Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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 MEDIA GENERAL, INC.

(Volume 1: Comments and Appendices 1 – 8)

John R. Feore, Jr.
Michael D. Hays
M. Anne Swanson
Scott D. Dailard
Kevin P. Latek

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036
(202) 776-2000

December 3, 2001

Table of Contents

Volume 1

Summary v

I. The Media General Experience: Common Ownership of Newspaper and Broadcast Television Outlets in the Same Market Creates Tangible Public Interest Benefits. 3

A. Media General Has Built on Its Long-Standing Mission of Disseminating Information in Local Markets To Become One of the Nation's Leading Practitioners of Convergence. 3

B. Media General's Experience in Its Specific Convergence Markets Demonstrates That Common Ownership Yields Tangible Public Interest Benefits.6

C. The Size of the Market Is Irrelevant for Convergence, and Media General's Efforts in Its Smaller Markets Are Producing the Same Types of Benefits. 9

D. Quantitative Program Studies Demonstrate That Converged Properties Deliver Increased Non-Entertainment Programming. 11

E. Convergence Is More Effectively Achieved Through Common Ownership.13

II. Media Diversity Has Materialized Over the Last Quarter Century, and Removing the Ban Will Have No Adverse Effect on Viewpoint Diversity. 18

A. In 1975, the Commission Based Adoption of the Rule on Sheer Speculation That It Would Foster Diversity Rather Than in Response to Any Demonstrable Showing of Harm to Diversity from Common Ownership. 18

B. Since 1975, the Media Marketplace Has Experienced an Explosive Growth in Diversity; the Availability of a Wide Variety of Outlets and Owners in Media General's Converged Markets Reflects This Increase. 19

C. Locally Established Internet Sites Create a Substitute for Local Newspapers and Offer a Very Inexpensive and Quick Method for Reaching Consumers in Every Market with General Interest as Well as Specialized Niche Information. 26

D. Media General's Experience in Operating Co-Owned Newspapers and Television Stations as Well as FCC Precedent Addressing Structural Ownership Regulations Show That There Is No Correlation Between Common Ownership and Any Loss in Diversity of Viewpoint. 30

1. Second Report and Order. 30

2. FCC Precedent. 31

3. Real World Experiences. 34

E. The FCC's Concern Over the Effect Newspaper-Broadcast Ownership May Have on Diversity Is Misplaced and, in Any Event, Cannot Be Measured. 36

TABLE OF CONTENTS
(continued)

Page

1. The Ban on Newspaper/Broadcast Cross-Ownership Is Inconsistent with Broadcasters' Acquisitions of Unregulated Assets Related to Broadcasting or Licenses for Other Parts of the Non-Broadcast Spectrum. 36

2. The FCC Lacks a Valid Method for Measuring Diversity. 38

III. Repealing the Archaic Newspaper/Broadcast Cross-Ownership Ban Would Not Harm Competition in Local Markets. 42

A. The FCC Has No Evidence of a Competitive Problem. 42

B. The Lack of Difinitive Empirical Data and The Fact-Specific Nature of the Market Definition Process Make Development of Consistent Product and Geographic Market Definitions To Achieve in the Rulemaking Context. 46

C. If a Competitive Problem Were Ever To Develop, the Federal Antitrust Agencies as Well as State Antitrust Authorities Have the Expertise, Procedures and Willingness To Address the Problem. 52

D. Any Concern Over Competitive Harm Is Assuaged by the Operational Synergies and Other Benefits Derived from Convergence. 56

IV. The 1996 Telecommunications Act Sets a High Standard of Proof for Retention of the Newspaper/Broadcast Cross-Ownership Ban and Places That Burden Squarely on the Commission. 58

V. Fundamental Principles of Administrative Law Require Repeal of the Cross-Ownership Ban. 60

VI. The Rule Violates the First Amendment and Equal Protection Clause and Must Be Repealed. 66

A. Spectrum Scarcity No Longer Exists and Cannot Serve as the Basis for a Diminished Standard of First Amendment Protection for Broadcast Licensees. 66

B. The Newspaper/Broadcast Cross-Ownership Ban Cannot Survive Either Strict or Intermediate First Amendment Scrutiny. 72

C. Equal Protection Considerations Also Mandate That the Newspaper/Broadcast Cross-Ownership Ban Be Abolished 76

VII. The Ban Cannot Be Retained, Regardless of Market Size. 80

VIII. Conclusion. 86

TABLE OF CONTENTS
(continued)

Page

Appendix 1 Television Stations Owned by Media General, Inc.

Appendix 2 Daily Newspapers Owned by Media General, Inc.

Appendix 3 Selected Articles Concerning Media General's Convergence Efforts in Tampa

Appendix 4 James K. Gentry, Ph.D., *The Public Benefits Achievable from Eliminating the FCC's Newspaper/Broadcast Cross-Ownership Rule*, Dec. 2001.

Appendix 5 Samuel Robert Lichter, Ph.D., *Review of the Increases in Non-Entertainment Programming Provided in Markets with Newspaper-Owned Television Stations*, Dec. 2001.

Appendix 6 Temporal Comparison of Television Stations and Cable Penetration (1975 to 2000).

Appendix 7A Temporal Comparison of Radio Stations and Cable Penetration (1975 to 2000).

Appendix 7B Temporal Comparison of Radio Stations and Cable Penetration (1994 to 2000).

Appendix 8 Percent of Households with Computers and Internet Access, by State, 2000.

Volume 2

Appendix 9 Availability of Media Outlets in the Tampa/St. Petersburg, Florida, DMA.

Appendix 10 Availability of Media Outlets in the Roanoke-Lynchburg, Virginia, DMA.

Appendix 11 Availability of Media Outlets in the Tri-Cities, Tennessee/Virginia, DMA.

Appendix 12 Availability of Media Outlets in the Florence-Myrtle Beach, South Carolina, DMA.

Appendix 13 Availability of Media Outlets in the Columbus, Georgia, DMA.

Appendix 14 Availability of Media Outlets in the Panama City, Florida, DMA.

SUMMARY

Media General, Inc. ("Media General"), a publicly traded owner of newspapers and television stations, some in the same market and some in separate markets, hereby submits its Comments in the above-referenced proceeding, which the Commission has initiated to consider whether its 1975 newspaper/broadcast cross-ownership rule should be repealed or modified. Based on its experiences in operating newspaper and broadcast properties both separately and together, Media General believes that common ownership and the convergence of newspaper, television and on-line platforms can deliver a local news product to communities that is highly superior to the product such outlets could render separately. Given the lack of any demonstrable harm from common ownership, Media General believes the Commission has no basis for continuing to deny media companies and their local communities the significant, proven public interest benefits that can be derived from "full convergence" in both large and small markets across the nation.

The Commission's current reexamination of its ban is an outgrowth of its earlier 1998 and 2000 biennial reviews of its broadcast ownership restrictions. In those reviews, despite voluminous record evidence that the rule did not address any tangible harm, the Commission chose to retain it. In the interim, the reasons justifying repeal of the rule have become even more apparent, and, as shown in detail below, they mandate its prompt, swift, and complete repeal.

Media General is among the industry's leaders in developing the "full convergence" model, and Section I of the Comments highlights a study of the public interest benefits achievable from "full convergence." Prepared by Professor James K. Gentry of the University of Kansas Journalism School and attached to Media General's Comments, the study finds that these benefits are evident in both small and large markets across the country. And, as the study also

explains, the benefits of convergence are most effectively achieved through common ownership. The challenges associated with bringing expanded and enhanced news to a community require a comprehensive set of organizational talents and abilities, including strong, forceful leadership, to bridge the historically distinct cultural and institutional differences that long have separated print and electronic journalism. Without common ownership, according to Professor Gentry, the success of combined activities is likely to be dependent on such serendipitous factors as sheer force of personality.

Section I also summarizes the results of a study commissioned by Media General to measure the effect of common ownership on the broadcast of news, information and other non-entertainment programming. This study, prepared by Dr. S. Robert Lichter, co-founder of the Center for Media and Public Affairs, found that, when the quantity of non-entertainment programming presented on average by all stations in each of Media General's converged markets was compared to the average for all stations in the next largest DMA, in five out of the six comparisons, the stations in the converged markets broadcast considerably more non-entertainment programming.

The newspaper/broadcast cross-ownership rule remains the last vestige of the Commission's former one-owner, one-outlet broadcast regulatory regime. In 1975, the Commission justified adoption of the rule as necessary to promote the twin "pillars" of broadcast regulation -- diversity of information sources and competition. Yet, the record produced in that proceeding included no demonstrable evidence of a harm to either "pillar" that might be exacerbated by common ownership of newspapers and broadcast stations. In subsequently affirming adoption of the rule, the Supreme Court recognized that the Commission had only inconclusive studies of competitive harm and no evidence of competitive abuses. It nonetheless affirmed the agency's adoption of the rule based on conjectured improvements that might accrue to diversity: "Diversification of ownership . . . would probably result in enhanced diversity of viewpoints, and, given the absence of persuasive countervailing considerations, 'even a small gain in diversity' was 'worth pursuing.'"[1]

In the almost quarter century since the Supreme Court allowed the newspaper/broadcast cross-ownership ban to stand, the media world has changed dramatically. As shown in detail in Section II of the Comments, the number of existing media outlets both at the national and local levels has increased, with the number doubling if not trebling for many services. More significantly, new local services regulated by the FCC, such as Class A television, low-power television, and low-power FM services have begun to serve the public, and the Internet has begun to offer a true alternative to existing information services, be they local or national. At the same time, local outlets are facing increased competition from national programming services whether delivered by broadcast television, cable television, or DBS. Together, these local and national outlets -- and the burgeoning Internet -- offer a variety of services, some aimed at wide audiences, others directed to very narrow niche interests. Their profusion and the varying constituencies they serve remove any concern that retention of the newspaper/broadcast cross-ownership ban is needed to foster diversity of viewpoint. Viewpoint diversity is simply not a real-world issue.

The ban, moreover, cannot be said to be needed to address any competitive concerns that may have arisen in the last quarter century. As discussed in Section III of the Comments, economic studies have shown local markets to be no more concentrated than they were in 1975, and these studies have demonstrated that grandfathered cross-ownership of newspaper and

[1] *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 786 (1978).

broadcast stations has not led to higher advertising prices. Without any documented need to protect competition in the rulemaking context, the FCC should leave these matters to adjudication by the federal and state antitrust agencies. Indeed, as discussed in Section IV, in light of the adoption of Section 202(h) of the 1996 Telecommunications Act, which explicitly requires the FCC to repeal or modify any rules that do not remain "necessary in the public interest as the result of competition," the rule must fail because no documented competitive harm justifies its retention.

Administrative and constitutional law principles also mandate repeal of the newspaper/broadcast cross-ownership ban. As discussed in Section V, when the speculative underpinning of a rule has been invalidated, the agency must repeal it under fundamental administrative law principles. Similarly, as shown in Section VI, because the rationale of spectrum scarcity, which previously shielded the rule from thorough First Amendment review, has been discredited by virtually every body that has considered it -- Congress, the lower federal courts, and the FCC itself -- the rule can no longer pass muster under the searching First Amendment standards of strict, or even intermediate, scrutiny. The rule also fails when measured against the Equal Protection Clause of the Constitution because it lacks an overriding purpose, or even a rational basis, for restricting broadcasters from owning newspapers in their home markets when other media owners do not face comparable restrictions.

Riddled with infirmities, the rule cannot be allowed to continue in markets of any size. As discussed in Section VII, extensive programming and economic studies have failed to show any concerns relevant to market size that would require retention of the rule. If anything, at this critical time when local newspapers and television stations are encountering increased competition from national media services, higher costs of producing good local journalism, and declining advertising revenues, and when local television stations additionally are facing declining network compensation while at the same time funding an expensive transition to DTV, the Commission should seize this opportunity to remove an unconstitutional ban that, in fact, is inhibiting the public interest and the delivery of enhanced and expanded local news to communities across the nation..

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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 MEDIA GENERAL, INC.

Media General, Inc. ("Media General"), by its attorneys and in response to the *Order and Notice of Proposed Rule Making* released in the above-referenced proceeding,[1] hereby submits its Comments, and urges repeal of the newspaper/broadcast cross-ownership rule.[2]

In first adopting the rule over a quarter century ago, the Federal Communications Commission ("Commission" or "FCC"), although citing to twin goals of ensuring competition and advancing diversity, relied principally upon the diversity objective as the primary rationale for adoption of the ban. In doing so, the FCC addressed the importance to American democracy of maintaining a multiplicity of services as well as a free flow of information and opinion. Diversity, according to the Commission, was "a vitally important matter, for it is essential to a democracy that its electorate be informed and have access to divergent viewpoints on

[1] *Cross-Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Waiver Policy, Order and Notice of Proposed Rule Making*, MM Docket Nos. 01-235 and 96-197, FCC 01-262 (rel. Sept. 20, 2001) ("*NPRM*").

[2] 47 C.F.R. § 73.3555(d) (2000).

controversial issues."[3] The Commission is now seeking, as the *NPRM* reminds, "to ensure that the public has access to a diversity of viewpoints to promote First Amendment values."[4]

As documented below, Media General has extensive experience as the owner of newspaper and broadcast facilities, some commonly owned in the same Designated Market Area ("DMA"). Based on this experience, Media General can report that common ownership has resulted in enhanced and expanded news, information, and public affairs across all of its commonly owned markets, no matter what the size. At the same time, Media General has witnessed a growth in diversity of outlets and viewpoints in these markets, as it competes with a profusion of new and expanded media services serving a wide variety of audiences, tastes, and interests. Any conjectural concern that the Commission may have had a quarter century ago that the rule was necessary to protect diversity has not materialized.

Similarly, the record, both at the time the rule was adopted and as it has been developed in several subsequent Commission examinations, includes no documented instances of competitive abuses or threats to competition that would warrant retention of the rule. This evidence shows, and Media General's experience confirms, that common ownership has not been a threat to competition no matter what the market size, and any abuses that may develop can be addressed adequately by federal and state antitrust agencies. To retain the rule, the FCC would now need to show that it is "necessary in the public interest as the result of competition," a high standard of proof it cannot meet on the record before it.[5]

---

[3] *Amendment of Sections 73.34[sic], 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 FCC 2d 1046, 1074, *recons.*, 53 FCC 2d 589 (1975), *aff'd sub nom, FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775 (1978) ("*Second Report and Order*").

[4] *NPRM* at ¶ 14.

[5] Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 112 (1996).

Finally, not only does lack of any factual evidence of harm compel elimination of the rule, but legal reasons also warrant its repeal. Now that technological advances and the profusion of new media outlets ensure the diversity that the FCC sought to protect with the ban, no rational basis remains for its retention. As a result, fundamental principles of administrative law require its repeal. The growth in diversity has also invalidated the "scarcity doctrine" that for years had shielded the ban from a thorough First Amendment review. Absent this immunity, the rule can no longer pass muster under either strict or intermediate First Amendment scrutiny. For similar reasons, the ban cannot survive under the Equal Protection clause because it now lacks an overriding purpose, or even a rational basis, for restricting broadcasters from owning newspapers in their home markets when other media owners do not face comparable restrictions.

In short, over the course of its operation, the newspaper/broadcast cross-ownership rule has become increasingly discredited and invalid. The Commission no longer has any factual or legal basis to sustain it, and it should be promptly repealed in its entirety.

I. The Media General Experience: Common Ownership of Newspaper and Broadcast Television Outlets in the Same Market Creates Tangible Public Interest Benefits.

A. Media General Has Built on Its Long-Standing Mission of Disseminating Information in Local Markets To Become One of the Nation's Leading Practitioners of Convergence.

Media General is an independent, publicly owned communications company based primarily in the southeastern United States with interests in newspapers, broadcast television stations, interactive media, and diversified information services. Media General's corporate mission is to be a leading provider of high-quality news, information, and entertainment programming by continuing to build on its position of strength in strategically located markets.

Media General is also one of the media industry's leading practitioners of "convergence," the melding of newspaper, broadcast television, and on-line research in the preparation and dissemination of local news. Media General's News Center in Tampa-St. Petersburg (Sarasota), Florida, the nation's 14th-ranked Designated Market Area ("DMA"), is the most advanced convergence laboratory in the nation, and the only one, as far as Media General is aware, in which the news staffs of a newspaper, broadcast television station, and on-line operation are housed together under one roof. Media General also has similar convergence efforts underway in five additional markets where it owns television broadcast stations and daily newspapers -- Roanoke-Lynchburg, Virginia, the 67th-ranked DMA; Tri-Cities, Tennessee/Virginia, the 93rd-ranked DMA; Florence-Myrtle Beach, South Carolina, the 109th-ranked DMA; Columbus, Georgia, the 126th-ranked DMA; and Panama City, Florida, the 159th-ranked DMA.

At the beginning of 1995, Media General owned just three daily newspapers, and, as of the start of 1997, it held only three broadcast television station licenses. Since then, Media General has expanded rapidly, now serving newspaper readers in twenty-five markets and television viewers in twenty-one Designated Market Areas ("DMAs").[6] To *The Tampa Tribune*, the *Richmond Times-Dispatch*, and the *Winston-Salem Journal*, Media General has now added twenty-two other daily newspapers in Virginia, North Carolina, Florida, Alabama, and South Carolina, as well as nearly 100 weekly newspapers and other periodicals. Today, its twenty-six network-affiliated television stations reach more than thirty percent of the television households in the southeastern United States and nearly eight percent of the nationwide television audience. Media General's Interactive Media Division also provides online content that includes news, information, and entertainment sources in virtually every one of the company's markets.

[6] Attached as Appendix 1 is a complete list of the markets in which Media General owns a television broadcast station. Attached as Appendix 2 is a list of all the markets in which it publishes a daily newspaper.

Given its newspaper and broadcast holdings, Media General has long had a very keen interest in the Commission's proceedings related to combined ownership of newspapers and broadcast stations. Media General participated as a commenting party in the rulemaking proceeding that resulted in adoption in 1975 of the current newspaper/broadcast cross-ownership prohibition.[7] More recently, Media General submitted both comments and reply comments in response to the Commission's March 1998 Notice of Inquiry initiating the agency's first biennial review of its ownership rules pursuant to Section 202(h) of the Telecommunications Act of 1996 ("1996 Telecommunications Act") and Section 12 of the Communications Act of 1934, as amended.[8]

In those filings, Media General argued that the rationale of broadcast "spectrum scarcity" is no longer available to provide support for the rule and, absent such scarcity, the FCC's desire to foster diversity is insufficient to support continued retention of the rule. Moreover, Media General argued that equal protection considerations also demand repeal of the restriction.[9] Media General, with other parties, also submitted comments in support of the "Emergency Petition for Special Relief," filed by the Newspaper Association of America ("NAA") in 1999.[10] Throughout this whole process, Media General has been an active member of the NAA, formerly the American Newspaper Publishers Association, and wholeheartedly has endorsed and

---

[7] Appendix A, *Second Report and Order*. Media General participated in the proceeding through its subsidiary, WFLA, Inc.

[8] *See 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 13 FCC Rcd 11276 (1998) ("*1998 Biennial NOI*").

[9] Joint Comments of Cox Broadcasting, Inc. and Media General, Inc., MM Docket No. 98-35 (July 21, 1998), at 6-12, 25-29.

[10] Petition by the Hearst Corporation, Media General, Inc., Gannett Company, Inc., and Tribune Company in Support of the Newspaper Association of America's "Emergency Petition for Relief," MM Docket Nos. 98-35 and 96-197 (Aug. 23, 1999) ("*Emergency Petition for Relief*").

supported NAA's actions, both before the Commission and the courts, to obtain repeal of the rule.

B. Media General's Experience in Its Specific Convergence Markets Demonstrates That Common Ownership Yields Tangible Public Interest Benefits.

In the last several years, Media General has worked very intently to bring convergence and its benefits to the markets in which it operates. Initially, these efforts focused on Tampa, the 14th-ranked DMA, where it has owned NBC affiliate WFLA-TV, Channel 8, and *The Tampa Tribune* since before the adoption of the newspaper/broadcast cross-ownership rule. Media General next sought to expand convergence to its co-owned properties in Roanoke, Virginia, ranked as the 67th DMA; Tri-Cities, Tennessee/Virginia, the 93rd-ranked DMA; Florence-Myrtle Beach, South Carolina, the 109th-ranked DMA; Columbus, Georgia, the 126th-ranked DMA; and Panama City, Florida, the 159th-ranked DMA.[11] While the benefits of convergence are beginning to manifest themselves in these other, smaller markets, it is Tampa that to date best illustrates the company's approach to convergence.

Convergence activities actually began in Tampa almost ten years ago, when the WFLA-TV news director and *The Tampa Tribune*'s sports department began to take a coordinated approach to covering local high school football and other sports. Shortly thereafter, the two outlets began sharing political polling information and coordinating political coverage, and the paper's religion columnist began making on-air reports on WFLA-TV. As explained in detail in the news articles attached as Appendix 3 and the statement of Dr. James K. Gentry, Dean of the

[11] These combinations are not grandfathered cross-ownerships. Rather, four were created beginning in 1998 in transactions undertaken pursuant to footnote 25 in the *Second Report and Order*, which allows such formations and ownership during the term of a broadcast station's license. *Second Report and Order*, 50 FCC 2d at 1076 n.25 (1975). In the case of the fifth

School of Journalism and Mass Communications at the University of Kansas, attached as Appendix 4, full convergence at Media General began in earnest almost two years ago, when WFLA-TV, *The Tampa Tribune*, and Media General-owned Tampa Bay Online ("TBO.com") moved all their news staffs and content operations into a new $35 million state-of-the-art facility, The Tampa News Center.

While each of the three outlets has its own specific news and editorial staffs that make independent, final decisions about content, this convergence laboratory features a central news desk, the "Multi-Media Desk," which is continuously staffed by editors from all three media and facilitates the rapid exchange of story ideas, news content, and video images among the three outlets. All three outlets also maintain their news "budgets" on a building-wide "intranet," and the staff of each outlet can access the news "budgets" for the other properties. Newspaper reporters are writing scripts for television newscasts and appearing on-air, and the newspaper has made its archives available to the other two outlets. With the provision of special equipment to the photographers of all three outlets, *The Tampa Tribune* and TBO.com have been able to provide stories with pictures that otherwise would have been only text, including aerial footage obtained from WFLA-TV's helicopter. Similarly, *The Tampa Tribune*'s photojournalists have been able to provide WFLA-TV with video for airing on its newscasts.

As Professor Gentry details extensively in Appendix 4, the benefits of full convergence in Tampa are already apparent. The pooling of news-gathering resources has increased the output of news content and has allowed the reporters at the three outlets to build on each other's "scoops" to present various angles of the same story. In one recent, high-profile case, a WFLA-

---

situation, the Roanoke, Virginia, DMA, the Grade A contour of WSLS-TV in Roanoke does not encompass the communities in which Media General's daily newspapers are published.

TV reporter told the story of dangerous corrosion in the Sunshine Bridge, not on WFLA-TV, but in an article that first appeared on the front page of *The Tampa Tribune*.

As Professor Gentry notes, WFLA-TV's and TBO.com's full access to *The Tampa Tribune*'s archives and research desk has allowed these electronic outlets to bring more depth and perspective to their coverage of news and information. In return, *The Tampa Tribune* has gained faster access to breaking news and valuable opportunities for branding its product in a highly-competitive, two-newspaper market. Finally, by working together, the three outlets have gained better access to political candidates and government officials. Together, they now conduct their own joint polls, hold town hall meetings, and organize other community events, such as health fairs and community telephone banks that would have been infeasible without common ownership.

These full convergence efforts are paying off for the outlets themselves -- and for the community they serve. TBO.com has become the most visited Internet web site in the Tampa Bay region,[12] and despite a history of declining circulation, *The Tampa Tribune* is now experiencing a circulation *increase* within its core geographic market. WFLA-TV also recently has been recognized by the Pew Charitable Trust's Project for Excellence in Journalism as providing the best television journalism in the Tampa Bay region.[13]

Significantly, the viewing public in Tampa has recognized that Media General's full convergence is enhancing the news product that they receive. A local poll cited by Professor Gentry found that two-thirds of the respondents agreed that convergence had improved the

---

[12] James K. Gentry, Ph.D., *The Public Benefits Achievable from Eliminating the FCC's Newspaper/Broadcast Cross-Ownership Rule*, Dec. 2001, at 6 ("Gentry's Statement") (citing Scarborough Research 2001 and *The Tampa Tribune* Market Development Department).

[13] *Id.* (citing Tom Rosenstiel et al., *The Magic Formula: Five proven steps to financial success in news*, CJR/Project for Excellence in Journalism, Nov./Dec. 2001, at 10).

quality of news coverage, and another local poll found a majority of respondents believed Media General's convergence efforts had a positive effect on news presentation in the Tampa market.[14]

C. The Size of the Market Is Irrelevant for Convergence, and Media General's Efforts in Its Smaller Markets Are Producing the Same Types of Benefits.

Media General has begun to implement full convergence efforts, not just in Tampa, Florida, but also in the five other markets where it owns both newspaper and broadcast television outlets. These markets range in size from Roanoke, Virginia, the 67th-ranked DMA, to Panama City, Florida, the 159th-ranked DMA.

As in Tampa, the newspapers and television stations in each market maintain separate news and editorial staffs. Nonetheless, despite the fact that they do not have the same advantage of co-location as Tampa, the news staffs at these co-owned properties regularly share story ideas by e-mail, fax, and telephone, and they publicize each other's news content. All of the Media General's convergence markets are working to provide their television cameramen with equipment that will allow the newspapers to retrieve print-quality photos, and they are equipping the print photojournalists with digital video cameras to provide the television stations with video. The newspapers are making their archives available to the television stations, and in Roanoke, Florence, and Panama City, newspaper reporters already are preparing items for broadcast and appearing on-air to be interviewed about their stories.

Importantly, these full convergence efforts have led to expanded, better and more immediate news coverage. For example, in Florence, the newspaper has been able to enhance and expand its coverage of nearby Myrtle Beach by drawing on the resources of the television station's local bureau in that community. The newspaper and television station expect to increase their coverage of events in Columbia, South Carolina's state capital, by sharing a full-

[14] Gentry's Statement at 6.

time reporter who will reside there. In the Columbus DMA, thirty miles, a time zone boundary, and a river separate Columbus, Georgia, the television station's community of license, and Opelika and Auburn, Alabama, where the *Opelika-Auburn News* is published. In that market, the sharing of resources has allowed an expansion of geographic coverage that otherwise would not have been possible. The Columbus television station is developing plans for building a bureau inside the newspaper's office, which will soon provide it with the ability to shoot, edit, and feed stories directly to the station. By working together, a television news crew and a reporter from the newspaper drove a news truck to New York City on September 11 and jointly reported on local angles to the terrorist attacks that could not have been obtained from national sources. Neither the station nor the paper, acting alone, could have marshaled the resources to make the trip. Finally, in the Tri-Cities, Tennessee/Virginia DMA, Media General's convergence efforts are not only beginning to enhance and improve news coverage and content, but they appear as well to be building regional ties among formerly separate communities.

The fact that convergence has been successful in smaller markets does not surprise Professor Gentry, as he explains in his statement. He discusses at length numerous examples, in addition to Media General's experience, in which convergence has brought enhanced news quality and other benefits to communities, large and small. According to Professor Gentry, the size of the local market is irrelevant. Instead, the critical ingredients for successful implementation of full convergence are co-ownership and strong leadership,[15] and it is for these reasons that Media General is able to achieve the benefits of full convergence at all of its co-owned locations, large and small.

---

[15] *Id.* at 7-10 (citing James K. Gentry, *Tampa: Another stop on the road to convergence,* Extending the Brand, Apr. 2000, at 31-37).

D. Quantitative Program Studies Demonstrate That Converged Properties Deliver Increased Non-Entertainment Programming.

Three studies over a twenty-five year period consistently have demonstrated that television stations jointly owned with newspapers are likely to broadcast significantly more news and informational programming than other stations in the same market. The most recent survey shows additionally that the total amount of news and informational programming broadcast by all stations in a market is likely to be higher in markets that include at least one jointly-owned television and newspaper outlet than markets where there is no such co-ownership.

The first of these studies was conducted by the FCC and undertaken in 1973 as part of the proceeding leading to adoption of the newspaper/broadcast cross-ownership ban. Published as Appendix C to the *Second Report and Order*, the study, which was based on TV Station Annual Programming Reports, found that, on average, television stations owned by newspapers offered six percent more local news, nine percent more local non-entertainment programming, and 12 percent more total local programming than other television stations.[16] The FCC described these results as presenting "an undramatic but nonetheless statistically significant superiority in newspaper owned television stations in a number of program particulars."[17]

The second of these studies was undertaken by A.H. Belo Corporation and submitted in connection with its comments in the 1998 Biennial Regulatory Review urging repeal of the archaic newspaper/broadcast cross-ownership rule.[18] Among the stations included in the study was WFAA-TV, Dallas-Fort Worth, Texas, where Belo jointly owns *The Dallas Morning News*. As the study showed, WFAA-TV aired over sixty hours a week of non-entertainment

[16] *Second Report and Order*, 50 FCC 2d at 1078 n.26 & Appendix C.

[17] *Id.* at 1078 n.26.

[18] Appendix A, Comments of A.H. Belo Corporation, MM Docket Nos. 98-35 (July 21, 1998).

programming, consisting of newscasts, news/information programming (*e.g.*, news "magazines" and morning news programs), public affairs programs, instructional shows, children's educational programming, and religious programs.[19] This total placed WFAA-TV appreciably ahead of the other network affiliates in its market in terms of average hours of non-entertainment programming aired in a week and placed WFAA-TV second among all seventeen Belo stations, a second-place showing that was so close that it could be disputed as statistically insignificant, particularly since different calendar weeks were used to measure the various Belo stations.[20]

Third, more recently, in a study commissioned by Media General, media expert Dr. S. Robert Lichter, co-founder of the Center for Media and Public Affairs, found that common ownership has a positive effect on the overall amount of non-entertainment programming broadcast in a market.[21] In his study, Dr. Lichter paired each Media General co-owned DMA with the immediately higher-ranked DMA in population size. None of the higher-ranked DMAs included a commonly owned television station and newspaper. For each market, Dr. Lichter coded and categorized the listings using the same six categories utilized in the Belo study, including one additional category for agricultural programming. Dr. Lichter then calculated the number of hours of non-entertainment programming presented both in total and on average by

[19] *Id.* WFAA-TV specifically broadcast 81.5 hours total of non-entertainment programming, 61.94 hours when discounted for commercials. Its weekly total as a percentage of all programming was 48.5 percent, 36.9 percent when discounted for commercials. These percentages were much larger than the 42.1 percent, 32.0 percent when discounted for commercials, broadcast on average by the other stations in the Dallas-Fort Worth market.

[20] KTVB, Boise, Idaho, aired more non-entertainment programming than WFAA-TV, and its percentages were only slightly higher than WFAA-TV's -- 83.5 percent of total programming was non-entertainment, 63.46 when discounted for commercials. It should be noted that different "news weeks" were used for the two stations, and the slight difference may be explainable on that basis.

[21] Samuel Robert Lichter, Ph.D., *Review of the Increases in Non-Entertainment Programming Provided in Markets with Newspaper-Owned Television Stations*, Dec. 2001, at 3 ("Lichter Statement") attached as Appendix 5. Dr. Lichter's qualifications are appended to his study.

the four network affiliated stations in the Media General markets and in the next adjacent, immediately higher-ranked DMAs.[22] He then compared these averages and found significant results that produced a consistent pattern. In five out of six of the comparisons between DMAs with newspaper-owned television stations and DMAs without such stations, the stations in the co-owned DMAs offered appreciably more non-entertainment programming on average than the stations in the non-co-owned markets. The differences ranged from a low of one percent greater in the comparison of co-owned Columbus, Georgia, and non-co-owned Yakima, Washington, to as high as 15 percent between co-owned Tri-Cities, Tennessee/Virginia and non-co-owned Davenport, Iowa. Only in the Roanoke, Virginia DMA did the stations offer less non-entertainment programming than the stations in non-co-owned Lexington.[23]

These empirical studies are significant. Not only do they show that a station owned by a newspaper offers more non-entertainment programming, but they also evidence that the presence of a commonly owned television station in a market may tend to raise the bar for all competing broadcast players in that market. Accordingly, it appears that common ownership has a positive, market-wide effect on the quantity of non-entertainment programming available to viewers.

E. Convergence Is More Effectively Achieved Through Common Ownership.

In the *NPRM*, the FCC notes that a party participating in the 1998 Biennial Regulatory Review commented that "businesses do not need to realize . . . efficiencies [of convergence] because they could simply form a joint venture."[24] Numerous studies have demonstrated, however, that, while operation as a joint venture may permit businesses to achieve some of the

---

[22] *Id.* at 3.

[23] *Id.* at 4 and Table 1.

[24] *NPRM,* ¶ 25, n.76 (citing Independent Free Papers of America Comments, MM Docket Nos. 98-35 and 96-197 (May 11, 1998), at 2-4).

benefits resulting from common ownership, the organizational shortcomings and limitations inherent in joint ventures make them less efficient and imperfect substitutes for common ownership.[25] Only by eliminating the anachronistic newspaper/broadcast cross-ownership rule and allowing parties to recognize the full benefits and synergies of common ownership can the public interest be served most effectively.

In his statement, Professor Gentry explains that the challenges associated with convergence, such as bringing expanded and enhanced local news to a community, require a comprehensive set of organizational talents and abilities.[26] Key among them is strong, forceful leadership essential for combining the historically divergent cultural and institutional perspectives that have long typified print and electronic journalism. Bridging this divide in professional attitudes also requires a system for effective communication, development of strategic plans, employee training, and understanding.[27] In Professor Gentry's opinion, without common ownership, the success of converged activities is likely to be dependent on such serendipitous factors as the sheer force of personality.[28] As a result, full convergence, in which news and other informational content expands and improves, is "extraordinarily difficult to achieve without common ownership," according to Professor Gentry.[29]

---

[25] *See* Gentry's Statement at 11 n.23 (citing Stanley M. Besen and Daniel P. O'Brien, "An Economic Analysis of the Efficiency Benefits from Newspaper-Broadcast Station Cross-Ownership," July 21, 1998 ("Chronicle/Besen Analysis"), filed as Exhibit B to Comments of The Chronicle Publishing Co., Inc., MM Docket No. 98-35 (filed July 21, 1998); Stanley M. Besen and Daniel P. O'Brien, "An Economic Analysis of the Efficiency Benefits from Newspaper-Broadcast Station Cross-Ownership," July 21, 1998 ("Gannett/Besen Analysis"), filed as Appendix B to Comments of Gannett Co., Inc., MM Docket No. 98-35 (filed July 21, 1998)).

[26] Gentry's Statement at 7, 10.

[27] *Id.* at 7, 11.

[28] *Id.* at 12.

[29] *Id.*

Virtually identical conclusions were reached by Stanley M. Besen and Daniel P. O'Brien of Charles River Associates in similar studies submitted three years ago by Chronicle Publishing and Gannett Co. in the 1998 Biennial Regulatory Review.[30] According to Messrs. Besen and O'Brien, joint ventures confront three classes of issues that hinder their ability to achieve efficient results.[31] First, joint ventures encounter the costs of agreeing on a common course of action and reaching agreements. Delays and stalemates may occur as each participant attempts to influence selection of the course of action that it finds most favorable.[32] Contracts are expensive to prepare, and, given the uncertainties of joint operation, the participants may insist upon conditions and safeguards to protect against a broad range of contingencies.[33]

Second, in joint ventures, participants may have incentives to withhold information about the value of their own productive input or the value of the jointly-created product. Each party has an incentive to understate the value and overstate the costs of the components about which they have the most knowledge, all in order to garner a greater share of the profits.[34]

Third, joint ventures may create incentives for each participant to take actions that are not in the best interest of the joint venture -- or what has been dubbed the "shirking" problem.[35] Each participant has an incentive to "under-provide" quality or other productive inputs to the venture because, in doing so, it receives all the benefits of the joint venture but at less cost.

---

[30] Chronicle/Besen Analysis, at 16; Gannett/Besen Analysis, at 15.

[31] Chronicle/Besen Analysis, at 16; Gannett/Besen Analysis, at 15.

[32] Chronicle/Besen Analysis, at 16; Gannett/Besen Analysis, at 15.

[33] Chronicle/Besen Analysis, at 17; Gannett/Besen Analysis, at 15-16.

[34] Chronicle/Besen Analysis, at 17-18 (citing P. Milgram and J. Roberts, *Economics, Organization and Management*, Chapter 5 (Prentice Hall 1992)); Gannett/Besen Analysis, at 16-17 (citing P. Milgram and J. Roberts, *Economics, Organization and Management*, Chapter 5 (Prentice Hall 1992)).

[35] Chronicle/Besen Analysis, at 18-19; Gannett/Besen Analysis, at 17-18.

Unless the joint venture contract anticipates and specifies all the costly decisions each party will need to make on an ongoing basis in providing inputs to the joint venture, a highly difficult conceptual task, "shirking," is likely to occur.[36] The "shirking" problem is likely to be even worse when the core businesses of the participants provide services that compete either for resources or in the output market with the joint venture, such as when newspapers and broadcast stations work together to develop advertising on a jointly-operated web site.[37] The dangers of shirking are also likely to arise when the benefits of the venture are highly uncertain and one or more of the participants are risk-averse.[38]

Common ownership has the potential to mitigate each of these three problems.[39] First, agreement on the parameters of production is reached cheaply because management decides and establishes them.[40] Any resulting disputes are handled "quite naturally" by the structure of authority that already exists.[41] The second problem -- that of withholding information -- is reduced because, within one firm, it is easier for key decision-makers to obtain the information that they need; senior management is free to monitor the activities of each participating division on an unrestricted basis; and the central authority, if necessary, can specify what information should be shared.[42] Finally, while it can be prohibitively costly to specify in the joint venture contract all the actions that each participant will take, "shirking" does not have the opportunity to

[36] Chronicle/Besen Analysis, at 19; Gannett/Besen Analysis, at 18.

[37] Chronicle/Besen Analysis, at 19-20; Gannett/Besen Analysis, at 18-19.

[38] Chronicle/Besen Analysis, at 20; Gannett/Besen Analysis, at 19.

[39] Chronicle/Besen Analysis, at 21; Gannett/Besen Analysis, at 20.

[40] Chronicle/Besen Analysis, at 21-22; Gannett/Besen Analysis, at 20.

[41] Chronicle/Besen Analysis, at 22; Gannett/Besen Analysis, at 20.

[42] Chronicle/Besen Analysis, at 22-23; Gannett/Besen Analysis, at 20-21.