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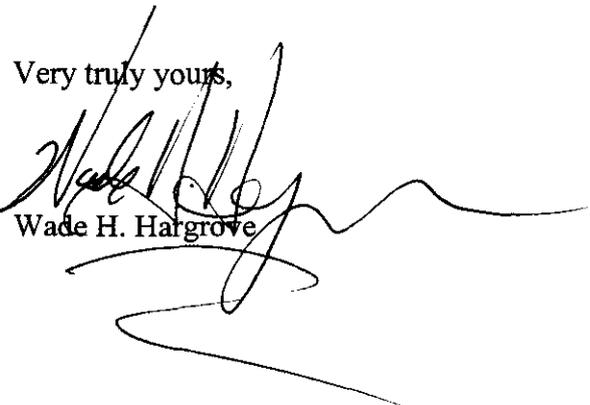
Re: Cross-Ownership of Broadcast Stations
and Newspapers
MM Docket No. 01-235

Dear Ms. Salas:

Transmitted herewith, on behalf of Hearst-Argyle Television, Inc., are an original and four copies of Reply Comments to be filed in the above-captioned proceeding.

If you should have any questions in connection with this matter, it is respectfully requested that you communicate with this office.

Very truly yours,


Wade H. Hargrove

Enclosures

cc: Chairman Michael K. Powell (w/enc.)
Commissioner Kathleen Q. Abernathy (w/enc.)
Commissioner Michael J. Copps (w/enc.)
Commissioner Kevin J. Martin (w/enc.)
Mr. Kenneth Ferree (w/enc.)
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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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
)	

To: The Commission

REPLY COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

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February 15, 2002

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Summary

The newspaper/broadcast cross-ownership rule should be repealed in its entirety. The evidence in this proceeding supporting total repeal is compelling. It includes extensive data on 31 existing newspaper/broadcast combinations, including “voice” counts and other data in the relevant markets as well as the public interest benefits of co-ownership. Commenters also provided extensive market data on an additional 15 markets. The extensive data for these 46 markets supplement the comprehensive examination of the diversity that exists in each of the nation’s 210 DMAs that Hearst-Argyle submitted in its initial comments.

The record evidence demonstrates that there will be no harm to competition and no harm to diversity if the newspaper/broadcast cross-ownership rule is repealed.

There is a difference of opinion among the commenters with respect to what constitutes the relevant advertising product market for purposes of assessing the impact of repeal on competition. It is not necessary, however, for the Commission to resolve that issue. As Hearst-Argyle noted in its comments, if newspaper advertising and broadcast advertising *are not* substitutes, then there would be no harm to competition if the cross-ownership restriction were rescinded. Conversely, if newspaper advertising and broadcast advertising *are* substitutes, then, both (i) based on existing econometric studies, as demonstrated by Hearst-Argyle in its comments, and (ii) due to the explosive growth in local media advertising outlets over the past quarter century, as demonstrated by multiple commenters, repeal of the cross-ownership restriction would not lessen or harm local competition.

With respect to viewpoint diversity, not a single party submitted *evidence* of actual harm to diversity in any of the 46 markets in which newspaper/broadcast combinations now exist. In view of the voluminous filings made by Consumers Union, United Church of Christ, and the AFL-CIO

in opposition to repeal, it is difficult to imagine that evidence of actual harm to diversity would not have been submitted if such harm exists. The record before the Commission contains, then, on the one side, voluminous, detailed evidence of the great diversity of “voices” available in local media markets against, on the other side, speculative, conclusory arguments—unsupported by any evidence—of the alleged harm to diversity if the newspaper/broadcast cross-ownership rule is repealed.

The evidence Hearst-Argyle presented identified in the nation’s 210 DMAs more than 17,000 (17,049) local media “voices” for which there are 8275 separate owners. On average, each DMA has 81 traditional media “voices” for which there are 39 separate owners. Thus, because the “average” DMA contains 39 separate owners of local media “voices,” were a newspaper whose circulation exceeds 5% to combine with a broadcast station, there would still remain 38 separate owners of local media “voices” in the DMA post-merger. Clearly, there could be no harm to local diversity if the newspaper/broadcast cross-ownership rule were repealed.

The evidence is indisputable: Neither the diversity nor competition pillar of the newspaper/broadcast cross-ownership rule provides any foundation for the rule. The rule, therefore, should be repealed in its entirety.

* * *

**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
)	

To: The Commission

REPLY COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

Hearst-Argyle Television, Inc. (“Hearst-Argyle”), by its attorneys, submits these reply comments in response to the *Order and Notice of Proposed Rule Making* (“Notice”), FCC 01-262, released September 20, 2001, in the above-captioned proceeding.

It is difficult to recall a rulemaking proceeding at the Commission in which the weight of the record evidence is so compelling. Of the more than 2300 pages of substantive comments and evidence filed by 34 different parties, the overwhelming majority of the substantive comments support repeal of the newspaper/broadcast cross-ownership rule.¹ This is all the more remarkable

¹ Indeed, some 25 commenters, ranging from media companies (such as Hearst-Argyle and The Hearst Corporation, Belo, Cox, Gannett, New York Times Co., and Tribune) to trade associations (such as NAB, NAA, and ALTV) and from non-profit organizations (such as The Media Institute and the Freedom of Expression Foundation) to media market analysts (such as Bear, Stearns), providing more than 1800 pages of record evidence, support full repeal of the newspaper/broadcast cross-ownership rule. Only a handful of media companies (five) advocate something other than total repeal, *see* Comments of Caribbean International News Corp. (focusing on Puerto Rico and advocating cross-ownership so long as one of the parties does not control more than 70% of the advertising revenues in its medium); Comments of Pathfinder Communications Corp. (advocating repeal, but, if not repeal, arguing that the Commission should permit newspaper/radio cross-ownership, but, if not that alternative, arguing that the Commission should

(continued...)

given the fact that the Commission's *Notice* focused so extensively on various options for relaxation of the rule.²

The record evidence is impressive. Of the 26 newspaper/television combinations and 29 newspaper/radio combinations reported by the Newspaper Association of America in its comments (which figures include 9 newspaper/television/radio combinations), only a handful of which are not grandfathered combinations,³ commenters have provided extensive data on 31 existing newspaper/broadcast combinations, including "voice" and other data in the relevant markets as well as the numerous benefits these combinations have brought to their communities, especially in the

¹(...continued)

change the geographical restriction for radio to the 70 dBu contour); Comments of Reading Eagle Co. (arguing that the Commission should allow at least one newspaper/AM/FM combination in a market); Comments of Mid-West Family Stations (advocating a market concentration standard), or take no position at all, *see* Comments of Post Company.

By contrast, only four entities argue that the rule should be fully retained (AFL-CIO, Consumers Union et al., United Church of Christ et al., and Arso Radio Corp. (focusing on Puerto Rico but arguing that the rule should be retained or even expanded to prohibit cross-ownership of a Spanish language paper where Spanish is the dominant language)).

These figures purposely exclude the allegedly more than 1300 comments filed by individuals, as these are nearly all non-substantive in nature and amount to nothing more than form emails generated from the Center for Digital Democracy's website, *see* <http://www.democraticmedia.org/getinvolved/fccfiling.html>, including "comments" filed by individuals such as "Jesus Christ," "Test User," and "M," "S," and "V.," many of which were emailed multiple times. It appears that the comments filed by only five sets of individuals exceed one page and contain any original substance; these are the comments of Margaret M. Bondy, advocating repeal, and the comments of Nickolaus Leggett and Donald Schellhardt, Jennifer Poole, Harold C. Reeder, and Thierry Hansard, the latter four arguing for retention.

² *See Notice* at ¶ 52.

³ *See Comments of NAA* at Appendix II. It is worth observing that NAA's chart does not expressly denote newspaper/television/radio combinations but that they can be determined by cross-reference.

form of increased and award-winning local news coverage.⁴ Commenters also provided extensive market data on an additional 15 markets in which they operate, albeit without newspaper/broadcast combinations.⁵ These extensive data on 46 distinct markets are in addition to the comprehensive examination of traditional media “voices” in each of the nation’s 210 DMAs that Hearst-Argyle undertook and submitted in its initial comments. Gannett and New York Times Co. also provided information on six joint ventures (three each) in which their television stations are engaged with newspapers that are owned by other companies.⁶ Their comments unequivocally show the limitations of cross-media joint ventures as opposed to joint ownership.⁷

The record evidence demonstrates that (1) there can be no harm to competition if the newspaper/broadcast cross-ownership rule is repealed and (2) there can be no harm to diversity if the newspaper/broadcast cross-ownership rule is repealed. Since both pillars of the rule must fall under the weight of the evidence, it follows, inexorably, that the rule itself must be repealed.

I. The Record Evidence Demonstrates That There Will Be No Harm To Competition If The Newspaper/Broadcast Cross-Ownership Ban Is Repealed

There appears to be a difference of opinion among the commenters as to what constitutes the

⁴ See Table I.A., appended hereto, listing the commenters and the market(s), newspaper(s), and broadcast properties about which they have provided data.

⁵ See Table I.B., appended hereto, listing commenters and the markets without newspaper/broadcast combinations about which extensive data was provided.

⁶ See Table I.C., appended hereto, listing the joint ventures discussed by Gannett and New York Times Co.

⁷ In addition, three other owners of grandfathered combinations submitted comments providing some information on the circumstances of their combinations but did not provide market data as extensive as did the other commenters noted above. See Table I.D., appended hereto, listing these other commenters and their combinations.

relevant advertising product market for purposes of the Commission's concern with economic competition. That is, are newspaper advertising, local television advertising, and local radio advertising separate product markets or do these constitute a single product market in which these media directly compete? But one principle about which there should be no question is that if newspapers and television stations and radio stations inhabit separate and distinct product markets, then, by definition, the combination of a newspaper and a broadcast station is not a horizontal merger and, perforce, cannot adversely affect competition in either product market.⁸

⁸ See Comments of Hearst-Argyle at 10, 16.

Obviously, the combination of a newspaper and a broadcast station would not constitute a vertical merger since one entity would not provide the inputs to the other in the chain of production as in a supplier-customer relationship. Even so, however, antitrust policy and law would not intervene absent some harm to competition at the horizontal level. If there is no horizontal harm, then current antitrust policy and law would not prevent the vertical merger. See, e.g., Thomas B. Leary, Commissioner, *The Essential Stability of Merger Policy in the United States* (FTC Jan. 17, 2002), available at <http://www.ftc.gov/speeches/leary/learyuseu.htm>, at text accompanying note 93 (stating that “[t]he antitrust agencies today still accept the fundamental Chicago-school insight that vertical mergers are problematic only to the extent that they are likely to have an effect on competition at a horizontal level”).

That means, in these circumstances, that the combination of a newspaper and a broadcast station would have to be considered a “conglomerate” merger—the only category left. However, conglomerate mergers have not raised the concern of antitrust policy or law for the past quarter century or since the time that the newspaper/broadcast cross-ownership rule itself came into existence. See, e.g., *Missouri Portland Cement Co. v. Cargill, Inc.*, 498 F.2d 851 (2d Cir. 1974); *Emhart Corp. v. USM Corp.*, 527 F.2d 177 (1st Cir. 1975). In the 1982 Merger Guidelines, the Department of Justice expressly eliminated entrenchment theory as a basis for challenging non-horizontal mergers. As the Department very recently observed in two papers, “[a]fter fifteen years [i.e., from 1967 to 1982] of painful experience with these now long-abandoned theories, the U.S. antitrust agencies concluded that antitrust should rarely, if ever, interfere with any conglomerate merger. We simply could not identify any conditions under which a conglomerate merger, unlike a horizontal or vertical merger, would likely give the merged firm the ability and incentive to raise price and restrict output.” William J. Kolasky, *Conglomerate Mergers and Range Effects: It's a Long Way from Chicago to Brussels* (Antitrust Div., U.S. Dep't of Justice Nov. 9, 2001), at 1; see also Antitrust Division, *Range Effects: The United States Perspective* (Antitrust Division Submission for OECD Roundtable on Portfolio Effects in Conglomerate Mergers) (Antitrust Div., U.S. Dep't of Justice Oct. 12, 2001), at 9 (stating that “[d]evelopments in Clayton Section 7 and

(continued...)

The vast majority of commenters believe that newspapers and broadcast stations do compete in certain aspects of the local advertising market (excluding, in general, classified advertising). This includes many parties in favor of repeal of the rule as well as United Church of Christ, who advocates its retention.⁹ A minority of commenters, including both industry interests and Consumers

⁸(...continued)

Sherman Act cases in the last 25 years make it extremely unlikely that a merger could be successfully challenged under the kind of range effects theories currently found in some recent European decisions”).

⁹ See, e.g., Comments of The Hearst Corporation at 14 (stating that the “newspaper and broadcast industries directly compete against one another for a share of the total advertising dollars available in any given local market” but recognizing that they do not compete in all regards, such as for help wanted classified advertising, which can be a significant percentage of newspaper advertising revenue); Comments of ALTV at 4 (stating that newspapers, television stations, radio stations, cable, and other MVPDs compete against one another); Comments of Bear, Stearns & Co. at 10 (suggesting both that newspapers compete with local “measured” media such as television, radio, outdoor, and magazines and that newspapers also compete with yellow pages and direct mail); Comments of Belo Corp. at 9 (implying that newspapers and broadcast stations compete for advertisers); Comments of Margaret Bondy at 2 (stating that newspapers and broadcast stations compete for advertising); Comments of Bonneville Int’l Corp. at 3 (stating that radio and television broadcast stations compete with a host of media, including newspapers, billboards, direct mail, cable, and DBS); Comments of Caribbean Int’l News Corp. at 27, 29 (arguing that broadcast stations and newspapers compete in the primary economic market of advertising, even if the products are not entirely substitutable, because there is a limited pool of available advertising revenues in any given market); Comments of Cox at 17 (stating that “television, radio, and newspapers compete for advertising revenue” but also arguing that they are not perfect substitutes); Comments of Freedom of Expression Foundation at ¶¶ 30-34 (suggesting that all forms of media compete, but recognizing that there are conflicting opinions as to the substitutability of newspapers and broadcast stations in the advertising market and that advertising buys may be purposely media specific); Comments of Gannett at 2, 15 (stating that cable and DBS compete with broadcast stations and newspapers, and the Internet competes with all of them, but also stating that the various media are not necessarily interchangeable in all regards); Comments of Mid-West Family Stations at 5-6 (suggesting that newspaper and radio stations compete for advertising); Comments of News Corp. at 30 & n.82, 31 (arguing that newspapers, television stations, and radio stations are not perfect substitutes for one another; that, to the extent they define a relevant product market, no harm to competition would result from cross-ownership; and that the relevant product market should also include cable, weekly newspapers, and outdoor advertising); Comments of E.W. Scripps Co. at 2 (implying that newspaper and broadcast stations compete for advertisers); Comments of Tribune at 31-32 (implying that

(continued...)

Union, believe that newspapers and broadcast stations are not sufficiently substitutable, do not materially compete for advertising revenues, and, thus, do not compete in the same product market.¹⁰

⁹(...continued)

different media compete broadly and that none can dominate the advertising market); Comments of West Virginia Radio Corp. at ¶¶ 30-35, 80 (suggesting that all forms of media compete for advertising); Comments of United Church of Christ et al. at 12-13 (arguing that newspapers and broadcast stations do not compete for classified advertising but that they do compete in the local advertising market in some areas, such as retailing).

¹⁰ See, e.g., Comments of Media General at 43 (stating that various FCC reviews have never revealed “any reliable information supporting the theory that newspaper and broadcast advertising are reasonably interchangeable substitutes for one another”); *id.* at 50 (arguing that “grouping newspaper and broadcast properties together into a single advertising product market may ignore important marketplace realities”); Comments of Morris Communications Corp. at 18, 20 (arguing that newspapers and radio stations are not fully substitutable, and, in any event, to the extent they are part of the same product market that market also includes television stations, cable, weekly newspapers, yellow pages, magazines, direct mail, outdoor advertising, and the Internet); Comments of New York Times Co. at i (stating that “newspapers and television stations do not compete substantially for the same advertising dollars”); *id.* at 18 (observing that NAA in its comments stated that newspaper and television advertising are not close substitutes for each other); Comments of NAA at vii (stating that newspapers, television stations, and radio stations do not compete: “The Commission has never demonstrated any basis for including the three media in a single uniform product market.”); *id.* at 56-65 (arguing that there is, at best, a limited degree of substitutability between newspapers and broadcast stations in the advertising market); *but cf. id.*, Kent Mikkelsen, Economists Incorporated, *Horizontal and Vertical Structural Issues and the Newspaper-Broadcast Cross-Ownership Ban* (Appendix IV) (concluding, based on assumption that newspapers, television stations, and radio stations do compete in the advertising market, that there has been an increase in competition since 1975 and that competition concerns cannot support the rule); Comments of Consumers Union et al. at iii (stating that newspapers and broadcast television “are separate markets with weak substitution effects”); *id.* at 19 (stating that the print and broadcast media “represent distinct product and geographic markets”); *id.* at 70 (stating that “[b]roadcast TV, multichannel TV, newspapers, radio and the Internet are separate products that are not close substitutes. . . . These markets are adjacent to each other, rather than in competition with each other.”); *id.* at 75 (stating that newspapers, radio, cable, and broadcast television largely occupy separate product spaces and that “competition across these product categories is weak at best”); *id.* at 75 (stating that “television and newspapers do not compete with each other”); *id.* at 99-100 (stating that because the “broadcast and newspaper product markets [are] separate” the “cross-ownership ban prevents mergers that would be considered vertical or conglomerate”); see also *id.*, C. Edwin Baker, *Giving Up on Democracy: The Legal Regulation of Media Ownership* (Appendix C), at 58 (arguing that “any suggestion that for antitrust purposes the relevant product market is the media as a whole must be (continued...)”).

These disparate comments appear to be reconcilable if the relevant product market were defined with requisite specificity.

In any event, it is clear, as the Commission itself has previously acknowledged, that “[p]rohibition of . . . newspaper and television . . . cross-ownership would make little sense unless these different media were important substitutes for each other.”¹¹ This is why the argument of Consumers Union, an opponent of repeal, is patently illogical. Were the Commission to take Consumers Union’s argument—that newspapers and broadcast stations do not compete—at face value, then, obviously, repeal of the newspaper/broadcast cross-ownership rule would have no effect on competition.

But it is not necessary for the Commission to determine whether newspaper, television, and radio advertising are economic substitutes for one another or to delineate the relevant product market if they are substitutable. Obviously, if they are not economic substitutes, repeal of the rule would not and could not adversely affect competition in either product market. But even if they are, the record evidence demonstrates (i) at best, that local advertising markets are highly competitive, presenting no harm to either advertisers or consumers should the rule be repealed, or (ii) at worst, that it is impossible to determine levels of concentration on some aggregate basis that could be applied to support a prohibitory structural rule of general applicability.

In its initial comments, Hearst-Argyle analyzed the existing economic literature examining

¹⁰(...continued)

rejected” and that “different media products are simply not substitutes for each other”); *but cf. id.* at 81 (stating “radio, newspapers and magazines are substitutes from an advertiser’s perspective”).

¹¹ Amendment of § 73.3555 of the Commission’s Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, *Report and Order*, 100 FCC 2d 17 (1984), at ¶ 29, *recon. granted in part and denied in part*, 100 FCC 2d 74 (1985).

the substitutability of newspaper advertising and broadcast advertising.¹² That analysis need not be repeated, but no party presented or reported any economic study that calls into question the validity of the economic evidence adduced by Hearst-Argyle. With minor exception, the studies examined by Hearst-Argyle conclude that newspapers, local television, and local radio are substitutes for one another for local advertisers and may be substitutes for one another for national advertisers; that television advertising is not a distinct antitrust market at the local level; that television stations lack market power to unilaterally increase advertising rates and, more generally, that cross-media mergers will not create sufficient market power to lead to increased advertising rates; and that newspaper/broadcast cross-ownership may bring benefits to both advertisers and consumers. In short, a review of the current economic literature leads to the conclusion that there is *no* evidence of competitive harm should newspaper/broadcast cross-ownership be permitted. Again, no party in this proceeding demonstrated that this literature is flawed or that there are competent economic studies concluding that *competitive* harm does or can result from cross-media joint ownership.

A few parties (including News Corp., Consumers Union, and United Church of Christ) attempted to undertake “level of concentration” antitrust analyses of a variety of geographical markets by relying on Herfindahl-Hirschman Index (“HHI”) inputs. These efforts are of varying utility, since, unless one accepts both the underlying definition of the product and geographical markets and the data used to determine individual market share, the numbers are inherently unreliable. Ultimately, United Church of Christ observed, no doubt correctly, that it is “impossible” to determine an HHI if television stations and newspapers, or all media sources, are included as part of the relevant advertising market due to the lack of commercially available data to determine market

¹² See Comments of Hearst-Argyle at 11-15.

share.¹³ The fact of the matter is, whether “impossible” or not, it really is pointless to attempt to engage in an HHI-type “level of concentration” analysis for purposes of supporting either repeal or retention of the newspaper/broadcast cross-ownership rule since the level of concentration will be constantly changing and must necessarily be calculated on a case-by-case, market-by-market basis. This is why this detailed level of case-by-case antitrust analysis cannot serve as a foundation for a structural rule of general applicability.

The only calculus for the Commission to perform is not complicated. Obviously, if newspaper advertising and broadcast advertising *are not* substitutes, then there would be and could be no harm to competition if the cross-ownership restriction were rescinded. Conversely, if newspaper advertising and broadcast advertising *are* substitutes, then, both (i) based on existing econometric studies and (ii) due to the explosive growth in local media advertising outlets over the past quarter century, repeal of the cross-ownership restriction likewise would not and could not lessen or harm local competition.

Therefore, based on the record economic evidence, the competition pillar of the newspaper/broadcast cross-ownership prohibition cannot stand and the rule should be repealed.

II. The Record Evidence Demonstrates That There Will Be No Harm To Diversity If The Newspaper/Broadcast Cross-Ownership Ban Is Repealed

The record is replete with detailed evidence regarding the large numbers of “voices” available in 46 different geographical markets, including 31 markets with newspaper/broadcast combinations. The Hearst Corporation, Gannett, Media General, News Corp., and New York Times

¹³ See Comments of United Church of Christ et al. at 13.

Co., for example, provided comprehensive listings of all media “voices” available in a wide variety of markets, from New York City (1) to Albany-Schenectady-Troy, New York (57), to Fort Smith-Fayetteville-Springdale-Rogers, Arkansas (107), to Panama City, Florida (159). These extensive data, together with the statistics on the explosive growth in local media outlets over the past quarter century cited by many commenters, naturally lead to the conclusion that there is an abundance of viewpoint diversity in virtually every local media market.

Putting the *rhetoric* of opponents of repeal, such as Consumers Union, aside, not a single party submitted any credible *evidence* of actual harm to viewpoint diversity in any of the 46 markets in which newspaper/broadcast combinations exist. In view of the voluminous filings made by Consumers Union, United Church of Christ, and the AFL-CIO, evidence of actual harm to diversity surely would have been submitted in the record if such harm existed. The record the Commission is confronted with, then, pits, on the one side, voluminous, detailed evidence of the great diversity of “voices” available in media markets of various sizes in various locales with, on the other side, speculative, conclusory arguments—unsupported by evidence—of the harm to diversity should the newspaper/broadcast cross-ownership rule be repealed.

But that is not all the Commission has before it. Hearst-Argyle conducted a comprehensive examination of all traditional media “voices” in each of the nation’s 210 DMAs and provided the Commission with a complete summary of that study. In the aggregate, Hearst-Argyle identified more than 17,000 (17,049) local media “voices” in total for which there are 8275 separate owners. On average, each DMA is home to 81 traditional media “voices” for which there are 39 separate owners. Thus, because the “average” DMA contains 39 separate owners of local media “voices,” were a newspaper whose circulation exceeds 5% to combine with a broadcast station, there would

still remain 38 separate owners of local media “voices” left in an “average” DMA post-merger.¹⁴ Based on Hearst-Argyle’s comprehensive data analysis, it is difficult to see how there could be any harm to local diversity were the newspaper/broadcast cross-ownership rule repealed.

The record evidence is clear: The diversity pillar of the newspaper/broadcast cross-ownership rule, like the competition pillar, cannot stand, and the rule, itself, therefore, should be repealed.

Although the evidence compels repeal, not relaxation, and certainly not retention, it may be useful to the Commission to place Hearst-Argyle’s “voices” data in a framework familiar to the Commission for comparative purposes. The Commission’s former one-to-a-market rule, now the radio/television cross-ownership rule, *see* 47 C.F.R. § 73.3555(c), permits at least some radio/television cross-ownership provided “at least 10 independently owned media voices would remain in the market post-merger,”¹⁵ and permits an even greater degree of cross-ownership if 20 independently owned media voices remain.¹⁶ More particularly, in the former, with 10 independently owned media voices post-merger, an entity can own up to two commercial television stations and four commercial radio stations in the same market, and, in the latter case, with 20 independently owned media voices post-merger, an entity can own (i) up to two commercial television stations and six commercial radio stations or (ii) one commercial television station and seven commercial radio stations.

Hearst-Argyle does **not** advocate that a “voice count” test be applied to newspaper/broadcast

¹⁴ *See* Comments of Hearst-Argyle at 5-10 & Exhibits 1-2.

¹⁵ 47 C.F.R. § 73.3555(c)(2)(ii).

¹⁶ *See* 47 C.F.R. § 73.3555(c)(2)(i).

cross-ownership. “Voice counts” are inherently arbitrary. Moreover, the newspaper/broadcast cross-ownership rule should be repealed, not relaxed. It is instructive, however, to examine Hearst-Argyle’s comprehensive “voice” data for the nation’s 210 DMAs in the basic framework of the Commission’s existing radio/television cross-ownership rule.¹⁷ This examination reveals that only 9 of the smallest DMAs, out of the 208 DMAs which have at least one daily newspaper of general circulation,¹⁸ have fewer than 11 separately owned local media voices (as the Commission counts such voices for purposes of its radio/television cross-ownership rule) and, therefore, would not have at least 10 separately owned media voices post-merger were a newspaper/broadcast combination permitted. These 9 markets comprise just 332,550 households (0.3%) out of a total 105,444,330 households nationwide. In other words, using the standards the Commission has set forth in its radio/television cross-ownership rule, 199 markets, covering 99.7% of households, have sufficient viewpoint diversity to permit at least some level of newspaper/broadcast cross-ownership. A greater degree of newspaper/broadcast cross-ownership would be permitted in 168 markets, covering 97.0% of households, since at least 20 separately owned media voices would remain in these markets post-newspaper/broadcast merger.

This comparison is compelling. It demonstrates unequivocally that any purported harm to viewpoint diversity is speculative and unfounded and that, measured against the Commission’s only comparable cross-ownership rule, abundant viewpoint diversity will remain should

¹⁷ It is worth observing, that, were the Commission to decide that a “voice count” test is appropriate in this proceeding, any test that differed from the test the Commission applies to radio/television cross-ownership could be considered to be arbitrary.

¹⁸ Two DMAs, Presque Isle, Maine (205), and Glendive, Montana (210), do not have a daily newspaper of general circulation, and, therefore, in these two markets there obviously could be no newspaper/broadcast cross-ownership.

newspaper/broadcast combinations be permitted.¹⁹

In short, the viewpoint diversity concerns raised by opponents of repeal are a canard. Like Ducky-Lucky, these opponents are willing to accept—without any evidence—that the sky will fall if the Commission were to repeal the newspaper/broadcast cross-ownership rule. The voluminous record evidence demonstrates the contrary. The only thing that should fall here is the newspaper/broadcast cross-ownership prohibition itself. The rule no longer serves a useful purpose and should be repealed.

Conclusion

For the foregoing reasons, as well as those set forth in Hearst-Argyle's initial comments, the newspaper/broadcast cross-ownership should be repealed in its entirety.

¹⁹ It should also be remembered that even for that tiny fraction of the nation's population where the "voice count" test of the radio/television cross-ownership rule appears to foreclose a newspaper/broadcast combination, standard antitrust analysis would still apply and could prevent such a combination. Therefore, there is no need for a Commission rule of such limited applicability.

Respectfully submitted,

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Table I.A.

Extensive Data Provided by Commenters with Newspaper/Broadcast Combinations

COMMENTER	MARKET/NEWSPAPER/BROADCAST PROPERTIES
Belo Corp.	Dallas, TX <i>Dallas Morning News</i> WFAA-TV
Bonneville International Corp.	Salt Lake City, UT <i>Deseret News</i> KSL(AM), KSL-TV
Cox Enterprises	Atlanta, GA <i>Atlanta Journal-Constitution</i> WSB-FM, WSB-TV Dayton, OH <i>Daily News</i> WHIO(AM), WHIO-TV
Gannett Co.	Phoenix, AZ <i>The Arizona Republic</i> KPNX-TV (temporary)
Journal Broadcast Corp.	Milwaukee, WI <i>Milwaukee Journal Sentinel</i> WTMJ-TV, WTMJ(AM), WKTI-FM
Media General, Inc.	Tampa-St. Petersburg, FL <i>Tampa Tribune</i> WFLA-TV Tri-Cities, TN/VA <i>Bristol Herald Courier</i> WJHL-TV (temporary) Florence-Myrtle Beach, SC <i>Morning News</i> WBTW(TV) (temporary) Columbus, GA <i>Opelika-Auburn News</i> WRBL(TV) (temporary)

	Panama City, FL <i>Jackson County Floridian</i> WMBB(TV) (temporary)
Morris Communications Corp.	Topeka, KS <i>Topeka Capital-Journal</i> WIBW(AM), WIBW-FM (temporary waiver)
	Amarillo, TX <i>Amarillo Globe-News</i> KGNC(AM), KGNC-FM (temporary waiver)
NAA/Dispatch Broadcast Group	Columbus, OH <i>Columbus Dispatch</i> WBNS-TV, WBNS(AM)
NAA/Elyria-Lorain Broadcasting Co.	Cincinnati, OH <i>Chronicle Telegram</i> WEOL(AM)
NAA/Findlay Publishing Co.	Findlay, OH (Toledo, OH, DMA) <i>The Courier</i> WFIN(AM), WKXA-FM
NAA/Forum Communications Co.	Fargo, ND <i>The Forum</i> WDAY-TV, WDAY(AM)
NAA/Free Lance-Star Publishing	Fredericksburg, VA (Washington, DC, DMA) <i>Fredericksburg Free Lance-Star</i> WFLS-FM, WYSK(AM)
NAA/Gazette Co.	Cedar Rapids, IA <i>Cedar Rapids Gazette</i> KCRG-TV, KCRG(AM)
NAA/Huse Publ'g/WJAG, Inc.	Norfolk, NE (Sioux City, IA, DMA) <i>Norfolk Daily News</i> WJAG(AM), KEXL(FM)

NAA/Quincy Broadcasting Co.

Quincy, IL
Quincy Herald-Whig
WGEM-TV, WGEM(AM), WGEM-FM

News Corp.

New York, NY
New York Post
WNYW(TV), WWOR-TV (temporary waiver)

New York Times Co.

New York, NY
New York Times
WQXR-FM

Schurz Communications, Inc.

South Bend-Elkhart, IN
South Bend Tribune
WSBT(AM), WSBT-TV, WNSN(FM)

Star Printing Co.

Miles City, MT
Miles City Star
KATL(AM)

Tribune Co.

New York, NY
Newsday
WPIX(TV) (temporary)

Los Angeles, CA
Los Angeles Times
KTLA(TV) (temporary)

Chicago, IL
Chicago Tribune
WGN(AM), WGN-TV

Miami-Fort Lauderdale, FL
South Florida Sun-Sentinel
WBZL(TV) (temporary waiver)

Hartford-New Haven, CT
Hartford Courant
WTIC-TV, WTXN(TV) (temporary)

West Virginia Radio Corp.

Morgantown, WV
Dominion Post
WJAR(AM), WVAQ(FM)

Table I.B.

Extensive Data Provided by Commenters for Markets Without Newspaper/Broadcast Combinations

<u>COMMENTER</u>	<u>MARKET</u>
Caribbean International News Corp.	Puerto Rico
The Hearst Corporation	Albany-Schenectady-Troy, NY San Antonio, TX San Francisco, CA
Media General, Inc.	Roanoke-Lynchburg, VA
New York Times Co.	Des Moines-Ames-Newton, IA Fort Smith-Fayetteville-Springdale-Rogers, AR Huntsville-Decatur-Florence, AL Memphis, TN Davenport, IA-Moline-Rock Island, IL Norfolk-Portsmouth-Newport News, VA Oklahoma City, OK Wilkes Barre-Scranton, PA
E.W. Scripps Co.	Corpus Christi, TX
West Virginia Media Holdings, LLC	Clarksburg, WV

Information Provided on Joint Ventures Between Television Stations and Newspapers

<u>COMMENTER</u>	<u>MARKET/TELEVISION STATION/JOINT VENTURE NEWSPAPER</u>
Gannett Co.	Tampa, FL WTSP-TV with <i>St. Petersburg Times</i>
	Jacksonville, FL WTLV(TV) and WJXX(TV) with <i>Times-Union</i> (Morris Communications)
	Knoxville, TN WBIR-TV with <i>Knoxville News Sentinel</i> (Scripps-Howard)
New York Times Co.	Davenport, IA-Moline-Rock Island, IL WQAD-TV with <i>The Dispatch</i> (Moline) (Small Newspaper Group)
	Oklahoma City, OK KFOR-TV with <i>Journal Record</i>
	Memphis, TN WREG-TV with <i>The Commercial Appeal</i>

Table I.D.

Comments from Other Owners of Grandfathered Combinations

COMMENTER	MARKET/NEWSPAPER/BROADCAST PROPERTIES
Pathfinder Communications Corp.	South Bend-Elkhart, IN <i>Elkhart Truth</i> WTRC(AM), WBYT(FM)
The Post Company	Idaho Falls, ID <i>The Post Register</i> KIFI-TV
Reading Eagle Co.	Reading, PA <i>Reading Eagle and Reading Times</i> WEEU(AM)