Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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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	)	MB 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

COMMENTS OF MEDIA GENERAL, INC.

(Volume 1: Comments and Appendices 1-8)

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SUMMARY

Twenty-eight years is a long time to ban an industry from entering a market based on nothing more than a conjectural "hoped-for" gain in diversity and absolutely no proof of any competitive harm. Yet, by the time the Commission acts in this proceeding, that is how long the newspaper industry will have been prohibited by the newspaper/broadcast cross-ownership rule from purchasing broadcast stations. The time is long overdue for repeal of the newspaper/ broadcast cross-ownership rule in all markets, particularly given the recent liberalization of all other FCC media ownership regulations. This result is also compelled by drastic changes in the last quarter century in the media marketplace, numerous empirical studies already before the FCC showing public interest benefits and a complete lack of any harm from cross-ownership, and applicable legal standards. There is no countervailing factual or legal reason justifying retention of the newspaper/broadcast cross-ownership rule in any market, large or small.

The wholesale liberalization of all other FCC ownership rules presents a compelling argument that the newspaper/broadcast cross-ownership rule should be eliminated. The newspaper/broadcast cross-ownership rule is the only media ownership rule that has gone unmodified for almost three decades. The national radio cap has disappeared, and the national television cap has been loosened. The local radio ownership rules now allow ownership of up to eight stations per market, and television duopolies are abundant. No longer is cross-ownership of cable systems and television stations prohibited anywhere.

The newspaper/broadcast cross-ownership rule stands alone as the only ownership rule that restricts the activity of an industry that the FCC does not regulate, the newspaper industry. This discriminatory treatment of newspaper owners vis-à-vis other regulated media players,

which now face lessened or no ownership restrictions, and vis-à-vis all other unregulated industries, which may buy broadcast stations, must cease.

Not only recent regulatory changes, but dramatic market changes compel repeal. The media marketplace is vastly different than 1975 when the rule was adopted. Consumers in all markets now have access to cable television, DBS systems, low-power FM and television stations, a wide array of specialty publications, weekly newspapers and other publications of varying frequency, local magazines, and sometimes wireless cable. Most recently, consumers in all markets have seen the launch of a profusion of Internet sites, many of which offer locally-originated content of all types.

Media General has witnessed this explosive growth in outlets and competitors in the one grandfathered and five other markets where it owns newspaper-broadcast combinations. At the same time, as documented at length in these comments and previous Media General filings, consumers in these six markets have benefited from the unique public interest benefits Media General's converged properties have been able to offer. With convergence, Media General has been able to deliver better, faster and deeper local news. With convergence, Media General has melded all the advantages of its print, broadcast, and on-line operations to provide multiple channels and streams of useful information when, where, and how consumers want it.

As discussed in these comments, numerous empirical studies conducted by Media General, the FCC itself, and others show that newspaper-ownership of broadcast stations results in enhanced news and public interest programming. For instance, one study submitted by Media General found that, when the quantity of non-entertainment programming presented on average by all stations in each of its six converged markets was compared to the average for all stations in the next largest DMA, in five out of six comparisons, the stations in the converged markets

broadcast considerably more non-entertainment programming. The Commission's own study that its staff conducted in 1973 at the time the rule was adopted found similar results. This past fall, another FCC-issued study found newspaper-owned television stations provide higher quality and quantities of local news than other network affiliates.

The six of the twelve media ownership studies recently released by the FCC that tangentially relate to the newspaper/broadcast cross-ownership rule also compel its repeal. They show increased use of non-traditional media, particularly new subscription video services and the Internet; echo the same outlet and ownership growth Media General has seen in its own markets; demonstrate no link between common ownership and the presentation of campaign coverage; chronicle the higher quality and greater quantity of news and public affairs programming presented by newspaper-owned stations; and demonstrate no harm from repeal in terms of either advertising substitutability among media or consumer substitutability in use of varying outlets.

There was no competitive harm documented when the newspaper/broadcast cross-ownership rule was adopted, and studies recently put before the FCC show the complete lack of any competitive need for the rule. One broad study analyzed structural indications of competition across a sample of 21 DMAs of all market sizes between 1975 and 1997, and again in 2000. In examining competition among newspapers, television, and radio in the sale of advertising, arguably an artificially narrow market, it found ownership concentration in 20 of the 21 DMAs at issue had decreased or remained unchanged since 1975 despite adoption of the 1996 Telecommunications Act. Additional empirical studies conducted first across 1400-plus newspapers in all markets and then focused only on newspapers in smaller markets found cross-ownership did not lead to higher advertising prices.

Faced with this mounting evidence of cross-ownership benefits and the complete lack of any demonstrated harm, the FCC has no choice under governing legal standards but to repeal the rule. Section 202(h) of the 1996 Telecommunications Act requires the FCC to review its ownership rules to determine whether they are "necessary" in the public interest as the result of competition and then repeal or modify any it finds are no longer in the public interest. The term "necessary" must be interpreted as meaning "essential" or "indispensable" in the public interest as a result of competition. This interpretation comports with the deregulatory thrust of the Act, the intent of Section 202 as a whole, and judicial interpretation of similar provisions.

Recent court decisions, *Fox Television Stations, Inc.* and *Sinclair Broadcasting Group, Inc.*, demonstrate a new judicial impatience with the FCC's review of its media ownership rules. These decisions interpret Section 202(h) as creating a presumption in favor of repeal and lead inescapably to the conclusion that Section 202(h) establishes a more exacting standard for retention than for promulgation of the FCC's rules. Under these decisions, it is arbitrary and capricious to continue restricting newspaper/broadcast cross-ownership while allowing cable television/television cross-ownership, local television duopolies, and broadcast ownership by a wide variety of other unregulated media such as the Internet. Given all the record evidence demonstrating the benefits of repeal and the lack of any evidence showing retention of the rule to be "necessary," continuation of the rule will unnecessarily weaken any package of ownership rules that the FCC ultimately retains. In addition, these decisions implicitly invite the FCC to find that spectrum scarcity no longer exists, a finding that will conclusively render the newspaper/broadcast cross-ownership rule unsustainable under the First Amendment.

Finally, the newspaper/broadcast cross-ownership rule also disserves the FCC's traditional policy goals. Diversity of ownership never did and now clearly does not bear a

credible link to diversity of viewpoint. Nonetheless, if the FCC continues to analyze the rule in terms of diversity, it will find that it prevents newspapers from helping to reinvigorate struggling local news operations, many of which have had to go dark due to the escalating costs of local news production and the economic downturn. The Commission's goal of fostering competition will also not be harmed by repeal of the rule, particularly when the FCC includes the profusion of new media in any competitive analysis. At the same time, repeal of the rule will advance localism by bringing new local resources to broadcast news operations and stimulate innovation by allowing new synergies to emerge.

These benefits of repeal should be available in all markets, large and small. The empirical studies in the record show absolutely no reason to differentiate or draw any sort of line based on market size.. Not only is good local journalism expensive to produce and deliver in all markets, but local media players, such as Media General, face increasing competition for audiences and advertisers from large national entities delivering content in all markets. Repeal of the newspaper/broadcast cross-ownership rule will ensure that locally-based entities focused on delivering a local product can compete against these larger institutions who have already benefited from recent liberalizations in other Commission rules. Equally important, locally-focused media in small markets and the consumers they serve are just as entitled to the benefits of convergence as their counterparts in larger markets.

Riddled with infirmities, the rule should be repealed in all markets. The Commission should act quickly and seize this opportunity to reverse this statutorily indefensible and unconstitutional ban that is inhibiting the delivery of enhanced and expanded local news and disserving the public interest.

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COMMENTS OF MEDIA GENERAL, INC.

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

I. Introduction.

For the second time in a little over twelve months, Media General is again submitting detailed factual evidence and legal arguments demonstrating why repeal of the newspaper/broadcast cross-ownership rule in all media markets, large and small, is in the public interest.[3] In fact, Media General and other newspaper owners, the *only* industry *not* regulated by

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[1] *Notice of Proposed Rulemaking*, FCC 02-249, released September 23, 2002 ("*2002 NPRM*").

[2] 47 C.F.R. § 73.3555(d)(2001).

[3] On December 3, 2001, and February 15, 2002, Media General submitted extensive comments in response to the Commission's *Order and Notice of Proposed Rulemaking*, MM Docket Nos.

the FCC that is restricted from buying radio and television stations, have been urging the Commission for the past five years to review and repeal the newspaper/broadcast cross-ownership rule.

As discussed in more detail below, repeal of this anachronistic rule is long overdue for multiple reasons. First, the oldest of the Commission's media ownership restrictions, the rule was adopted in 1975 and designed to address speculative concerns and conjecture based on market conditions in the years preceding 1975 rather than on any inescapable statutory requirement.[4] The rule has remained completely unmodified ever since, despite drastic changes in the communications landscape and liberalization of the FCC's other media ownership rules. Market conditions today for newspapers, broadcasters, and a complex array of new media providers are unrecognizable from 28 years ago. Thus, today, not only does the rule continue to lack a statutory imperative, it has lost whatever public interest basis it may have ever had. Retention of the rule in light of these changes makes no sense.

Second, repeal of the rule is compelled by recent decisions from the Court of Appeals for the District of Columbia Circuit, such as *Fox Television Stations, Inc. v. FCC* ("*Fox*")[5] and *Sinclair Broadcasting Group, Inc. v. FCC* ("*Sinclair*").[6] These decisions have emphasized that the Commission must take very seriously the Congressional directive in the Telecommunications

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01-235 and 96-1097, FCC 01-262 (rel. Sept. 20, 2001) ("*2001 Proceeding*"). As the *2002 NPRM* noted at ¶ 7, the comments in that proceeding will be incorporated in the record of this proceeding, and Media General will cite to them extensively in this document.

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

[5] 280 F.3d 1027, *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002).

[6] 284 F.3d 148 (D.C. Cir. 2000), *rehearing denied*, 2002 U.S. App. Lexis 16618, 16619 (*en banc*) (D.C. Cir. Aug. 12, 2002).

Act of 1996 that the agency biennially determine whether any of its ownership rules remain "necessary in the public interest as the result of competition" and "repeal or modify any regulation" that is not in the public interest.[7] These decisions also implicitly invite the FCC to take the long overdue step of finding that spectrum scarcity no longer exists. Once it does so, the newspaper/broadcast cross-ownership rule cannot continue to be sustained under current First Amendment principles.

Third, repeal of the rule is compelled by the FCC's own recently released media ownership studies.[8] Although a number of these studies were limited to radio and/or television broadcasting, the six that do touch on issues relevant to the newspaper/broadcast cross-ownership rule provide no basis, conceptual or empirical, showing that the rule is necessary in the public interest as the result of competition or for any other reason. Indeed, the studies further establish that repeal of the rule is long overdue. Similarly, numerous studies already cited in or submitted to the FCC in the *2001 Proceeding* demonstrate both that the rule is not necessary in the public interest as the result of competition and that repeal of the rule would serve the public interest in various ways.[9] Retention of the newspaper/broadcast cross-ownership rule can no longer be empirically supported.

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[7] Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 112 (1996). Consequently, as a threshold matter, the purpose of this proceeding is not a *discretionary* one to select what, if any, of the media ownership rules should be repealed, but rather it is a *mandatory* one to determine which among all of the media ownership rules remain "necessary in the public interest as the result of competition." To avoid its obligation to repeal or modify a media ownership rule, the FCC must affirmatively find that the rule remains *necessary* in the public interest as the result of *competition*. As the United States Court of Appeals for the District of Columbia noted in *Fox*, such a finding must have an identifiable basis in the record before the FCC. *Fox*, 280 F.3d at 1043.

[8] FCC News, "FCC Releases Twelve Studies on Current Media Marketplace: Research Represents Critical First Steps in FCC's Fact Finding Mission," Oct. 1, 2002.

[9] *See, e.g.*, Economists Incorporated, "Behavioral Analysis of Newspaper-Broadcast Cross-Ownership Rules in Medium and Small Markets," Appendix A to Reply Comments filed by

Finally, as discussed in these Comments, the Commission's own policy goals compel repeal of the newspaper/broadcast cross-ownership rule. The Commission's concerns over the effect of repeal on its diversity goal are ill-founded. The agency has never been able to establish any conclusive proof of a credible link between regulating diversity of ownership and achieving diversity of viewpoint nor, Media General submits, could it ever do so. On the other hand, repeal of the rule will enhance diversity by bringing new local sources of content to broadcasting, ones that will offer more community-based information, services, and innovation than large national television group owners provide.

The Commission's responsibility to foster competition also requires repeal of the newspaper/broadcast cross-ownership rule. For too long, newspaper publishers have been barred from competing in the delivery of broadcast services, and any concern that the FCC has about their entry can be addressed through the assignment/transfer review process and application and enforcement of the well-established federal antitrust laws by federal agencies such as the Department of Justice and the application and enforcement of state antitrust laws by state officials.

Media General in *2001 Proceeding*, filed Feb. 15, 2002 ("EI Analysis III") ("Media General Reply Comments"); Samuel Robert Lichter, Ph.D., "Review of the Increases in Non-Entertainment Programming Provided in Markets with Newspaper-Owned Non-Entertainment Programming Provided in Markets with Newspaper-Owned Television Stations," Appendix 5 to Media General Comments in *2001 Proceeding*, filed Dec. 3, 2002 ("Lichter Study") ("Media General Comments"); Economists Incorporated, "Horizontal and Vertical Structural Issues and the Newspaper-Broadcast Cross-Ownership Ban," Appendix IV to Comments filed by Newspaper Ass'n of America in *2001 Proceeding*, filed Dec. 3, 2001 ("EI Analysis II") ("NAA 2001 Comments"); Economists Incorporated, "Structural and Behavioral Analysis of the Newspaper-Broadcast Cross-Ownership Rules, July 1998," Appendix B to Comments filed by Newspaper Ass'n of America in MM Docket No. 98-35, filed July 21, 1998 ("EI Analysis I") ("NAA 1998 Comments"); "Non-Entertainment Programming Study," Appendix A to Comments filed by A. H. Belo Corporation filed in MM Docket No. 98-35, filed July 21, 1998 ("Programming Study") ("Belo 1998 Comments"); *Second Report and Order*, 50 FCC 2d at 1078 n.26 ("FCC Staff 1973 Programming Study").

The two policy goals that are explicitly based in statute -- localism and the promotion of innovation -- are also currently being disserved by retention of the newspaper/broadcast cross-ownership rule.[10] Extensive evidence shows that newspaper ownership of television stations increases the coverage of local issues and that convergence of newspaper and broadcast properties brings fresh and unprecedented technological approaches to news gathering, production, and delivery.

The benefits of repeal must be felt in all media markets, both large and small. Media General's experience shows that markets of all sizes have experienced dramatic growth in media outlets over the last quarter century, and Media General in the *2001 Proceeding* has provided the Commission with empirical evidence that common ownership has a positive effect on the overall amount of non-entertainment programming broadcast in markets, irrespective of size. These results echoed earlier studies by the Commission's own staff at the time the rule was adopted and another broadcaster showing television stations owned by newspapers delivered more news and public affairs programming. Studies of advertising competition in small media markets in the *2001 Proceeding* also show convergence does not adversely effect advertising prices. Moreover, small market media operators and the citizens they serve are just as entitled as their counterparts in large markets to the competitive benefits and synergies of convergence.

A thorough review of the record that has been compiled on this issue over the past several years and the material discussed below lead ineluctably to the conclusion that the newspaper/broadcast cross-ownership rule must go. Past regulation in this area has been fueled

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[10] Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C.A. § 307(b) (2001), directs the FCC to distribute broadcast licenses "among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." Congress has also directed the FCC to make the introduction of new technologies and services a priority. 47 U.S.C.A. § 157 (2001).

solely by conjecture. In light of the adoption of Section 202(h) of the Telecommunications Act of 1996, only a determination that the rule is necessary in the public interest as a result of competition and an affirmative finding that the rule serves the public interest can sustain a continued ban. Lacking those, the Commission must move promptly to eliminate the rule in all markets, large and small.

II. Media General's Experience and a Review of the History of the FCC's Regulation of Media Ownership and the Current Media Marketplace Show That Repeal of the Newspaper/Broadcast Cross-Ownership Rule in All Markets Is Long Overdue.

A. Media General Has Pioneered Convergence in Medium and Small Markets.

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

Media General is also one of the media industry's leading practitioners of "convergence," the melding of newspaper, broadcast television, and on-line research in the preparation and dissemination of local news. Media General's News Center in Tampa, Florida is the most advanced convergence laboratory in the nation, and the only one, as far as Media General is aware, in which the news staffs of a newspaper (*The Tampa Tribune*), broadcast television station (WFLA-TV), and on-line operation (TBO.com) are housed together under one roof. Besides this strong presence in Tampa-St. Petersburg (Sarasota), the nation's 13th-ranked Designated Market Area ("DMA"), Media General has similar convergence efforts underway in five additional markets where it owns television broadcast stations and daily newspapers -- Roanoke-Lynchburg, Virginia, the 67th-ranked DMA; Tri-Cities, Tennessee/Virginia, the 90th-

ranked DMA; Florence-Myrtle Beach, South Carolina, the 110th-ranked DMA; Columbus, Georgia, the 126th-ranked DMA; and Panama City, Florida, the 159th-ranked DMA.

At the beginning of 1995, Media General owned just three daily newspapers, and, as of the start of 1997, it held only three broadcast television station licenses. Since then, Media General has expanded rapidly, now serving newspaper readers in twenty-five markets and television viewers in twenty-one DMAs.[11] To *The Tampa Tribune*, the *Richmond Times-Dispatch*, and the *Winston-Salem Journal*, Media General has now added twenty-two other daily newspapers in Virginia, North Carolina, Florida, Alabama, and South Carolina, as well as nearly 100 weekly newspapers and other periodicals. Today, its twenty-six network-affiliated television stations reach more than thirty percent of the television households in the southeastern United States and nearly eight percent of the nationwide television audience. Media General's Interactive Media Division also provides online content that includes news, information, and entertainment sources in virtually every one of the company's markets.

Media General has a strong interest in expanding its convergence efforts beyond the six markets where it currently offers such benefits. It is hampered in doing so, however, by the existing newspaper/broadcast cross-ownership ban. Unlike all other industries the FCC does not regulate, newspaper providers, such as Media General, find themselves unable to buy broadcast properties in the markets where they own newspapers. These companies can own newspapers and cable systems together. Based on its experience, Media General believes this and other regulatory anomalies should end, and they should end promptly. The history of FCC treatment

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

of the newspaper/broadcast cross-ownership rule has allowed this disparity to remain for too long.

B. The Newspaper/Broadcast Cross-Ownership Rule Is the Only Media Ownership Rule That Has Gone Unmodified for Almost Three Decades, and the Record Already Before the Commission on the Rule Is More Than Sufficient To Support Complete Repeal.

Unlike all of the Commission's other multiple ownership rules, the newspaper/broadcast cross-ownership rule has never been modified during its entire twenty-eight year history. During this period, the national television ownership rule has been modified at least three times,[12] and the national radio ownership cap has been repealed.[13] On the local level, the television standard has been loosened at least twice,[14] and the local radio ownership rule has been liberalized dramatically.[15] The local radio-television one-to-a-market rule has been relaxed twice,[16] and the

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[12] *Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 1063 (2001); *Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Report and Order*, 15 FCC Rcd 20743 (1999); *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order*, 100 FCC 2d 74 (1985); *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations, Report and Order*, 100 FCC 2d 17 (1984).

[13] *In the Matter of Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, Order*, 11 FCC Rcd 12368 (1996), and Telecommunications Act of 1996, § 202(a), Pub. L. No. 104-104, 110 Stat. 56 (1996).

[14] *Review of the Commission's Regulations Governing Television Broadcasting Television Satellite Stations Review of Policy and Rules, Memorandum Opinion and Second Order on Reconsideration*, 16 FCC Rcd 1067 (2001); *Review of the Commission's Regulations Governing Television Broadcasting* and *Television Satellite Stations Review of Policy and Rules, Report and Order*, 14 FCC Rcd 12903 (1999).

[15] *In the Matter of Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, Order*, 11 FCC Rcd 12368 (1996), and Telecommunications Act of 1996, § 202(b)(1), Pub. L. No. 104-104, 110 Stat. 56 (1996).

[16] *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Report and Order*, 14 FCC Rcd 12903 (1999);

television-cable cross-ownership rule was recently vacated by the Court of Appeals for the District of Columbia Circuit when the Commission failed to offer plausible arguments as to why it should be retained under Section 202(h).[17] In that same case, the court remanded the FCC's 2000 decision to retain the national television ownership cap because the Commission had similarly failed to justify its retention in light of Section 202(h).[18] Most recently, the same court has remanded to the FCC its decision to allow television duopolies, finding arbitrary and capricious the agency's exclusion of non-broadcast media from the "Eight Voices" test governing when duopolies are to be allowed.[19]

While these regulatory changes were occurring and new media outlets and technologies were proliferating, the FCC has been promising -- both in its own decisions and in statements to the judiciary -- that it would address the need to revise the newspaper/broadcast cross-ownership rule. Despite these expressions of a professed interest in reform, however, the Commission's actions over the last six years have proven to be nothing more than lip service, as the agency, despite several fits and starts, has failed to conduct any meaningful review of the rule.

In early 1996, in approving the sale of ABC/Cap Cities to Disney, the Commission declined to issue permanent waivers of the newspaper/broadcast cross-ownership rule for commonly-owned radio and newspaper properties in the Detroit and Dallas-Fort Worth markets.[20] Instead, it granted a temporary, twelve-month waiver, while noting "we will proceed

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Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules, Second Report and Order, 4 FCC Rcd 1741 (1989).

[17] *Fox*, 280 F.3d at 1049-53.

[18] *Id.* at 1040-45.

[19] *Sinclair*, 284 F.3d at 152.

[20] *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5851 (1996).

expeditiously with an open proceeding to consider revising our newspaper/broadcast cross-ownership policies."[21]

Some eight months later, the FCC launched a *Notice of Inquiry* seeking comment on possible revision to its newspaper/*radio* cross-ownership waiver policies.[22] Despite a full briefing cycle of initial and reply comments, the Commission took no action on this *Notice.* Very concerned over the Commission's delay in addressing the rule, the Newspaper Association of America ("NAA") in 1997 filed a petition asking the FCC to eliminate the rule with respect to all broadcast properties, but no action was taken on the petition.[23] The next year, in 1998 the FCC launched the first biennial review of its media ownership rules, seeking comment on the status of numerous ownership rules, including the newspaper/broadcast cross-ownership rule.[24] When over a year had passed and the FCC still had not acted, the Newspaper Association of America ("NAA") filed an "Emergency Petition for Special Relief," which Media General and other newspaper-broadcast owners supported.[25]

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[21] *Id.* at 5851.

[22] *Newspaper/Radio Cross-Ownership Waiver Policy, Notice of Inquiry*, 11 FCC Rcd 13003 (1996). Disney's temporary waiver was extended and conditioned on the outcome of that proceeding. Letter from Roy J. Stewart, Chief Media Bureau, to Joel Rosenbloom and Alan Braverman, Oct. 24, 1996.

[23] Newspaper Association of America, Petition for Rulemaking in the Matter of Amendment of Section 73.3555 of the Commission's Rules To Eliminate Restrictions on Newspaper/Broadcast Station Cross-Ownership, filed April 27, 1997.

[24] *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry*, 13 FCC Rcd 11276 (1998).

[25] Newspaper Ass'n of America, Emergency Petition for Relief in MM Docket Nos. 98-35 and 96-197, filed Aug. 23, 1999; Petition by the Hearst Corporation, Media General, Inc., Gannet Company, Inc., and Tribune Company in Support of the Newspaper Association of America's "Emergency Petition for Relief," MM Docket Nos. 98-35 and 96-197, filed Nov. 2, 1999.

Not until June 2000 did the FCC issue its 1998 Biennial Review Report, which touched on the newspaper/broadcast cross-ownership rule in only a few cursory paragraphs, stating it continued to serve the public interest because it furthered diversity, and therefore should be retained.[26] In the same report, however, the FCC did commit to undertake a rulemaking proceeding to consider altering the rule but gave no indication when that would be.[27] Shortly thereafter, the FCC launched its second or its 2000 Biennial Review proceeding, but in its 2000 Biennial Review Report, which was issued one year later in January 2001, the agency did not alter any of the recommendations it had made with respect to the newspaper/broadcast cross-ownership rule in the 1998 Biennial Review Report.[28]

With statements from the Commission's Chairman in early 2001 that the agency would address the newspaper/broadcast cross-ownership rule,[29] in late September 2001 the FCC finally launched a rulemaking into the status of the newspaper/broadcast cross-ownership rule.[30] That rule making resulted in well over 100 initial comments and tens of reply comments that analyzed

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[26] *1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Biennial Review Report*, 15 FCC Rcd 11058, 11105-11110 (2000) ("*1998 Biennial Review Report*"). The NAA challenged the FCC's decision not to repeal the rule. *Newspaper Ass'n of America v. FCC*, Case No. 00-1375 (D.C. Cir. filed Aug. 16, 2000). By order dated Aug. 30, 2000, the court held the case in abeyance and ordered the filing of periodic status reports.

[27] *1998 Biennial Review Report*, 15 FCC Rcd at 11105.

[28] *2000 Biennial Regulatory Review Report*, CC Docket No. 00-175, *Report*, 16 FCC Rcd 1207, 1218 (2001).

[29] "As for broadcast-newspaper cross-ownership limits, which FCC plans to start reviewing next month (CD April 2 p 6), Powell said 'I'm pretty skeptical' about the need for such continued restrictions. 'It's [cross-ownership rule] a hard sell,' he said. 'I don't know why there's something inherent about a newspaper and something inherent about a broadcaster that means they can't be combined.' Powell said agency would consider repeal as well as reform of the rule. 'I suspect there'll be support for a willingness to ask the [repeal] question,' he said." *Communications Daily*, April 6, 2001, page 1.

[30] *Cross-Ownership of Broadcast Stations and Newspapers, Order and Notice of Proposed Rule Making, 2001 Proceeding*, *supra* note 3 ("*2001 NPRM*").

substantive issues related to the rule.[31] Of these filings, all but a handful of comments filed by public interest groups, one Midwestern broadcaster, and one Puerto Rican media owner supported repeal of the rule.[32] These comments included and cited numerous empirical studies, reviews, and articles justifying repeal of the rule.[33]

In its reply comments in the *2001 Proceeding*, Media General provided additional empirical work supporting repeal and noted that the only "data" presented by opponents of repeal consisted of unsupported, and unsupportable, musings that convergence would increase advertising rates;[34] 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;[35] and isolated anecdotes.[36] Overall, despite their volume and length, the comments submitted by opponents of repeal in the *2001 Proceeding* did not raise any concrete reasons or harms justifying the FCC's continuing to prohibit, through any form of regulation, the combined ownership of newspapers

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[31] The FCC actually received over 1,200 comments, of which some 1,100 were short one-page letters or short e-mails that were almost identical to each other and appeared to have been generated by the efforts of one particular public interest group.

[32] Comments of the Office of Communication, Inc., of the United Church of Christ, National Organization for Women, and Media Alliance in *2001 Proceeding*, filed Dec. 3, 2001 ("UCC Comments"); 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 *2001 Proceeding* filed Dec. 3, 2001 ("Consumer Union Comments"); Comments of Mid-West Family Stations, in *2001 Proceeding* filed Dec. 3, 2001 ("Mid-West Comments"); Comments of Caribbean International News Corporation in *2001 Proceeding* filed Dec. 3, 2001.

[33] EI Analysis III, attached as Appendix A to Media General Reply Comments; Lichter Study, attached as Appendix 5 to Media General Comments; EI Analysis II, attached as Appendix IV to NAA 2001 Comments; "Selected Media 'Voices' by Designated Market Area," Exhibit 1 to Comments filed by Hearst-Argyle Television, Inc. in *2001 Proceeding*, filed Dec. 3, 2001; EI Analysis I, attached as Appendix B to NAA 1998 Comments; Programming Study attached as Appendix A to Belo 1998 Comments.

[34] Media General Reply Comments at 18-28, *citing* UCC Comments at 11.

[35] *Id. citing* at 12-13 and its Appendix 5.

and broadcast television stations. The FCC acknowledged itself in 1975 that it had no evidence of tangible harm,[37] and the opponents of repeal have offered nothing since to cure that deficiency. Despite accumulation of this extensive record, the FCC chose to take no action in the newspaper/broadcast cross-ownership docket following the close of the pleading cycle and instead launched this omnibus rulemaking.[38]

C. Changes in the Media Marketplace in the Last Twelve Months Make the Need for Repeal Even More Compelling.

In the year since the FCC received initial comments in the *2001 Proceeding*, there has been continued growth in the availability of media outlets and owners in Media General's converged markets. In addition, during this period, Media General's converged properties have accelerated their effort to bring high quality news and public affairs programming to the residents of their markets and to launch new public interest initiatives that demonstrate that a continued ban on the joint operation of newspapers and broadcast properties disserves the public interest.

1. Media General's Converged Facilities Continue To Bring Better, Faster, and Deeper Local News and Other Civic Improvements to Their Communities, Proving That Common Ownership Yields Tangible Public Interest Benefits.

In its initial comments in the *2001 Proceeding*, Media General described in great detail how it has worked to bring convergence and its benefits to the markets in which it operates.[39] Media General also submitted a lengthy statement from Dr. James K. Gentry, Dean of the School of Journalism and Mass Communications at the University of Kansas, an academic leader who

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[36] *Id. citing* UCC Comments at 15-17 and Mid-West Comments at 5-6.

[37] *Second Report and Order*, 50 FCC 2d at 1073, 1075.

[38] *2002 NPRM*; "FCC Plans Omnibus Blockbuster Report on TV-Radio Ownership," *Communications Daily*, June 18, 2002.

has been active in helping establish converged facilities and in ensuring that today's journalism students graduate with the skills necessary to function in the new "converged world."[40] In his 2001 statement, Professor Gentry described not only Media General's efforts to establish convergence in the six markets where it owns newspaper and television facilities, but he also documented similar efforts by other owners of converged facilities in additional markets. He has now prepared an updated statement that is attached to these Comments as Appendix 3.[41] This new statement, which is meant to supplement and update his previous report but not replace it, provides detail about Media General's service to its convergence markets over the last 12 months. It also highlights recent efforts by other companies and presents in chart form a brief summary of efforts underway at the 23 stations in various markets around the country where he is aware convergence is being practiced.

As noted last year, Media General's convergence efforts initially focused on Tampa, where it has owned NBC affiliate WFLA-TV, Channel 8, and *The Tampa Tribune* since before the adoption of the newspaper/broadcast cross-ownership rule. Media General next sought to expand convergence to its co-owned properties in Roanoke, Virginia; Tri-Cities, Tennessee/Virginia; Florence-Myrtle Beach, South Carolina; Columbus, Georgia; and Panama City, Florida.[42] Although last year the benefits of convergence were only beginning to manifest

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[39] Media General Comments at 6-10.

[40] James K. Gentry, Ph.D., "The Public Interest Benefits Achievable from Elimination of the FCC's Newspaper-Broadcast Cross-Ownership Rule" (December 2001), Appendix 4 to Media General's Comments ("2001 Gentry Statement").

[41] James K. Gentry, Ph.D., "Statement of James K. Gentry, Ph.D." (December 2002) ("2002 Gentry Statement").

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

themselves in these other, smaller markets, this year all six markets provide instructive illustrations of the company's approach to convergence and the public interest benefits that result.

Tampa. As described in last year's comments, full convergence at Media General began in earnest almost three years ago, when WFLA-TV, *The Tampa Tribune*, and Media General-owned Tampa Bay Online ("TBO.com") moved all their news staffs and content operations into a new $35 million state-of-the-art facility, The Tampa News Center. While each of the three outlets has its own specific news and editorial staffs that make independent, final decisions about content, this convergence laboratory features a central news desk, the "Super Desk," which is continuously staffed by editors from all three media and facilitates the rapid exchange of story ideas, news content, and video images among the three outlets. All three outlets also maintain their news "budgets" or plans for stories on a building-wide "intranet," and the staff of each outlet can access the news "budgets" for the other properties. Newspaper reporters are writing scripts for television newscasts and appearing on-air, and television reporters are writing stories for the newspaper. The newspaper has also made its archives available to the other two outlets. With the provision of special equipment to the photographers of all three outlets, *The Tampa Tribune* and TBO.com have been able to provide stories with pictures that otherwise would have been only text, including aerial footage obtained from WFLA-TV's helicopter. Similarly, *The Tampa Tribune*'s photojournalists have been able to provide WFLA-TV with video for airing on its newscasts.

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

The pooling of news-gathering resources has increased the output of news content and has allowed the reporters at the three Tampa outlets to build on each other's "scoops" to present various angles of the same story. WFLA-TV's and TBO.com's full access to *The Tampa Tribune*'s archives and research desk has also allowed these electronic outlets to bring more depth and perspective to their coverage of news and information. In return, *The Tampa Tribune* has gained faster access to breaking news and valuable opportunities for branding its product in a highly-competitive, two-newspaper market. Finally, by working together, the three outlets have gained better access to political candidates and government officials. Together, they now conduct their own joint polls, hold town hall meetings, and organize other community events, such as health fairs and community telephone banks that would not have been feasible without common ownership. .

Last year's comments listed several ways the convergence efforts were benefiting the Tampa outlets themselves and the community they serve. WFLA-TV had recently been recognized by the Pew Charitable Trust's Project for Excellence in Journalism as providing the best television journalism in the Tampa-Bay region; and local polls of Tampa-Bay area residents had found that a majority of the respondents believed that convergence had improved the quality of news coverage and had a positive effect on news presentation in the Tampa market. *The Tampa Tribune* had begun to experience a circulation increase within its core geographic area, and TBO.com had become the most visited Internet site in the Tampa-Bay region.

One year later, The News Center continues to experience great success with the convergence model:

- Media General has increased the number of full-time news professionals in Tampa, despite the very serious advertising recession.

- While daily newspapers across the country generally have been suffering declining newspaper circulation, the *Tribune*'s circulation again *increased* in total and in its core market of Hillsborough County in 2002.
- While many television stations were losing viewers, WFLA-TV's 11 p.m. newscast ratings built on 2001's increases by rising once again in 2002.
- Despite a downturn in the economy, WFLA-TV has maintained the same number of local newscasts and has replaced a syndicated program with a new, locally originated entertainment/variety program at 10:00 a.m. on weekdays.[43]

Equally significant, Media General's three Tampa outlets continue to gain recognition in the journalistic community, receiving an extensive list of journalistic awards as shown by Appendix 4.

As in Tampa, the newspapers and television stations in each of Media General's other five convergence markets maintain separate news and editorial staffs. Nonetheless, despite the fact that they do not have the advantages of co-location as in Tampa, the news staffs at these co-owned properties regularly share story ideas by e-mail, fax, and telephone, and they publicize each other's news content. All of Media General's convergence markets have made progress in providing their television cameramen with equipment that allows the newspapers to retrieve newsprint-quality photos, and they are equipping the print photojournalists with digital video cameras to provide the television stations with video. The newspapers make their archives available to the television stations.

Roanoke/Tri-Cities. Over the past year, in the Roanoke market, Media General's television station and two daily newspapers in the DMA continued to expand their convergence

[43] 2002 Gentry Statement at 4.

efforts. During the year, the television reporters routinely wrote stories for the newspapers while the newspapers' reporters provided content for the website and the television stations' newscasts and also appeared on-air to be interviewed about them. In the Tri-Cities market, the staffs of Media General's television station and daily newspaper continued to work on a daily basis, sharing information for stories and video images, engaging in long-range planning, and cooperating on joint news and sales projects.

Florence. In Florence, South Carolina, Media General's television station and daily newspaper there shared coverage of a number of major news stories in 2002, including initiation of new local airline service, expansion of a local plant, and the shooting of a sheriff's deputy. Together, they produced a seven-part series about the seven worst local traffic intersections. Many of these projects, the outlets believe, could not have been covered if they had tried to do so alone. The Florence newspaper also distributed a hurricane tracking chart that both partners produced. The television station promoted the availability of the chart in the newspaper on its newscast the night before its distribution. The chart helped many local citizens monitor potentially devastating storms in the area during hurricane season.

Perhaps the Florence outlets' most notable achievement in 2002 was the extensive effort they made to cover local campaigns and elections and provide debate among candidates. In April 2002, the two outlets worked with a student group at a local university to sponsor a debate among gubernatorial candidates in the Republican primary, the first debate of the campaign and the first in which all seven party candidates participated. In October 2002, the outlets sponsored a debate among the Democratic and Republican gubernatorial candidates. In both debates, the outlets encouraged their readers and viewers to submit questions to be used in the debate. In November 2002, the outlets established a joint "election results" desk to which their reporters

telephoned results, enabling both improved timeliness and an expansion of their election coverage. Both Florence outlets also launched a cooperative effort to stage a "town hall" community meeting called "Our Town Hartsville," and they each coordinated on a six-part series covering the meeting.

Columbus. During 2002, the communities in the Columbus, Georgia DMA also benefited greatly from the joint efforts of Media General's commonly-owned newspaper and television station in that market. Media General's facilities in the Columbus, Georgia DMA were active in efforts intended to facilitate civic discourse and debate. The two outlets jointly hosted a "Political Forum" on April 24, 2002, to bring together a cross-section of local citizens to discuss topics of importance to them and to ascertain issues they wanted political candidates to address. Both the television station and the newspaper carried the "Political Forum" extensively and also used the information they gathered there to guide joint editorial board meetings with local and state candidates. On the night of an election on June 4, 2002, the newspaper's reporters not only wrote stories for the newspaper but also provided the television station with constant updates that allowed the broadcast of up-to-the-minute election results every half hour.

In August 2002, the newspaper staff covered the trial of a man who was eventually convicted of murdering his wife and child. The newspaper's reporters provided details to the television station for on-air updates, including breaking news when the man was sentenced to death. The two outlets also teamed up to promote and present a "Hurricane Watch" project, and they continued their joint coverage of the Iron Bowl football game, as had been the case in 2001. They continued their joint sports activities in February by hosting "Signing Day 2002," the second annual banquet honoring local area high school football players, coaches, and families on

National Signing Day. By bringing together 15 area players, the two outlets were able to improve their annual coverage of local angles related to National Signing Day.

Panama City. In Panama City, Florida, Media General's smallest convergence market, its television station continued to work closely not only with its daily newspaper in the DMA but also with two daily newspapers Media General owns in the adjacent Dothan, Alabama DMA. In May 2002, the television station, the three newspapers, and their websites jointly produced a special section on a locally controversial proposal to construct an I-10 highway connector between Florida and Alabama. One of the Dothan papers published the 20-page special edition in print and on-line and included stories from its own reporters as well as reporters from the television station and the other two newspapers. The television station also featured an on-air story on the subject by a reporter from the Dothan newspaper.

The newsroom staffs of the Panama City television station and newspaper daily discuss developing news stories to improve the depth and timeliness of local reports. In one recent example, on November 6, 2002, the television station first learned about a breaking news story involving a bank robbery from a report phoned in by a member of the newspaper's staff. The two outlets also worked together on a story delving into accusations against a local sheriff's deputy for sexual misconduct with a young girl. Despite efforts from local government officials to prevent the story's dissemination, the television station's and newspaper's reporters working together used their combined resources and clout to ensure its presentation to local residents.

The Panama City DMA outlets' carriage of local weather also illustrates their convergence efforts. The newspaper's daily weather package is produced by Media General's Interactive Media Division based on information from the television station's meteorologists. Both the newspaper and television station jointly produce a hurricane tracking map that includes

basic information about hurricanes, a list of telephone numbers to call for help, and pointers on developing a severe weather survival plan.

As noted in Media General's initial comments in the *2001 Proceeding*, the fact that convergence has succeeded in smaller markets does not come as a surprise to Professor Gentry. In addition to Media General's experience, his statements both last year and this year provide numerous other examples in which convergence has brought enhanced news quality and other benefits to communities, large and small.[44] As Professor Gentry notes, the size of the market is irrelevant. Rather, the critical ingredients for successful implementation of full convergence are co-ownership and strong leadership,[45] and it is for these reasons that Media General is able to achieve the benefits of full convergence at all of its co-owned locations, large and small.

2. Media General's Convergence Markets Continue To Benefit From a Wide Variety of Media Outlets and Owners.

For its comments in the *2001 Proceeding*, Media General spent extensive resources and many weeks compiling a detailed catalog of the media outlets and owners in existence in each of its six convergence markets.[46] These results demonstrated conclusively what Media General already believed to be the case: each of its markets benefits from a profusion of outlets and owners offering local news and content in various types of print publications and over television broadcast stations, radio broadcast stations, cable television systems, television translators, low-

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[44] "List of Known Media Convergence Efforts as of December 2002," attached to 2002 Gentry Statement; 2001 Gentry Statement at 7-10.

[45] *Id.*

[46] Media General Comments in *2001 Proceeding* at Appendices 9-14. At the beginning of each of these appendices, Media General placed a summary of the media outlets included in each of the six convergence markets. The summary presented totals on the availability of outlets of the following types: television (commercial and non-commercial), radio (commercial and non-commercial), LPFM, cable, direct broadcast satellite ("DBS"), print, wireless cable, and the Internet.

power television and radio stations, and Internet sites.[47] (While residents in all of its markets also can receive service from DBS systems and those in several markets can also subscribe to wireless cable systems, these services typically do not provide original local content.)

Over the past few months, in order to ensure the accuracy of this material, Media General has painstakingly updated this material.[48] Except in the case of the Internet, as discussed below, the large number of outlets and owners documented last year has remained essentially constant, with only a few minor changes, as shown in the summary pages included at the front of each of Appendices 9-14. This updated information reconfirms that each of Media General's six convergence markets has experienced the same type of explosive media growth over the last few years that has characterized the United States' media markets overall, as documented in the *2001 NPRM* and the *2002 NPRM*.[49] As is also true of the national scene, diversity in each of Media General's convergence markets has been enhanced greatly by the entry of numerous new services that were not present in 1975.

Of all these new media entrants, the Internet has shown the greatest growth over the last year. Nonexistent when the newspaper/broadcast cross-ownership ban was adopted in 1975, the Internet has grown rapidly every year over the last decade, bringing new access to national and

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[47] At pages 21-26 of its comments in the *2001 Proceeding*, Media General discussed these results service-by-service. Media General Comments at 21-26. Rather than repeating this discussion, Media General specifically directs the reader to it, so as not to lengthen these comments unnecessarily.

[48] Appendices 9-14 hereto. Media General has also updated several charts from last year's comments that summarized data from all six convergence markets comparing on a temporal basis the growth in television stations to the increase in cable penetration, the growth in radio outlets to the number of owners, and the growth in radio outlets to the number of radio formats. With the exception of the 2002 Gentry Statement, Media General has been able to keep the number assigned to all of its appendices the same as the numbers in the Media General Comments. *See* Appendices 6, 7A, and 7B hereto.

[49] *2002 NPRM* at ¶¶ 24-28; *2001 NPRM* at ¶¶ 9-13.

numerous local information sources. The last year was no exception. Since Media General prepared its 2001 market summaries, such sites have significantly multiplied in each of the six markets.[50] At both the local and national news levels, this variety of information available over the Internet is so diverse and extensive that it approximates, from an information standpoint, the establishment of multiple newspapers in each of Media General's markets.[51]

Combined with the proliferation since 1975 of traditional and other new service entrants, the multiplicity of locally generated Internet sites -- both general in nature and of interest to niche audiences -- assures that any Commission concern over ownership and viewpoint diversity will be met. As was true last year, Internet sites remain very inexpensive and quick to establish, and, once established, are relatively inexpensive to maintain.[52] Given the ease of entry and low barriers to the provision of continued service, economies of scale become unimportant, and profusion is further guaranteed.

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[50] Indeed, there is no way in which Media General's work could ever result in an exhaustive and complete list. The large numbers shown in the summary sheets and the lists of specific Internet sites in Appendices 9-14 reflect the additional sites Media General was able to add to last year's list after conducting approximately fifteen hours or so of research. With more work, the totals could have easily trebled or quadrupled.

[51] The catalogue of local Internet sites in each of Appendices 9-14 has been organized in a manner that shows how it comes very close to duplicating the various substantive sections of a newspaper. Media General even found a local crossword puzzle site in Roanoke. Appendix 10 at "Internet Sites in Converged Markets, 2002, Table of Contents," at No. 13, Miscellaneous.

[52] For example, Yahoo offers a full-service package that includes domain name registration, web site creation and hosting facilities, and 10 e-mail accounts to match the domain name registration. This service costs $15.00 for set-up and $11.95 a month to maintain. A site can be established within minutes. *See, e.g., Yahoo! Website Services,* at http://website.yahoo.com (last visited Dec. 31, 2002); *Create-a-Website,* at http://createawebsite.net/hosting (last visited Dec. 31, 2002) (offering set-up for $25.00 and hosting for $14.95 a month).

The Internet is also beginning to emerge as a very important medium of choice for news and information.[53] In fact, "a number of Internet users get political news online that they cannot find elsewhere."[54] Internet users report a decline in television viewing and use of newspapers.[55] Another recent study shows that Internet users with broadband access, as opposed to dial-up service, spend even more time on-line -- an average of one hour and 15 minutes per day.[56] When

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[53] The Pew Internet and American Life Project, an initiative of the Pew Research Center for the People and the Press, found in a study released late last month that 69 percent of Americans "say they expect to find reliable, up-to-date news online." John B. Horrigan, *Counting on the Internet,* Pew Internet & American Life Project at 15 (Dec. 29, 2002), *available at* http://www.pewinternet.org/reports/toc.asp?Report=80 (last visited Dec. 31, 2002). *See also More Folks Turning to Web for Attack News: TV is tops but Internet Gains, Surpassing Radio, available at* http://www.medialifemagazine.com/news2001/oct01/oct08/3_wed/news5wednesday.html (last visited Dec. 31, 2002). The Pew Research Center for People and the Press also found that, when presented with a hypothetical attack on the United States, "[a]s many Americans would go to the Internet for more information on a terrorist attack as would choose network TV." *Internet Sapping Broadcast News Audience,* Pew Research Center for the People and the Press, *available at* http://people-press.org/reports/display.php3?ReportID=36 (last visited Dec. 31, 2002). For financial breaking news, eight times as many Americans would choose the Internet over network television. *Id.*

[54] John B. Horrigan, *Counting on the Internet*, *supra* note 53 at 15.

[55] A Pew Internet & American Life Project research study released March 3, 2002, shows that 31 percent of Internet users have decreased their television watching and 21 percent report a decline in newspaper use. John B. Horrigan, *Getting Serious Online*, Pew Internet & American Life Project, at 3 (March 3, 2002), *available at* http://www.pewinternet.org/reports/toc.asp?Report=55 (last visited Dec. 31, 2002).

[56] Jane Weaver, *High-Speed Internet Usage Soars; Broadband Bypasses Dial-Up for First Time,* MSNBC, *available at* http://www.vicarnetworks.com/documents/High-speed%20Internet%20usage%20soars.mht (last visited Dec. 31, 2002).

Another similar report has found,

> About one-quarter of the online population looks for news on the Net on a typical day, which is less than half the rates at which internet users watch TV news on a daily basis (59%). However, the faster the Internet connection, the smaller is the gap between daily newsgathering on line and on television. About 60% of Internet users with high-speed home connections watch a TV news program on a typical day, while 43% of broadband users get news on line on a typical day.

Internet users fail to find a specific news item for which they are looking on-line, a recent study has found that "[c]able TV comes out ahead, with 34% saying they would turn to a cable TV news program, followed by 30% who say they would consult a newspaper. About one in six (15%) say they would look to Network TV news, 5% said the radio, and 11% would stop looking altogether."[57]

In short, any speculative and hypothetical concern that the FCC may have had in 1975 about the need to protect diversity through adoption of the newspaper/broadcast cross-ownership ban has been quashed by the advent of these new technologies, particularly the Internet. The new technologies ensure that the Commission's concern over the availability of divergent and antagonistic viewpoints will be met. Because of the proliferation of these technologies, particularly the Internet, the FCC has no justification for refusing to repeal completely the newspaper/broadcast cross-ownership ban.

III. Recent Court Decisions Further Compel Repeal of the Newspaper/Broadcast Cross-Ownership Rule.

In the *2002 NPRM*, the Commission seeks comment on the effect of Section 202(h) and its interpretation in the *Fox* and *Sinclair* decisions on the Commission's current review of its media ownership rules.[58] As shown below, Section 202(h) establishes a more exacting standard for retention rather than promulgation of the FCC's rules. Under this new higher, more stringent, and clearly deregulatory standard, the Commission cannot continue to justify retention of the newspaper/broadcast cross-ownership rule. Even if the courts should ultimately hold that Section 202(h) merely establishes the same standard for repeal or modification or for adoption of

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John B. Horrigan, *Counting on the Internet*, *supra* note 53 at 15.

[57] *Id.*

[58] *2002 NPRM* at ¶ 18.