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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

ORDER AND
NOTICE OF PROPOSED RULE MAKING

Comments of

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INTRODUCTION

The Media Institute is a nonprofit research foundation specializing in communications policy and First Amendment issues. The Institute has long advocated a robust and dynamic press, a strong First Amendment, and a competitive communications industry. The Media Institute responds here to the Federal Communications Commission's Order and Notice of Proposed Rule Making released Sept. 20, 2001,[1] in which the Commission seeks comment on its newspaper / broadcast cross ownership rule pursuant to its Biennial Review Report on broadcast ownership rules released in June 2000.[2]

In 1997, The Media Institute published a detailed analysis of the newspaper / broadcast cross ownership rule. (Richard T. Kaplar, *Cross Ownership at the Crossroads: The Case for Repealing the FCC's Newspaper / Broadcast Cross Ownership Ban*). This publication discussed the rule in terms of diversity, competition, and the First Amendment, and concluded that the rule is counterproductive and should be repealed. We herewith submit *Cross Ownership at the Crossroads* as an attachment to these comments, and ask that the entire publication be made a part of this proceeding. The arguments advanced therein for repeal of the rule remain valid, and we augment them here with further discussion and updated numbers on media outlets.

VIEWPOINT DIVERSITY AND THE CROSS OWNERSHIP RULE

The Commission's concept of diversity is ultimately one of viewpoint diversity in keeping with its perceived role as manager of the broadcast marketplace of ideas. This is consistent with the FCC's belief that the American broadcasting system is built on "the paramount right of the public in a free society to be informed...."[3] The Commission restated this position when it adopted the cross ownership rule, and has reiterated this view in various documents over the years by invoking "the twin goals of diversity of viewpoints and economic competition."[4]

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[1] *Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235, and Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197, Order and Notice of Proposed Rule Making,* FCC 01-262 (released Sept. 20, 2001) ("Order and NPRM").

[2] *1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, Report,* 15 FCC Rcd. 11058 (2000) ("Biennial Review Report").

[3] *Report on Editorializing by Broadcast Licensees,* 13 F.C.C. 1246, 1249 (1949).

[4] *Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Docket No. 18110, Second Report and Order,* 50 F.C.C.2d 1046, 1048 (1975) ("1975 Second Report and Order"). *See also, e.g.,* Biennial Review Report, *supra* note 2 at 11061, para. 5.

Viewpoint Diversity Cannot Be Created by Regulation.

The Commission's desire to manipulate viewpoint diversity, however, presents a rather formidable problem. Short of becoming a programmer itself, or engaging in blatant censorship, the FCC does not have a legal way to mandate viewpoint diversity directly. That would require the type of pervasive and absolute authority over programming content long proscribed by statute.

Thus the FCC does the next best thing: It mandates ownership diversity as a proxy for viewpoint diversity. The Commission assumes that different owners will bring different editorial voices to the airwaves, resulting in a diversity of viewpoints. As the FCC pointed out when it adopted the newspaper / broadcast restriction:

> The significance of ownership from the standpoint of "the widest possible dissemination of information" lies in the fact that ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation, all of which are a critical aspect of the Commission's concern with the public interest.[5]

There is certainly no guarantee, however, that the Commission's carefully chosen entrants will actually speak with different voices, or that broadcast outlets and newspapers owned by the same company will speak with the identical voice. This proxy approach relies on speculation about the likely viewpoints of media speakers, and thus is an imprecise means of effecting viewpoint diversity. In fact, viewpoint diversity cannot be created by regulation -- nor should it be. Ultimately that diversity is a function of the listening, viewing, and reading choices made by consumers in the information marketplace. The marketplace itself will determine the amount of diversity it wants from media speakers, and will do so more reliably and more efficiently than any regulatory agency.

SCARCITY AND THE CROSS OWNERSHIP RULE

Nothing has done more to give urgency to the FCC's quest for viewpoint diversity than the concept of scarcity. The idea that the electromagnetic spectrum is a limited resource with only so many frequencies to go around is as old as broadcasting itself. In the early days of radio, this unchallenged belief in spectrum scarcity led to three corollary views: (1) that the spectrum was too scarce to be availing of allocation measures like auctions or lotteries, and of market mechanisms like property rights; (2) that the spectrum was so scarce that it could easily be monopolized by a single large player; and (3) that the government was the most suitable entity to allocate frequencies and monitor their use. When the newspaper / broadcast ban was adopted in 1975, scarcity was still very much a part of the accepted wisdom; not only was it acknowledged as a controlling factor

[5] 1975 Second Report and Order, *supra* note 4 at para. 14.

by the *Red Lion* Court,[6] but it was cited by the FCC in 1974 as justification for retaining the Fairness Doctrine, another attempt at viewpoint diversity.[7]

Scarcity No Longer Exists in Numerical Terms.

As the Order and NPRM recognizes, "[t]he number of local media outlets has grown substantially since 1975."[8] This is quite an understatement. In *Cross Ownership at the Crossroads*, we compared media growth between 1970 (the year in which the newspaper / broadcast rulemaking began) and 1996.[9] A comparison between 1970 and the present yields even more striking differences.

In 1970, for example, there were 581 VHF television stations and 281 UHF stations (862 total). By September 2001 that number had almost doubled, to 697 VHF and 989 UHF stations (1,686 total), a jump of 95 percent.[10] Low power television stations, which did not exist until 1982, accounted for another 2,212 stations by 2001 (up sharply from 1,180 stations as recently as 1996).[11] The number of radio outlets rose from 6,995 AM and FM stations licensed in 1970 to 13,012 in 2001, an increase of 86 percent. (Of today's radio stations, 4,727 are AM, 6,051 are commercial FM, and 2,234 are educational FM.[12])

Significant growth took place among independent (non-affiliated) television stations, which increased from 90 in 1970 to 598 in 2000[13] -- even as the number of national TV networks with which to affiliate rose from three to seven. Of special note is the number of television stations the average home is able to receive. In 1970 the average TV household received 6.8 channels -- the networks plus 3.8 other stations. By 2000 the average home received 74.6 channels[14] -- a more than 10-fold jump due directly to the impact of cable television.

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[6] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 393 (1969).

[7] *The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act*, 48 F.C.C.2d 1 (1974).

[8] Order and NPRM, *supra* note 1 at para. 9.

[9] Richard T. Kaplar, *Cross Ownership at the Crossroads: The Case for Repealing the FCC's Newspaper / Broadcast Cross Ownership Ban* (The Media Institute, 1997) at 21-24.

[10] 1970 numbers from *Amendment of Syndication and Financial Interest Rules, Tentative Decision and Request for Further Comments in BC Docket No. 82-345*, FCC 83-377, 48 Fed. Reg. 38,020 (Aug. 4, 1983) ("Tentative Decision"). 2001 numbers from FCC, "Broadcast Station Totals as of Sept. 30, 2001" [news release], Oct. 30, 2001 ("Broadcast Station Totals"). *See also Broadcasting & Cable Yearbook 2001* (Bowker, 2001) at xxx.

[11] 2001 number from Broadcast Station Totals, *supra*. 1996 number from FCC, "Broadcast Station Totals as of May 31, 1996," Mimeo No. 63298 [news release], June 6, 1996.

[12] 1970 numbers from Tentative Decision, *supra* note 10. 2001 numbers from Broadcast Station Totals, *supra* note 10.

[13] 1970 number from Tentative Decision, *supra* note 10. 2001 number from *Broadcasting & Cable Yearbook 2001*, *supra* note 10 at xxx.

[14] 1970 number from Tentative Decision, *supra* note 10. 2000 number from Nielsen Media Research, *Television Audience 2000* at 12.

In 1970 there were 2,490 cable systems serving 4.5 million basic subscribers. Contrast this to 2000, when there were 11,800 cable systems serving 68 million subscribers in 34,000 communities. Actual viewership is thought to exceed 176 million people. In addition, 44 million people subscribe to pay-cable premium services like HBO and Showtime, compared to none in 1970. Most cable systems today offer 60 or more channels, while in 1970 only 1 percent offered more than 12 channels.[15]

The growth in radio, broadcast television, and cable outlets is only one aspect of heightened media diversity. Most prominent among other entrants are direct broadcast satellite (DBS) services such as DirecTV and EchoStar, which can offer 150 or more channels of programming. According to the FCC, DBS subscribers numbered 1.7 million in 1995 and rose dramatically to 10.1 million by 1999, then jumped again to about 13 million in 2000 -- a growth rate nearly three times that of cable television.[16]

Other delivery systems include multi-channel multipoint distribution services (MMDS or "wireless cable"); satellite master antenna television systems (SMATV); and the ubiquitous videocassette recorder, now in 86 percent of television households.[17] These are joined by new entrants such as open video systems (OVS), now operating in four major cities; Internet video; satellite radio; and services offered by local exchange carriers. None of these distribution systems existed in 1970. There can be no doubt that the media landscape has grown far more diverse than one could have imagined in the early 1970s.

As far back as 1985, the Commission noted that media growth had resulted in ample viewpoint diversity -- that is, scarcity no longer existed:

> We believe that the interest of the public in viewpoint diversity is fully served by the multiplicity of voices in the marketplace today and that the intrusion by government into the content of programming occasioned by the enforcement of the [fairness] doctrine unnecessarily restricts the journalistic freedom of broadcasters.[18]

The FCC acknowledged that the Supreme Court in *Red Lion* had upheld the Fairness Doctrine on the basis of media scarcity, noting that "the Court's decision was necessarily premised upon the broadcasting marketplace as it existed" in 1969:

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[15] 1970 numbers from Tentative Decision, *supra* note 10. 2001 numbers from *Broadcasting & Cable Yearbook 2001, supra* note 10 at xxx.

[16] 1995 number from *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report,* FCC 96-496, 5 Comm. Reg. (P & F) 1164 at para. 4 (Dec. 26, 1996). 1999 and 2000 numbers from *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 00-132, Seventh Annual Report,* 16 FCC Rcd. 6005, 6037 at para. 61 (2001).

[17] *Broadcasting & Cable Yearbook 2001, supra* note 10 at xxx.

[18] *Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees,* 102 F.C.C.2d 145, 147 (1985) ("1985 Fairness Report").

> But in the intervening sixteen years the information services marketplace has expanded markedly, thereby making it unnecessary to rely upon intrusive government regulation in order to assure that the public has access to the marketplace of ideas.[19]

And, as the Commission said in 1987:

> To the extent that the [Supreme] Court is concerned about numerical scarcity in this medium ... 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.[20]

COMPETITION AND THE CROSS OWNERSHIP RULE

The newspaper / broadcast cross ownership ban is couched in language that speaks of a dual purpose: creating viewpoint diversity and fostering economic competition. This proceeding seems an appropriate time to ask the Commission to reassess its historical rationale for fostering economic competition. When the FCC talks about increasing competition, it really is talking about prohibiting excessive media concentration. Yet the FCC's concern over market concentration is not primarily an economic one, like that of the Federal Trade Commission, but is directly related to its desire for viewpoint diversity. The Commission believes that having fewer media owners in a given market results in fewer voices reaching the public, and that having more owners yields more voices. Thus, when the Commission has discussed economic competition vis-à-vis cross ownership, it has been in the context of viewpoint diversity.

Indeed, the Commission explained the approach it took in fashioning the newspaper / broadcast ban as follows:

> We have analyzed the basic media ownership questions in terms of this agency's primary concern -- diversity in ownership as a means of enhancing diversity in programming service to the public -- rather than in terms of a strictly antitrust approach....
>
> The distinction between our approach and the Justice Department's is best put this way. Justice and others applying traditional antitrust criteria are primarily interested in preserving competition in advertising ... and for their arguments they use analytic tools taken from economic studies of market share and the like. Conversely, the diversity approach would examine the number of voices available to the people of a given area.[21]

The only problem in tinkering with the economic dynamics of a market (*e.g.*, controlling entry and exit) to achieve a non-economic goal like viewpoint diversity is that such tinkering may

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[19] *Id.* at 148 citing *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367 (1969).

[20] *Inquiry into Section 73.1910 of the Commission's Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees,* 2 FCC Rcd. 17 5272 (1987).

[21] 1975 Second Report and Order, *supra* note 4 at paras. 11, 12.

have a serious negative impact on the economic viability of the market itself. It is quite possible to kill off the speakers in the process of enhancing their diversity.

The FCC Has Enhanced Competition Elsewhere by Relaxing Ownership Rules.

Looked at from afar, it seems quite odd that the Commission has been so reluctant to relax or repeal the newspaper / broadcast cross ownership rule when it has relaxed or repealed so many ownership and other rules. In the process the Commission has done much to create a level playing field, but has maintained the sharp tilt where newspapers and broadcast outlets come together. Among the steps the FCC has taken, for example, are the following:

- Repealed the Fairness Doctrine.
- Repealed the financial interest and syndication rules.
- Repealed the prime time access rule.
- Relaxed program log and other administrative requirements.
- Progressively raised the cap on the number of television and radio stations one entity could own nationally.
- Eased the "one-to-a-market" rule to allow common ownership of a TV station and a number of AM and FM radio stations in the same market, based on market size.
- Relaxed the "duopoly" rule to allow common ownership of two television stations in a market under certain conditions.

Where is the logic in perpetuating the newspaper / broadcast cross ownership ban in the face of these other actions? Clearly the FCC would not have undertaken these steps if it felt it were compromising competition or diversity in the process. And in fact local media markets have not only survived, but have thrived in the process -- to the benefit of their audiences.

Yet what purpose is served by prohibiting a company from owning a newspaper and TV station in the same market when another company can own two TV stations, or a third can own up to eight radio stations in that market? How are competition and diversity enhanced by allowing common ownership of two TV stations, or a TV station and four radio stations in the same market, yet disserved (at least in the Commission's view) by common ownership of a TV station and newspaper? The distinction eludes us.

One can debate theories of competition and diversity endlessly, but the plain fact of the matter is that the media industry is moving toward consolidation for compelling economic reasons -- and that the Commission has, in many instances, rightly fostered the industry's economic viability by removing other ownership restrictions. Against this backdrop, the newspaper / broadcast

cross ownership rule stands as an anachronism, and those who would like to see a truly competitive media marketplace are forced to step back and ask "Why has this rule not been repealed?"

FIRST AMENDMENT CONCERNS

The Commission's interest in promoting viewpoint diversity through the cross ownership ban is directly related to the suppression of free expression, and thus raises serious First Amendment concerns. Suppressing speech is the precise effect of an ownership ban that promotes viewpoint diversity by giving voice to certain types of speakers at the expense of others. To impose diversity on the media marketplace of ideas, the government must necessarily suppress the free expression of certain speakers by denying them an opportunity to own an additional media outlet of their choosing. If the ban were challenged on constitutional grounds today, it would be subject at least to the intermediate scrutiny of the four-part *O'Brien* test.[22] It would appear that the ban would quickly run afoul of *O'Brien* Part 3: "The governmental interest must be unrelated to the suppression of free expression."

Part 4 would most likely prove problematic as well: "The incidental restriction on alleged First Amendment freedoms must be no greater than is essential to the furtherance of that interest." A regulation affecting virtually all of the country's daily newspapers, television stations, and radio outlets is hardly a "narrowly tailored" way to enhance diversity. Other less restrictive means can be found; for example, the government could promote diversity by easing market entry and taking other steps to encourage a larger and more robust communications industry. An analogy can be found in cable television: The number of cable voices became much larger and more diverse when Congress deregulated that industry beginning in the late 1970s, undoing years of structural barriers to growth and competition.

The Ban Could Not Withstand Today's Higher Burden of Proof.

Moreover, in recent years the Supreme Court has demanded a higher burden of proof on speech restrictions generally, requiring that a restriction on speech be based on a factual record in response to a documented problem. As the Court stated in *Turner Broadcasting*:

> When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must ... demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.[23]

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

[23] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664 (1994). *See also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (merely "rational" or "reasonable" judgment of regulators absent an evidentiary record not entitled to judicial deference).

When it initiated the cross ownership rulemaking, however, the FCC noted "an absence of any definitive measurement of the degree to which mass communications actually influence thought and behavior."[24] And when it adopted the rule in 1975, the Commission stated that "it is not necessary to have proof of abuses before we can act," and later noted that "[t]he rules are not in the least premised on the existence of improprieties in the operation of the media holdings."[25]

Recently, in *Time Warner Entertainment v. FCC*, an appellate court struck down two FCC regulations that violated the First Amendment rights of cable operators. The court did indeed apply the *O'Brien* intermediate scrutiny test, and found that the Commission had not offered the requisite "substantial evidence" to demonstrate how its rules directly and materially advanced its stated interest in preserving competition.[26] Given this higher burden of proof, we are hard pressed to imagine what "substantial evidence" the Commission might offer to prove that the newspaper / broadcast cross ownership ban has directly and materially advanced the Commission's interests, either in promoting diversity and competition or furthering the public interest.

Supporters of the ban point out that it has already withstood a constitutional challenge. The rule did in fact reach the Supreme Court in 1978, less than a decade after *Red Lion*, and was upheld on the scarcity rationale.[27] Relying heavily on *Red Lion*, the Court took note of the broadcast spectrum's "physical limitations" and "finite number of frequencies." How the Court would react today, of course, is another matter. In 1984 the Court acknowledged in *FCC v. League of Women Voters* that "[t]he prevailing rationale for broadcast regulation based upon spectrum scarcity has come under increasing criticism in recent years" and indicated that it would reevaluate the scarcity rationale if it received a signal from Congress or the FCC.[28] It is hard to imagine how a reevaluation of the scarcity rationale today could yield the same result as in 1969 or 1978.

Meanwhile, the Supreme Court's holding in *Buckley v. Valeo* may prove instructive, that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment...."[29] Yet that is precisely what the newspaper / broadcast ban does: It creates a "privileged class" of speakers comprising those who do not already own a newspaper in the market where they wish to acquire a

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[24] *Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, Further Notice of Proposed Rulemaking,* 22 F.C.C.2d 339, 344 n.6 (1970) (citation omitted).

[25] 1975 Second Report and Order, *supra* note 4 at paras. 112 n.29, 119.

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

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

[28] *FCC v. League of Women Voters,* 468 U.S. 364, 376-77 (1984). *See* Robert Corn-Revere, "Red Lion and the Culture of Regulation," and Robert M. O'Neil, "Dead or Alive: How Long Will the Red Lion Specter Haunt Free Speech and Broadcasting?" in Robert Corn-Revere, ed., *Rationales & Rationalizations: Regulating the Electronic Media* (The Media Institute, 1997).

[29] *Buckley v. Valeo,* 424 U.S. 1, 48-49 (1976).

broadcast outlet, and vice versa. Those who already own an outlet become, in effect, a disfavored class of speakers whose further speaking opportunities are proscribed by the FCC.

The fact that the newspaper / broadcast ban suppresses speech in a manner unlikely to withstand constitutional scrutiny is reason enough to contemplate its immediate repeal.

CONCLUSION: THE NEWSPAPER / BROADCAST CROSS OWNERSHIP RULE SHOULD BE REPEALED

By any measure, the conclusion is the same: The newspaper / broadcast cross ownership rule no longer serves any purpose (if it ever did) and should be repealed. We can summarize some of the reasons for repeal as follows:

Market Conditions Have Changed Dramatically Since the Ban Took Effect in 1975.

The ban was adopted in response to the media market of the late 1960s and early '70s -- a time when the newspaper industry was relatively robust, the "big three" networks ruled television, UHF television was barely a force, and cable had yet to explode as the dominant distribution system. Other "new media" like DBS, "wireless cable," VCRs, and online interactive services were years and even decades away from becoming household items.

Media Scarcity No Longer Exists, Eliminating Any Need for the Government To Impose Diversity.

The ban was based on the premise that government had to impose viewpoint diversity because broadcast media were a scarce resource. Today, however, there is no scarcity whatsoever in the electronic media marketplace by any measure. For example, absolute numbers of TV and radio stations have increased sharply (from 862 television stations in 1970 to 1,686 today), and the average home receives more than 10 times as many TV channels as in 1970 (74.6 versus 6.8).[30]

The Ban Is of Dubious Constitutional Validity.

In upholding the ban in 1978, the Supreme Court relied on the *Red Lion* scarcity rationale and applied a relaxed standard of scrutiny. Today, once the Court found that scarcity was no longer a significant concern, it would have to apply at least the intermediate scrutiny of the *O'Brien* test. The rule would not survive such a challenge, because there is no factual record that the ban directly and materially advances the FCC's interest in promoting viewpoint diversity, competition,

[30] Tentative Decision, *supra* note 10; *Television Audience 2000, supra* note 14.

and the public interest; moreover, the rule is not a narrowly tailored means, or even a reasonable means, of advancing that interest.

Repealing the Ban Would Improve Competition.

One of the stated goals of the newspaper / broadcast ban is to improve competition, but the rule has become decidedly counterproductive in that regard. Congress and the Commission have wisely repealed or relaxed restrictions on most other types of cross ownership, but that has left the playing field tilted steeply against those who would like to own a newspaper and broadcast outlet in the same market. These entities are now at a competitive disadvantage vis-à-vis common owners of newspapers and cable systems, television and radio stations, and multiple radio stations -- not to mention the owners of "grandfathered" newspaper / broadcast combinations. If the rule were repealed, the Department of Justice and the Federal Trade Commission would continue to oversee the media industry, as they do other industries, to guard against excessive economic concentration and anticompetitive practices.

* * * *

We remain concerned over the Commission's reluctance to repeal the newspaper / broadcast cross ownership rule. We are aware of the fact that the Commission was prohibited by Congress from repealing the rule from 1988 to 1996. However, there has been ample opportunity since then yet the Commission has not seized that opportunity. The present Order and NPRM mentions repeal as an option, but it is clear that the preponderance of the Commission's thinking on likely options has revolved around ways of tinkering with the existing rule -- *e.g.*, redefining the geographic area; adopting a "market concentration" standard, or a "voice count" standard, or a combined "market concentration" / "voice count" standard; amending waiver standards.

All of these options are proposed as ways of ensuring that any change in the rule will not diminish viewpoint diversity. Yet by taking this approach, the Commission is asking a question for which there is no objective answer: "How much viewpoint diversity is enough?" Certainly there is far more viewpoint diversity now than in 1975. Is this enough? If common ownership of newspapers and broadcast outlets is allowed, will there be too little viewpoint diversity? Within the regulatory framework it has constructed, only the Commission can answer these questions. But its answers will ultimately be subjective, even as the Commission tries to rationalize its decisions through the creation of one quasi-analytical "standard" or another. The fact remains: The Commission can always pick and choose standards that "prove" there is inadequate viewpoint diversity, or "prove" there is inadequate competition -- and thus justify continued regulation in perpetuity.

There is no disagreement that numerical diversity (*i.e.*, number of media outlets) is at an all-time high. Indeed, the Commission itself recognized that an adequate level of competition and diversity existed as far back as 1985.[31] Perhaps it is time for the Commission to recognize anew that this numerical diversity, and concomitant viewpoint diversity, is already serving the public interest quite well. Marketplace forces, together with the relaxation of other ownership rules, have yielded the most diverse and competitive media environment this country has ever known. Looked at from a larger perspective, any attempt to regulate diversity in this one corner of an otherwise vast and diverse media landscape by tinkering with the existing rule and creating pseudo-scientific "standards" seems hugely misplaced. The time has come for the Commission to repeal the newspaper / broadcast cross ownership rule.

Respectfully submitted,

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[31] 1985 Fairness Report, *supra* note 18.

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

o Microfilm, microform, certain photographs or videotape.

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One book.