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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF MEDIA GENERAL, INC.

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February 15, 2002

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SUMMARY

The initial comments filed in this proceeding resoundingly demonstrate that the newspaper/broadcast cross-ownership rule should be repealed. Its elimination is compelled by the dramatic changes that have taken place in the media industry since the ban was first adopted in 1975. As a result of these changes, the rule fails to meet the goals that the FCC speculated it would achieve at the time it was adopted. Equally important, the rule now hinders newspapers and broadcast stations alike in their efforts to provide enhanced local news to meet the demands of their ever-changing communities. Given these facts, the rule should be repealed.

The small number of parties filing substantive comments urging retention have not offered any probative evidence as to why cross-ownership should remain prohibited. Their contention that the rule is necessary to encourage "civic discourse" and foster the "marketplace of ideas" ignores not only the multiplicity of news, information, and other sources available today but assumes a causal connection between the ban and "diversity," a link they frankly cannot establish. Recent studies discussed in the initial comments and documented below show that cross-ownership does not diminish "diversity."

The fact is that the rule has not served to preserve or enhance diversity of news and opinion, particularly at the local level. Rather, by establishing an anti-market restraint on ownership, the rule has made the gathering and dissemination of local news uneconomic. The number of local daily newspapers has steadily declined since 1975, and television local news is now disappearing in both large and small markets. Elimination of the rule would reverse these trends and foster localism, a valid public interest goal under the Communications Act.

The opponents of repeal also have failed to raise any competitive concerns that cannot be addressed by traditional antitrust review of transactions and ongoing antitrust enforcement by

antitrust agencies and private parties. Studies submitted with the initial comments and another economic study attached hereto demonstrate that cross-ownership of newspapers and broadcast stations does not lead to higher advertising prices, no matter what the market size. Opponents also argue that cross-ownership results in anticompetitive abuses like predatory pricing and tying. The alleged market "horribles" that they present, however, are isolated and undocumented. If cross-ownership were to result in actionable harms of the type opponents allege, the behavior could clearly be addressed through well established legal procedures and remedies. The allegations opponents present do not warrant a prospective ban on cross-ownership that affects all newspapers and broadcast stations.

Neither does the record evidence warrant adoption, as some parties suggest, of "solutions" short of total repeal that are based on varying standards of market share. These proposals would prohibit an owner who is already involved in either newspapers or broadcast stations from "crossing over" and buying the other type of media outlet. These approaches fail to take into account conclusions adopted by the Department of Justice, as the government's expert antitrust agency, that broadcast facilities and newspapers constitute separate product markets, a position with which the FCC has tended to agree. Only if all media were viewed as a single product market, a concept that has not been embraced by DOJ, the FCC, or the courts, could a market standard based on market share of one medium have any applicability to entry into the market of another medium. The fact that a party may have a degree of market influence in one product market should not presumptively, and as a matter of FCC rule, preclude entry into a different market, particularly when one of those product markets is not even regulated by the FCC.

For over a quarter century, continuation of the ban on newspaper/broadcast cross-ownership has depended on a number of myths. Rather than look to those who, without tangible evidence, continue to advance these myths, the FCC should focus on the real world practices and difficulties of the broadcast stations it regulates. Elimination of the FCC's ban on cross-ownership of newspapers and broadcast stations will provide the relief that local newspaper and broadcast owners need to continue to serve their local communities as they compete in an increasingly globalized world against large national and international players. The need for this relief is so uncontrovertible, and its likely result so clear, that the FCC cannot escape its obligations under the Communications Act, the Telecommunications Act of 1996, and administrative and constitutional law. Elimination of a rule that was adopted to serve once speculative, and now discredited, rationales will have a clear public interest benefit in the renewed ability it will give local broadcast outlets and newspapers to serve their local communities. Allowing cross-ownership will promote preservation, development, and dissemination of local news. The rule should be repealed to allow these benefits.

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REPLY COMMENTS OF MEDIA GENERAL, INC.

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

I. INTRODUCTION

As demonstrated by the initial comments that Media General filed,[3] and as corroborated by the overwhelming weight of the evidence provided in the comments of the scores of other parties who made substantive filings in this proceeding, the newspaper/broadcast cross-ownership rule has clearly outlived its usefulness. It fails to meet the goals the FCC speculated it

[1] *Cross-Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Waiver Policy, Order and Notice of Proposed Rulemaking*, 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).

[3] Comments of Media General, Inc. in MM Docket Nos. 01-235 and 96-197 (filed Dec. 3, 2001) ("Media General Comments").

would serve and instead now hampers newspaper publishers and broadcasters alike in their efforts to provide new and innovative information services that meet the demands of their ever-changing communities.[4]

Those few parties that oppose repeal of the rule, a small minority of the total submitting substantive comments, continue to argue that the two rationales -- advancing "diversity" and promoting competition -- that the Commission cited over twenty-five years ago as justifying adoption of the rule still warrant its retention. Yet, despite the FCC's repeated call for the submission of empirical information and data in support of arguments addressing the rule, the parties opposing repeal have not offered any probative substantiation as to why cross-ownership should remain prohibited.

These opponents of repeal urge continuation of the rule for the alleged beneficial effect that they say the rule has on "civic discourse" and the "marketplace of ideas," but without ever showing any concrete or direct causal link between the ban on cross-ownership and an improvement in intellectual or informational exchange. Nor is it likely that they ever could produce such evidence. The fact is the rule has not served to preserve or enhance diversity of opinion, particularly at the local level. Indeed, as discussed below, statistics show that the

[4] More than 1,200 comments were filed in this proceeding, but well over 1,100 of them are one-page letters and short e-mails that are virtual clones of each other and appear to have been generated in response to a call for participation posted on the websites of the Center for Digital Democracy and Fairness & Accuracy in Reporting. Because these letters and e-mails are very short, repeating the same opinion but not providing any developed explanation, Media General is not addressing them in this reply filing. The Center for Digital Democracy itself participated in a very voluminous filing made by a group of public interest parties. *See* Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights, and Media Access Project, in MM Docket Nos. 01-235 and 96-196 (filed Dec. 3, 2001) ("Consumers Union Comments"). Media General addresses the arguments made in the Consumers Union Comments, as noted many times below.

number of local daily newspapers has steadily declined since the rule was adopted, and television local news is now disappearing in both large and small markets.

The reason for these decreases in local news sources is easy to discern. By establishing an anti-market restraint on ownership, the rule has made the gathering and dissemination of local news uneconomic. The Commission's well-intentioned but entirely speculative "hoped for" gain in diversity now has been shown to have produced results that are actually detrimental to the public. Repealing the rule clearly would foster localism, which is, of course, an equally valid public interest goal -- and one that, unlike diversity, is at least specifically identified in the Communications Act.

In fact, evidence filed in the initial comments as well as other academic studies that were recently released have begun to show no link at all between consolidation or cross-ownership and diminution in "diversity." As these studies, which are referenced in various comments and discussed below, show, consolidation frequently leads to more variety, and cross-ownership does not have an effect on the bias or slant of content in news, editorials, and opinion pieces. These studies, which have emerged over the last decade, not only refute the concerns raised by proponents of the ban but offer vastly more proof justifying repeal than the FCC had in 1975 to support the rationales it offered for the ban's adoption.

If, however, the FCC chooses to continue to focus on theoretical constructs, rationales, and surmises developed over a quarter century ago rather than recognizing that changes in the industries it regulates require comparable adjustments in regulatory thinking, ample evidence additionally exists to find repeal of the rule will not harm "diversity" or competition. The comments filed in this proceeding show an incredible variety and multiplicity of outlets delivering locally-generated content in markets of all sizes across the country. The majority also shows, contrary to the claims of opponents of repeal, that the Internet is a phenomenon that is growing so quickly that it cannot be disregarded in any evaluation of the marketplace of ideas. In all parts of the nation, the Internet provides citizens with direct access to government and civic information, unfiltered by any media interface, functioning as a new intellectual agora and guaranteeing a ready currency for its exchanges. Contrary to opponents' claims, in addition to this wealth of governmental and noncommercial information, Internet sites in every market offer locally-generated news and information content provided by both media and non-media sources. The Internet is not, as opponents would have the FCC believe, the exclusive province of the traditional media.

Opponents also have failed to show any reason grounded in economics or antitrust principles justifying retention of the rules. Studies supplied in the initial comments, as supplemented by yet another study that Media General provides below, show that elimination of the cross-ownership rule would be unlikely to result in conditions conducive to anticompetitive behavior. Similarly, they show no statistically significant difference between advertising prices of cross-owned and other newspapers across all market sizes, large and small.

In short, the rule has depended on a number of myths – the myth that there is a link between ownership diversity and viewpoint diversity and the myth that cross-ownership leads to higher advertising prices. Rather than look to those who, without tangible evidence, continue to propound these myths, the FCC should focus on the real world practices and difficulties of the television and radio stations it regulates. Media General, through the convergence model that it practices and that it described in detail in its initial comments, offers enhanced (better, deeper, faster) local news to the individual communities that it serves and the varying constituencies that each of its newspapers, television broadcasts, and websites reaches. Media General's model offers content that is consumer-driven rather than dictated from the "top down."

No matter what the specific model of convergence practiced in the real world, however, Media General urges the Commission to eliminate the rule, so that competition and free market forces are allowed to flourish, communities are better served, and organizations that find and report local news can continue to do so as they compete in an increasingly globalized world against large national and international players.

II. The Extensive Factual Evidence Presented by Commenting Parties as Well as Numerous Empirical and Academic Studies Show Repeal of the Newspaper/Broadcast Cross-Ownership Rule Will Have No Effect on the Availability of News, Information, and Other Media Content.

A. Markets of All Sizes Offer a Profusion of Media and Information Sources.

In its Comments, Media General presented the results of an extensive survey cataloguing the other media outlets available in the six markets in which Media General owns both a daily newspaper and a television station. These markets, in which Media General's co-owned properties practice convergence, range in size from Tampa, the 14th-ranked DMA, to Panama City, Florida, which is the 159th-ranked DMA. The full panoply of media offerings in each market – both traditional services and new outlets – showed clearly that each locale benefits from extensive pluralism and diversity both in terms of availability of outlets and ownership of these sources.[5]

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[5] In particular, Media General's information on its markets, which was presented in extensive detail in Appendices 9 through 14 of its Comments, showed not only the existence of numerous owners of broadcast television, radio and newspaper outlets, but entrance by a number of media players that did not exist at the time the newspaper/broadcast cross-ownership ban was adopted. On the print side, each Media General converged market has not only five to ten daily newspapers, but a wealth of general interest newspapers published weekly or with ranging frequency, specialty newspapers, shopper publications, and collegiate newspapers, and all but

continued...

A number of other commenting parties prepared similar market reviews and, not surprisingly, their compilations showed that residents of markets all across the United States, no matter what the size, benefit from a wide range of outlets. Some of these outlets facilitate the delivery of programming and information from national sources, but almost all provide locally-originated content. Hearst-Argyle Television, Inc. in its comments provided a market-by-market nationwide "voices" count of media outlets for every single one of Nielsen's 210 DMAs.[6] Employing the FCC's "voice" count methodology used in its "one-to-a-market rule," which tabulates only owners of full-power broadcast television, radio, and daily English language newspapers with greater than five percent circulation in a DMA, and counts cable systems as only one voice, the calculation does not survey the whole range of media sources available in a community;[7] nonetheless, even with this restrictive approach, Hearst-Argyle's review showed that over seventy percent of the DMAs nationwide have twenty-five or more "voices" each. Of

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two have locally-published magazines. All six markets have cable penetration rates in excess of sixty-five percent, and the substantial majority of the cable systems offers local origination and leased access channels, with most of such systems offering two such channels. Notably, in Media General's two smallest convergence markets – Columbus, Georgia, and Panama City, Florida -- an even greater proportion of systems offer more such channels, and frequently provide more of them on average than in the larger markets. All of the markets now receive low-power television service and direct broadcast satellite programming, and all soon will receive low-power FM services. Most significantly, the Internet now brings a profusion of national and, as Media General's Comments showed, a very large number of local information sites to each market. In essence, the list of *local* Internet sites available in each of the Media General markets is so diverse and extensive that it approximates, from an information standpoint, the equivalent of multiple newspapers in each of Media General's markets.

[6] Exhibit 1, "Selected Media 'Voices' by Designated Market Area," Comments of Hearst-Argyle Television, Inc., in MM Docket Nos. 01-235 and 96-196 (filed Dec. 3, 2001) ("Hearst-Argyle Comments").

[7] For the details on conducting a "voice" count, *see* 47 C.F.R. § 73.3555 (c)(3)(2000).

all 210 DMAs, only seven had "voice" counts that registered fewer than 10 outlets, again using the FCC's narrow definition.[8]

Several other commenting parties provided great detail about their individual markets, showing, as Media General did, a multiplicity of media and information sources in addition to those the FCC counts as "voices." These surveys, presented by the New York Times Company, the Hearst Corporation, Tribune Company, and West Virginia Media Holdings, LLC, covered markets that ranged in size from New York City, the nation's largest DMA, to Clarksburg-Weston, West Virginia, the 165th-ranked DMA. Many of these surveys continued for scores of pages and presented in detail and service-by-service a wealth of information sources.

Among the surveys of medium and smaller markets, the Hearst Corporation presented extensive detail, not just on traditional "voices," but on local cable programming and local independent and non-commercial Internet sites, demonstrating that residents of the Albany-Schenectady-Troy, New York, and San Antonio, Texas DMAs, the 57th and 37th-ranked DMAs,

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[8] A comparison of the "voice" counts that Hearst-Argyle compiled and Media General's tabulations showed slight differences in totals for certain classifications. These differences can be explained by the fact that the two parties used different measurement sources and included or excluded certain media variations, a significant impediment to any attempt at devising a rule that would purport to define sufficient media "diversity." As Media General argued in its Comments, the complete impossibility of crafting a defensible method for measuring "diversity" additionally argues against any further reliance upon "diversity" as a regulatory rationale. *See* Media General Comments at 38-42.

The differences in the Hearst-Argyle and Media General tabulations help to illustrate this point: For television, Hearst-Argyle excluded satellite and experimental television stations; Media General included them. For LPTV stations, Hearst-Argyle included only those LPTV and Class A stations in the DMA that originate programming according to the BIA MEDIA Access Pro database. Media General included all licensed LPTV and Class A stations in the DMA. For radio, Hearst-Argyle used a DMA market definition; Media General used an Arbitron metro market definition. For daily newspapers, Hearst-Argyle included only newspapers published in the DMA; Media General counted papers with five percent or greater circulation in the DMA regardless of the location where the newspapers are published.

respectively, have numerous all-day sources of news and information.[9] The comments of the New York Times Company, while cataloguing the FCC's traditional "voices" in the television markets it serves, also included long lists of local weekly publications in each of its markets that would customarily be excluded from a "voices" count.[10] In addition, the New York Times Company provided a list of several hundred Internet news search engines and news sites available to residents of its markets.[11] Together, all these extensive lists and catalogues, based on the direct experience of entities that compete daily in the various markets, document robust competition in the marketplace of ideas throughout the country, regardless of what the DMA market size, and should eliminate any lingering concern the FCC may have about the presence of "diversity."

B. The Comments Demonstrate That the Internet Is a True Surrogate for Local Newspapers, and Studies They Present, As Well As More Recent Data, Document That Access by Over Half of the Nation's Population to the Internet Ensures Its Use as a New Form of Civic Discourse.

Parties opposing repeal contend that new media sources, such as the Internet, have not yet gained widespread usage and have had little impact in media markets.[12] In its Comments, however, Media General showed that computer and Internet usage is growing and that, based on an October 2000 report from the United States Department of Commerce, a large percentage of

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[9] Comments of The Hearst Corporation, in MM Docket Nos. 01-235 and 96-196 (filed Dec. 3, 2001) ("Hearst Comments"), at Appendices A and B.

[10] Comments of the New York Times, in MM Docket Nos. 01-235 and 96-196 (filed Dec. 3, 2001) ("New York Times Comments"), at Attachment 1.

[11] *Id.* at Attachment 2.

[12] Consumers Union Comments at 20; Comments of Mid-West Family Stations, in MM Docket Nos. 01-235 and 96-196 (filed Dec. 3, 2001) ("Mid-West Family Stations Comments"), at 8.

households in the states in which Media General's markets are located have computers and access to the Internet.[13]

Within the last two weeks, the United States Department of Commerce has released further evidence showing that, contrary to opponents' claims, the Internet is quickly becoming an important informational tool for Americans. Some 54 percent of all Americans, or 143 million, now use the Internet, up 33 percent from three years ago. Each month, more than two million Americans go on-line for the first time.[14] This very recent report also documents that nine out of 10 school-age children now have access to computers either at home or at school. Some 75 percent of 14 to 17 year-olds and 65 percent of children aged 10-13 use the Internet at home and at school. More than half of all U.S. households now have a home Internet subscription, up from one quarter of all households in December 1998. Last year, lower-income groups went online for the first time in greater numbers than any other income bracket, and rural users are nearly just as likely to be on-line as their urban counterparts.

Commenting parties presented similar reports of burgeoning Internet usage that refute opponents' attempts to minimize the significance of the Internet. Several parties commented in depth on these trends, noting the potential the Internet has not only for fostering a more informed electorate but also for creating a true competitive threat wooing readers and viewers, particularly younger ones, from newspapers, television stations, and other more traditional media.[15] Studies

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[13] Media General Comments at 28 and Appendix 8.

[14] U.S. Department of Commerce, Economics and Statistics Administration, National Telecommunication and Information Administration, *A Nation Online: How Americans are Expanding Their Use of the Internet* (Feb. 2002), *available at* http://www.esa.doc.gov.

[15] Comments of Newspaper Association of America in MM Docket Nos. 01-235 and 96-197 (filed Dec. 3, 2001) ("NAA Comments"), at App. 1, 15-20; Comments of Victor B. Miller IV and Kevin R. Gruneich of Bear, Stearns & Co., Inc. in MM Docket Nos. 01-235 and 96-197 (filed Dec 3, 2001) ("Bear Stearns Comments"), at 16-19; Hearst Comments at 10-12.

and reports, cited by these commenting parties, confirm that readers are increasingly turning to the Internet for news and information and that the Internet has developed into a rich source of local news and information, including one recent study by the Pew Charitable Trust that also suggests this use is coming at the expense of television local news viewing.[16]

Moreover, the Internet is becoming a fixture in political campaigns and election coverage, further facilitating the civic discourse for which opponents of repeal clamor. As one commenting party noted, a recent study of eight toss-up U.S. House and Senate races in which challengers won found six of the successful campaigns employed a "'superior Web strategy.'"[17] According to Nielsen/NetRatings, online newspapers were among the news outlets that prospered during the 2000 presidential election period; the data for the week ending November 12, 2000, in particular, show such an increase in web traffic that it has been termed "the most famous week in web news history."[18]

In addition, commenting parties also noted how the Internet now affords citizens direct access to government information, removing, as the Hearst Corporation points out, any dependence they may have had on the media to provide such information in the past.[19] As another commenting party mentioned, citizens in Illinois now can watch the daily happenings of their state House of Representatives online.[20] Contrary to the contentions of opponents of repeal, the ability of citizens to obtain such information independently through online services provides

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[16] NAA Comments, Appendix I at 18-19, *citing* RTNDA Foundation survey, cPulse study, and Pew Charitable Trust study.

[17] NAA Comments, Appendix I at 20, *citing* study by e-advocates and Juno Online Services, Inc.

[18] NAA Comments, Appendix I at 20.

[19] Hearst Comments at 11-12.

[20] NAA Comments, Appendix I at 20.

the Commission with additional assurance that repeal of the rule will not deprive citizens of the information they need to engage in civic discourse. This extensive record evidence of the availability of local information over the Internet combined with hard data documenting use of these resources demonstrates that repeal of the newspaper/broadcast cross-ownership rule will not harm the marketplace of ideas anywhere, regardless of market size.

C. Numerous Studies Contradict Opponents' Concerns that Repeal of the Newspaper-Broadcast Cross-Ownership Rule Will Harm "Diversity."

Numerous studies, including those cited in the submissions of commenting parties as well as others released very recently, demonstrate in empirical fashion that repeal of the newspaper/broadcast cross-ownership rule will not harm "diversity" of content. These studies from journalists and economists alike have approached the issue from different disciplinary perspectives, but each has come to very similar conclusions. Each has found consolidation or cross-ownership does not harm "diversity" of content, be it either informational or entertainment content, as opponents of repeal would have the Commission believe.

1. *The Pritchard Study.* The most recently available study, published since the deadline for submission of initial comments, deals directly with the effect of newspaper/broadcast cross-ownership on diversity of viewpoint. It examines the political "slant" of news content in co-owned media properties in three cities during the last 15 days of the Bush-Gore presidential election.[21] Focusing on media properties in Milwaukee, Chicago, and Dallas, the study found no evidence of owners' influence on, or control of, news coverage by co-owned newspapers and broadcast stations. Rather, the empirical results lead Professor David Pritchard, Professor of Journalism and Mass Communication at the University of Wisconsin in Milwaukee,

who conducted the study, to conclude that the cross-owned properties offered a "wealth" of diverse and antagonistic information.[22]

To conduct the study, Professor Pritchard and his associates developed a numerical coding and grading system for quantifying whether co-owned newspapers' and broadcast properties' election coverage was more favorable to George Bush or Albert Gore. They then examined 708 newspaper pieces, 198 television reports, and 310 radio news stories and talk show segments. From these, they computed an objective "slant co-efficient" that allowed them to conclude whether a media outlet was pro-Bush or pro-Gore.

In Milwaukee, the researchers reviewed campaign coverage and opinion pieces in the *Milwaukee Journal Sentinel*, WTMJ-TV, WTMJ(AM), and WKTL-FM, all owned by Journal Communications, Inc.[23] These properties provided a wide diversity of opinions. "The newspaper had a clear pro-Gore slant, the radio station a very strong pro-Bush slant, and the television station a slight pro-Bush slant," according to the report.[24]

In Chicago, the researchers found that, although the *Chicago Tribune*'s editorials clearly reflected a strong preference for George Bush, no other categories of news or comment in the

...*continued*

[21] D. Pritchard, *A Tale of Three Cities: 'Diverse and Antagonistic' Information in Situations of Newspaper/Broadcast Cross-Ownership,* 54 FED. COM. L. J. 31 (Dec. 2001).

[22] *Id.* at 49.

[23] The *Journal Sentinel* is the only daily paper in Milwaukee, the product of a 1995 merger between the morning *Milwaukee Sentinel* and the evening *Milwaukee Journal*, both of which had been owned by Journal Communications. For thirty-five years, the two papers consistently took opposing positions in their editorials regarding the presidential elections between 1960 and 1995. According to Professor Pritchard, "[t]hat two newspapers owned by the same company consistently took such different stands over a thirty-five-year period strongly suggests that common ownership does not inevitably result in common viewpoints." *Id.* at 47.

[24] *Id.* at 49.

paper favored Bush. Indeed, overall the newspaper's news stories, staff opinion columns, editorials, letters to the editor, and guest columnists had a slight pro-Gore slant.[25] The numerical results showed a virtually even balance in co-owned WGN-TV's late evening newscast and a slight pro-Gore slant to co-owned WGN(AM)'s evening drive time and late evening news of the campaign.[26]

In Dallas, where A.H. Belo Corporation owns the *Dallas Morning News* and WFAA-TV, researchers found that the *Morning News*' endorsement of Bush, its staff opinion columns' fairly strong bias in Bush's favor, and its news stories' mild favoritism toward Bush were balanced by letters to the editor and guest opinions that favored Gore.[27] Coverage of the campaign by WFAA-TV was almost "perfectly" balanced, according to the study.[28]

These results caused Professor Pritchard to conclude that ownership exercised no influence over or control of the news coverage of the 2000 presidential campaign by these combined properties. He summarized his results and conclusions as follows:

> In other words, the evidence does not support the fears of those who claim that common ownership of newspaper and broadcast stations in a community inevitably leads to a narrowing, whether intentional or unintentional, of the range of news and opinions in the community....[29]
>
> This Article examined whether three existing newspaper/broadcast combinations in major markets provided information about the 2000 presidential campaign from "diverse

[25] *Id.* at 43.

[26] *Id.*

[27] *Id.* at 45-46.

[28] *Id.* at 45.

[29] Among those that Professor Pritchard cites as making these claims is Ben H. Bagdikian, whose statement constitutes the first appendix to Consumer Union's comments opposing repeal of the newspaper/broadcast cross-ownership ban.

> and antagonistic sources." The results show clearly that they did provide a wide range of diverse information. In other words, the Commission's historical assumption that media ownership inevitably shapes the news to tout its own interests may no longer be true (if it ever was).[30]

In short, Professor Pritchard concludes that "the prohibition on newspaper/broadcast cross-ownership has outlived its usefulness."[31]

2. *Studies by Professor Waldfogel.* Attached to the comments submitted by Consumers Union was a study prepared by economics Professor Joel Waldfogel entitled "Who Benefits Whom in Local Television Markets?"[32] The report, which dealt exclusively with television broadcasting, did not examine cross-ownership in particular or changes in structural regulation in general. Rather, based on viewing data it presented, the report concluded that different racial groups prefer different programming, blacks tend to view more television in markets with television stations offering more black-targeted programming, blacks enjoy different programming than non-blacks, Hispanics enjoy different programming than non-Hispanics, and local programming is more sensitive to local demographics.

While Media General finds it hard to quibble with any of these conclusions as a general matter, it concludes that they have little direct relevance to evaluation of the newspaper/broadcast cross-ownership ban on which the FCC has sought comment. More

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[30] *Id.* at 49-51 (footnotes omitted). Professor Pritchard emphasizes, though, that he was not studying "the quality of campaign coverage in cross-owned media," rather whether they took a common slant, which they did not. On the "quality" issue, he concludes, "cross-owned newspapers and broadcast stations covered the campaign in the way that mainstream American news organizations typically cover political campaigns. Whatever the deficiencies of the news coverage of Campaign 2000, they did not seem to be the result of cross-ownership . . . ." *Id.* at 50 (footnote omitted). Thus, this study likewise supports the conclusion that allowing cross-ownership, the only issue under review here, will not diminish diversity of viewpoint.

[31] *Id.* at 51.

[32] Consumers Union Comments, Appendix B.

relevant, Media General submits, is another study that Professor Waldfogel recently published. This economic study, authored with Steven T. Berry, examined the effect of consolidation following adoption of the 1996 Telecommunications Act on "product variety" in radio broadcasting.[33] The multiple regression analyses presented in the paper demonstrate that radio consolidation increased the number of radio formats available relative to the number of stations and produced some evidence that consolidation increases the amount of programming variety absolutely. "[O]ur results suggest that the increased concentration has reduced potentially excessive resource use on station entry without hurting listeners," according to the two authors.[34]

3. *Other Studies*. In responding to the NPRM in this proceeding, the Newspaper Association of America also collected and cited studies similar to the Berry-Waldfogel article that support the proposition that co-located media outlets under common ownership have a strong commercial incentive to diversify program or content offerings in order to reach the largest possible aggregate audience, whereas an independently operating media outlet has an incentive to engage in "greatest common denominator" programming in order to attain the largest possible audience for that one outlet.[35] As NAA noted, and as Professors Waldfogel's and Berry's recent work confirms, "economic studies are virtually unanimous in recognizing these incentives, and economics literature supporting this model has been frequently cited and relied upon by the Commission."[36]

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[33] Steven T. Berry and Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence from Radio Broadcasting,* 66 THE QUARTERLY J. OF ECONOMICS 1009 (Aug. 2001).

[34] *Id.* at 1024.

[35] NAA Comments at 44.

[36] NAA Comments at 44 n. 123.

This body of literature confirms what Media General for years has observed from its own practices and those of other operators of co-owned properties. Co-ownership, in Media General's case, has had no negative effect on the variety and diversity of content offered by its cross-owned properties. Content at each of Media General's outlets is not driven from the top-down but rather responds to what its readers and viewers want, building upon their interests, needs, and desires. Further, Media General's co-owned outlets in the same market frequently have differing geographic and demographic reaches. The varying audiences require different information and content that is totally unaffected by the fact that one outlet is co-owned with another. As a result, repeal of the newspaper/broadcast cross-ownership rule will not in any way diminish the variety and diversity of content offered by Media General's co-owned properties.

D. Opponents' Concerns Over "Homogenized" Media Content and Harm to "Institutional Diversity" Are Conjectural and Unsupported in the Record and, as Such, Cannot Justify Retention of the Rule.

Separate and apart from their concerns over hypothesized decreases in the number and variety of viewpoints in non-entertainment programming if the rule is repealed, some of those favoring its retention also speculate that elimination of the rule will "homogenize" news and information content and will have a negative effect on "institutional diversity," a construct opponents have invented for purposes of this proceeding.[37] Not only have the opponents of repeal failed to provide documentation to support these conjectural claims, but the record evidence amassed in this proceeding demonstrates that their concerns will not materialize.

Although it is not entirely clear what is meant by "homogenized" news and information, Media General submits that the news and information content that it disseminates over its co-owned properties, much as Professor Pritchard documented, varies from outlet to outlet even within a single market. Although Media General newspaper journalists and television reporters are assigned to separate outlets, the company considers convergence as a way to have more professional feet, eyes, and ears on the local streets gathering more solid and sourced information germane to each geographic and demographic community. These journalism professionals create a great collaborative pool of local information from which Media General's separate entities may draw, shaping and disseminating the content in ways that best serve their specific outlet's targeted customer base. In markets where Media General operates newspapers, television stations, and websites, there are three separate products; three separate gathering forces; and three separate research, analysis, and development initiatives serving three separate geographic, demographic and psychographic customer profiles. Media General has not found that this customer- and market-focused approach produces a product that would ever qualify as "homogeneous," and the academic literature and record evidence that the FCC has considered in other proceedings certainly have established that consolidation creates disincentives to providing duplicative products that appeal to the "greatest common denominator."[38]

As for the preservation of "institutional diversity," Media General understands the concern to be that cross-ownership will somehow diminish the deterrent effect created by newspaper investigative reporting as opposed to investigative reporting by other kinds of media outlets. Media General employs many experienced and respected journalists at its newspapers

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[37] Comments of American Federation of Labor and Congress of Industrial Organizations in MM Docket Nos. 01-235 and 96-197 (filed Dec. 4, 2001) ("AFL-CIO Comments"), at 8; Consumers Union Comments at 61-66.

[38] Media General Comments at 30-36.

and reporters at its television stations and websites who deem investigation and discovery of the truth their professional obligation. The idea that only its print staff is diligent in ferreting out news and, therefore, that it alone somehow creates a deterrent against civic abuses has not proven true in Media General's experience. In the Tampa market, where convergence has been in existence the longest, Media General has increased the number of news professionals over the number it employed prior to convergence. This increase, combined with the new technological tools convergence has made available to its news staffs, guarantees that whatever special "institutional diversity" opponents ascribe to print journalism has not been lost with cross-ownership.

III. Opponents of Repeal Have Not Raised Any Competitive Concerns That Cannot Be Addressed by Traditional Antitrust Review of Transactions and Ongoing Antitrust Enforcement by Antitrust Agencies and Private Parties

As Media General pointed out in its Comments, the FCC in 1975 and to-date has never developed record evidence of a competitive problem that would result from co-ownership of newspapers and broadcast stations. Moreover, the lack of any definitive empirical data and the very fact-specific nature of the market definition process make development of consistent product and geographic market definitions impossible to achieve in the FCC's rulemaking context. 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.

Nothing that has been presented in the comments urging repeal of the rule raises an issue regarding competition that should cause the FCC to hesitate to repeal the rule in all markets. The only "data" presented by opponents consist of conjectural concerns that convergence will increase advertising rates;[39] a study of the levels of concentration in 10 radio and 10 television broadcast markets, expressed in each case by calculation of Herfindahl-Hirschman Indices ("HHI"s);[40] and anecdotal references to alleged anticompetitive behavior.[41] Overall, despite their volume and length, the comments submitted by opponents of repeal do not raise any concrete reasons or harms justifying the FCC's continuing to prohibit, through any form of regulation, the combined ownership of newspapers and broadcast television stations. The FCC acknowledged itself in 1975 that it had no evidence of tangible harm, and the opponents of repeal have offered nothing in the record to cure that deficiency.

A. Empirical Results Confirm That Allowing Co-Ownership of Newspapers and Broadcast Stations Is Unlikely To Lead to Higher Advertising Prices

Some opposed to repeal of the rule claim that co-ownership would result in increases in advertising prices, yet they offer no data or studies relating directly to cross-ownership or advertising prices.[42] In fact, as Media General discussed in its Comments, studies presented to the FCC in the last several years demonstrate no likely competitive harm from repeal.[43] As Media General's Comments explained, one broad study conducted in 1998 analyzed structural indications of competition across a sample of 21 DMAs of all market sizes between 1975 and 1997.[44] In examining competition among newspapers, television, and radio in the sale of

[39] Comments of the Office of Communication, Inc., of the United Church of Christ, National Organization for Women, and Media Alliance in MM Docket Nos. 01-235 and 96-197 (filed Dec. 3, 2001) ("UCC Comments"), at 11.

[40] UCC Comments at 12-13 and Appendix 5.

[41] *Id.* at 15-17; Mid-West Family Stations Comments at 5-6.

[42] UCC Comments at 11, 13.

[43] Media General Comments at 44-45.

[44] Economists Incorporated, *Structural and Behavioral Analysis of the Newspaper-Broadcast Cross-Ownership Rules*, July 1998, submitted with the Comments of the Newspaper Association

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advertising (a market that the study acknowledged was overly narrow given the artificial exclusion of all other relevant competing media), it found that ownership concentration in 20 of the 21 DMAs it surveyed had decreased or remained unchanged since 1975 despite the frenzy of radio acquisitions following adoption of the 1996 Telecommunications Act. Based on this finding, the study concluded that elimination of the newspaper/broadcast cross-ownership rule would be unlikely to result in conditions conducive to anti-competitive behavior.[45] To disprove the theoretical possibility that cross-ownership itself could impart unilateral market power in the advertising market, the study also examined the advertising prices of over 1,400 daily newspapers. The study found no reason to believe that cross-ownership is likely to lead to higher prices. After controlling for other factors, the study found that there was no statistically significant difference between advertising prices of cross-owned newspapers and those of other papers.[46]

To address opposing parties' concerns about the effect of repeal on advertising prices in medium and smaller markets of the type discussed in some of their anecdotal discussions of conjectural harms, Media General conducted a further study refining the EI 1998 Analysis of advertising prices at over 1,400 daily newspapers. The new study, conducted last month, focused on smaller markets using two separate analyses. The first performed standard regression

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of America in MM Docket No. 98-35 (filed July 21, 1998) ("*EI 1998 Analysis*"). The EI 1998 Analysis ensured that all market sizes were represented by using data from 21 DMAs that ranked in size from DMA #3 to DMA #206.

In its Comments filed on December 3, 2001, NAA attached an updated version of this same study showing that between 1975 and 2000 concentration levels had increased even further. NAA Comments at 71-73 and Appendix IV ("*EI 2001 Analysis*").

[45] EI 1998 Analysis at 1, 15-16.

[46] *Id.* at 1-2, 16.

analyses on subsets of data including only smaller markets, specifically three different groupings of DMAs representing DMAs 159-211 (lowest DMA quartile), DMAs 106-158 (lowest third DMA quartile), and DMAs 106-211 (bottom half of DMAs). The second analysis tested for any potential impact of cross-ownership on advertising prices in each of the nine markets in DMAs 106-211 that includes a newspaper-broadcast combination. The results from each study were very similar. After controlling for other factors, there was no statistically significant difference in either analysis between advertising prices of cross-owned newspapers and those of other papers.[47]

In its comments urging retention of the rule, UCC calculates HHI's for 10 different local radio markets and for 10 different local television markets, which it says show that the radio and television markets are "highly concentrated ... in almost all cities studied."[48] Based on this contention, UCC asserts that "the level of concentration in the local market[s] would increase substantially" if cross-ownership of newspapers and broadcast stations were allowed.[49] Such cross-ownership, UCC claims, "would likely reduce competing outlets and increase advertising rates in these markets."[50] UCC admits, however, that the manner in which it has constructed its HHI study was highly underinclusive, focusing as it did on separate radio and television markets because of a "lack of commercially available data" delineating the actual, combined share of advertising controlled by print, broadcast and other media outlets in the cities UCC studied. UCC admits that this deficiency makes it impossible to determine an accurate HHI indicating the

[47] Economists Incorporated, *Behavioral Analysis of Newspaper-Broadcast Cross-Ownership Rules in Medium and Small Markets,* January 2002, attached as Appendix A ("*EI 2002 Study*").

[48] UCC Comments at 11-13, Attachments 2 and 3.

[49] UCC Comments at 13.

[50] *Id.*

level of competition when both television and newspaper outlets together as well as all media sources are included as part of a larger advertising market.[51]

In its studies in 1998, December 2001, and January 2002, Economists Incorporated performed extensive work to amass the type of data for radio stations, television stations, and newspapers combined that UCC notes is not generally available. The data sets Economists Incorporated constructed are themselves still underinclusive because they do not include numerous other outlets such as outdoor advertising, Yellow Pages, direct mail, and the Internet; nonetheless, their results show no increase in market concentration since 1975 and no effect by cross-ownership on advertising prices. With their much more detailed and extensive research, these studies are more reliable and probative than the limited calculations upon which UCC relies.

In its *NPRM* in this proceeding, the FCC sought specific empirical studies regarding the effect of the role of cross-ownership on competition.[52] The studies by Economists Incorporated, discussed above and in the comments of Media General and NAA, provide the conclusive proof the Commission has requested and show that repeal of the rule will not have an adverse effect on advertising competition. The record is completely devoid of probative empirical evidence to the contrary.

B. Opponents Have Not Presented or Postulated Any Competitive Harm That Traditional Antitrust Review and Enforcement Will Not Correct.

Several of the commenters argue that the rule should be retained to prevent predatory pricing practices such as preferential ad placement or tying. Others contend that the rule should be partially retained to guard against "egregious" cases or prevent cross-ownerships in which

[51] *Id.*

entities already holding a certain share in one product market (newspaper or broadcast) want to enter a different product market (acquire their first newspaper or broadcast station) in the same geographic market. Neither of these concerns -- the parade of allegations of specific market behavior "horribles" or the desire to block media owners from becoming inter-market competitors -- is supported by any substantive justifications in the opposition comments. Moreover, to the extent any of the concerns ever were to rise to the level of actionable behavior under established antitrust law and principles of unfair competition, a legal remedy already exists.

In one section of its comments, the UCC discusses alleged "anticompetitive situations" in several small markets and one large market and warns that repeal of the rule would lead to more such problems.[53] The "proof" that UCC offers, however, does not demonstrate the presence of any actionable abuses of an anticompetitive nature. Three publishers from Columbus, Ohio; Stuart, Florida; and Milford, Indiana merely incant in almost identical declarations, which are devoid of any detailed facts, that they have "difficulty" competing with cross-owned properties in their markets.[54] A further individual from Quincy, Illinois, the publisher of an independent free weekly shopper, describes in his statement several advertising accounts that he has been unable to retain and a meeting from which he was excluded, but the underlying behaviors do not appear to evidence anything more than market forces at work. Again, he does not disclose actionable behavior and, indeed, Media General's exhaustive search of LEXIS, state records, and

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[52] *NPRM* at 10-13.

[53] UCC Comments at 15-17.

[54] UCC Comments at Appendices 7, 8, and 9.

Better Business Bureau files does not uncover any indication that the Quincy publisher ever took any legal action to stem or complain about the behavior which he now cites.[55]

UCC also alleges that the *Chicago Tribune* offers "package deals" to advertisers that utilize its cross-media platforms, something the *Chicago Sun-Times* cannot match. Without describing them in detail, UCC terms these packages "tying" arrangements and states that repeal of the rule will cause them to spread to other cities.[56] Mid-West Family Stations in its comments also mentions that it has faced "overbearing market power" in Rockford, Illinois; Madison, Wisconsin; and St. Joseph, Michigan, where "advertisers that cooperated by limiting their radio buys to newspaper-owned stations received preferential rates and better placement of their advertising in the newspaper."[57] Like UCC, however, Mid-West offers no further details.

None of these claims warrants retention of the rule. First of all, they are too skeletal and undocumented to qualify as record evidence in this proceeding. But even if properly documented, they do not raise actionable conduct that somehow warrants retention of the rule. Even if these commenting parties had demonstrated anticompetitive tying arrangements or predatory pricing, such incidents would be nothing more than isolated private party disputes that do not warrant retention of the rule and for which there are well-established avenues of legal redress. The solution is not a nationwide ban on the combined ownership of newspapers and broadcast properties.

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[55] Attached as Appendix B is a description of the sources that Media General checked to try and determine the extent and seriousness of the publisher's grievances, which are set forth in UCC Comments at Appendix 6.

[56] UCC Comments at 16-17.

[57] Mid-West Family Stations Comments at 5-6.

Other commenting parties posit "solutions" short of total repeal of the rule that they base on varying standards of market share or presence that should prohibit an owner who is already involved in either newspapers or broadcast stations from "crossing over" and buying the other type of media outlet. Caribbean International News Corporation, a Puerto Rican media owner, and Mid-West Family Stations, owner of 37 stations in twenty Midwestern communities, propose different numerical standards. Based on its unique experience in Puerto Rico, Caribbean argues that if a newspaper or even a pair of newspapers hold a 70 percent share of "a market sector," which Media General interprets to mean 70 percent of the newspaper product market, that entity should not be able to enter the different product market of broadcasting.[58] In somewhat similar fashion, Mid-West Family argues that "the Commission should forbid any monopoly newspaper from cross-owning broadcast station(s) in its home market when either commercial radio or television is dominated by three or fewer 'significant' attributable owners."[59] Mid-West defines "significant" as any radio owner with more than a 15 percent market share of radio revenue.

Both of these approaches fail to take into account, however, the conclusion that has been adopted by the Department of Justice, the government's expert agency in competition and antitrust, that broadcast facilities and newspapers constitute separate product markets, a position with which the FCC has tended to agree.[60] Only if all media were viewed as a single product market, a concept that has not been embraced by DOJ, the FCC, or the courts, could a market share standard based on performance in one medium's market have any applicability to entry

[58] Comments of Caribbean International News Corporation in MM Docket Nos. 01-235 and 96-197 (filed Dec. 3, 2001), at 35-38.

[59] Mid-West Family Stations Comments at 7.

[60] Media General Comments at 46-50.

into the market of another medium. To the extent that these commenting parties are concerned about the potential for tying arrangements in isolated instances, again there are well-established mechanisms, other than FCC rulemaking, for addressing such problems if they ever develop. The fact that a party may have a degree of market influence in one media product market should not presumptively and as a matter of FCC rule preclude entry into a different market, particularly when one of those markets is not even regulated by the FCC.

A third solution short of total repeal is posited by the New York Times Company. In its comments, the Times generally argues in favor of repeal. "To permit the owners of television stations in smaller communities to compete in their markets with newspapers and stations owned by national media giants, complete repeal of the rule is essential for virtually all markets," the Times contends.[61] In an almost off-handed footnote, however, the Times suggests that, in repealing the rule, the FCC may want to retain as a prohibition against cross-ownership the "egregious" case standard utilized in 1975 to require the break-up of a limited number of cross-owned properties.[62] This standard, which the FCC said at the time applied to seven television-newspaper combinations and nine radio-newspaper combinations, mandated dissolution of combinations in which one party owned the only newspaper of general circulation in a community and the only radio or television station placing a city-grade signal over the entire community of publication.[63]

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[61] New York Times Comments at 17.

[62] New York Times Comments at 17 n.13.

[63] *Amendment of Sections 73.34[sic], 73.240, 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 (1975) at Appendices D and G.