is diminished by the number of outlets and the myriad of viewpoints available. The proverbial town square has been replicated on the Internet where any individual can go online at any time and speak to the world. The Internet offers a powerful microphone at the hands of the many. Local community groups post notices and speak to their membership via the Web. Sports teams have individual Web sites to tell the story of their season. Political candidates have Web sites that communicate their message to the electorate. And in chat rooms and message boards, millions of Americans post opinions and share ideas on any topic under the sun. In short, getting a message out to the public no longer requires a printing press or a broadcast license. It is happening every day and is available to every American with access to a library's computer. The U.S. Supreme Court has hinted at recognizing this change. Reno v. ACLU, 521 U.S. 844, 870 117 S.Ct. 2329, 2344 (1997) ("Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer."). See also, National A-1 Advertising, Inc., et. al v. Network Solutions, Inc., 121 F. Supp. 2d 156, 172 (D.N.H. 2000) ("Few would deny that features of the Internet, such as the Worldwide Web, chat rooms, bulletin board services, and newsgroups, have become a forum for public debate.").

Second, if there is a debate to be heard or a message to be sent, the local newspapers and broadcast stations will see it is brought to the public. In an environment with so many choices and so many media outlets, even if one newspaper and broadcast station report a story the same way, other local voices will report it differently.

of the Rule's authors: Consumers control the programming provided to them. Chairman Powell has hit on the reason for this:

> One is hard pressed, however, to see why, in a healthy marketplace, if the public values local programming, producers would not supply it. If a local audience desires a program, and is willing to watch the program, that program will attract advertising dollars and thus a station or network will have an incentive to produce and provide that show. Indeed, since most consumers purchase advertised product in their local towns and communities, advertisers – even national ones with local franchises – would favor programs that appeal to local audiences.[166]

As consumers demand programming directed to their interests, media must comply to remain relevant to advertisers. Gone are the days when consumers were beholden to three networks for their programming choices. The unregulated environment of cable programming today contains a cornucopia of targeted content. Historians can watch the History Channel, epicures can tune into The Food Network or the Home & Garden channel, golfers can commiserate on The Golf Channel, and sports fanatics can inundate their senses with ESPN, ESPN2, ESPNews, ESPN Classic, CNN/SI or one of the many regional sports networks available.

Even within a single company, speaking in one voice is no longer enough. In Chicago, Tribune publishes the *Chicago Tribune*, a mass market daily, but also publishes and distributes *Exito*, a Spanish language weekly, *Relcon*, a real estate supplement, *Silicon Prairie*, a weekly magazine about technology in the Midwest, and *BlackVoices Quarterly*, a quarterly magazine directed to African Americans. Each publication is operated with editorial independence and each has its own staff of reporters and editors. The existence of myriad different publications illustrates the need to reach distinct demographics within the marketplace and common ownership only enhances the ability to do so.[167]

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[166] 1998 Biennial Regulatory Review, 15 FCC Rcd. at 11150 (2000).

[167] The same is true on cable where The Food Network and Home & Garden Television have the same primary owner, The E.W. Scripps Co., a newspaper publisher. See the E.W. Scripps Co., 2000 Annual Report, Form 10-K (Dec. 31,2000) available at www.scripps.com. In addition, the same demand for local content is why *Chicago Tribune* and other Tribune newspapers spend time and money on zoned editions giving readers content and advertising more centered in their communities. It is why the number of weeklies and community newspapers has increased in the last 10 years.

As the market fragments, Tribune is driven to provide more diverse content – content that will attract readers and advertisers. As a result, the Rule is not necessary to preserve diversity; if the Commission would allow the market to function, our diverse culture will preserve diversity on its own.

3. Tribune's newspapers and television stations reach different demographics.

Where there is little overlap between the readers of a newspaper and the viewers of a commonly-owned television station, any potential harm resulting from common ownership is reduced because the views being expressed are falling on different eyes and ears. [168] In 2001, the facts show there is little overlap. In New York, for example, only 7.2% of adults 18 or older both read *Newsday* and watch WPIX. [169] In Los Angeles, only 18.8% both read the *Los Angeles Times* and watch KTLA. In Chicago, only 26.5% both read the *Chicago Tribune* and watch WGN-TV. In South Florida, only 9% read the *Sun-Sentinel* and watch WBZL. In each market, far more watch TV than read the newspaper,[170] and as a result, allowing the newspaper to contribute to the station's newscast will introduce a new voice to the majority of viewers.

4. Common ownership does not mean common viewpoints.

The myth that common ownership will result in common viewpoints is rooted in the faulty perception that broadcast stations routinely express opinion, either directly or through choices in

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[168] See, Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 100 FCC 2d 17, 25-26, recon. granted in part and denied in part, 100 FCC 2d 74 (1985) ("Prohibition of . . . newspaper and television, and radio and television cross ownership in the same market would make little sense unless these different media were important substitutes for each other."); Review of the Commission's Regulations Governing Television Broadcasting, 10 FCC Rcd. 3524, 3555 (1995).

[169] For Chicago and New York numbers, see, The Media Audit, July-August, 2001; For Los Angeles numbers, see, The Media Audit, March-April, 2001; For Miami-Ft. Lauderdale numbers, see, The Media Audit, June-July, 2001. In each case, daily newspaper reach defined as "read one or more in the past five weekdays." Television reach defined as "viewed over the past seven days." The number of persons who both read the newspaper and view local news on the station would be even less. Geographic area is defined by Media Audit as its metropolitan statistical area, which may differ from the DMA and/or the area defined by the U.S. Census.

[170] For example, WPIX in New York reaches 7.7 million people throughout Manhattan and the greater New York area, whereas *Newsday* reaches just 1.7 million. WGN-TV reaches 4.6 million people in Chicago; the *Chicago Tribune*'s weekday reach is just 2.4 million. See, The Media Audit, July-August, 2001.

programming. This is misguided for many reasons. First, the number of voices in a market is not affected by whether a station airs *Dawson's Creek*, *Who Wants to Be a Millionaire*, *Moesha*, *Uga Uga*, or a telecast of *Major League Baseball*. Moreover, non-news programming decisions are mostly cost-based and market-driven. The modicum of opinion exercised in choosing programming reflects economic considerations far more than any viewpoint bias. Therefore, the need to protect diversity among entertainment or sports programs does not amount to a justification for the Rule.[171]

Second, television stations rarely editorialize. In the November, 2000, elections, for example, none of Tribune's television stations endorsed candidates for elective office. Even in the rare cases where a station expresses an opinion, that opinion is not necessarily influenced by common ownership with a newspaper. If one were to believe common ownership begets common viewpoints, it would be expected that each of Tribune's newspapers would endorse the same political candidate. That was not the case in the 2000 presidential election, in which six of Tribune's daily newspapers endorsed President Bush, three endorsed then-Vice President Gore, and two declined to endorse either candidate. Some Tribune-owned weekly newspapers even endorsed Ralph Nader. As with all editorial decisions at Tribune media outlets, these decisions were made by the local operators and emphasized local issues and perspectives.[172] The Commission recognized this independence in the radio context when it relaxed the Seven Station Rule in 1984: "We believe that, in general, decisions concerning local coverage are made by individual stations, whether affiliated or network owned."[173]

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[171] See, NPRM, ¶ 40 (diversity of viewpoints in local news presentation is at the heart of the Commission's diversity goal), citing, Local TV Ownership Report and Order, 14 FCC Rcd. at 12933, ¶ 66.

[172] Amendment of Section 73.3555 (Multiple Ownership of AM, FM, 100 F.C.C.2d 17, 51 (1984). See id at 39 (citing uncontroverted evidence that group-owned stations which do editorialize "make basic reporting and coverage decisions on an autonomous basis"). The analysis and the practical reality are no different here.

[173] Indeed, decisions about content at Tribune media are all made locally and Tribune media routinely criticize their sister operations and their corporate parent. Tribune-owned Chicago Cubs baseball team is a frequent target. Tribune's newspaper media reporters critique the programming on Tribune-owned television stations. Following the merger of Tribune and the former Times-Mirror companies, *Los Angeles Times* newspaper columnists lampooned the corporate ownership. See, e.g., Howard Rosenberg, *Mergers Make for Strained Bedfellows*, Los Angeles Times, March 15, 2000, at F1.

Finally, even if the fear of cross-ownership justified a need to protect diversity, regulating ownership is an ineffective means of achieving that goal. Banning common ownership leads to a diversity of owners, but does little to create a diversity of viewpoints. One need only remember the phalanx of helicopters that followed O.J. Simpson's Ford Bronco down the freeways of Southern California to illustrate how competition among broadcast media leads to uniformity, not diversity. As Chairman Powell notes, "Different owners may have different perspectives, but they probably have more in common as commercial interests than not, for each must compete for the maximum audience share to remain profitable."[174] That is, most television newscasts will broadcast the major stories in the marketplace because they are trying to reach the broadest audiences. Common ownership increases the chance they will provide content to niche demographics and therefore depart from the mainstream.

For these reasons, consumers in markets where cross-ownership exists do not perceive a lack of voices. In Chicago, where Tribune has owned and operated a newspaper, a television station, and a radio station for 53 years, competition for audience share remains fierce and there are no complaints about the lack of viewpoint diversity. To the contrary, common ownership has given a local flavor to news and programming of WGN-TV and has allowed both the stations and the newspaper to better become a part of the community they serve. Neither Tribune nor the Commission has received complaints about the common ownership of WGN-TV, WGN(AM) and the *Chicago Tribune*.

B. The Rule actually harms diversity by reducing local news and public interest programming.

Beyond being unnecessary and ineffective, the Rule is actually detrimental to the most important programming, local news and public interest programs. The quality of local news and public interest programming will increase with common ownership, and decline where that ownership is banned.

1. The Rule denies ownership of broadcast stations by the organizations most capable of, and dedicated to, covering local news.

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[174] 1998 Biennial Regulatory Review, 15 FCC Rcd. at 11149 (2000).

In 2000, following years of persistent inquiries by Tribune's newspaper publishers, Tribune Company was honored to be one of the first two U.S. newspaper publishers to open a news bureau in Havana, Cuba.[175] Coverage from Cuba is of extreme interest to the large Cuban-American population in South Florida, many of whom left their families and friends to seek opportunities in the United States. Tribune's *Sun-Sentinel* assigned veteran journalist Vanessa Bauza as its resident Havana correspondent, and since the spring of 2001, Bauza has provided in-depth reports on a variety of topics of interest to the Cuban-American population in South Florida. Her reports have included Cuban reaction to the September 11 attacks, the state of the Cuban economy, immigration dynamics, Cuban President Fidel Castro's health, a teacher shortage in Cuba, and follow-up stories on the widely-watched Elian Gonzales custody battle. These unique stories are of particular interest to South Florida's large Cuban population. They were created by a Tribune newspaper that has invested heavily by stationing a reporter in Cuba. But despite Tribune's investment in developing these stories, their reach is limited to print media. The Rule prevents Bauza from reporting on Tribune's WBZL. And so, while Fidel Castro prevents most local broadcasters from providing local coverage from Cuba,[176] Tribune's WBZL could provide such coverage using the resources of the *Sun-Sentinel*, if not for the Rule.

Similarly, in Hartford, residents can get newscasts produced by major networks located in New York. They can choose 24-hour cable newscasts produced in Washington, D.C. and Atlanta. They can even view international news produced in Europe and Asia. But unless the Rule is changed, they will not be able to watch a local newscast produced under common ownership with their local newspaper – a newspaper that has been published in their community since before the American Revolution.[177]

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[175] The Associated Press, *Tribune Co., Dallas Morning News Opening Havana Bureaus*, Jan. 8, 2001, available on LexisNexis. ("They join the AP and CNN as the only US media permanently operating in Havana.")

[176] While Cuba occasionally admits American journalists to the island to report, such instances are ad hoc and subject to the whim of the Cuban government.

[177] *The Hartford Courant* is the nation's oldest newspaper in continuous publication. It was first published as a weekly paper in 1764. See, *The Hartford Courant*, About Us, available at www.hartfordcourant.com/about. In Hartford, Tribune is permitted under applicable Commission policy to operate both *The Hartford Courant* and local television stations only until the next station license renewal dates.

These unfortunate results prove the Rule has outlived whatever usefulness it ever had. As the Commission knows and has cited, 70% of American adults get most of their news today from television – more than twice the number that list newspapers as their main news source.[178] In the aftermath of the September 11 terrorist attacks, fully 81% of Americans say they get most of their information from television, and about 11% from radio.[179] The news staff of a broadcast station is typically only a fraction of that employed by a daily newspaper to cover the issues of the day. In the 25 largest U.S. markets, the television news staff is estimated to be less than 81 people on average.[180] In a DMA the size of Newport News, Virginia (No. 41), the average station has a news staff of less than 40.[181] News operations at U.S. radio stations are even smaller - or non-existent.[182] As an alternative, these stations turn to national networks and out-of-town entities to provide national news coverage and broadcast feeds. Reports from ABC, CBS, NBC and CNN stream onto the local stations, but content from the local newspaper does not.

By contrast, providing consumers with local, national and international news through a local perspective is the tradition and primary mission of the daily newspaper. The average newspaper in a major U.S. city devotes hundreds of reporters and editors to this cause. The *Chicago Tribune* employs more than 650 editorial staffers and hundreds of freelancers to gather and write news of local interest. In Los Angeles, the numbers are even higher - 1,130 editorial staff at the *Los Angeles Times*. Even in the

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[178] See, Television Ownership Report & Order; Television Satellite Stations Review of Policy and Rules, 14 FCC Rcd. 12903, 12912 & n.34, 12934 & n.119 (1999) (citing Roper Starch Worldwide, Inc., America's Watching, (March/April, 1997).).

[179] Pew Internet and American Life Project, *How Americans Used the Internet After the Terror Attack*, at 2 (Sept. 15, 2001). available at http://www.pewinternet.org/reports/toc.asp/?Report=45.

[180] Vernon Stone, *News Operations at U.S. TV Stations*, Missouri School of Journalism (Updated 2001), available at http://web.missouri.edu/~jourvs/gtvops.html.

[181] Vernon Stone, *News Operations at U.S. TV Stations*, Missouri School of Journalism (Updated 2001), available at http://web.missouri.edu/~jourvs/gtvops.html.

[182] Vernon Stone, *News Operations at U.S. Radio Stations*, Missouri School of Journalism (Updated 2001), available at http://web.missouri.edu/~jourvs/graops.html.

smaller markets, the size of Tribune's newsgathering operations is significant. In Newport News, for example, the *Daily Press* employees 155 full-time editorial staff.

When allowed, newspapers contribute unique resources to the local newscasts of sister stations. Some examples:

- In 1999, *Chicago Tribune* reporters looked at all 285 death penalty cases in Illinois since capital punishment was reinstated. The newspaper's series raised numerous troubling questions about how the death sentence was applied in Illinois. It was picked up by the television media throughout Chicago, but aired first and most dramatically on WGN-TV. Early in 2000, Illinois Governor George Ryan imposed a moratorium on the death penalty in Illinois and said the *Chicago Tribune* series helped demonstrate the unfairness and unreliability of the system.

- In Hartford, Tribune-owned WTIC-TV wanted to investigate whether state-licensed contractors, whose work regularly put them inside customers' homes, had been convicted as sexual offenders. The television station obtained the databases of state-licensed contractors and of convicted Connecticut sexual offenders, but did not have the computer expertise or the resources to cross-match them. The newspaper had experts in computer-assisted reporting that could make the comparison in a matter of hours. Working together, the station was able to get the story it needed. The newspaper then separately expanded its analysis to include all convicted felons in the state.[183] As a result of the story – a story the station could not have told on its own - the Connecticut Department of Consumer Protection promised a thorough review.

- In New York, following the September 11 tragedy, WPIX broadcast regular live phone reports from *Newsday* reporter Edward A. Gargan in Pakistan. While network coverage has been available on other New York television stations, WPIX offers its viewers an independent voice with a local perspective. Gargan is not alone. Reporter Michael Lev of the *Chicago Tribune* appears live from overseas on WGN-TV. Many other Tribune reporters appear on the Tribune stations in their markets, offering viewers a local perspective and an alternative to the network coverage. The bottom line is more in-depth, substantive and valuable coverage for Tribune television viewers from Tribune newspaper reporters and editors. **Tribune newspapers have 45 reporters stationed internationally, covering issues around the globe. Tribune television stations have no reporters outside the U.S.**

- In Los Angeles, the *Los Angeles Times* led an in-depth investigation into allegations that some of the nation's largest natural gas companies triggered the California energy crisis by blocking construction of key gas pipelines in 1996. As a result of the newspaper's efforts, five Tribune television stations (in Los Angeles, Sacramento, San Diego, Houston and Dallas) were able to use the sources and information gathered to produce their own stories, with more substantive and timely content. KTLA added video, KTXL in Sacramento contributed an interview with California's governor Gray Davis, and KHWB in Houston interviewed El Paso energy officials. All three stations made their reports available to the other stations via satellite feeds. Combined with the reporting of the L.A. Times, the California and Texas television markets had in-depth and powerful content.

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[183] The TV and newspaper stories thus were slightly different in this regard; the television story focused largely on the sexual offenders while the newspaper included more on other kinds of felons.

- In the spring of 2001, Michael Lev, *Chicago Tribune* Beijing correspondent, provided detailed coverage of the downing of a U.S. plane in China not only to readers of the *Chicago Tribune*, but to viewers of WGN-TV and CLTV, listeners of WGN Radio and users of chicagotribune.com. Lev gave WGN-TV, CLTV, WGN Radio and chicagotribune.com a resource in China that none of them could have afforded on their own. Absent Lev's reporting, each of these entities would likely have used wire reports or network coverage with the same content available on other channels and media outlets in Chicago. Instead, Lev provided comprehensive, up-to-date coverage with a unique, Chicago voice, and Tribune made it available in a variety of media so Chicago residents had the latest information.

- In New York, *Newsday* and WPIX shared resources to plan and produce a prime-time debate for New York's five Democratic mayoral candidates in this year's election. *Newsday* came up with the debate idea and because of the obvious television component, contacted WPIX. Neither the station nor the newspaper could have handled the production costs on its own (and indeed no other newspaper or station in New York undertook the challenge), but the idea became more economically feasible when *Newsday* and WPIX decided to split the costs. WPIX aired the debate on August 28 and replayed it September 1. Debate stories and a full transcript of the debate were available on *Newsday*.com and wb11.com. Debate coverage was a front-page story in the New York Times, was covered in several of the city's other dailies and ran on the newscasts of New York's major television stations. As a result, the people of New York benefited from a chance to hear the candidates, a chance not guaranteed if *Newsday* and WPIX were not co-owned.[184]

- In Washington, D.C., Tribune invested several million dollars to create a unique Washington Media Center - a state-of-the-art news gathering facility that combines the Washington bureaus of its television stations and newspapers. The Media Center shares and expands the use of content the bureaus traditionally created exclusively for the television or newspaper groups and identifies ways to share costs and thus enhance coverage without sacrificing editorial independence. Today, the Media Center employs newspaper and broadcast reporters/editors who regularly collaborate and share information about developing news stories. The Media Center capitalizes on the expertise and knowledge of Tribune's newspaper writers who regularly provide additional depth and insight to the news coverage of Tribune's television news departments. This allows Tribune to provide a new independent source of national news coverage to the viewers in its markets. In addition, the combined media presence helps Tribune enhance and localize national news coverage by adding interviews with local Congressmen and Senators to supplement a basic news story, and allowing Tribune print reporters to provide additional depth and insight on stories of particular interest.

These examples, and the totality of the comprehensive coverage found in Tribune's cross-media reports of the September 11 attacks on America, provide a unique illustration of the benefits of common ownership. Each of these cross-media news reports has a common thread: It originated in whole or in part from the journalistic work of a Tribune newspaper, and therefore represented a new

[184] This example of additional broadcast airtime for candidates seeking elective office should be applauded and encouraged. As the Commission is aware, the call for free air time to be available to candidates in the weeks prior to elections continues to be debated at length, particularly in discussions about campaign finance reform. Clearly more such air time is in the public interest. Eliminating the Rule is one way to encourage such programming, without mandating it.

television news voice. These new voices would not have reached the public on television with the same depth and scope had it not been for Tribune's commitment to vibrant newspaper operations with reporters and resources throughout the community and around the globe.

Tribune newspaper and television reporters share story ideas and resources. Each entity makes its own decisions about whether and how to tell the story to the public, and the process helps ensure better quality journalism. Regular interaction allows each medium to do a better job of gathering news for its consumers, and helps ensure no stories fall through the cracks. Other examples of shared resources are growing: By outfitting photographers with new technology, for example, one individual can gather both video and still photographs for publication in print, on-air and online. This frees other photographers for other assignments and expands coverage.

If not freed to compete in the broadcast marketplace, newspapers must find other ways to combat the rising cost of newsgathering, including cuts in coverage. This is likely to mean fewer reporters and editors and a reduced capacity to cover the local meetings and events that are the substance of community journalism. It will mean more homogenized news coverage like that provided by wire services or on the Internet – regurgitated information and wire stories prepared by out-of-town reporters, rather than new information targeted to the individual interests of the local marketplace.

2. The rule discourages new voices in the marketplace.

Tribune has been at the forefront of developing synergies between newspapers and other video programming outlets - most notably cable news channels. These synergies take the extensive content generated by a newspaper and translate it into new local video news programming that would be unavailable but for the relationship between the newspaper and the video outlet. Tribune's efforts are restricted to cable, except in Chicago, where the Commission has grandfathered Tribune's ownership of newspaper, television and radio, and in New York, Los Angeles and Hartford, where recent acquisitions will make Tribune subject to the Rule when its broadcast licenses are up for renewal. If the Commission would eliminate the Rule, more of this quality news programming will find its way to the airwaves.

Chicago is an example of how a newspaper's resources can give birth to an entirely new channel dedicated to the local marketplace. There, Tribune put together a new 24-hour-a-day all-news local cable channel known as CLTV – ChicagoLand Television News. CLTV was founded in 1992 and first appeared on television in 1993, offering some 1.6 million Chicago DMA cable television viewers their own around-the-clock news service. CLTV started slowly, as local cable systems refused to carry it in part because they doubted its viewership potential. The channel lost money for seven straight years. Yet despite more than $60 million in losses, Tribune refused to give up on the station or its mission of delivering local news to consumers.

Today, CLTV is successful and stands on its own:

- Its election night coverage during the March, 2000, Illinois primary was watched at local campaign headquarters alongside that of the major network affiliates. Bruce Dold, *Chicago Tribune* deputy editorial page editor, joined CLTV primary night anchors Monica Schneider and Bill Moller as an in-studio analyst from 7 to 11:30 p.m. CLTV's Greg Prather co-anchored the primary night coverage from the *Chicago Tribune* newsroom, where he interviewed *Chicago Tribune* political writers Rick Pearson, Robert Becker, Susan Kuczka, Douglas Holt and Lisa Black. Prather also talked to chicagotribune.com metro editor Mark LaBien about how the Internet has made more election information available to voters. While most Chicago television stations limited their primary coverage to within their late evening newscasts, CLTV added more. Even if the newspaper reporters had appeared on other stations, it would have been for much shorter time periods and offered less in-depth information.

- In 2001, more than 40 reporters, editors, and visual journalists from the *Chicago Tribune*, WGN-TV and CLTV, worked together on a series of stories entitled, "Gateway to Gridlock," about the effect that air traffic snarls at O'Hare Airport were having on lives all over the country. Each medium contributed to the investigation and shared the results of its newsgathering, but in the delivery of the story, each communicated in the way best suited to its audience. It is impossible to conceive of such an effort without common ownership and for their effort, the story was recognized with journalism's highest honor, the Pulitzer Prize.

- CLTV features regular appearances by *Chicago Tribune* columnists and writers who prepare video versions of their popular columns or features, including daily business reports, theatre reports, movie reviews, restaurant reviews, a computer connection feature, a local community-affairs calendar, TV reviews, entertainment reviews, and regular segments on local high-school sports. CLTV also features *Chicago Tribune* reporters on a number of 30-minute programs, including *Around Chicagoland*, a recap of the week's top stories and issues; *Good Eating*, featuring content from the newspaper's food section; *Your Money*, a program on the Chicago business community and personal finance, based on a newspaper section of the same name; and *Metromix*, an entertainment program that is the companion to *Chicago Tribune's* entertainment website, Metromix.com.

For Tribune, capitalizing on its resources and reputation for excellence in newsgathering makes eminent economic sense. The *Chicago Tribune*'s news operation has a staff more than ten times that of CLTV's news department and five times that of WGN-TV. This allows cost efficiencies in newsgathering operations. Newsgathering, features, commentary, specialty programs and promotion at CLTV are all built on the backbone of the *Chicago Tribune*'s coverage and the extensive video resources from WGN-TV. The result is wide dissemination of a thorough analysis of local and national issues: Cross-ownership giving birth to a new voice.

Contrast this with the situation in South Florida. In 1996, when Tribune acquired Miami television station WBZL (then WDZL) as part of the Renaissance station group, the station was the seventh-rated television station in the market and carried no local news. Tribune asked for a waiver of the Rule due to the ownership of the *Sun-Sentinel* newspaper and was given temporary permission to acquire the station. However, as a condition to the approval, Tribune agreed to operate the station and the newspaper separately. That mandatory separation continues today.[185]

At the time Tribune acquired WBZL, the station had considered the possibility of starting a new local newscast. The start-up capital costs for a new 30-minute news broadcast were prohibitive — estimated at approximately $1.5 to $2 million. Included in these estimates were costs for edit- and post-production facilities ($280,000); a fully-equipped ENG truck ($200,000); a microwave repeater site to bring news stories into the station ($250,000); an engineering and playback control and studio upgrade ($500,000); and six video cameras and accessories ($500,000). In addition to the initial capital costs, the station needed to fund an annual operating budget of approximately $2 million to cover wages and benefits for new news employees as well as the costs of various news services.

Even assuming the station had the capital to launch the newscast, there was no guarantee of success. The station faced an extremely competitive news market with six different local television

[185] On September 18, 2000, Tribune filed a petition asking the Commission to remove the mandatory separation condition. See, Channel 39, Inc., FCC File No. BTCCT-960801LJ. That petition conclusively demonstrated how the restriction harmed the public. It was supported by Knight-Ridder, the publisher of the Miami Herald and previously the only opponent of cross-ownership in South Florida. To date the Commission has not acted on the petition.

newscasts - four of which were affiliates of the top four national networks - and each of which was established, successful and backed by well-financed operators including General Electric/NBC, Post-Newsweek, Sunbeam, CBS and Telemundo. [186]

Rather than making the enormous capital commitment needed to launch a new newscast in these circumstances, WBZL (prior to its acquisition by Tribune) contracted with NBC-owned WTVJ to purchase a news broadcast. The 30-minute, 10 p.m. news broadcast features on-air talent employed by, and stories generated by, WTVJ's news department. Under the terms of the contract, WTVJ controls production of the broadcast. Absent a permanent waiver, Tribune has little incentive to make a long-term capital investment in a WBZL newscast. Thus, instead of launching a new voice in the market, rich in local news content supported by the *Sun-Sentinel*, WBZL airs a newscast produced and staffed by a competitor.

The difficulty faced by WBZL in launching local news is in no way unique. While practically all television stations affiliated with the four major networks have news departments, the great majority of other television stations do not. One study found that while 98% of ABC, NBC and CBS affiliated stations had news departments, only 36% of independently-owned stations did.[187] For independent stations to produce news often requires help, and common ownership offers an answer. Stations co-owned with the local newspaper have greater access to stories and the resources needed to cover them. By adding the resources of the newspaper, the co-owned station can do more.[188] It stands to

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[186] Barriers to entry are typically higher for UHF stations. In Miami-Ft. Lauderdale, each of the four major network VHF affiliates has a long-standing history with Miami viewers with operations having commenced in 1949, 1956, 1961 and 1967. By contrast, WBZL signed on Channel 39 as an independent station in 1992. By that time, competition from the cable industry was intense and growing (cable penetration nationally was already at 60%) and Miami-Ft. Lauderdale viewers had more than 35 video programming channels to choose from. WBZL had no established viewing pattern to rely on and, more importantly, the efficiencies available to the cable industry enabled the national cable networks to siphon off some of the traditional programming used by independent stations to attract audiences. For example, first-run movie packages, once a good source of alternative programming against network offering, had almost completely moved to cable networks by the time WBZL signed on in 1992.

[187] Stone, supra at n. 180.

[188] The Commission found in 1999 there are significant efficiencies inherent in joint ownership and operation of television stations in the same market, including efficiencies related to the co-location and sharing of studio and office facilities, the sharing

reason that without the Rule's absolute bar on cross-ownership, more independent stations could establish new local newscasts.

Moreover, the Rule sorely disadvantages the independent voices it is designed to protect. WPIX in New York provides an independent voice in the New York marketplace that competes with stations owned and operated by the four major networks. But those networks can pool their resources and share expenses across one or more television and/or radio stations. Even greater, the major networks are now discussing cost-sharing arrangements to further reduce expenses as they compete against each other and the independent voices in the market.[189] In these times of increased economic challenges for broadcasters, the Rule has the effect of disadvantaging the local independent voice and providing a distinct competitive advantage to the networks.

3. We harm the fabric of our cities if we deny newspapers the right and ability to deliver news in alternative media.

Since the founding of our country, newspapers have filled a role critical to our democracy – increasing understanding by sharing information. One of America's first widely distributed print publications, Thomas Paine's *Common Sense*, helped make independence a national cause by bringing together readers from Vermont to Virginia, sharing information and ideas and stirring public debate.

Today's local newspaper fills a similar role, providing a unique and critical link among our citizens, informing them about what is going on around them, and creating a sense of community. It promotes tolerance by highlighting ideas and activities shared by our diverse population. The *Chicago*

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of administrative and technical staff, and efficiencies in advertising and news gathering. These efficiencies can contribute to programming and other benefits such as increased news and public affairs programming and improved entertainment programming, and, in some cases, can ensure the continued survival of a struggling station. Television Ownership Report and Order, 14 FCC Rcd. at 12930

[189] Most recently, ABC and CBS announced the intention to combine newsgathering resources to reduce costs. See, e.g., Jim Rutenberg and Bill Carter, *ABC and CBS Discuss Sharing of News Costs*, N.Y. Times, Nov. 15, 2001, at C4. The concept that two storied network competitors would combine newsgathering resources would have been laughable in 1975, but today is simply one more indicator of the changing market conditions facing traditional media. See also, Peter Johnson, *NBC's contract dance with Couric heats up*, USA Today, Nov. 28, 2001, at 4D ("Bureau chiefs at CBS News and ABC News in Washington, D.C., and London have been given until next week . . . to determine whether a merger of bureaus there would save money.")

Tribune is one of the few places where Chicago residents can learn in-depth what is going on in differing and often geographically distant communities and neighborhoods throughout the city. Tribune's other newspapers offer the same to readers in their communities. With circulation dropping and newspapers' most important revenue source, classified advertising, under attack from Internet operations such as monster.com (recruitment) and homestore.com (housing), newspapers must find additional ways to find a return on the cost of newsgathering or be forced to curtail coverage.[190]

Common ownership also fosters the promotion of newspapers on television and helps increase literacy. Younger generations have led the decline in newspaper readership as they turn increasingly to television and to the Internet for news.[191] Where commonly-owned television stations promote their newspaper brethren, they encourage newspaper readership and can help promote newspapers to younger viewers. Reaching this younger audience and encouraging them to open the newspaper is perhaps the best way to increase newspaper literacy.

Common ownership thus serves the public interest by promoting the sharing of information throughout our diverse communities and helping to personalize and promote the newspaper to a wider audience. As we share news about crime and families, about schools and sports, about successes and tragedy, and about the people and places we live, we strengthen our communities and help increase understanding that is vital in the fight against parochialism and segregation. These important and unifying roles greatly serve the public interest.

V. JOINT VENTURES ARE NO SUBSTITUTE FOR COMMON OWNERSHIP.

[190] Classified ads are booming online, competing with the long-standing dominance of newspapers as the preferred venue, according to <http://news.cnet.com/news/0-1005-200-8020991.html?tag=cd_pr>Cnet. Online classified advertising revenue went up 176% in 2001, according to the <http://www.iab.net/main/main.html>Interactive Advertising Bureau (IAB) and consulting firm <http://www.pwcglobal.com/>Pricewaterhouse Coopers. "Classifieds are booming because it's the perfect application for the Internet," said Jim Nail, senior analyst at <http://www.forrester.com/Home/0.3257,1,FF.html>Forrester Research.

[191] One study, in 2000, found 36% of persons aged 18-24 reported watching local TV news 4-5 times per week, while only 24% reported reading a daily newspaper 4-5 times a week, and 23% reported using the Internet for news 4-5 times per week. Clark, Martire & Bartolomeo, Inc., *Leveraging Newspaper Assets: A Study of Changing American Media Usage Habits, 2000 Research Report*, (2000). Dramatically, only three years ago, only 7% of this age group reported visiting the Internet for local news. The dramatic increase in use of the Internet has come at the expense of both newspapers, which dropped from 33%, and television which dropped from 44%.

Many of Tribune's newspapers in markets without a commonly-owned television station participate in informal alliances with separately-owned stations. These alliances are typically characterized by little or no up-front capital investment and short-notice termination rights. As a result, the resource-laden newspaper has little incentive to make any long-term investment in developing a shared newsgathering operation or creating new ways to reach its audience. More importantly, because the alliances generally involve well-established stations with substantial news departments (there is little, if any, incentive to "share" resources with a station that has no newsroom), the alliances produce far fewer instances of new local news programming. As described below, these alliances do not replicate the public interest benefits of cross-ownership.

A. Lack of capital investment. Without agreements that commit the parties to work together for multiple years, newspapers and separately-owned television stations are reluctant to invest substantially in the training and equipment necessary to enhance the television newscast. Tribune invested in excess of $2 million to construct a state-of-the-art television newsroom at the *Chicago Tribune* for use by the newspaper, WGN-TV and CLTV. This facility includes multiple cameras, sophisticated fiber and file-server systems, and all-digital video delivery systems for broadcast, cable and the Internet. Using this equipment, print reports can quickly be converted into scripts and used to supplement on-air reporting. By contrast, in most instances where Tribune has partnered, the partnership involves little more than placing a single camera in the corner of the print newsroom and far less newsroom content is shared over the air.

The fate of the fabled City News Bureau of Chicago further illustrates how economic reality can converge to destroy even the most long-standing partnerships. For 108 years, City News served as a venerated training ground for reporters and a source of unique local coverage renowned for its factual accuracy and detail. It was a cooperative funded by a number of Chicago newspapers and television stations, and shared its data among all members. Unlike a wire service that provides stories for broadcast or publication, newspaper journalists used City News primarily for leads, then developed their own stories based on the data City News supplied. Thus City News did not jeopardize the diversity of viewpoints in the marketplace, but in fact provided a separate voice, covering stories that newspaper and television stations could not justify individually. But ultimately, as the costs of newsgathering increased and budgets tightened, members withdrew from City News to turn their limited financial resources to projects they owned. The City News Bureau - perhaps the ultimate partnership in Chicago news – was ultimately undone by modern newsroom economics. It closed its doors in 1998.

B. Lack of human-resource investment and coordination. Closely related to capital investment is investment in the training and development of multimedia journalists and support staff. Each Tribune newspaper has a high-level editor dedicated to the electronic publishing of its journalism. In Chicago, the multimedia staff includes journalists responsible for developing television, radio and Internet content. Videographers, video editing specialists, television news producers and Internet news producers work together on breaking news around the clock. The expertise required to deliver breaking news and stories designed for the television and Internet consumer is markedly different than that used strictly in print.

By contrast, in Tribune's partnerships, lack of commitment to training by general managers, editors and news directors often scuttles the relationship. Print and broadcast newsrooms are inherently different: They have conflicting deadlines, vastly different lead-times to develop stories, different editing procedures, and separate priorities about the nature of the stories that best serve their audiences. The audiences themselves may be profoundly different, demographically and geographically. Coordinating this effort requires a team of editors and reporters with a common purpose to effectively marshal the resources of print and broadcast reporters and deliver the news to consumers in the most effective means. Without the right leadership, skill and commitment from editors, conflicts that stem from these issues can destroy or inhibit the effectiveness of a partnership when it matters most.

Often, cooperation occurs on mundane subjects but competitive fissures or disconnected operations prevent coordination when a significant story breaks. For example, coverage of the September 11 events played out in multi-media on Tribune television stations in New York, Chicago and Los Angeles, enhanced as a result of common ownership. Within hours of the attacks on the World Trade

Center, *Newsday*'s Susan Harrington and Diane Goldie were on the telephone with Tribune television stations KTLA in Los Angeles and WGN-TV in Chicago, providing eyewitness accounts of the tragedy. In the days that ensued, Tribune newspaper reporters were invited by the news departments at Tribune television and radio stations to contribute to the broadcast coverage. Reporters from Tribune's *Orlando Sentinel* gave updates on New York's WPIX regarding the status of the investigation into the attacks and the tracking of the terrorists in Florida. *Chicago Tribune* reporters with aviation expertise reported about the effect of the attacks on the nation's air traffic. In South Florida, however, where CBS's WFOR and Tribune's *Sun-Sentinel* have a news partnership agreement, the ability to work together was severely limited, in part because WFOR elected to carry network coverage.

Efficient coordinated sales operations can benefit both partners, but also require investments of time and resources to develop. Separate companies, with separate compensation and benefit plans, face significant hurdles in aligning management incentives, sales commissions and business unit goals. By contrast, Tribune has the ability to align compensation fairly across its different media, and has dedicated resources to developing multimedia editorial and sales teams to capitalize on economic efficiencies.

C. Cross-media journalism requires common goals and incentives. Tribune's strategic commitment to multimedia results in quality journalism enhanced by multiple outlets. In markets where it owns both a television station and newspaper, Tribune has the highest incentives to reconcile conflicting reporting priorities, resource demands and deadline pressures of its print and television newsrooms. Simply put, Tribune wants its newspapers and broadcast stations to be successful and to have the greatest impact on the local community. Tribune editors are committed to using multimedia journalism to achieve these goals, and by delivering stories over electronic media, information can be delivered to more people. This extended reach enables the story to make a bigger difference in the community.

Multimedia journalism is not easy: It requires management focus, resource commitments, new skills, training and a deep understanding of the local community. It also requires high levels of trust and confidentiality while a story is being developed. This commitment to succeed does not often survive in ad-hoc partnerships, but it is at the center of the public benefit newspaper/broadcast cross-ownership provides to the television viewer and radio listener.

VI. THE RULE IS UNCONSTITUTIONAL.

Given the tremendous breadth of competing options in today's media marketplace, broadcast regulations need no deference under Constitutional scrutiny. When evaluated against the same Constitutional standards applied to cable and other non-broadcast media, the Rule must fail since it cannot meet the requisite Constitutional showing that it "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests."[192]

A. The deferential standard of review originally applied to the Rule was based on the assumption there was scarcity in the local media marketplace.

The Rule was originally held to be Constitutional in *Red Lion Broadcasting Co. v. FCC*.[193] This deferential standard of review was based on the Supreme Court's perception that there was functional scarcity in the broadcast media. In *Red Lion*, the Supreme Court upheld the Constitutionality of the Commission's Fairness Doctrine, pursuant to which broadcasters were required to present a balanced discussion of matters of public concern.[194] The Court focused on the scarcity of broadcast frequencies, finding,

> Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.[195]

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[192] Turner Broadcasting Sys., Inc. v. FCC, 520 U.S. 180, 189 (1997) ("Turner II").

[193] 395 U.S. 367 (1969).

[194] Id. at 369. The Commission has stopped enforcing the Fairness Doctrine entirely. See Inquiry Into the Fairness Doctrine, 102 FCC 2d. 142 (1985). The Personal Attack and Political Editorializing rules, companions of the Fairness Doctrine, were struck down by the D.C. Circuit Court of appeals within the last year. See Radio-Television News Directors Ass'n v. FCC, 184 F 3d. 872 (1999). See also, Repeal or Modification of the Personal Attack and Political Editorial Rules, 15 FCC Rcd. 19973 (2000).

[195] Id. at 388-89.

The Court further reasoned, "[b]ecause of the scarcity [in the broadcast spectrum], the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium."[196] Subsequent cases confirm broadcast spectrum scarcity is the doctrinal justification for applying a more lenient standard of review to broadcast regulations than would otherwise be applied to restrictions on speech like the Rule.[197]

Since the scarcity rationale was first invoked, the Supreme Court has recognized subsequent technological developments might overtake the doctrine. "[T]he broadcast industry is dynamic in terms of technological change; solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence."[198] Thus, the Supreme Court has expressly stated its willingness to reconsider the Red Lion standard upon "some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required."[199]

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[196] Id. at 390.

[197] See, e.g., Turner Broadcasting System Inc. v. F.C.C., 512 US 622 at 640 (1994), ("Turner I") 512 U.S. at 640 (essential to the Red Lion doctrine are the "special physical characteristics of broadcast transmission"); FCC v. League of Women Voters, 468 U.S. 364, 377 (1984); Metro Broadcasting Inc. v. FCC, 497 U.S. 547, 566-67 (1990), overruled on other grounds, Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995); News America Publish., Inc. v. FCC, 844 F.2d 800, 811 (D.C. Cir. 1988) ("The Supreme Court has rested this lesser protection on the scarcity of broadcast frequencies . . . and has recognized that new technology may render the doctrine obsolete") (internal quotations and citations omitted); Time Warner Entertainment v. FCC, 105 F.3d 723, 724 & n. 2 (D.C. Cir. 1997) (per curiam) (Williams, J., dissenting).

The Supreme Court has recognized that the "pervasiveness" of and children's unique access to broadcasting justified the Commission's prohibition on indecent material during hours when children might be listening or watching. FCC v. Pacifica Found., 438 U.S. 726, 748-50 (1978); see also Denver Area Educational Telecommunications Consortium v. FCC, 518 U.S. 727 (1996) (applying Pacifica rationale to cable television). However, this rationale for regulation has never been accepted except in the context of limitations on indecent expression, which are not implicated here. FCC v. League of Women Voters, 468 U.S. 364, 380 n. 13 (1984) (overturning FCC regulation prohibiting noncommercial stations from presenting editorials and distinguishing Pacifica because "we are faced not with indecent expression" and "no claim is made by the Government that the expression of editorial opinion by noncommercial stations will create a substantial 'nuisance' of the kind addressed in [Pacifica]"). Thus, the "pervasive nuisance" rationale does not provide a constitutional theory in support of a lenient standard of review for broadcast ownership -- as opposed to decency -- restrictions.

[198] Columbia Broadcast Sys., Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 102 (1973).

[199] FCC v. League of Women Voters, 468 U.S. at 376-77 n.11 (1984). See also Arkansas AFL-CIO v. FCC, 11 F.3d 1430, 1443

B. The Commission has recognized scarcity no longer exists as it has eliminated other structural rules.

The Supreme Court's market prediction has been realized, and the Commission itself has recognized scarcity is no longer relevant. As highlighted above, since Red Lion was decided in 1969 and the Rule was promulgated in 1975, the technology for the delivery of video programming has undergone a veritable revolution. Through the Telecommunications Act of 1996, Congress indicated the new broadcast marketplace mandates a review of the Rule. The Commission relaxed other ownership and structural rules designed to enhance diversity and/or increase competition in the broadcasting industry, finding the broadcast market had developed so fully, and diversification of programming was so extensive, as to require repeal of restrictive ownership or programming limitations. Indeed, such revisions are Constitutionally and statutorily required where, as here, the passage of time has undermined the original justification for a rule.[200]

1. Reconsideration of the Fairness Doctrine.

In the mid 1980s, the Commission reconsidered the Fairness Doctrine, the Commission's ultimate attempt to ensure viewpoint diversity in programming received by viewers. Notwithstanding the Supreme Court's ruling in Red Lion affirming the Constitutionality of the Fairness Doctrine and giving life to the scarcity rationale, the Commission issued an order that expressly found the Fairness Doctrine unconstitutional based on the "explosive growth in the number and types of information sources available in the marketplace" such that "the public has 'access to a multitude of viewpoints without the need or

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(8th Cir. 1993) (Arnold, J., concurring) (developments since Red Lion "raise a significant possibility that the First Amendment balance struck in Red Lion would look different today"); Syracuse Peace Council v. FCC, 867 F.2d 654, 681 (D.C. Cir. 1989), cert. denied, 493 U.S. 1019 (1990) (Judge Starr, concurring) ("[U]nder the Red Lion framework . . . the constitutionality of the Fairness Doctrine is linked in part to technological developments (and behavior) in the communications marketplace."); Branch v. FCC, 824 F.2d 37, 50 (D.C. Cir. 1987) (concluding that the FCC has already sent the "signal" mentioned in FCC v. League of Women Voters by deciding that the Fairness Doctrine was unconstitutional and should be abandoned); News America Publishing, Inc. v. FCC, 844 F.2d 800 (D.C. Cir. 1988).

[200] Syracuse Peace Council v. WTVH, 2 FCC Rcd. 5043 ¶ 8, n.8 (1987) ("Syracuse MO & O"); Meredith Corp. v. FCC, 809 F.2d 863, 874 (D.C. Cir. 1987).

danger of regulatory intervention'."[201] The Commission concluded, "[t]o the extent that the [Supreme] Court is concerned about numerical scarcity in [broadcast], . . . with the explosive growth in the number of electronic media outlets in the 18 years since Red Lion, there is no longer a basis for this concern."[202]

2. **Other Broadcast Ownership Rules**.

The Commission has also liberalized almost all of its other broadcast ownership rules and/or their corresponding waiver policies in response to changes in the media marketplace. Most recently, the Commission relaxed the Rule's companion prohibition on combined ownership of television stations and radio stations in the same market (the "One-to-a-Market Rule").[203] The One-to-a-Market Rule was adopted in 1970, based on the same diversity and competition rationale underlying the adoption of the newspaper cross-ownership rule in 1975. Citing changes in the local broadcast media marketplace since the adoption of the One-to-a-Market Rule and demonstrated efficiencies that occur in the joint operation of television and radio stations, the Commission now allows combinations of up to two television stations and six radio stations in a single market.[204] The Commission was persuaded that public benefits such as improved programming, "outweighed the cost to diversity."[205] The Commission has foreshadowed even further relaxation of the rule, stating it "will have further opportunity to consider

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[201] Syracuse MO&O, at 5043, 5053-53 (¶¶ 4, 64) (quoting Inquiry Into Section 73.1910 of the Commission's Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees, 102 F.C.C.2d 143, 224 (1985).

[202] Syracuse MO&O at 5065 (¶ 37 n.106.)

[203] See Review of the Commission's Regulations Governing Television Broadcasting, Report and Order, 14 Fcc Rcd. 12903 at 12947 (1999) ("Television Ownership Order").

[204] Id, at 12948.

[205] Id, at 12950. In truth, the Commission's revision of the One-to-a-Market Rule has been a continuous effort for more than a decade. In 1989, the Commission began by relaxing the waiver policy associated with the One-to-a-Market Rule, creating a "case-by-case" standard that authorized common ownership of a television station and four radio stations. See, e.g., BREM Broadcasting and WKPG-TV, Inc., 9 FCC Rcd. 1333 (1994).

relaxing the radio/TV cross-ownership rule as we evaluate ongoing changes in the television and radio markets in conjunction with future biennial reviews."[206]

At the same time the Commission relaxed the One-to-a-Market Rule, it substantially revised another long-standing prohibition, the television duopoly rule. The prohibition against ownership of two television stations in the same market was adopted in 1964 on the same diversity and competition basis as the newspaper cross-ownership Rule. In the Television Ownership Order, the Commission determined it was appropriate to permit dual station ownership in markets where at least eight independent stations would exist after the combination.[207] The Commission concluded that allowing duopolies would preserve and strengthen weaker stations and create cost savings that could result in improved local programming,[208] and that these public interest benefits outweigh the limited risk to viewpoint diversity that might result from the rule change.[209]

In 1992, the Commission "recognized the need to adapt [its] rules to the changing marketplace" when it increased the number of AM and FM stations a single entity could own in a single market. The Commission concluded, "[t]he explosion of radio and other media since [it first applied local restrictions in 1938] has provided local consumers with a wide range of media choices and presented radio owners with multiple competitive challenges."[210] The 1992 proceeding relaxed that restriction and permitted the common ownership of two AMs and two FMs in a market subject to an audience share limit.[211] The Telecommunications Act of 1996 further relaxed the local radio ownership limit, permitting up to eight stations per market to be commonly owned.[212] The 1996 Act also eliminated national

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206 Television Ownership Order, 14 FCC Rcd. at 12949.

207 Id at 12932.

208 Id at 12933.

209 Id at 12922.

210 Revision of Radio Rules & Policies, 7 FCC Rcd. 2755, 2773 (1992).

211 Id.

212 Newspaper/ Radio Cross-Ownership Waiver Policy, Notice of Inquiry, 13 FCC Rcd. 13003 (1996).

limitations on the number of radio or television stations an entity may own and repealed the statutory ban on local TV/cable cross-ownership.

3. 1984 Television Deregulation Order.

The Commission has also eliminated several policies and rules regarding programming and license renewal processing, including a policy requiring full Commission review of any television station renewal application that reflected "less than five percent local programming, five percent informational programming (news and public affairs) or ten percent total non-entertainment programming."[213] The Commission found market forces would stimulate the desired mix of informational, local and non-entertainment programming without regulatory intervention, in part because,

> Many new video technologies such as Subscription Television (STV), Multipoint Distribution Service (MDS), Satellite Master Antenna Television (SMATV), Low Power Television (LPTV), Direct Broadcast Satellite (DBS), Multi-Channel MDS (MMDS) and Instructional Television Fixed Service Stations (ITFS) have begun, or are just beginning, to assert themselves in the marketplace. . . The emergence of these new technologies, coupled with the continued growth in the number of television stations, will create an economic environment that is even more competitive than the existing marketplace. Given the market-based demand for these types of programming . . . this increased level of competition can, in our view, only further ensure the presentation of sufficient amounts of such programming.[214]

4. Repeal of the Rules Designed to Curb the Power of Broadcast Networks.

In 1994 and 1995, the Commission repealed its financial interest and syndication ("fin/syn") rules as well as its prime time access rule ("PTAR"). These rules, both contemporaries of the newspaper cross-ownership ban, were similarly designed to protect competition and the marketplace of ideas by placing broad constraints on the financing, ownership, and programming practices of the television networks. The Commission reconsidered these rules and determined that, given competitive conditions in the television marketplace, they should be repealed in their entirety.[215]

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[213] Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 98 F.C.C. 2d 1076, 1078 (1984) ("Television Deregulation Order").

[214] Id at 1086 ¶¶ 20-21.

[215] See, Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd. 3282, 3284 (1993) ("Fin/Syn Second R&O"); PTAR Report and Order, 11 FCC Rcd. 546, 548 (¶ 4) (1995). See also, Capital Cities/ABC, Inc. v. FCC, 29 F.3d 309 (7th Cir.

Similarly, in 2000, the Commission determined it was appropriate to relax the dual network rule to allow the top four networks (ABC, CBS, NBC and Fox) to acquire either of the emerging networks (WB or UPN).[216] The Commission concluded the potential programming efficiencies outweighed any potential harm to diversity or competition.

In each instance where the Commission rolled back limitations on the networks, it recognized the dramatic changes in the marketplace since the adoption of the rule in question, including the fact that network audience shares had declined greatly, cable and independent television had grown significantly, competition among the networks had become intense, and first-run distribution had become a fully comparable alternative to network distribution for program producers.[217] The increased competition facing the networks and the new conditions in the television programming market eliminated the danger that repeal of the fin/syn rules and PTAR or relaxation of the dual network rule would impair the competition and diversity goals of these rules.[218]

C. The Rule does not withstand even intermediate Constitutional scrutiny.

In the absence of scarcity, any cross-ownership rule would be subject to strict First Amendment scrutiny. Given the Commission's findings in relaxing other regulation, and the realities of the current media marketplace, the Rule would certainly not survive review under the standard of strict scrutiny. As three recent appellate court decisions demonstrate, if reviewed today, a cross-ownership ban would fail even under the standard of intermediate scrutiny.

The Rule can be upheld only if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further

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1994).

[216] See, 1998 Biennial Regulatory Review, 15 FCC Rcd. at 11094 (2000).

[217] PTAR Report and Order, 11 FCC Rcd. at 556 (¶ 21.)

[218] Id at 542, 556; Fin/Syn Second R&O, 8 FCC Rcd. at 3288.

those interests. In Time Warner Entertainment Co. L.P. v. FCC,[219] the D.C. Circuit concluded the Commission's national cable subscriber cap and limitations on cable carriage of affiliated programming were unconstitutional. Applying intermediate scrutiny, the Court first found Congress drew reasonable inferences in the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act") concluding that increases in cable concentration could threaten viewpoint diversity and economic competition. However, in reviewing the rules adopted by the FCC to implement the Cable Act, the Court held, "in 'demonstrat[ing] that the recited harms are real, not merely conjectural,' the FCC must show a record that validates the *regulations*, not just the abstract statutory authority."[220] The court concluded the FCC did not present "substantial evidence" that the perceived harm to diversity and competition exists or is likely to occur. Thus it held the FCC's assumptions were merely conjecture and its regulations unconstitutional.[221]

Going further, the Court questioned the premise that even small gains in diversity justify regulatory intervention:

> We have some concern how far such a theory may be pressed against First Amendment norms. Everything else being equal, each additional "voice" may be said to enhance diversity…. But at some point, surely, the marginal value of such an increment in "diversity" would not qualify as an "important" governmental interest. Is moving from 100 possible combinations to 101 "important"?[222]

Just as the Court of Appeals found in invalidating the cable regulations in Time Warner, the Supreme Court determined in 1978 that the newspaper cross-ownership Rule "lacked any hard evidence" that increased competition or broader viewpoint diversity would result.

Moreover, as evidenced in these Comments, the Commission's showing in support of the Rule was minimal: The Commission's Report and Order adopting the Rule contained no empirical or other evidence that cross-ownership of a newspaper and a television station would impede viewpoint

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[219] 240 F.3d 1126 (D.C. Cir 2001).

[220] Id at 1130 (citations omitted).

[221] Id.

diversity.[223] When reviewing the Rule, the D.C. Circuit observed the record contained "little reliable 'hard' information."[224] As the Supreme Court commented, "the Commission did not find that existing co-located newspaper-broadcast combinations had not served the public interest, or that such combinations necessarily 'spea[k] with one voice' or are harmful to competition."[225] The Supreme Court characterized the Rule as merely "reasonable" and the Commission's predictive judgment "rational."[226]

Section 47 USSA §533(b) of the Cable Franchise Policy and Communications Act of 1984[227] made it unlawful for a telephone company to provide video programming in its telephone service area. In two subsequent decisions, courts have applied intermediate scrutiny to hold the statutory prohibition on cross-ownership of a telephone and a cable company violated the First Amendment.[228] The Ninth Circuit concluded the cross-ownership ban was unconstitutional where there is insufficient evidence to demonstrate the ban would foster competition in the cable industry or promote diversity in programming, and where less restrictive means of achieving diversity are available.[229] The Fourth Circuit reached similar conclusions. In Chesapeake and Potomac Telephone Co., the court observed, after looking at the history of 533(b), "the FCC's reasoning does not indicate that attention was devoted to the possibility of other, less drastic regulatory schemes that might achieve the substantial government interests enunciated above." [230]

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[222] Id.

[223] Order, 50 F.C.C. 2d 1046, ¶ 111 (1975).

[224] NCCB v. FCC, 555 F.2d 938, 956 (D.C. Cir. 1977).

[225] FCC v. NCCB, 436 U.S. at 786.

[226] Id at 776, 790.

[227] 47 USCA § 533(b)

[228] See, Chesapeake & Potomac Tel. Co. v. United States, 42 F.3d 181 (4th Cir. 1994); US West, Inc. v. United States, 48 F.3d 1092 (9th Cir. 1995).

[229] US West, Inc., 48 F.3d at 1101-1106.

[230] 42 F.3d at 201.

As these cases illustrate, once the scarcity rationale is eliminated, the Rule must be based on substantial evidence the particular restriction will promote a substantial government interest without suppressing substantially more speech than necessary. In 1975, the Commission's own record indicates that it was unable to make such a showing and the same would be even more true today.

D. **The Rule discriminates against newspapers by singling them out as the sole media outlet subject to blanket and complete restrictions**.

In FCC v. NCCB, the Supreme Court countered the concern that the Rule "singled out" newspapers in violation of the First and Fifth Amendments by pointing out "the regulations treat newspaper owners in essentially the same fashion as other owners of the major media of mass communications were already treated under the Commission's multiple-ownership rules; owners of radio stations, television stations, and newspapers alike are restricted in their ability to acquire licenses for co-located broadcast stations."[231] Since that decision, and as noted above, the most significant of the Commission's other ownership restrictions have been liberalized, putting newspapers at a competitive disadvantage vis-à-vis other media. Among the anomalous results of relaxing all restrictions other than the newspaper ownership ban:

- In South Florida, CBS/Viacom has a virtual triopoly, owning three stations within 80 miles of each other – WFOR in Miami, WBFS in Miami and WTVX in Ft. Pierce (West Palm Beach DMA). It combines their resources to compete with Tribune-owned WBZL. WBZL can share resources with any of these television stations (the largest of which reaches 1,656,200 people), but not with the *Sun-Sentinel*, which reaches only a fraction of that population. WBZL is disadvantaged because it is co-owned by a company that owns a newspaper in the market, while companies that own multiple television stations face no such restrictions. [232]

- AT&T Broadband serves 95% of the cable subscribers in Chicago and 75% of the cable subscribers in Miami-Ft. Lauderdale. Other cable systems enjoy dominant or substantial market shares in other markets, and supply multiple channels of programming in which they have proprietary interests. As the Commission has noted, "most programming is either originated or selected by the cable system operator, who thereby ultimately controls the content of such programming" viewed in the market.[233] Yet this market

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[231] FCC v. NCCB, 436 U.S. at 801.

[232] Permitted combinations of broadcast stations often result in combined audience shares that far exceed the newspaper's readership. Yet these combinations are permitted and newspaper-broadcast combinations are not.

[233] Television Ownership Report and Order, 14 FCC Rcd. at 12953 (¶ 113). See also, NPRM at ¶ 44.

strength by a single entity that selects programming is permitted, while newspapers are denied the ability to own even a single broadcast station.

- One reporter can gather and interpret news for two TV stations or even, in the case of an informal alliance, for a newspaper and a TV station. In other words, the government is willing to allow a single reporter to gather and report news for a newspaper and broadcast station – one reporter's voice over multiple media; but it arbitrarily restricts common ownership of the resources that support the reporter.

The exclusion of newspapers as suitable broadcast licensees is even more frustrating when one considers the Commission recently adopted a policy of including newspapers as "voices" for purposes of relaxing the one-to-a-market Rule.[234] The Commission counts daily newspapers and cable systems, along with radio and television stations, as equal market voices for purposes of evaluating cross-ownership of television and radio stations.[235] That is, newspapers are counted interchangeably with other media for purposes of loosening restrictions on television and radio station owners, but the same viewpoint valuation is not applied to evaluate restrictions on newspaper publishers.

E. The 1996 Act Creates a Presumption in Favor of Deregulation.

Section 202(h) of the Telecommunications Act of 1996 (the "1996 Act") evidences Congress' conclusion that the public interest is best served by competitive market forces. It directs the Commission, every two years, to determine whether its broadcast ownership rules are "necessary in the public interest as a result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."[236] This is a clear legislative direction to focus on competitive market forces.

Both principles of statutory construction and the legislative history of the 1996 Act make clear Congress intended the Commission to depart from its traditional regulatory approach. First, the

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[234] Id at 12951-52 (¶111.)

[235] Id at ¶ 113. The new rules require newspapers, unlike broadcast voices, to have a specified level of market penetration to count under the formula. It is equally illogical to count cable, with its multitude of programming choices, as but one voice.

[236] Telecommunications Act of 1966, Pub. L. No. 104-104, §202(h) 110 Stat. 56, 111-12 (1996).

statute emphasizes competition and makes no mention of diversity as an independent goal.[237] This signals a change in direction from the Commission's reliance on the twin goals of competition and diversity that have been used to justify the Rule since 1975.[238]

Second, the legislative history of the Act clearly reveals Congress' intent that the Commission change its regulatory approach in evaluating the continuing need for its broadcast ownership rules. The House Report noted, "[t]he audio and visual marketplace ... has undergone significant changes over the past fifty years and the scarcity rationale for government regulation no longer applies."[239] The Report continued:

> Today, there are in excess of 11,000 radio stations and over 1,100 commercial television stations, a 30 percent increase in the number of stations from just ten years ago. In addition, a fourth network has developed and two new networks are being launched. There is also competition from cable systems as suppliers of video programming. Cable systems pass more than 95 percent of all U.S. television households and 65 percent of U.S. television households subscribe to cable. In addition, other technologies such as wireless cable, low power television, backyard dishes, satellite master antenna television service (SMATV) and video cassette recorders (VCRs) provide consumers with

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[237] The Commission's suggestion that Section 202(h) permits it to undertake a far-reaching diversity analysis is inconsistent with the statutory construction principle *expressio unius est exclusio alterius*, *i.e.*, the "mention of one thing implies exclusion of another thing." Ethyl Corp. v. EPA, 51 F.3d 1053, 1061 (D.C. Cir. 1995) (internal quotation omitted). The *expressio unius* maxim has particular force here because Congress, in enacting other sections of the 1996 Act with purposes similar to Section 202(h), *did* make specific reference to the "diversity" aspect of the Commission's public interest standard. See Russello v. United States, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.")(internal quotation marks omitted); *Halverson v. Slater*, 129 F.3d 180, 186 (D.C. Cir. 1997)(recognizing this principle as a rule of statutory construction). For example, Congress directed the Commission to conduct a proceeding to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services and information services. See 47 U.S.C. § 257(a). Congress specifically instructed the Commission that, in executing its statutorily mandated review in that regard, it "shall seek to promote the policies and purposes of this chapter favoring *diversity* of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity." Id. § 257(b) (emphasis added). This provision, which is similar in purpose to Section 202(h), makes specific reference to the diversity aspect of the Commission's public interest standard. Section 202(h), in contrast, makes no reference whatsoever to diversity and instead, by omission, specifically limits the Commission's public interest analysis to assessing the level of competition, and nothing more. See National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers, 414 U.S. 453, 458 (1974) ("'When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.'") (quoting Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929)).

[238] NPRM at ¶ 2.

[239] H.R. Rep. No. 104-204, at 54 (1995), *reprinted in* U.S.C.C.A.N. 10, 18 (1996).

> additional program distribution outlets that compete with broadcast stations. To date, twenty four telephone companies have applied to provide "video dial tone service" to customers over phone lines.... This explosion of programming distribution sources calls for a substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes.[240]

Having acknowledged the striking changes in the level of competition in the media marketplace over the past 50 years, the Committee concluded:

> To ensure the industry's ability to compete effectively in a multichannel media market, Congress and the Commission must reform Federal policy and the current regulatory framework to reflect the new marketplace realities. To accomplish this goal, the Committee chooses to depart from the traditional notions of broadcast regulation and to rely more on competitive market forces.[241]

The Committee Report thus confirms Congress' intent that the Commission "depart from" its "traditional notion" of the public interest and instead focus on "competitive market forces" in its approach to regulating ownership in the broadcast industry. This change in focus is both sensible as a matter of policy and Constitutionally required as a matter of law.

As the Notice itself observes, the local media marketplace has changed dramatically in the past 25 years.[242] The Commission must give effect to the legislative intent by examining these profound changes and repealing or modifying those rules that are no longer necessary as a result of those changes. In so doing, the Commission may not simply hold to its traditional preference for separately owned outlets simply for the sake of diversity. To the contrary, Congress clearly has concluded that competition ordinarily will protect the public interest. Thus, any decision to depart from reliance on market forces must be supported by a complete explanation of the diversity objective sought to be achieved and a clear demonstration that market forces do not produce the desired objective. The Commission must favor competition over other means of achieving its goals.

VII. THE PUBLIC INTEREST IS BEST SERVED BY REPEAL OF THE RULE.

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[240] Id at 54-55 (1995), *reprinted in* U.S.C.C.A.N. at 18-19 (1996).

[241] Id at 55, reprinted in 1996 U.S. C.C.A.N at 19 (1996) (emphasis supplied).

[242] NPRM at ¶8.

The Commission asks in the Notice whether structural safeguards, a formulaic approach to approving local newspaper-broadcast combinations, a refashioned waiver policy or repeal of the Rule best could serve the Commission's goals and comply with the 1996 Telecommunications Act's deregulatory mandate. Tribune submits the time has come for full repeal of the Rule. None of the alternatives is necessary, desirable or lawful.

A market concentration standard, at the outset, ignores the fact that diversity is only harmed if local news is compromised.[243] Where a broadcast station does not produce news, or produces little original news, there can be little harm in allowing common ownership with the local newspaper, no matter how great the combined share of the post-merger entity. Adopting a market concentration test does little justice to the goal of protecting diversity. In fact, it completely ignores the quantity or quality of local content being produced in favor of an arbitrary limit similar to the cable cap rules recently invalidated by the Court of Appeals.

In addition, a market concentration standard presents the problem of defining the relevant product market. It would be folly to expect an unassailably objective test to determine the degree to which myriad different competitive voices in a market "compete" with one another. For example, in addition to broadcast stations and daily newspapers, the relevant market must include some of the following: news magazines, which typically sell national but not local advertising; local radio; satellite radio; Spanish-language daily newspapers (which do not fall within the scope of the Rule); weekly newspapers, which increasingly take market share from larger newspapers; Internet-based subscription news services, which sell advertising and challenge newspapers and broadcast stations for revenue; leased-access cable programming; and, advertiser-supported basic cable news networks. But which of these to include and to what degree is inherently subjective and, worse, in the absence of a widely-accepted objective criteria, can create the perception of arbitrariness and unfairness.

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[243] See, NPRM, ¶ 40 (diversity of viewpoints in local news presentation is at the heart of the Commission's diversity goal), citing, TV Ownership Report and Order, 14 FCC Rcd. at 12933, (¶ 66).

A "voices" test that equates newspapers with broadcast outlets would also be inherently unworkable and unfair. It, too, ignores the quality and content of the programming. No matter how many voices exist in a market, if one is not producing local news, then its combination with a newspaper that leads to the creation of the local newscast will increase the number of video news voices in the market. More importantly and as evidenced in Tribune's cross-owned markets, even in markets with relatively few stations, allowing combinations with a newspaper will increase the quality of local coverage. Finally, a voices test raises the problem of weighing media outlets of different sizes, types and influence inherent in the Commission's local ownership rules,[244] which use such a test. It presents the inequities of either ignoring or undervaluing the competitive impact of new media such as the Internet and cable program services. Such a test would lack any predictability, as changes in the media landscape would require ever-changing calibration of the "voices" in the market.

A modified waiver policy or standard is equally undesirable. To begin with, the Rule has been waived only four times in 26 years.[245] A liberalized waiver policy would consume more of the Commission's resources, would be prone to inconsistent results, would make business planning more uncertain, and would increase transaction costs. Just as importantly, since waiver decisions are inherently subjective,[246] allowing decisions about media ownership to be made on such an ad hoc basis would be inconsistent with the Commission's efforts at fairness and predictability and contrary to the Constitutional guarantee of free speech.

Perhaps the most misguided notion raised in the Notice is that of "structural separation" between commonly-owned newspapers and broadcast stations.[247] Tribune is subject to just such an

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[244] 47 C.F.R. §§ 73.3555(b), (c).

[245] NPRM, ¶ 3 & n.11.

[246] The current waiver standard, for example, allows the Commission to waive application of the Rule if it determines "the purposes of the rule would be disserved" by application of the newspaper-broadcast common ownership ban. See, Order, 50 FCC 2d at 1085; NPRM ¶48. While Tribune believes this discretion is important if a waiver policy is to be in place, it is intended to permit the Commission to have the flexibility to grant waivers it deems appropriate and thus is inherently subjective.

[247] Id.

unnatural relationship in South Florida[248] and the results in that market speak for themselves. The attempt to create some form of artificial "diversity" will undermine all of the public interest benefits that occur when newspapers and broadcasters collaborate to serve the community.

Aside from these statutory and constitutional considerations, there is another reason the Commission is well advised to refrain from regulating in this area: the Commission does not regulate newspapers. It has no expertise in understanding their competitive problems and their unique attributes. And yet, as described above, each regulatory action the Commission takes in this area will have a profound effect on the future of newspapers in this country. Should a newspaper company that publishes a morning and an evening paper, each with a separate editorial staff, be considered two voices? Is a newspaper that aggressively covers all important population centers in the state to be considered a voice in analyzing local competition? What about powerful national publications like the *New York Times*, *USA Today* and the *Wall Street Journal* that are read in every local community? Should two newspapers operating under a Joint Operating Agreement entered into pursuant to the Newspaper Preservation Act,[249] be considered two newspapers, or one? These are among the many questions that will present a thicket of problems for the Commission should it decide to scrutinize individual newspaper-broadcast transactions for their pro- and anti-competitive effects. In the modern media marketplace, where the newspaper is struggling to keep up with the barrage of competition presented by old and new media competitors alike, it is not in the public interest for the Commission to continue to regulate ownership of the print media.

Finally, the Commission is not charged with enforcing the antitrust laws, and has recognized it has no authority to enforce them.[250] If the Commission undertakes the task of performing exhaustive market analyses for each transaction placed before it, it will duplicate efforts committed by

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[248] See supra at Section II.

[249] Pub. 2. No. 91-353, 84 Stat, 466 (codified at 15 U.S.C. §§ 1801–1804). Before two newspapers can enter into a Joint Operating Agreement, they must obtain the written consent of the U.S. Dept. of Justice. 15 U.S.C. § 1803.

[250] *Order*, 50 FCC 2d. at 1049; FCC v. Nat'l Citizens Comm. for Broad., 436 U.S. 775, 795 (1978); NBC v. United States, 319 U.S. 190, 223-24 (1943); Fox Television Stations, Inc., 8 FCC Rcd. 5341, 5352 (1993).

law to other agencies of government far more expert in defining markets, gauging levels of concentration and competition in those markets, and weighing the procompetitive and anticompetitive effects of proposed business combinations. Fortunately, the Commission is entitled to conclude - and, Tribune submits, must conclude - the local and national media markets are sufficiently competitive that a detailed analysis of competition in each market is unnecessary when a radio or television broadcaster seeks to acquire a local daily newspaper, or vice-versa. This will permit the Commission to conserve its resources, while reserving its enforcement mechanisms for cases where competitive harm is demonstrated.

Once the Rule is repealed, antitrust laws will still exist to combat anticompetitive combinations and curb any abuses that otherwise might arise in an economy unburdened of the newspaper cross-ownership Rule. Many acquisitions of broadcast stations are and will continue to be reviewed by the Federal Trade Commission or the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act.[251] Public and private actions under the federal and state antitrust laws can be brought to prevent anticompetitive combinations from being formed or to restrain or punish anticompetitive practices.

On numerous occasions, the Commission has chosen to allow the competitive market to function, subject to enforcement of the antitrust laws, rather than continue regulations that stifled competition and innovation.[252] Such actions reduce the Commission's burden and cost of scrutinizing

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[251] 15 U.S.C. § 18a.

[252] See, e.g., 1998 Biennial Review—Repeal of Part 62 of the Commission's Rules, 14 FCC Rcd. 16530, 16535 (1999)(repealing rules governing interlocking directorates and relying on other Title II provisions and the antitrust laws to protect the public interest); Program Exclusivity in the Cable & Broadcast Industries, 3 FCC Rcd. 5299, 5309–10 (1988)("When there is a diverse set of program sources and outlets, as there increasingly is in the current television marketplace," granting broadcasters locally exclusive rights to programming is procompetitive, and the antitrust laws can be used to police anticompetitive practices.); Elimination of Unnecessary Broadcast Regulation, 57 R.R.2d 913, 915 (1985)(repealing policy prohibiting a licensee from using a station in furtherance of the licensee's other business activities: "There is little reason to believe that the prohibited practices in fact suppress competition. To the contrary, we believe that these rules prohibit practices which are either competitively neutral or would foster economic efficiency and are unnecessary to protect listeners or viewers. The Congress has identified those practices which are genuinely anticompetitive and has outlawed such practices in the antitrust laws, most notably the Sherman and Clayton Acts. We do not believe that this Commission should attempt to outlaw practices not prohibited by the antitrust laws, at least where, as here, the listeners or viewers receive no offsetting benefits."); Representation of Stations by Representatives Owned by

individual transactions, and eliminate attendant uncertainties and delays in business transactions.[253] The Commission can exercise oversight of the competitive dynamics occurring in any market through its licensing process.[254]

CONCLUSION.

The modern media marketplace has rendered the Commission's ban on newspaper cross-ownership and related waiver policy obsolete. The Rule does not, and possibly never has, served its intended purpose of furthering programming diversity, especially local news programming diversity. Indeed, in today's competitive media market — in which ownership restrictions have been lifted for virtually all other combinations — the Rule is actively impeding newsgathering synergies that would improve the scope and quality of local news broadcasts and public affairs programming without sacrificing viewpoint diversity. For these reasons, Tribune respectfully requests the Commission repeal the Rule in its entirety. Doing so will enhance the distribution of news and information that is at the core of the First Amendment's concern for an informed citizenry.

Respectfully submitted:

TRIBUNE COMPANY

Competing Stations in the Same Area, 87 F.C.C.2d 668, 681 (1981) (repealing Commission's *Golden West* policy forbidding a station-owned sales representative organization from representing a competing station in the same market; market forces, subject to enforcement of the antitrust laws, could be relied on to ensure competitive benefits).

[253] Elimination of Unnecessary Broadcast Regulation, 59 R.R.2d 1500, 1514–15 (1986) (Commission repealed policies forbidding joint sales practices and combination advertising rates that prohibited practices not proscribed by the antitrust laws. "We concur ... that the policies were premised upon only a 'potential' for abuse, rather than actual antitrust violations, and that this is not an appropriate basis for regulation." Id at 1515. Permitting these sales practices would permit economies of scale and reduce costs of doing business. Id.). *See also Reexamination of the Comm'n Cross-Interest Policy, Policy Statement,* 4 FCC Rcd. 2208, 2211–13 (1989) (repealing application of the cross-interest policy to consultants, time brokerage agreements and advertising agency representative relationships, finding that administrative costs could not be justified, the increasing number of media outlets had undercut the notion that any single individual or entity could skew competition through the cross-interests at issue, and alternative remedies, such as the antitrust laws, were available to curb anticompetitive conduct); *accord,* Review of the Commission's Regulations Governing Attribution of Broadcast & Cable/MDS Interests, 14 FCC Rcd. 12559, 12610 (1999)(deleting application of the cross-interest policy to joint ventures between stations).

[254] Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179, 1190–91, on recon., 1 FCC Rcd. 421 (1986); Fox Television Stations, Inc., 8 FCC Rcd. 5341, 5352–53 (1993).

Crane H. Kenney
Michael R. Lufrano
Charles J. Sennet
Tribune Company
435 N. Michigan Avenue
Chicago, Illinois
(312) 222-9100

R. Clark Wadlow
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, DC 20005
(202) 736-8215
Its Attorney

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