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

In the Matter of	)	
	)	
2002 Biennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant lo Section 2U2 of the Telecommunications Act of I996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules aiid Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

Wade H. Hargrove
Mark J. **Prak**
David Kushner

BROOKS. **PIERCE,** McLENDON,
HUMPHREY & LEONARD, L.L.P.
First **Union** Capitol Center, Suite 1600
150 Fayetteville Street Mall (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Counsel to Hearst-Argyle Television. Inc

January 2,2003

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

In the Matter of	)	
	)	
2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MU Docket No. 02-277
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

To: 'The Commission

COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

Hearst-Argyle Television, Inc. ("Hearst-Argyle"), by its attorneys, hereby submits these comments in response to thr *Notice of Proposed Rule Making* ***("Notice"),*** FCC 02-249, released September 23, 2002, in the above-captioned proceeding. Hearst-Argyle respectfully requests that (1) the newspaperbroadcast cross-ownership rule be repealed and (2) the television duopoly rule be significantly relaxed

I. The Newspaper/Broadcast Cross-Ownership Rule Should Be Repealed

The newspaper/broadcast cross-ownership rule should be repealed.[1] The evidence is compelling, The Commission has before it voluminous information on 31 existing

[1] The Commission has folded its proceeding on the newspaperbroadcast cross-ownership rule in MM Docket No. 01-235 into the instant omnibus ownership rulemaking proceeding. Hearst-Argyle hereby incorporates by reference its comments (filed December 3, 2001) and its reply comments (filed February 15, 2002) previously filed in MM Docket No. 01-235.

newspaperhroadcast combinations reflecting the extent of viewpoint diversity that exists in those markets and the public interest benefits of cross-ownership. Hearst-Argyle submitted comprehensive, aggregate data on the diversity that exists in each of the nation's 210 DMAs,[2] and The Hearst Corporation, Gannett, Media General, News Corp., and New York Times Co. have provided the Commission with comprehensive listings of all media "voices" available in a wide variety of markets, from New York City (Market 1) to Albany-Schenectady-Troy, New York (Market 55), to Fort Smith-Fayetteville-Springdale-Rogers, Arkansas (Market 108), to **Panama** City, Florida (Market 159).[3] 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. Moreover, there will **be** documented public interest benefits if the **rule** is rescinded

One principle about which there can be no dispute is that if **newspapers** and *television* stations and radio stations inhabit separate and distinct product markets, then. by definition, **a** local newspaper and a local broadcast station are not horizontal competitors and, perforce, co-ownership cannot adversely affect competition in either product market. **As** the Commission itself has previously acknowledged, "[p]rohibition of. . . newspapcrand television. . . cross-ownership would make little sense unless these different media were important substitutes for each other."[4]

In its earlier-filed comments, Hearst-Argyle analyzed existing economic studies on the substitutability of newspaper advertising and broadcast advertising.' No party has presented or

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[2] *See* Hearst-Argyle's Commcuts (filed Dec. 3, 2002), at Exhibit 1

[3] ***See*** Hearst-Argyle's Reply Comments (filed Feb. 15, 2002), at Table 1 (tabulating data submitted by parties).

[4] 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).

[5] ***See*** Hearst-Argyle's Comments (filed Dec. **3,** 2001), at 11-15. The economic literature examined by Hearst-Argyle included the following:

(continu***ed. . .)***

reported a persuasive economic study that calls into question the validity of the economic evidence adduced by Hearst-Argyle. The studies examined by Hearst-Argyle overwhelmingly conclude that newspapers, local television, and local radio are substitutes for one another for local advertisers and may he 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; that cross-nicdia mergers will not create sufficient market power to lead to increased advertising rates; and that newspaperhroadcast cross-ownership may bring benefits to both consumers and advertisers. In short, a review of current economic studies leads to the inescapable conclusion that thcre is *no* meaningful evidence of competitive harm should newspaperbroadcast cross-ownership be permitted. Again, no party hasdcmonstrated that these studies are flawed or that there arc competent, persuasive economic studies concluding that *competitive* harm does or can result from cross-media joint ownership.

In conjunction with the current omnibus *Notice*, the Commission has released twelve media ownership studies. Of these twelve studies, two arc particularly relevant to the competition aspect

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[5](...continued)

Benjamin J. Bates, *Concentration in Local Television Markets*, 6 J. OF MEDIA ECON. 3 (1993)

John C. Bustema, *The Cross-Elasticity of Demand for National Newspaper Advertising*, 64 JOURNALISM Q. 346 (1987)

Robert B. Ekelund, Jr., George S. Ford, & John D. Jackson, *Is Radio Advertising a Distinct Local Marker? An Empirical Analysis*, 14 REV. OF INDUS. ORG. 239 (1999)

Robert B. Ekclund, Jr., George S. Ford, & John D. Jackson, *Are Local TV Markers Separate Markets?* 7 INT'L J. OF THE ECON. OF BUSINESS 79 (2000)

Robert B. Ekelund, Jr., George S. Ford, & Thomas Koutsky, *Market Power in Rudio Markers: An Empirical Analysis of Local and National Concentralion*, 43 J. OF LAW & ECON. 157 (2000)

.lames M. Ferguson, *Daily Newspaper Advertising Rates. Local Media Cross-Ownership. Newspaper Chains, and Media Competition*, 26 J. OF LAW & ECON. 635 (1983)

Leonard N. Reid and Karen Whitchill King, *A Demand-Side View of Media Substitutability in Notional Adverrising: A Study of Advertiser Opinions about Traditional Media Options*, 77 JOURNALISM & MASS COMMUNICATION Q. 292 (2000)

Barry J. Seldon, R. Todd Jcwell, & Daniel M. O'Brien, *Media Substitution and Economies of Scale in Advertising*, 18 INT'L J. of INDUS. ORG. 1153 *(2000)*

Barry J. Seldon & Chulho Jung, *Derived Demand for Advertising Messages and Substitutability Among the Media*, 33 Q. REV. OF ECON. AND FIN. 71 (1993)

of the newspapcrhroadcast cross-ownership rule. Both support repeal of the rule.

The study by Waldfogel attempts to determine whether *consumers* (not advertisers) substitute different media (television, radio, cable, satellite, Internet, and daily and weekly newspapers) for one another.[6] Waldfogel's study finds the following:

- clear evidence of substitution between the Internet and television, both overall and for news
- clear evidencc of substitution between daily and weekly newspapcrs
- clear evidence of substitution between daily newspapers and television news
- some evidence of substitution between cable and daily newspapers, both overall and for news
- some evidence of substitution between radio and television for news
- some evidence of substitution between the Internet and daily newspapers for news
- little or no evidence of substitution behveen weekly newspapers and television
- little or no evidence of substitution between radio and the Internet
- little or no evidence of substitution between radio and cable

Some of Waldfogel's cvidence derives from the finding that the tendency Io use national media vis-a-vis local media increases as market size decreases, suggesting that, in smaller markets, Internet and cable serve as substitutes for newspapers, local tclevision, and radio. The most relevant finding here is the clcarevidence of substitution between daily newspapers and television. Such substitution indicates that newspapers and television should not be viewed as distinct markets. Waldfogel's conclusion is consistent with the previous economic studies examining substitutability among advertisers, and it supports Hearst-Argyle's contention that competition will not be harmed if the cross-ownership ban is repealed

[6] *See* Joel Waldfogel, *Consumer Substitution Among Media* (Sept. *2002)* (Media Ownership Working Group 2002-3)

The Bush economic study examines the substitutability of local newspaper, radio, and television advertising in the sales activities of local businesses.[7] The study presupposes (logically) that a local business within a **DMA** will maximize its expected sales by selecting **the** optimal **mix** of local newspaper ads, local radio ads, and local telcvision ads. The study finds weak substitutability between local media in the sales activities of local businesses. Morc specifically, it findsthatthere **is** weak, but statistically significant, substitutability between newspaper retail ads and local radio ads and also weak, but statistically significant, substitutability between newspaper retail ads and local television ads. The study finds no statistically significant substitutability between local radio ads and local television ads. In addition, the study finds that newspaper retail ads and local television ads are complementary inputs in the sales efforts of local businesses and similarly for local radio ads and local televison ads. **Like** the Waldfogel study, the Bush study's finding of substitutability comports with previous studies and supports repeal of the newspaper/television cross-ownership **ban.**

In the end, the calculus is simple. If newspaper advertising and broadcast advertising ***are*** *not* substitutes, then there would be and could bc 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 economic 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.

With respect to viewpoint diversity, no meaningful ***evidence*** of actual harm to diversity has ever been submitted---by any pany—in any of the **46** markets in which newspapcrhroadcast combinations exist. In view of the voluminous filings made by certain opponents of repeal in connection with this long-running issue, it is difficult to imagine that evidence of actual harm to

[7] *See* C. Anthony Bush, *On the Substitutability* ***of Local Newspaper. Radio,*** and ***Television*** *Advertising in* ***Local Business*** *Sales* (Sept. ***2002)*** (Media Ownership Working Group 2002-10).

diversity would not have been submitted if such harm exists. The record before the Commission contains, 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 real evidence—of the alleged harm to diversity if the newspaper broadcast cross-ownership rule were repealed.

Hearst-Argyle previously identified in the nation's 210 DMAs more than 17,000 local media "voices" for which there are 8275 separate owners.[8] 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.

In addition, the one media ownership study released by the FCC that is relevant to the diversity aspect of the newspaper/broadcast cross-ownership rule also supports repeal. The Pritchard study[9] examined the content of the reporting coverage of ten cross-owned newspaper/television combinations in the last 15 days of the **2000** Bush/Gore presidential campaign.[10] The study ultimately found, in five of the cases, that the overall diversity of the coverage provided by the cross-owned television station was noticeably different than that of the newspaper. For the other five cases, the study found that the overall diversity was not significantly different between the two

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[8] These data were compiled as of November 15, 2001

[9] ***See*** David Pritchard, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential* ***Campaigrr*** (Sept. ***2002)*** (Media Ownership Working Group 2002-2).

[10] The ten markets and owners are Chicago/Tribune; Dallas/Belo; Fargo/Forum; Hartford/Tribune; Los Angeles/Tribune; Milwaukee/Journal; New York/News Corp. (Post); New York/Tribune (Newsday); Phoenix/Gannett; and Tampa/Media General.

media. The Pritchard study concluded, in short, that common ownership does not result in a predictable pattern of news coverage and commentary about political events among commonly owned media outlets. Moreover, there was no generalized evidence of ownership manipulation of the news among the media outlets studied. The Pritchard study therefore supports repeal of the cross-ownership ban because it shows that repeal will not result in the homogenization of news reporting in local communities. Commonly-owned media outlets can, and will, speak with independent editorial voices.

Although the accumulated evidence compels repeal, not relaxation, and certainly not retention, Hearst-Argyle previously thought it useful to the Commission to place Hearst-Argyle's "voices" data in a framework familiar to the Commission for comparative purposes, namely the radioitelevision cross-ownership rule, 47 C.F.R. § 73.3555(c).[11]

Hearst-Argyle does not advocate that a "voice count" test be applied to newspaperhroadcast cross-ownership. Nevertheless, it is instructive to examine, within the basic framework of the Commission's existing radio/television cross-ownership rule, the comprehensive "voice" data for the nation's 210 DMAs that Hearsl-Argyle prcviouslysubmitted. Such an examination revcals that only 9 of the smallest DMAs, out of the 208 DMAs which have at least one daily newspaper of general circulation," have fewer than 11 separately owned local media voices (as the Commission counts such voices for purposes of its radioitelevision cross-ownership rule) and, therefore, would not have at least 10 separately owned media voices post-merger were a newspaperhroadcast combination permitted. These 9 markets comprise just 336,070 households (0.3%) out of a total

[11] See Hearst-Argyle's Reply Comments at 11-13.

[12] Two DMAs, Prcsque 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 newspaperhroadcast cross-owncrship.

106,641,910 households nationwide.[13] In other words, using the voice test standards contained in the Commission's radioitelevision cross-ownership rule, 199 markets—covering 99.7% of liouscholds—have sufficient viewpoint diversity to permit at least some level of newspapcrhroadcast cross-ownership. A much greater degree of newspaper/broadcast cross-ownership would bc permitted in 168 markets, covering 97.0% of households, since at least 20 separately owned media voices would remain in these markets following a local newspaperhroadcast merger.

This comparison is compelling. It demonstrates unequivocally that any purported harm to viewpoint diversity that opponents of repeal of the newspaperbroadcast cross-ownership rule claim would occur is purely speculative and is not supported by factual evidence. Measured against the the Commission's only comparable cross-ownership rule, it is plainly evident that abundant viewpoint diversity will remain upon repeal of the newspapcrhroadcast cross-ownership rule.[14]

The factual 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 bc repealed in its entirety

11. The Television Duopoly Rule Should Be Relaxed Significantly

The television duopoly rule has existed, in some form, for nearly 40 years. Although the Commission relaxed the nile slightly in 1999, the relaxation was confined to a handful of larger markets Most medium and small markets (and even some large markets such as Baltimore and San Diego) are unable to benefit from the current rule. And it is in those markets, in particular,

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[13] Household data are from Nielsen Media Research for the 2002-2003 television season

[14] It should also be remembered that even for that tiny fraction of the nation's population whcrc 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.

where the efficiencies and benefits ofco-ownership, including the aggregationofresources for local news reporting, would be especially beneficial.

Moreover, in light ofthe decision in ***Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148** (D.C. Cir. 2002), it is clear that the Commission's current "voices" test must be reconsidered. Therefore, this proceeding presents an opportunity io the Commission to redefine the current television duopoly rule so that competition may be sharpened among those television stations with the resources to cornpetc most aggressively.

Given the D.C. Circuit's construction of Section 202(h) of the Telecommunications Act, both in ***Sinclair*** and in ***Fox Television Stations, Inc. v. FCC*, 280** F.3d 1027. ***on rehearing*, 293** F.3d 537 (D.C. Cir. 2002), it is apparent that this is not the time for the Commission to be timid in relaxing the duopoly rule. Because the "evils" of television duopoly have not been demonstrated — indeed, none of the twelve media studies released by the FCC suggests *any* harm would **flow** from relaxation of the rule— the Commission should consider permitting co-ownership of television stations except in all but the most egregious cases where thcre would clearly **be** harm to competition or material diminution of diversity.

Hcarst-Argyle **looks** forward to reviewing rhc comments of other parties in this proceeding, and, following that review, will submit specific proposals to the Commission on these and other issues in this procecding.

Conclusion

For the foregoing reasons, as well as those set forth in Hearst-Argyle's previous comments and reply comments in MM Docket No, 01-235, the newspaperbroadcast cross-ownership should bc repealed and the television duopoly rule significantly relaxed.

Respectfully submitted,

HEARST-ARGYLE TELEVISION, INC.

Wade H. Hargrove

Wade H. Hargrove

Mark J. Prak

Mark J. Prak

David Kushner

David Kushner

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center, Suite 1600
150 Fayetteville Street Mall **(27601)**
Post Office **Box** 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Its Attorneys

January 2,2003

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