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

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| In the Matter of | ) | |
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| 2006 Quadrennial Regulatory Review-<br>Review of the Commission's Broadcast<br>Ownership Rules and Other Rules Adopted<br>Pursuant to Section 202 of the<br>Telecommunications Act of 1996 | )<br>)<br>)<br>)<br>) | MB Docket No. 06-121 |
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| 2002 Biennial Regulatory Review -<br>Review of the Commission's Broadcast<br>Ownership Rules and Other Rules<br>Adopted Pursuant to Section 202 of<br>The Telecommunications Act of 1996 | )<br>)<br>)<br>)<br>) | MB Docket No. 02-277 |
| | ) | |
| Cross-Ownership of Broadcast Stations<br>and Newspapers | )<br>) | MM Docket No. 01-235 |
| | ) | |
| Rules and Policies Concerning Multiple<br>Ownership of Radio Broadcast Stations<br>In Local Markets | )<br>)<br>) | MM Docket No. 01-317 |
| | ) | |
| Definition of Radio Markets | ) | MM Docket No. 00-244 |

# Comments of
# Communications Workers of America
# The Newspaper Guild/CWA
# National Association of Broadcast Employees and Technicians/CWA

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**SUMMARY**

The Commission's broadcast media ownership rules are based on the First Amendment principle that the widest possible dissemination of information from diverse and antagonistic sources is essential to public welfare. As the Commission has repeatedly stated and as the Courts have consistently confirmed, common ownership of media reduces viewpoint diversity and competition. Most recently, the Third Circuit Court of Appeals ("Third Circuit Court") in *Prometheus v FCC* affirmed the authority of the Commission to regulate media ownership to foster viewpoint diversity, local identity, and prevent undue concentration of economic power. The Third Circuit Court acknowledged that structural rules limiting concentrated ownership of the media are necessary to protect and promote the free and vibrant press that is so vital to our democracy.

Yet, the Third Circuit Court in *Prometheus* remanded to the Commission the specific rules adopted in the *2002 Biennial Review* that seriously weakened limits on the number of media outlets that one company could own in a single market. In light of the Commission's goals to promote viewpoint diversity, competition, and localism, the Third Circuit Court rejected the *2002 Biennial Review* rules that would have permitted one company to own as many as three television stations, a newspaper, and multiple radio stations in the same local community.

This proceeding provides the Commission the opportunity to get it right this time. Getting it right begins with a rigorous and accurate analysis of the local media market for news and information. By any measure, that market is already a highly concentrated one. Despite the advent of cable, satellite, and the Internet, the daily newspaper and the handful of local television newscasts continue to be the dominant

means by which Americans get news and information about their local communities. About two-thirds of Americans get their news from television and about half read the daily newspaper. In contrast, only the largest markets have local cable news shows, which are often owned by a broadcast station or network, and one-quarter of all Americans still do not have Internet access at home. Internet news sites are not independent sources of news and information, but rather serve as alternative distribution platforms for the content produced by newspaper, television, radio, or wire services.

Newspaper and television markets are highly concentrated. The top three or four local broadcast television stations have upwards of 80 percent of local television market share in all but the largest urban areas. Most cities are one-newspaper towns; readers have a choice among daily newspapers in only a handful of metropolitan areas.

Relaxation of TV and radio ownership limits over the past decade has accelerated the pace of media consolidation and concentration that, in turn, has facilitated a decline in both the quality and quantity of local news, information, and entertainment programming. Studies of local radio markets illustrate that concentration has resulted in less diversity, higher advertising prices, and less local content. As a result of relaxed duopoly rules, the number of television outlets has also declined, leading to more commingling and co-branding of news operations at commonly owned stations, further reducing viewpoint diversity. As a result of concentration of ownership driving corporate owners to focus on ever higher profits, television stations and newspapers devote fewer resources to newsgathering and in-depth investigation and analysis, as staff cuts further threaten serious newsgathering.

Media owners claim that relaxation of ownership rules will allow them to realize “synergies” from joint operations. While common ownership of media properties may enhance efficiencies, the

Commission's charge is to protect and enhance media diversity, competition, and local identity—not efficiency. CWA journalists and broadcast technicians who work at commonly owned local newspaper/broadcast combinations and at commonly-owned local television duopolies report merging of news operations, cross-promotions, and less competition and differentiation in newsgathering and entertainment programming.

Media owners are crying wolf when they claim that they need to merge to survive. In fact, newspapers and local television stations continue to earn healthy profits, in the range of 20 percent for newspapers and 40 to 50 percent for local television stations. These are valuable properties. In 2005, 111 daily newspapers changed hands in 23 separate transactions totaling $3.09 billion in sales. In just the first nine months of 2006, 119 television stations have been sold for a total value of $16.1 billion. As another indicator of the value capital markets place on media properties, price to earnings ratios in the printing and publishing and the broadcasting and cable TV industries are well above the average for the S&P 500 index.

Moreover, cross-ownership has not provided the boost to the bottom line that media owners promised. The Fox television duopoly and co-owned *New York Post* in New York City and the Tribune's commonly owned *L.A. Times* and KTLA-TV station in L.A., among others, have not earned the expected profits nor have they gained the audience share that their owners expected from common ownership. In short, local television and newspapers do not have to merge to survive and grow.

Rather, traditional media can ensure financial viability and stem the decline in readers and viewers with a strategic focus on quality and innovation. Media outlets are caught in a vicious cycle of decline which is largely of their own making. To boost profits, they cut staffing and resources. As the quality of the product declines, readers and viewers depart. To reverse this trend, newspapers and broadcasters must return to the basics: invest in a quality product that people want to read and to view.

Media owners must also invest in the Internet and other complementary – not competitive – digital platforms to increase revenues. To be sure, the Internet is transforming traditional newspaper and broadcast business models. The traditional media are just beginning to make the transition to the Internet age, using their Internet sites to gain readers, viewers, and advertising dollars. About 50 million adults check the news online on a typical day, going to a TV, newspaper, or web portal site. The decline in newspaper circulation is now being reversed by the number of people who read the newspaper online. Much of the revenue growth at traditional newspapers comes from online advertising. Digital television with its additional channel capacity provides new revenue and programming opportunities for broadcasters. As the media invest in online platforms and discover new business models, they will find that their traditional strength in newsgathering combined with innovative use of the new platforms will stand them well with both the public and advertisers.

In sum, the Commission need not, indeed must not, sacrifice the goals of diversity, competition, and local identity in the media, but must preserve and protect those goals through strong structural ownership limits. There is overwhelming evidence to support retention of the newspaper/broadcast cross-ownership rule, and maintenance of strong structural limits on the number of television and radio stations one company can own in a single market.

In the *2002 Biennial Review*, the Commission replaced the newspaper/broadcast cross-ownership rule with a cross-media limit. The Third Circuit strongly criticized the Commission's methodology in adopting the Cross-Media Limit as irrational and inconsistent. While CWA continues to believe the newspaper/broadcast cross-ownership rule provides the strongest protection against undue concentration in a local media market for news and information, should the Commission adopt a single media ownership limit, the Third Circuit Court in *Prometheus* has provided the Commission with a methodological roadmap to follow in adopting such a limit. This requires an accurate assessment of consumer use of the various media types for local news and information, a calculation of actual market shares within media types, and a prohibition against any cross-media mergers that would increase the level of media concentration above the "moderately concentrated" level, as defined by the Department of Justice/Federal Trade Commission (DOJ/FTC) Horizontal Merger Guidelines. Where the Commission through rigorous analysis determines that the market is unconcentrated, cross-media mergers should be permitted with the burden of proof on the merging parties to demonstrate that the combination is in the public interest; and with the requirement that commonly owned media outlets maintain separate newsrooms and editorial staff.

This proceeding is of profound importance to the future of American democracy. It is imperative that the Commission adopt strong structural rules in order to protect and promote against further consolidation of the media into fewer hands, an outcome that would do serious harm to the free flow of ideas that is so essential to civic participation in our democracy.

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## I. INTRODUCTION

The Commission's media ownership rules must continue to promote the objectives of media diversity, competition, and localism. As the Supreme Court noted in 1945, the foundation of our democracy "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[1] As the Commission has stated repeatedly and as the Courts have continually affirmed, common ownership of media reduces viewpoint diversity.[2] Most recently, the Third Circuit Court in the *Prometheus* decision stated that "ample evidence supported [the Commission's] conclusion that ownership can influence viewpoint"[3] and therefore upheld the constitutionality of the Commission's conclusion in the *2002 Biennial Review Order* that "limiting common

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[1] *Associated Press v. United States,* 326 U.S. 1, 20 (1945) ("Associated Press").

[2] *See Sinclair Broadcast Group v. FCC,* 284 F.3d 148 (DC Circuit 2002) ("In *Sinclair,* the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in tum encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to service a legitimate government interest…" Notice of Proposed Rulemaking, *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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets;* MB Docket No. 02-277, MM Docket No. 01-235; MM Docket No. 01-317; MM Docket No. 00-244, Sept. 12, 2002 (adopted), 15 ("2002 Notice"). *See also Turner Broadcasting System v. FCC,* 512 U.S. 622, 662 (1994) ("Turner I") ("The Supreme Court has determined that 'promoting the widespread dissemination of information from a multiplicity of sources' is a government interest that is not only important, but is of the 'highest order,' 2002 Notice, 11 (quotation marks omitted); *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations,* 45 F.C.C. 1476, 1477 (1964), 3 ("The Commission has elaborated on the Supreme Court's view, positing that 'the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level," 2002 Notice, 14; *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets,* 16 FCC Rcd 19861, 19877 (2001), 37 ("Commission policy presumes that mu ltiple owners are more likely to provide 'divergent viewpoints on controversial issues,' which the Commission has stated is essential to democracy," 2002 Notice, 117); *FCC v. National Citizens Committee for Broadcasting,* 436 U.S. 775, 779 (1978) ("NCCB") ("It is unrealistic to expect true diversity from a commonly- owned station-newspaper combination. The divergency of viewpoints cannot be expected to be the same as if they were antagonistically run."); *Metro Broadcasting, Inc. v. FCC,* 497 U.S 547, 571 at n. 16 (1990); *Fox Television v. FCC,* 280 F. 3d, 1027, 1042, 1053 ("*Fox*"), *Turner Broadcasting System v. FCC,* 520 U.S. 622, 190 ("*Turner II*") (quoting *Turner I,* 512 U.S. at 662-63 ("governmental purpose of the highest order in ensuring public access to a mu ltiplicity of information sources", Notice 13, fn.96.)

[3] *Prometheus Radio Project, et al. v. F.C.C.* 373 F.3d 372 (2004) ("Prometheus"), 480 fn.26.

ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity.'[4] Structural rules that protect and promote diverse ownership are essential to preserve and promote the free flow of ideas and information that is so essential to our democracy.

The Communications Workers of America (CWA) represents more than 700,000 workers in many industries, including telecommunications, broadcasting and cable, publishing, manufacturing, airlines, health care, and the public sector. Our members depend upon the Fourth Estate—a free and vibrant press—for the information, investigation, and analysis they need to participate as informed citizens in public affairs. And they depend upon a diverse media to learn about the beliefs and experiences of different people in their local communities, across the country, and outside our borders in order to develop the understanding necessary to participate intelligently and empathetically in our increasingly interdependent world.

CWA represents more than 100,000 people who work in the various media industries as journalists, technicians, printers, online writers and producers, and customer service and sales representatives. They know first-hand what is happening in their industries. They witness a decline in news quality, diversity, and competition that is a direct result of the economic pressures from the enormous consolidation and concentration of media ownership that has taken place. They find it harder to practice their craft in an environment of reduced staffing and fewer resources. They concur with the consensus emerging among those who study the media that there is a serious erosion in the quality of journalism, a

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[4] *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 ("2002 Biennial Review Order")* MB Docket 02-277, July 2, 2003 (rel), 26. *See 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* (2003) "*2002 Biennial Review Order"), aff'd in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.* 373 F.3d 372 (2004) ("Prometheus").

tendency captured in the title of a recent book by two *Washington Post* editors: *The News About the News: American Journalism in Peril.*[5]

CWA members who work in the media industries know from daily experience that ownership matters to quality and viewpoint diversity. They know that who owns the media outlet is the final arbiter as to what gets printed, broadcast, or posted on an Internet news site. They are convinced that relaxation of media ownership rules that would permit further consolidation and concentration of ownership into fewer hands will reduce their professional ability to provide high-quality news from diverse and antagonistic sources.

In this proceeding, the Commission seeks comment on how to address the issues raised by the opinion of the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC*.[6] In that decision, the Third Circuit Court affirmed the power of the Commission to regulate media ownership, but remanded to the Commission the specific numerical limits promulgated in the *2002 Biennial Review Order* for local television ownership, local radio ownership, and cross-ownership of media within markets, noting that the specific limits were not supported by reasoned analysis.[7] In addition, the Third Circuit Court instructed the Commission to consider the impact of its ownership rules on minority ownership. In its *Further Notice,* the

[5] Leonard Downie Jr. and Robert G. Kaiser, *The News About the News: American Journalism in Peril,* New York: Alfred A. Knopf, 2002.
[6] Further Notice of Proposed Rulemaking ("Further Notice"), *In the Matter of 2006 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets*; MB Docket No. 06-121, MB Docket No. 02-277; MM Docket No. 01-235, MM Docket No.01-317, MM Docket No.00-244, July 24, 2006 (rel), 1 ("*2006 Quadrennial Review*"). *See 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* (2003) "*2002 Biennial Review Order"), aff'd in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.* 373 F.3d 372 (2004) ("Prometheus").
[7] *Further Notice,* 29.

Commission also seeks comment on the impact of structural limits on minorities, women, and small businesses.[8]

As a first matter, CWA believes that the evidence strongly supports retaining the current local media ownership rules as necessary to achieve the important policy goals of diversity, competition, and localism. The existing structural limits protect against further concentration in an industry characterized by concentrated vertical ownership and consolidated local ownership. In particular, CWA believes that the current rule barring common ownership of a newspaper and television outlet in the same market is essential to preserve diversity and competition in local news, since most local communities have only one daily newspaper and only three or four broadcast stations. Allowing one of these four or five major news outlets to merge would do serious harm to the already limited diversity of ownership among major sources of local news and information. Moreover, the current rule provides the Commission the flexibility to issue a waiver if it determines (as it has on a number of occasions) that a cross-media merger would serve the public interest.

However, should the Commission decide instead to construct a single local media ownership rule, CWA believes that the Third Circuit Court has outlined an appropriate methodology that the Commission should follow, one that would first require the Commission accurately and rigorously to assess consumers' use of different media types for local news and information, and second to analyze by market share media outlets within each media type. Any media cross-ownership limit should prohibit any merger that would increase the level of media concentration above the "moderately concentrated" level, as defined by the Department of Justice/Federal Trade Commission (DOJ/FTC) Horizontal Merger Guidelines. Where the Commission through rigorous analysis determines that the market is unconcentrated, cross-media mergers

[8] *Further Notice*, 5-6.

would be permitted with the burden of proof on the merging parties to demonstrate that the combination is in the public interest; and with the requirement that commonly owned media outlets maintain separate newsrooms and editorial staff in order to preserve and promote viewpoint diversity. This qualifier is modeled after the Newspaper Preservation Act, an anti-trust exemption passed by Congress in 1970 to preserve two newspaper voices in a local community where one newspaper is failing. While the Newspaper Preservation Act allows common ownership and joint operation of business and printing functions, it requires that "there shall be no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined."[9]

## II. OWNERSHIP RULES ARE NECESSARY TO PROTECT AND PROMOTE VIEWPOINT DIVERSITY

### A. THE COMMISSION AND THE THIRD CIRCUIT COURT GOT IT RIGHT: LIMITING COMMON OWNERSHIP OF MEDIA OUTLETS PROMOTES VIEWPOINT DIVERSITY

The Commission made abundantly clear in the *2002 Biennial Review Order* and the Third Circuit Court concurred in the *Prometheus* decision that viewpoint diversity is a paramount objective of the Commission because "the free flow of ideas under-girds and sustains our system of government."[10] Further, the Commission concluded and the Third Circuit Court in *Prometheus* agreed that limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity. The Commission emphasized that a large number of independent owners will generate a wider array of viewpoints in the media than would a comparatively smaller number of owners. Media owners have the ability and power to affect public discourse through their coverage of news and public affairs.[11] Substantial

[9] U.S. Code Title 15. Sec. 1801-1804. Sec. 3(2).
[10] *2002 Biennial Review Order*, 32.
[11] The Commission concluded that its own study designed to demonstrate a lack of connection between ownership and

evidence supports the view that reporters and employees of broadcasting companies alter their news coverage to suit their companies' interest and that there is a meaningful connection between the identity of media outlet owners and the content delivered via their outlets.[12] On this basis, the Commission reaffirmed its "longstanding conclusion that regulating ownership is an appropriate means to promote viewpoint diversity"[13] and that "independent ownership of outlets by multiple entities in a market contributes to our goal of promoting viewpoint (diversity)."[14]

The Commission and the Third Circuit Court in *Prometheus* accepted the overwhelming evidence provided by CWA and other citizen commentators in the *2002 Biennial Review* proceeding regarding the ways in which ownership influences and shapes news reporting.[15] The Commission conclusively rejected

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viewpoint – the Pritchard study (FCC Study #2) – contained a methodological flaw. *2002 Biennial Review Order*, 26. *See also* Dr. Dean Baker, "Democracy Unhinged: More Media Concentration Means Less Public Discourse; A Critique of the FCC Studies on Media Ownership," CWA Comments, *2002 Biennial Review,* Appendix A and 43-5 ("Baker"). CWA and CFA introduced a much more rigorous study by political scientists Kim Fridkin Kahn and Patrick J. Kenney that conclusively demonstrated that newspaper coverage of campaigns is affected by editorial positions. *See* CWA Comments, *20002 Biennial Review*, 44-46, Appendix C; *2002 Biennial Review Order* citing CFA Comments at 41 (quoting Kim Fridkin Kahn and Patrick J. Kenny, *The Slant of the News: How Editorial Endorsements Influence Campaign Coverage and citizens' Views of Candidates,* American Political Science Review, 96 (2002) at 381.).

[12] *2002 Biennial Review Order.*, 26-30.

[13] *Id*., 30

[14] *Id*. 39.

[15] CWA journalists provided four stories. *From a transportation reporter at a large Midwestern daily newspaper.*: "Several years ago, I did a story on the financial condition of the local regional airline, using unpublished U.S. Department of Transportation data. The data showed that the airline had suffered heavy losses. After the story appeared, the airline owner pulled all his advertising in our newspaper, stopped distributing the newspaper on the airline flights, and demanded a letter of apology. As a condition for resuming advertising in the paper, the airline owner demanded and my editor agreed that I would never be allowed to write a story about this particular airline. This condition has continued to this day." *From a reporter at a mid-sized Midwestern daily newspaper.* "I did a profile of the new chairman of the local port authority. I discovered the new chairman had some legal problems in the past. After the chairman called to object to mentioning this in the story, my editors re-wrote the story to downplay these problems. I have since learned that the publisher and editor have social relationships with the new chairman." *From a reporter in a medium-sized city working for a newspaper where the owner also owns the local television station:* **"**When the Nielsen TV ratings come out, I know I am expected to write a big story if the co-owned station's ratings are good and to bury the story if the co-owned station's ratings are down. Or another example. A few years ago, I ran a survey asking readers what they thought of local television news programs. My general manager told me that next time I do something that might affect our sister station, I better check with him first. I got the message—I haven't done a similar project since then." *From a reporter covering economic development and transportation for a newspaper in a Midwestern city:* "Every reporter is aware of the owners' interests. The CEO of our newspaper started a business coalition for economic growth. I knew that I was expected to give the coalition lots of favorable coverage. I've been here six years, I knew that, although no words were

media owners' arguments that common ownership does not affect viewpoint diversity.[16] Among other issues, CWA expressed special concern about media neglect of labor issues,[17] and the all-too-frequent refusal by media owners to air ads paid for by labor organizations because they might antagonize advertisers. These experiences underscore the importance of a multitude of media outlets under diverse ownership in a local market.[18]

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spoken." CWA also cited a Pew Research Center study finding that 48 percent of journalists believe corporate executives exert a fair or great amount of influence over news content; a Project on Excellence in Journalism study in which 53 percent of news directors reporter that advertisers pressure them to kill or run stories; and literature review and citations by Prof. Edwin C. Baker and Ben Bagdkian. CWA Comments, *2002 Biennial Review,* 30. *See also 2002 Biennial Review Order*, 24-5, citing Pew Research Center survey which found that 41 percent of reporters and executives employed by the four broadcast networks said they "purposely avoided newsworthy stories and/or softened the tone of stories to benefit the interests of their news organizations" and other evidence provided by UCC, Consumer Federation of America et al, and the Writers Guild.

[16] *2002 Biennial Review Order,* 29.

[17] Media coverage of union and workers' issues has declined precipitously over the past several decades. This includes a dramatic drop in the number of labor editors, and a finding by the media watchdog group, Fairness and Accuracy in Reporting (FAIR) that the evening news programs of CBS, ABC and NBC recently devoted only two percent of their total air time to workers' issues, including child care, the minimum wage and workplace health and safety. Few newspapers have a labor beat reporter, much less one who focuses on workplace issues. CWA Comments, *2002 Biennial Review,* 33, citations from Matt Witt, "As media turn away, the working class has become all but invisible, *The Guild Reporter,* Oct. 22, 1999, 4-4; Frank Swoboda, "Labor coverage? Forget about it!" *The Guild Reporter*, Oct. 22, 1999, 4-5. Kevin Drum, "The Disappearing Labor Beat," *Washington Monthly Online,* Oct. 11, 2006.

[18] Examples of media owners' refusal to air CWA ads include the following: 1) In August 2006, two of the largest radio stations in Boston, Ma., WEEI and WRKO, owned by Entercom, rejected radio spots informing the public about the labor situation at the *Boston Globe*. The corporate owner of the *Boston Globe* is the New York Times Company, which is also one of the major owners of the Boston Red Sox. Entercom holds rights to the name and logos of the Red Sox. 2) In May 2006, Washington Post-owned radio stations in Washington, D.C. refused to air radio spots educating the public about a labor dispute involving CWA-represented mailers at *The Washington Post.* The local cable provider, Comcast, has also refused to air ads. 3) In January 2006, WBEE and WBZA in Rochester, NY turned down radio spots concerning the labor situation at a local manufacturing facility represented by the IUE/CWA, even though the stations did not dispute the accuracy of the information in the spots. 4) In 2005, virtually every radio station in York, Pa. refused to air ads critical of the local newspaper monopoly, which is a big advertiser. 5) In 2002, CWA attempted to place radio ads on several radio stations in Cleveland, Oh. which informed the community about a labor issue at a local TV station. The stations refused to run the ads after the corporate parent of the TV station that was also an advertiser on the local stations objected. 6) In 1999, during a newspaper lockout, CWA attempted to run positive non-confrontational radio spots on behalf of The Newspaper Guild, but every major station in the city turned them down, except one small African-American owned station. 7)During a lockout by a broadcast network in 1998-99, the ABC radio network refused CWA's radio spots, as did virtually every other radio station or network we tried to buy—a matter of broadcaster solidarity against unions. 8) In 1997, in a dispute with another telecommunications company, the *Dallas Morning News* refused to run a print ad telling the CWA side of the story. 9) In 1997, during an organizing campaign at a major U.S. airline, CNN refused to air CWA TV spots on their closed circuit airport lounge telecasts that provided positive messages about CWA as an experienced customer service union. The airline pressured the media buyers not to run them. 10) In 1997, CWA ran radio ads in Little Rock, Ar. during contract negotiations with a telecommunications company, but the stations stopped running them after a telecommunications company executive called the stations and threatened to pull company advertising. 11) In 1995-96, the

The Third Circuit Court concurred with the Commission in its finding that ownership influences viewpoint, that more owners generate more viewpoint diversity, and that regulation of media ownership serves the substantial government interest in promoting diversified mass communications in a democracy.[19]

## B. CO-OWNED NEWSPAPER/TELEVISION COMBINATIONS REDUCE VIEWPOINT DIVERSITY

Publishers and broadcasters have argued that relaxing ownership rules would allow media owners to realize "synergies" that would provide greater resources to expand local news and information reporting. While these so-called synergies may increase efficiencies, efficiency is not the policy goal—diversity is. And the evidence demonstrates that combined television stations or cross-owned newspaper/broadcast combinations reduce the number of independent voices in a local media market.

CWA comments in the *20002 Biennial Review* reported on a survey of existing co-owned newspaper and broadcasting properties undertaken by CWA in an effort to assess the impact of cross-ownership on media voice. In this study, CWA interviewed union members employed in newsrooms in four co-owned properties that had been grandfathered when the cross-ownership rule was promulgated in 1975. Respondents provided examples of the co-mingling of news sources, reporting, and cross-promotion.

The *Milwaukee Journal Sentinel*, WTMJ-TV, WTMJ-AM and WKTI-FM in Milwaukee, Wi. are owned by Journal Communications. The Newspaper Guild/CWA ("TNG/CWA") represents the journalists at the *Milwaukee Journal Sentinel*. The CWA interviews reveal that there is now a remote WTMJ-TV camera in the *Journal Sentinel* newsroom so print reporters can appear on WTMJ-TV to describe their stories. Cross-promotion of stories is now common. Newspaper editors send top stories to

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NBC and CBS affiliates in Washington, D.C. and NBC and Fox affiliates in Philadelphia refused to air CWA television spots because the stations did not want to offend a big advertiser (a large telecommunications company).

[19] *Prometheus*, 401 n.26; 402.

the cross-owned television station, which in turn promotes the stories in the newscast and directs viewers to read the *Journal Sentinel* or the Journal-owned suburban weekly for more information. Other examples of commingling include a short newspaper column provided by the TV meteorologist and newspaper reporters (such as a business reporter) reporting on a story on TV.

Whatever other benefits co-ownership may produce for the parent company or even to the community, there is clear constraint of media viewpoint. While the newspaper reporters treat the TV newsroom as a competitor, the public views the paper, WTMJ (the voice of the *Milwaukee Journal*), and the radio as the same voice. Douglas Gomery of the University of Maryland School of Journalism describes how this situation created a serious conflict of interest. While the *Journal's* CEO and publisher sat on the commission making decisions about public funding of the Milwaukee Brewers baseball station, its radio station received lucrative revenues from broadcasting the Brewers' games, a relationship Gomery claims influenced reporting of the issue.[20]

In previous comments to this Commission, Gannett touts the commingling of news operations as an advantage of its ownership of *The Arizona Republic,* the state's largest newspaper and KPNX in Mesa, Az.:

> Through cross-ownership . . . newspaper reporters may have time to work on an element or dimension of the story television reporters would not have the ability to cover, and can talk about it on the air. The same reporters who appear on television can write for the newspaper or web site. The same video cameras that supply pictures for television newscasts can supply full motion video for online newspaper "viewers."[21]

[20] Gomery, 7.

[21] Comments of Gannett Co, Inc., *Newspaper/Broadcast Cross-Ownership,* Dec. 3, 2001, 9-10. Gannett acquired Central Newspapers, Inc. ("CNI"), Phoenix Newspapers, Inc. previously a subsidiary of CNI, which publishes *The Arizona Republic*, on August 1, 2000. It already owned KPNX, the NBC affiliate. Gannett has a temporary waiver for this arrangement pending KPNX's license renewal filing in 2006.

CWA represents the printers at the paper. As Gannett reports, there is a significant sharing of staff. More than 30 print reporters participate in KNPX newscasts and special programs. At the same time, KPNX reporters write special reports for print. All contribute to the web site Azcentral.com. KPNX's *12 News* stories are promoted in the newspaper, and vice versa. KPNX's *Call 12 for Action* problem-solving team has begun a bi-weekly column in print. Commingling of reporting and editorializing between the paper and television station staff range from political coverage, weather forecasting and sports coverage.[22]

At the co-owned Youngstown, Oh. paper *The Vindicator* and WFMJ-TV, the CWA interviews did not indicate any commingling of staff. However one interviewee told two troubling stories of how co-ownership affects coverage, as already discussed.[23] First, she said she was told that she was expected to give good coverage when the TV station received good Nielsen ratings but to check with the general manager/publisher of the paper if she wanted to criticize the station. Second, in the mid-1990s, she did a poll in the paper asking readers to rate aspects of the local TV news broadcasts, which turn out to be unfavorable to WFMJ. The general manager then told her that next time, she should check with him first. This and the Brewers' conflict of interest example illustrate one of the serious consequences of shrinking local media voices, especially where there is only one local newspaper: the loss of independent local media sources capable of generating critical editorials, opinions and reportage regarding local broadcast programming, or business interests tied to broadcasters, or politicians who favor such business interests.[24]

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[22] *Id.*, 10.
[23] *See* 33 *supra*.
[24] Gene Kimmelman, Co-Director, Washington Office, Consumers Union. Testimony Before the Senate Committee on Commerce, Science, and Transportation on Media Consolidation (July 17, 2001).

At the co-owned Scripps-Howard *Cincinnati Post* and WCPO-TV, there is some co-mingling of staff and cross-promotion, although the worst abuses are constrained because collective bargaining agreements require additional compensation if print reporters are required to appear on-air. However, there is increased cooperation between the co-mingled properties. The *Post* sends its schedule (summary of stories) that will appear in the next day's paper to WCPO and WCPO provides a summary of its spot news stories to the newspaper. A TV consumer reporter writes a column for the *Post*. As in Milwaukee, the journalists in the *Post* newsroom see WCPO as a competitor, but management cooperates in sharing sources and stories.

These examples provide compelling evidence that co-ownership reduces diversity by creating incentives to eliminate separate newsgathering operations in order to achieve efficiencies. It eliminates the competition that drives aggressive newsgathering. Outlets that would have competed for news sources and stories now share sources, assignments, staff, and editors.

Academic researchers who have studied converged newspaper/broadcast operations conclude that common ownership reduces competition in newsgathering. Researcher Jane B. Singer studied convergence at four news organizations in Dallas, Tampa, Sarasota, and Lawrence, Ks., concluding that the journalists find "convergence clashes with traditional newsroom values (of) professional competition." Journalists report they now cooperate across medium where they used to compete.[25] Michel Dupagne and Bruce Garrison's case study of newsroom convergence at Media General's Tampa News Center (home of commonly owned *The Tampa Tribune*, WFLA-TV, and the Tampa Bay Online service) found that the common platform has lead to "a declining sense of internal competition and conflict" between the newspaper and TV station. One

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[25] Jane B. Singer, "Strange Bedfellows? The Diffusion of Convergence in Four News Organizations," *Journalism Studies*,

Tribune senior editor is quoted as saying, "We used to compete against reporters at WFLA…but the strides that we've made as far as sharing resources and information – have come a long way."[26]

Media analysts argue that owners of converged newspaper and broadcast outlets have held back to some degree in realizing all their ambitions to merge their newsgathering operations to realize more extensive "synergies." These analysts contend that some media owners – whose commonly owned newspaper/broadcast combinations are visited by the Commission, researchers, and reporters – fear that if they commingled news operations more extensively at this time, the evidence would lead the Commission to a more restrictive rule. Newspaper analyst John Morton ascribed these motivations to the Tribune Company, which has newspaper/broadcast cross-owned outlets in Los Angeles, New York, and Hartford as a result of its Times Mirror purchase, plus an existing one in South Florida.

> We suspect Tribune Co. was leery of being aggressive about converging operation at the cross-ownerships until its ability to keep them remained in limbo.[27]

Common ownership of newspaper and broadcast properties violates the Commission's core policy objective to facilitate vibrant and diverse democratic discourse by the local news media.

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5:1 (2004), 3-18.

[26] Michel Dupagne and Bruce Garrison, "The Meaning and Influence of Convergence: A Qualitative Case Study of Newsroom Work at the Tampa News Center," *Journalism Studies,* 7:2, 2006, 237-255.

[27] John Morton, Morton-Groves Newspaper Newsletter, Oct. 19, 2006, 2.

### C. COMMON OWNERSHIP OF TELEVISION STATIONS IN THE SAME MARKET REDUCES VIEWPOINT DIVERSITY

Common ownership of television stations also reduces diversity. Under common ownership of local television stations (duopolies and triopolies), station owners are combining management, programming, and news operations. The National Association of Broadcast Employees and Technicians/CWA ("NABET/CWA") has direct experience with what happens when one company owns more than one TV station in the same market. The owner merges operations, slashes jobs, and reduces the quantity and quality of the news.

In the Commission's public hearing on media ownership in Los Angeles, NABET/CWA Vice-President James C. Joyce testified about the Los Angeles television market, which he noted is a poster child for broadcast media concentration.[28] Los Angeles has one television triopoly and three duopolies. NABET members work at many of these stations.

NBC owns three television stations in Los Angeles: KNBC and two Spanish-language stations KWHY and KVEA. NBC acquired the Spanish-language stations when it purchased Telemundo. Within a year of that purchase, NBC merged the stations into one facility in Burbank. They combined the technical operations, sales and marketing, and the newsroom. Ten percent of the workforce lost their jobs, most of whom were Spanish-speaking employees from Telemundo. The consolidation has now extended into nearby markets as KWHY-TV retransmits its programming to San Diego and Santa Barbara.

Before NBC bought Telemundo, each of the stations had a separate news operation. They were competitors. Now the news operations are commingled. Two assignment editors -- one for English-

[28] Remarks of James C. Joyce, Vice President, NABET/CWA, FCC Public Hearing on Media Ownership, Los Angeles, CA, Oct. 3, 2006, MB Docket No. 02-277, *2006 Quadrennial Review*. Mr. Joyce also provided testimony in the Public Forum Regarding Media Ownership rules, Columbia University Law School, New York City, NY, Jan. 16, 2003.

language KNBC and the other for the Spanish-language stations -- coordinate coverage, and send one crew to shoot video for all three stations. The two Spanish-language stations often use the same reporter who carries a four-sided microphone flag. The reporter displays the KVEA letters for the KVEA stand-up, and then flips the microphone to read the same exact script for the KWHY stand-up.

NBC is taking consolidation one step further. It is creating a “SuperDesk” to merge the assignment desks of KNBC, KVEA, KWHY, the NBC Network, and CNBC and MSNBC in the Burbank, Ca. news facility. As a result, NBC Universal will eliminate 700 jobs, representing five percent of its workforce.[29]

Fox owns two stations in Los Angeles: KTTV-channel 11 and KCOP-channel 13. Fox acquired this duopoly when News Corp. purchased ChrisCraft.[30] After the acquisition, the stations merged technical operations, cutting the number of technicians and engineers by 10 percent. Today, there is one General Manager, one News Director, and one assignment editor overseeing both stations. While one production crew sometimes covers the same story, KTTV and KCOP have done a better job than NBC in maintaining separate in-house production crews.

Univision owns KMEX-channel 34 and KFTR-channel 46. After the merger, the technical operations were combined, and 10 percent of the employees lost their jobs, including every technician at KFTR. More recently, KMEX cut staffing another 40 percent, and replaced union employees with non-union minimum wage workers, in violation of the union contract.

An investor group is now buying Univision. This purchase would create additional cross-owned

[29] Associated Press, “NBC to Cut 700 Jobs in Overhaul,” Oct. 19, 2006.

[30] Nationwide, Fox has nine duopolies: New York City, Los Angeles, Chicago, Dallas, Washington DC, Houston, Phoenix, Minneapolis, and Orlando. In New York City, Fox also owns the *New York Post*.

newspaper/TV properties in Los Angeles, Phoenix, and Fresno, and would result in violations of radio ownership rules in San Francisco, Dallas, and Houston. It would also affect a waiver in Puerto Rico and New York State. In addition, Univision has requested reauthorization of a permanent waiver to the network representation rule, which has allowed Univision to run its own internal ad agency, stifling competition and job creation among Hispanic small businesses.

Finally, Viacom-CBS owns both KCAL-channel 9 and KCBS-channel 2. These stations extensively commingle, sharing reporters and often airing the same news story. They even co-brand their news gathering vehicles in this market to highlight their single news operation. The KCBS and KCAL logos are featured side by side on their vehicles. KCBS has cut jobs, represented by another union, the International Brotherhood of Electrical Workers.[31]

NABET/CWA also has experience with the Fox television duopoly in New York City created after the Commission granted approval to News Corporation, the parent of Fox Television Stations, to purchase ChrisCraft Industries. As a result, Fox now owns two television stations in New York City (WWOR-TV channel 9 and WNYW-TV channel 5).[32] Prior to the merger, CWA represented the technicians at WWOR-TV in the New York market (the station is physically located in Secaucus, N.J.) and the technicians and news writers at KTTV in Los Angeles. To facilitate union representation at the merged properties, CWA and another union agreed that CWA would represent all technicians and news writers at the Fox properties in Los Angeles, while the other union would represent employees at the Fox properties in New York.

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[31] Viacom's CBS Los Angeles duopoly will move its KCBS-TV noon newscast to 11 a.m. so as not go to head to head with partner KCAL-TV. Dan Trigoboff, "All News is local," *Broadcasting and Cable*, Oct. 7, 2002.
[32] Fox also owns the *New York* Post in the New York City market under a permanent waiver of the newspaper/broadcast cross-ownership rule. Fox now has nine duopolies: New York City, Los Angeles, Chicago, Dallas, Washington D.C.,

The Fox duopoly in New York City merged station and news management, with one General Manager and one News Director over the two New York City stations. In New York City, Fox moved the operations of WWOR from Secaucus to WNYW's facilities in New York City, cutting the technician workforce by about twenty percent. While this may be more "efficient," merged operations do not advance the diversity policy goal. "We don't have to have two crews at one news event," a Fox executive told *Broadcasting and Cable* magazine.[33]

Other examples of duopolies that have also merged management and news operations include:

- In Detroit, Viacom's CBS affiliate WWJ-TV dropped its local half-hour news show in November 2002 so as not to compete with its duopoly partner and UPN affiliate WKBD-TV. Scripps-owned WXYZ-TV will produce WKBD-TV's news show under a revenue-sharing arrangement.[34]

- Meredith's Portland Or. duopoly KPTV and KPDX runs a combined newsroom, having shut down the news operation at KPDX, a UPN affiliate.[35]

- There is one general manager over Fox's Orlando, Fl. duopoly,[36] one general manager at Viacom's Boston duopoly WSBK-TV and WBZ-TV,[37] and one general manager at Fox's Houston duopoly KRIV-TV and KTXH-TV.[38]

- Ad agencies have expressed concern about Fox TV's plans to combine ad staffs in duopoly markets. "Our biggest concern lies in your ability to manipulate the market and unfairly take advantage of smaller advertisers and their agencies," wrote Allen Banks, Saatchi & Saatchi's North American media director and chair of the media policy committee of the American Association of Advertising agencies, to Fox TV Stations chief Mitch Stern. The biggest worry, Banks said, is that Fox might pressure ad buyers to buy package deals from both stations. They also fear that Fox may demand that make-good spots be aired on the lower-rated of the two stations. The worry arose when Fox, as part of plans to eliminate weekday kids programming,

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Houston, Phoenix, Minneapolis, and Orlando.

[33] Dan Trigoboff, "The duopoly marriage in three markets comes with some consolidation," *Broadcasting and Cable*, Aug. 6, 2001.

[34] Dan Trigoboff, "CBS Drops News in Detroit, *Broadcasting and Cable*, Nov. 25, 2002.

[35] Catherine Matacic, *American Journalism Review*, Sept. 2002.

[36] Dan Trigoboff, "Knott lands at duop," *Broadcasting and Cable*, June 26, 2002

[37] Dan Trigoboff, "All News is local," *Broadcasting and Cable*, April 1, 2002

[38] Dan Trigoboff, "All News is local.," *Broadcasting and Cable*, Dec. 12, 2001.

> moved most children's shows and their advertising to weaker stations acquired from Chris-Craft.[39]

In summary, common ownership of newspaper/broadcast combinations in the same market and television duopolies and triopolies results in commingling of news operations, reducing the number of diverse and competing news outlets in a local market. Given the limited number of independent sources of local news and information programming, rules that permit the elimination of an independently owned news outlet by permitting newspaper/broadcast combinations or more television duopolies and even triopolies seriously undermine the Commission's paramount policy objective to facilitate robust democratic discourse in the media.

## III. TELEVISION AND NEWSPAPERS ARE THE DOMINANT SOURCE FOR NEWS AND INFORMATION, PARTICULARLY FOR LOCAL NEWS AND INFORMATION

In the *2002 Biennial Review Order,* the Commission concluded that viewpoint diversity is most easily measured through news and public affairs programming, which also relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media. Based on this reasoning, the Commission appropriately determined that it should focus on how media ownership structures affect local news output, which is more limited than national news outlets.[40] Since the Third Circuit Court in *Prometheus* remanded for consideration the Commission's local media ownership rules, we focus in these comments primarily on the structure of local markets for news and information.

Newspapers and broadcast television are the dominant sources for news and information, particularly for local news and information. The Commission must protect against combinations that would

[39] *Broadcasting and Cable,* Dec. 10, 2001.

reduce the number of independently-owned television stations in a local market and the number of independently owned newspaper(s) and television stations to ensure the widest possible dissemination of news and information from these "undisputed leaders in contributing to viewpoint diversity."[41]

Despite the growth of cable, satellite, and the Internet, most Americans today get their news, particularly their local news, from the daily newspaper and broadcast television news shows.

Newspaper. More than half the adult population (51.6 percent) reads a daily newspaper and almost two-thirds (59.6 percent) read a Sunday newspaper, according to the Newspaper Association of America.[42] According to data reported in the FCC-commissioned studies in the *2002 Biennial Review*, 62 percent of Americans read a daily newspaper (Waldfogel, FCC Study #3)[43] and 62.8 percent of Americans identified the newspaper as a source for local news and information in the past seven days (Nielsen Media Research, FCC Study #8).[44] This is consistent with a more recent survey by the Pew Research Center, which found that 61 percent of respondents identified newspapers as their primary source of local and community news.[45] A 2004 survey by the Consumer Federation of America and Consumers Union ("CFA/CU Survey") found that more than half of all respondents identified newspapers as the most important source of local news and information, with 33 percent of respondents identifying daily newspapers

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[40] *2002 Biennial Review Order,* 32, 35.
[41] 2002 Notice, 107.
[42] Prepared by Newspaper Association of America Business Analysis & Research based on Scarborough Research Top 50 Market Reports, 1998-2005. Available at http://www.naa.org/ReadershipPages/Research-and-Readership/readership-statistics.aspx.
[43] Joel Waldfogel, FCC Media Ownership Working Group Study #3, "Consumer Substitution Among Media," Sept. 2002, Part II Table 1, 63 ("Waldfogel"). The data is from Scarborough Research 1999-2000 consumer survey of 180,000 people in the top 66 media markets.
[44] Nielsen Media Research, FCC Media Ownership Working Group Study #8, "Consumer Survey on Media Usage," Sept. 2002, Table 001 ("Nielsen").
[45] Pew Research Center for the People and the Press, "Maturing Internet News Audience – Broader Than Deep. Online Papers Modestly Boost Newspaper Readership." July 30, 2006, 29 ("Pew Research Center, Maturing Internet News"). Available at http://www.people-press.org

and 21 percent identifying weekly newspapers as the most important source for local news.[46] Moreover, with its much more significant newsgathering resources and staff, the newspaper sets the news agenda for other local media, including television and radio outlets.[47]

Television. Americans also rely on television as the other primary media for local (and national) news and information. According to the data in the FCC's 20003 Waldfogel study, 59.6 percent of Americans watch evening news and 64 percent of Americans watch nightly news.[48] The Nielsen survey found that 84.8 percent of respondents identified television as a source for local news and information in the past seven days.[49] The 2006 Pew Research center survey found that 34 percent of respondents turn to television for local and community news, while two-thirds turn to television for national and international news.[50] The CFA/CU survey found that 30 percent of respondents rank broadcast television as their most important source of local news and information.[51] According to a recent Radio-TV News Directors Foundation, two-thirds of Americans cite local television as one of their top three news sources.[52]

No other type of media comes close to the penetration level of local television and the newspaper for news and information, particularly for local news and information.

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[46] The CFA/CU survey asked: "Now thinking about local issues, like the city council election or school, police and fire department services, what single source do you *use* most often for news and information? And what do you use second most often? Which single source is *most important* in determining your opinion about local issues? And what sources is second most important?" The author weighted the responses to each question, giving greater weight to first over second responses. The author then averaged the weighted responses to the two question to determine the importance of each media type as a source of local news and information. *See* Mark Cooper, "When Law and Social Science go Hand in Glove: Usage and Important of Local and National News Sources: Critical Questions and Answers for Media Market Analysis." Paper Presented to Telecommunications Policy Research Conference, Oct 3, 2004, 18-21.

[47] "None of the other forms of media have the staff, the money, or the inclination to gather the mass amounts of news that newspapers produce every day." John Morton, Morton-Groves Newspaper Newsletter, Jan. 20, 2006

[48] Waldfogel, Part I Table 3, 48.

[49] Nielsen, Table 001.

[50] Pew Research Center, "Maturing Internet News," 29.

[51] CFA/CU Study, 18-21. See note on survey interpretive methodology, n. 20 *supra*.

[52] Citation in *Communications Daily,* Oct 4, 2006, 10. Only 11.2 percent identified the Internet as one of the top three news sources.

Radio. Only about one-third (35.3 percent) of respondents in the FCC's Nielsen survey reports the use of radio as a source for local news and information.[53] In the CFA/CU survey, 12 percent identified radio as an important source of local news.[54] According to the Project for Excellence in Journalism, most local radio stations offer "virtually nothing" in the way of reporters in the field; just 14 percent of local radio news involved field reporters and the average radio station produced fewer than 40 minutes of news locally each day in 2004.[55]

Cable. In 2003, there were only 22 local cable news channels in the country, five of which served the New York City area. These cable news channels served 10 to 15 percent of local media markets.[56] The Commission correctly determined in the *2002 Biennial Review Order* to give no weight to cable television as a source of local news in devising its diversity index. The Commission noted that responses to its Nielsen survey likely confused broadcast and cable television. Most cable stations that respondents cited as sources for local news were actually national cable news stations, such as CNN and MSNBC.[57] The Third Circuit Court in *Prometheus* affirmed the Commission's "reasoned decision" to discount cable, noting that "the Commission properly excluded cable because of serious doubts as to the extent that cable provided independent local news – the Commission's recognized indicator of viewpoint diversity in local markets."[58]

[53] Nielsen, Table 001.
[54] CFA/CU Study, 18-21. See note on survey interpretive methodology, n. 20 *supra*
[55] Project for Excellence in Journalism, "The State of the News Media 2006: An Annual Report on American Journalism," ("2006 State of the News Media") Overview, 2, A Day in the Life of the Media: Intro, 4, News Investment: Overview, 1.
[56] *Prometheus v. FCC*, 405 citing United Church of Christ Comments, *2002 Biennial Review*, 30-31. The Commission concluded that only one-third of cable subscribers have access to local cable news channels. *2002 Biennial Review Order*, 414 fn.924.
[57] *2002 Biennial Review Order*, 408. In the Nielsen survey, the majority who reported watching cable for news and public affairs turned to a national cable news channel: CNN (57 percent), MSNBC (16.5 percent), CNBC (5.1 percent), Headline News (5.9 percent.). *See* Nielsen, Table 018. In another Nielsen question, 58 percent of respondents say that they have watched cable or satellite news channels for local news and current affairs. Yet, when asked to identify the specific cable or satellite news channels they watch, only one-third identified local news channels. *See* Nielsen Table 008.
[58] *Prometheus*, 405.

Internet: The Third Circuit Court in *Prometheus* was most troubled by the Commission's treatment of the Internet as a source of viewpoint diversity. The Commission gave substantial weight to the Internet in its diversity index, based on a finding in the Nielsen data that 18.8 percent of consumers turn to the Internet for news.[59] However, the Third Circuit Court in *Prometheus* found that this decision was not "rational" because the Internet is not primarily an independent source of local news. In the Nielsen survey, the most popular websites identified were those of national cable news channels, MSN.com (22.4 percent) and CNN.com (19.1 percent), followed by Yahoo.com (17.9 percent), MSNCB.com (5.9 percent), NewYorkTimes.com (5.1 percent), FoxNews.com (2.2 percent) and with less than 2 percent response USAToday.com, ABCNews.com, CBSNews.com, Netscape.com, Excite.com, Iwon.com, AT&T.net, WallStreetJournal.com.[60] The record in the *2002 Biennial Review* indicated that 62 percent of those who cited websites as sources of local news visited a newspaper website and 39 percent visited television websites.[61]

The 2006 Pew survey found that among those who go online to get their news (international, national, or local), 45 percent go to sites of aggregators (such as yahoo, Google, or AOL), 32 percent to TV networks (such as CNN, MSNBC, ABCnews, etc), and 29 percent to newspaper sites.[62] Google News, for example, is not even edited by people, but rather by algorithms, and produces no original content whatsoever. In other words, computers choose from a mix of content produced elsewhere.[63] Yahoo selects

[59] *Id*., Table 001.
[60] Citation in *Prometheus*, 406 fn.32.
[61] Citation in *Prometheus,* 406 citing United Church of Christ Comments in *2002 Biennial Review,* 33.
[62] The most popular sites were MSNBC (31 percent), yahoo (23 percent), CNN (23 percent), Google (9 percent), AOL (8 percent), Fox (8 percent), New York Times (5 percent), USA Today (4 percent), ESPN (4 percent), ABC (4 percent). Pew, "Maturing Internet News Audience," 25.
[63] 2006 State of the News Media, Online: Content Analysis.

from six source: AP, Reuters, Agence France-Presse, the *Los Angeles Times*, *USA Today*, and the *Christian Science Monitor*.[64]

The Project for Excellence in Journalism cited figures from Nielsen/Net Ratings for the top online sites in 2005 (in descending order): CNN, Yahoo, MSNBC, AOL, The New York Times, USA Today, ABC News, Google News, WashingtonPost.com, CBS News, Fox News, and BBC News. The rest are multiple sites owned by Knight Ridder, Gannett, or Tribune. Of the top 20 online news sites, 80 percent are owned by the 100 largest media companies.[65]

The Third Circuit Court emphasized that websites that repackage the news are not independent sources of information and therefore do not contribute to viewpoint diversity. "There is a critical distinction between websites that are independent sources of local news, and websites of local newspapers and broadcast stations that merely republish the information already being reported by the newspaper or broadcast station," the Third Circuit Court wrote. "The latter do not present an 'independent' viewpoint."[66]

Most important, the Third Circuit Court distinguished between media outlets that provide "accuracy and depth in local news" and online chatrooms or the websites of organizations, political candidates, local governments, community organizations, or advertisers. The Third Circuit Court defined "media outlets" as those media that serve both "an aggregator function (bringing news/information to one place) as well as a distillation function (making a judgment as to what is interesting, important, entertaining, etc.)." Using this definition, individuals and entities that may use the Internet to disseminate information and opinions should not be counted as "media outlets."

[64] *Id*.
[65] Pew, State of the Media 2006, Online: Ownership, 2-3.
[66] *Prometheus*, 405-6.

Finally, the Third Circuit Court noted that since almost 30 percent of Americans did not have Internet access, the Commission could not justify inclusion of the Internet in the Diversity Index, absent a better explanation.[67] More recent data finds that 27 percent of Americans still do not have Internet access at home.[68] Since consumers with a broadband Internet connection are much more likely to use the Internet as a news source,[69] the broadband digital divide based on income and urban/rural geography means that a significant portion of lower-income and rural Americans are much less likely to access the Internet for any type of news. Only 11 percent of households with less than $30,000 annual income subscribe to broadband, compared to 28 percent with income between $30-50,000, 44 percent with income between $50-100,000, and 62 percent with income over $100,000. Only 17 percent of adults in rural areas subscribe to broadband compared to 31 percent in urban and 30 percent in suburban areas.[70]

There is no rational explanation for including the Internet as an independent source of local news and information. The Internet continues to serve primarily as an alternative distribution platform for traditional media such as newspapers, television, and radio. As the Project for Excellent in Journalism wrote in its 2006 State of the Media Report, "Many of the most popular (web) sites remain largely a stepchild of print and wire-service content…As a result, while the Internet has added more outlets from which to choose, it has not, our study suggests, added new topics to the agenda."[71] According to the report, "virtually all original newsgathering was still being done by the old media," and the Internet "still relies for the

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[67] Citation in *Prometheus,* 407; *see 2002 Biennial Review Order,* 407-8.
[68] The 27 percent figure is for March 2006. Pew Internet and American Life Project, "Home Broadband Adoption: 2006," May 28, 2006.
[69] 43 percent of broadband users compared to 26 percent of dial-up users to online to get the news. *Id*., i.
[70] Government Accountability Office, *Telecommunications: Broadband Deployment ins Extensive throughout the United States, but It is Difficult to Assess the Extent of the Deployment Gaps in Rural Areas,* May 2006, GAO-06-426.
[71] 2006 State of the News Agenda, "A Day in the Life of the Media: Intro," 2.

heart of its content on print journalism, and if papers were to vanish it is hard to see what might replace them."[72]

CWA surveyed journalists at newspapers represented by The Newspaper Guild/CWA ("TNG/CWA") regarding the level of independent content on the newspaper websites where they work (Table 1). The newspapers serve large, medium, and small markets. As a preliminary matter, we note that these websites are owned by the local newspaper (or in a few instances, the grandfathered commonly owned newspaper/television outlets), and since the Commission has determined that ownership matters for viewpoint diversity, these websites should not be counted as independent sources of news for diversity purposes.[73]

But even more, our survey finds that most of the news content on newspaper websites consists of material from the newspaper, repackaged and redesigned (in the best instances) to take into account the visual and interactive quality of the Internet. With few exceptions, the respondents to our survey reported that "almost all" of the news content posted on the newspaper website is generated by newspaper employees, repurposed for the web. Most if not all of the text on the newspaper website is written by the newspaper reporters. Most small and medium market newspaper websites have none, one, or two dedicated web employees, whose job function is primarily to re-design content and post material generated by the newspaper reporters or wire services on the website. Even large-market newspapers, such as the *Baltimore Sun* or the *Detroit Free Press* have only 10 or 15 dedicated web employees. *The New York Times* has only 32 employees working at Times Digital, compared to over 1,000 print reporters. Original online content consists largely of blogs, audio, video, chatrooms, and reader-generated material.

[72] 2006 State of the Media Report, Online: Content Analysis, 1 and A Day in the Life of the Media: Newspaper, 1.

The Project for Excellence in Journalism reports that the *Milwaukee Journal Sentinel* has one of the best news and information Web sites.[74] Yet, even its website, jsonline.com, consists largely of repurposed material. "DayWatch" posts the first few paragraphs of stories that are likely to appear in the following day's paper, written by the paper's reporters and largely edited by the newspaper's editors; original web content consists of blogs, chatrooms, reader photo galleries, video, a link for readers to submit news tips, and opportunities to download web feeds. According to a TNG/CWA-represented newsproducer at the jsonline.com website, her major job responsibilities consist of repackaging copy from the newspaper, writing headlines, monitoring the wire services, and producing a blog. The only jsonline.com employee who goes out into the field is the video producer.[75] Reports from other newspaper online sites echo this story.

- *Tampa Tribune* and tbo.com: "We have 12 staff dedicated to the web operation. They primarily repurpose the newspaper content on the website. A newspaper reporter will cover a story, sometimes even bring a video camera. Then the reporter will write a brief report for the website before writing a full article for the paper. We don't do a lot of original reporting. Editors scan the wires for stories to put online. Others design and program content for the website."[76]

- *Los Angeles Daily News* and DailyNews.com: "The majority of our online text comes from newspaper staff-written stories, and most of our video comes from the Associated Press."[77]

- *Lexington Herald-Leader* and kentucky.com. "There is one online employee who adapts wire stories, posts articles and photos. Reporters often write a web version of their stories before expanding them for the paper. The copy editors prepare the web stories for posting, the picture editor chooses photos to go online, and copy writers write captions for them."[78]

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[73] While Internet news sites affiliated with newspapers, television, radio, wire services, and aggregators are not independent sources of the news, they do provide an alternative platform for dissemination of news and information.
[74] 2006 State of the Media Report, Online: Content Analysis, 12.
[75] CWA Interview, conducted Sept 14, 2006.
[76] CWA Interview, Sept. 14, 2006.
[77] TNG/CWA Survey, conducted Sept 18 – Oct. 17, 2006.
[78] *Id*.

- *Philadelphia Inquirer* and *Daily News and* philly.com. "We have 12 philly.com staff, compared to 540 at the newspaper. Virtually all newspaper reporters, photographers, assignment editors, and ad sales staff are involved with the website. Columnists and many writers are blogging. Photographers and some writers are producing slide shows with audio. Reporters are filing breaking news in wire service fashion. Business news writers are producing a daily noontime e-mail newsletter previewing tomorrow's paper. Sports have developed a new service that sends breaking news to cell phones, BlackBerries, and PalmPilots. Graphic artists are working with reporters to produce such things as interactive maps."[79]

- (Los Angeles) *Daily News* and DailyNews.com. "The majority of our text comes from newspaper staff-written stories, and most of our multi-media (video, podcasts, photo galleries) come from AP. Most of the content is created by newspaper editorial employees and posted by the online people (or sometimes by the news staffers themselves)."[80]

- *The Indianapolis Star* and indystar.com. "Numerous newspaper editorial folks contribute content, including video, blogs, foto galleries, etc. A lot of the online content is from the newsroom, but there's a lot of AP, plus reader-generated community boards (and not edited for content/accuracy)."[81]

- Long Beach Ca. *Press Telegram* and presstelegram.com. "Newspaper photographers do video, audio, and still photos. Newspaper journalists are updating stories for the web."[82]

- Memphis Tn. *Commercial Appeal* and commercialappeal.com. "The ads are generated by the newspaper's advertising department and news content from the newspaper staff."[83]

- *York (Pa.) Daily Record* and ydr.com. "Newspaper employees produce virtually all the content on the web site, including copy, blogs, video clips, etc. Reporters and photographers are expected to produce daily items for the web. Some of it is used in the published product, some is not. Editorial staff doubles as web staff."[84]

- Merrilville In. *Post-Tribune* and post-trib.com. "All of the news, sports, business, lifestyle stories are generated by newspaper employees or freelancers, or other Hollinger papers in the Chicago area."[85]

[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id*

While these reports indicate that newspapers are beginning to make creative use of the interactive and visual qualities of the Internet, they also demonstrate that the Internet platform is not an independent source of local news and information, and should not be counted as such.

Most Americans continue to rely on television and newspapers for their local news and information. Television's large audience, powerful visual images, and immediacy give it a unique role among the media. Television dominates local political advertising. Daily newspapers are read by more than half the population, and are the dominant media for in-depth reporting, investigation, and analysis. Newspapers are the only media whose primary mission and the preponderance of resources and talent are devoted to newsgathering and analysis.

| Table 1. Content and Staffing of Newspaper Website<br>The Newspaper Guild/CWA Survey Results | | | | | | |
|---|---|---|---|---|---|---|
| **Newspaper** | **Website** | **Newspaper Circulation** | **Website employees*** | **Newspaper editorial employees *** | **% online content by newspaper employees** | **Online original content** |
| Baltimore Sun | Baltimoresun.com | 280,000 (D)<br>454,000 (S) | 14 | 233 | 90% | Updates, video, blogs, podcasts |
| Cleveland Plain Dealer | Cleveland.com | 354,000 (D)<br>479,000 (S) | 7-10 | 290 | "almost all" | Blogs, reader-interactive material, some local sports |
| The Commercial Appeal (Memphis TN) | Commercialappeal.com | 179,000 (D)<br>235,000 (S) | 0 | 80 | Almost 100% | Very little – some video, blogs |
| Daily News of Los Angeles | DailyNews.com | 178,000 (D)<br>200,000 (S) | 3 | 110 | Almost all text | Blogs, audio slideshows, audio commentaries, video, podcasts |
| Dayton Daily News | Daytondailynews.com | 129,000 (D)<br>185,000 (S) | 1 | 15-20 | 50% | Video, some photos, blogs, early cop checks |
| Detroit Free Press | Freep.com | 510,000 (D)<br>710,000 (S) | 12 | 200 | Almost all | Electronic updates |
| Detroit News | Denews.com | 510,000 (D)<br>710,000 (S) | 17 | 200 | Almost all | Electronic updates |
| Erie Times-News | GoErie.com | 56,000 (D)<br>86,000 (S) | 1 | 50 | 60-70% | Blogs, polls, charts, web-only reporting, occasionally video |
| Honolulu Advertiser | Honoluluadvertiser.com | 141,000 (D)<br>161,000 (S) | 8 | 120 | Almost all | |
| Honolulu Star-Bulletin | Honolulustarbulletin.com | 62,000 (D)<br>62,000 (S) | 3 | 82 | Almost all | |
| Independent (Massillon OH) | Indeonline.com | 12,000 | 0 | 16 | 100% | |
| The Indianapolis Star | Indystar.com | 252,000 (D)<br>358,000 (S) | 7 | 190 | Almost all, except AP content | Reader-generated message board, video |
| Knoxville News Sentinel | Knoxnews.com | 128,000 (D)<br>153,000 (S) | 0 | 83 | 60% | Stories, blogs, columns, video, audio |
| Lexington (KY) Herald-Leader | Kentucky.com | 114,000 (D)<br>145,000 (S) | 1 | 70 | Almost 100% | Blogs, web chats, videos |
| Macomb (MI) Daily | Macombdaily.com | | 1 | | Almost all | |
| (Peoria IL) Journal Star | Pjstar.com | 76,000 (D)<br>87,000 (S) | 2 | 120 | 100% except reader-generated | Reader-generated material, video, blogs |
| The New York Times | Nytimes.com | 1,056,390 (D)<br>1,680,583 (S) | 32 | 1,000 | 80% | Blogs, pictures, videos, things to do, reviews |

| Newspaper | Website | Newspaper Circulation | Website employees* | Newspaper editorial employees * | % online content by newspaper employees | Online original content |
|---|---|---|---|---|---|---|
| Philadelphia Inquirer, Daily News | Philly.com | 368,000 (D) 750,000 (S) | 12 | 540 | "huge" amount | Blogs, slide shows, audio, breaking news, business e-mail newsletter, sports breaking news to cell phones, blackberries, palms, interactive maps |
| Pittsburgh Post-Gazette | Post-gazette.com | 226,000 (D) 402,000 (S) | 14 | 245 | 100% | Slideshows, multi-media, video, blogs, online chats |
| Post-Tribune (Merrillville IN) | Post-trib.com | | 1 | 44 | 100% | None |
| Press Telegram (Long Beach CA) | Presstelegram.com | 97,000 (D) 109,000 (S) | 2 | 67 | 70-80% | Video, audio |
| Rocky Mountain News | Rockymountainnews.com | 595,000 (D) 750,000 (S) | 19 | 227 | 50% plus wire stories | Blogs, video, some headlines, some briefs, wecams, podcasts, wire copy rewrites, photo manipulation, breaking news copy such as sports & election results |
| Denver Post | Denverpost.com | 595,000 (D) 750,000 (S) | 6 | 229 | 50% plus wire stories | Same as above |
| San Francisco Chronicle | SFgate.com | 505,000 (D) 540,000 (S) | 38 | 330 | 98% | Entertainment, features, real estate, religion, opinion columns, animated cartoons, soc/pol commentary, a few columns started on web now run in paper |
| Washington Post | Washingtonpost.com | 707,000 (D) 1,0007,000 (S) | See notes | 650 | 65-70% | Columns, video, blogs |
| York Daily Record/Sunday News | Ydr.com | 71,000 (D) 92,000 (S) | 0 | 53 | 100% | Copy, blogs, video |

* In most cases, responses indicate all non-management employees dedicated to either the web to or the newspaper. In a few cases, response may omit non-management employees who are not union-represented.
* The Washington Post operates a separate online operation with an estimated 100 employees. The Project on Excellence in Journalism, 2006 State of the Media.
Source: Survey conducted by CWA Research Department in Sept. 2006. Responses provided by The Newspaper Guild/CWA staff and leadership.

## IV. LOCAL TELEVISION AND NEWSPAPER MEDIA MARKETS ARE HIGHLY CONCENTRATED

Newspaper and television markets for local news and information are highly concentrated. Most Americans have access to only one, or perhaps two, daily newspaper(s) and only three or four broadcast television newscasts for local news and information.[86] The evidence is overwhelming that consumers have few independently owned media alternatives in the local market for news and information. In this highly concentrated media marketplace, the Commission must continue to protect and promote diverse ownership in local media markets through structural ownership rules.

### A. LOCAL NEWSPAPERS MARKETS ARE HIGHLY CONCENTRATED

Local daily newspaper markets are highly concentrated. Most major metropolitan areas have only one or two daily newspapers covering local news of the entire metropolitan area. Readers may supplement the major daily with a suburban daily or with a weekly newspaper. In the comments we submitted to the Commission in the *2002 Biennial Review,* we calculated the market share and market concentration for daily newspapers in 17 markets.[87] While the specific market shares may have changed somewhat since we did the calculations in 2003, the overall conclusion remains the same: every single newspaper market in our sample is highly concentrated.[88] (Table 2)

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[86] Douglas Gomery, *The FCC's Newspaper-Broadcast Cross-Ownership Rule: An Analysis,* Washington, D.C.: Economic Policy Institute, 3,5 ("Gomery").

[87] The 17 markets correspond to the 10 markets in the Roberts et al study (FCC Study #1) plus the next seven largest Metropolitan Statistical Areas (MSAs) after New York City, which was included in that study. In each of these MSAs, we identified the metropolitan dailies of the principal metro city plus the county with the largest suburban daily circulation. We used the definition in the local radio/TV ownership rule that counts as an independent voice only those daily newspapers with circulation exceeding five percent. A daily newspaper is defined to be one that is published in the English language four or more times per week. 47 CFR Sec. 73.3555 n. 6; Newspaper/Broadcast Cross-Ownership Notice, fn 4. Comments of Communications Workers of America, The Newspaper Guild/CWA, National Association of Broadcast Employees and Technicians/CWA, Printing, Publishing and Media Workers Section/CWA, *2002 Biennial Review,* Oct. 23, 2006, 22-27 ("CWA Comments").

[88] In an analysis of 68 newspaper markets, Mark Cooper finds that 39 have one major daily newspaper, 12 have two major dailies, 12 are tight oligopolies, 5 are moderately concentrated, and none are unconcentrated. *See* Mark Cooper, *Media*

We evaluate concentration level based on the U.S. Department of Justice/Federal Trade Commission (DOJ/FTC) Herfindahl-Hirschman Index (HHI). The DOJ/FTC consider markets with an HHI above 1800 to be highly concentrated, those with HHI between 1000 and 1800 to be moderately concentrated, and those with an HHI below 1000 to be unconcentrated.[89] Every single newspaper market in our sample is highly concentrated with an HHI above 1800. Even New York City and Los Angeles are highly concentrated with HHIs of 2909 and 2036, respectively. The next six largest local newspaper markets all have HHIs above 3000, and all other selected markets have HHIs above 6000.

**Table 2. Market Concentration in Local Daily Newspaper Markets**
**Daily Newspapers in Principal Metro City and One Surrounding County**

| Principal City and One Surrounding County (DMA) | Daily Newspapers | Market Share | HHI |
|---|---|---|---|
| New York City/Westchester NY (001) | Wall Street Journal | 36% | 2287 |
| | New York Times | 24% | |
| | NY Daily News | 15% | |
| | NY Post | 11% | |
| | Bloomb erg News | 6% | |
| | Journal News (Westchester) | 3% | |
| | Others | 5% | |
| Los Angeles and Orange Co, CA (002) | Los Angeles Times | 50% | 2909 |
| | Orange County Register | 18% | |
| | La Opinion | 7% | |
| | LA Press-Telegram | 5% | |
| | LA Daily Breeze | 4% | |
| | Korean Central Daily | 3% | |
| | Others | 13% | |
| Chicago and Lake Co IL (003) | Chicago Tribune | 50% | 3856 |
| | Chicago Sun-Times | 35% | |
| | Lake Daily Herald (Lake Co.) | 11% | |
| | Chicago Defender | 2% | |
| | The News Sun (Lake Co.) | 2% | |

*Ownership and Democracy in the Digital Age* (Stanford Law School: Center for Internet & Society), 157 ("*Media Ownership and Democracy")*.

[89] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, April 8, 1997 (revised), 15.

| Principal City and One Surrounding County (DMA) | Daily Newspapers | Market Share | HHI |
|---|---|---|---|
| Philadelphia and Montgomery Co. PA (004) | Philadelphia Inquirer*<br>Philadelphia Daily News*<br>(*commonly owned with joint advertising)<br>The Mercury (Mont. Co.)<br>Times Herald (Mont. Co.)<br>The Reporter | 59%<br>31%<br><br><br>4%<br>3%<br>3% | 4458 |
| San Francisco and Santa Clara Co, CA (005) | San Francisco Chronicle<br>San Jose Mercury News<br>Palo Alto Daily News (Co)<br>San Francisco Examiner<br>Others | 59%<br>31%<br>3%<br>6%<br>1% | 4473 |
| Boston and Middlesex Co, MA (006) | Boston Globe<br>Boston Herald<br>Boston Metro<br>The Sun (Lowell MA)<br>Others | 47%<br>26%<br>18%<br>5%<br>4% | 3239 |
| Dallas/Fort Worth TX (007) | Dallas Morning News<br>Fort Worth Star-Telegram<br>Others | 64%<br>29%<br>7% | 4948 |
| Washington, D.C. and Montgomery Co. MD (008) | Washington Post<br>Washington Times<br>Montgomery Journal | 86%<br>11%<br>3% | 7510 |
| Kansas City and Linn Co. MO (031) | The Kansas City Star<br>Linn News-Bulletin | 95%<br>5% | 9053 |
| Birmingham, AL (039) | The Birmingham News<br>Birmingham Post-Herald<br>(Joint Operating Agreement) | 88%<br>12% | 7906 |
| Lancaster, PA (046) | Lancaster Intelligencer Journal | 100% | 10,000 |
| Little Rock and Pulaski Co. AR (056) | Arkansas Democrat-Gazette<br>Pulaski Daily Record | 96%<br>3% | 9187 |
| Burlington, VT (090) | Burlington Free Press | 100% | 10,000 |
| Altoona, PA (096) | Altoona Mirror | 100% | 10,000 |
| Myrtle Beach, SC (109) | Sun News | 100% | 10,000 |
| Terre Haute, IN (145) | Tribune-Star | 100% | 10,000 |
| Charlottesville, VA (192) | Daily Progress<br>Cavalier Daily | 77%<br>23% | 6,431 |
| Source: Burrelle's Media Directory, 2003. Local daily newspapers in principal metro city and one surrounding county. Trade publications not included. | | | |

While publishers frequently point to long lists of print media outlets in a metropolitan market, careful market definition and a market power analysis based on market share, not simply the number of outlets, leads to the conclusion that daily newspaper markets are in fact highly concentrated markets.

### B. LOCAL TELEVISION MARKETS ARE HIGHLY CONCENTRATED

Local television markets are also highly concentrated. In the comments we submitted in the *2002 Biennial Review*, we also calculated broadcast television market share in 16 television DMAs, again corresponding to the markets in Roberts et al study plus (after New York City) the next seven largest DMAs.[90] Here, again, while the specific market shares may have changed since we did our calculations based on 2001 data, the overall conclusion remains the same.[91] Table 3 indicates the market share of the top four broadcast stations in each DMA. In all but the largest DMAs, the top four broadcast stations control more than 80 percent of the market. Even in the largest markets, the top four broadcast stations dominate, with market shares in New York City (71 percent), Los Angeles (57 percent), Chicago, Il. (68 percent), Boston, Ma. (78 percent) and Dallas, Tx. (63 percent), respectively.

We have also calculated the HHI for each of these markets. We use a calculation of the market shares of all <u>independently</u> owned television stations in each DMA.[92] The result shows that all markets are highly concentrated, with HHIs above 1800. This actually understates the level of concentration in local

[90] CWA Comments, *2002 Biennial Review*, 27-29.
[91] Mark Cooper's analysis of local TV markets finds 26 monopolies, 56 duopolies, 112 highly concentrated, 16 moderately concentrated, and 0 unconcentrated. See Cooper, *Media Ownership and Democracy*, 135.
[92] Twelve of the 16 markets have duopolies: New York City (NBC/GE, Fox, and Viacom each own two stations each); Los Angeles (NBC/GE owns three stations, Viacom and Fox own two); Dallas, Tx. (NBC/GE, Viacom, Fox, and Univision); Chicago (NBC/GE owns three stations, Fox owns two); Philadelphia (Viacom); San Francisco (Viacom and Cox); Boston (Viacom and Hearst-Argyle); Washington, D.C. (Fox); Kansas City, Mo. (Scripps Howard); Birmingham, Al. (Sinclair); Little Rock, Ar. (Clear Channel); Burlington, Vt. (Hearst-Argyle). Burrelle's Media Directory, 2003.

broadcast news, since with rare exception, only the top four local stations produce their own local newscasts.[93]

| Table 3. Market Concentration in Local Television Markets - 2001 | | |
|---|---|---|
| DMA | Market Share of Top Four Stations | HHI |
| New York City, N.Y. (001) | 71 % | 1959 |
| Los Angeles, Ca. (002) | 57% | 1796 |
| Chicago, Il. (003) | 68% | 1852 |
| Philadelphia, Pa. (004) | 83% | 2370 |
| San Francisco, Ca. (005) | 80% | 2126 |
| Boston, Ma. (006) | 78% | 2276 |
| Dallas, TX. (007) | 63% | 1881 |
| Washington, D.C. (008) | 85% | 2254 |
| Kansas City, Mo. (031) | 80% | 1914 |
| Birmingham, Al. (039) | 77% | 1895 |
| Harrisburg, Pa. (046) | 95% | 2555 |
| Little Rock, Ar. (056) | 93% | 2605 |
| Burlington, Vt. (090) | 95% | 3500 |
| Altoona, Pa. (096) | 100% | 3166 |
| Myrtle Beach, S.C. (109) | 100% | 4146 |
| Terre Haute, In. (145) | 100% among 3 stations | 4178 |
| Source: BIA, 2001. Market share = average 2000 LCS. HHI calculation based on combined market share for each <u>independently</u> owned commercial station with >1% market share. Market share combined for commonly-owned stations | | |

[93] Gomery, 5.

In the Newspaper/Broadcast Cross-Ownership proceeding, the United Church of Christ (et al) provided a study of 10 local television markets. The UCC study calculated the viewing market share in 10 local television markets of various sizes. The findings of that study are consistent with our calculations.[94]

In summary, the separate and distinct local daily newspaper market and the local television market are both highly concentrated. As Ben Bagdikian notes:

> It is a favorite axiom of large media operators that, while they have great power, if they abuse it the public will reject them. But in order to have the power of rejection, the public needs real choices and choice is inoperative where there is monopoly, which is the case in 98 percent of the daily newspaper business, or market dominance of the few, which is the case with television and most other mass media.[95]

### C. LOCAL MEDIA MARKETS HAVE BECOME MORE CONCENTRATED AS LIMITS ON MEDIA OWNERSHIP HAVE BEEN REDUCED

Relaxation of broadcast media ownership rules by Congress in the Telecommunications Act of 1996 and by the Commission in various proceedings has resulted in increased concentration of ownership in local markets and slower growth in the number of media outlets.

The Commission in the *2002 Biennial Review* commissioned a number of studies to examine trends in consolidation in the local media marketplace. These studies consistently documented increased concentration in local media markets, reducing both viewpoint diversity and raising advertising rates.

- The Commission sponsored study by George Williams and Scott Roberts (Williams and Roberts, FCC Study #11) found a definite link between relaxation of media ownership rules in the six years since the weakening of restrictions on the number of radio stations that could be

[94] Comments of Office of Communication, Inc. of United Church of Christ, National Organization of Women and media Alliance, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper, Newspaper/Radio Cross-Ownership Waiver Policy*, MM Docket No. 01-135, 96-197, Attachment 3, Dec. 3, 2001 ("UCC et al").
[95] Ben H. Bagdikian, *The Media Monopoly*, Boston: Beacon Press, 8-9 ("Bagdikian").

owned by a single company and increased concentration in the number of radio outlets.[96] The study found that the four firm concentration ratio (as measured by shares of ad revenue) went from less than 65 percent in 1996 to more than 85 percent in 2002.[97] The number of distinct owners fell by 34 percent since the change in ownership rules.[98] According to a calculation by Dr. Baker, the growth rate in the number of stations slowed substantially over the same period, from 1.3 percent from 1980-2000 to 0.9 percent 1996-2000. (This calculation excludes the saturated New York market.)[99] Finally, Williams and Roberts found that increased concentration in radio markets resulted in an approximately 1.0 percent annual decline in listeners and a 60 percent increase (adjusted for inflation) in the cost of radio advertising since 1996.[100]

- The Commission sponsored study, by George Williams, Keith Brown, and Peter Alexander (Williams et al, FCC Study #9) also suggests that increased concentration in the radio industry may have led to a decrease in diversity.[101] Williams et al found that since 1996 there has been some decrease in songs across markets. Dr. Baker notes that this finding is particularly striking, because its "methodology probably biased it against finding this result."[102] Since the study examines only the top ten play lists, the study does not pick up any change in music play lists of the vast majority of songs played by radio stations.[103]

- Another Commission sponsored study (J.M. Ford-Livene Levy and A. Levine, FCC Study #11) provides evidence of reduced growth in the number of broadcast television stations over the last ten years.[104] Between 1980-85, the total number of stations grew by 18.4 percent and between 1985-90 it rose 20.5 percent. But over the first half of the 1990s, the growth rate was only 6.2 percent, and during the second half of the decade, it fell to 5.7 percent.[105] According to Dr. Baker's analysis of the Levy et al study, this decline was particularly dramatic among educational stations, which have experienced no growth since 1995.[106]

- In addition, the Commission commissioned one theoretical study to examine the impact of increased concentration on television broadcast quality and advertising prices (Cunningham and

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[96] George Williams and Scott Roberts, FCC Media Ownership Working Group Study #11, "Radio Industry Review 2002: Trends in Ownership, Format, and Finance," Sept. 2002 ("Williams and Roberts").
[97] *Id.,* Chart 2. *See* also Baker, 17.
[98] *Id.,* 3.
[99] Baker, Table 5, 17-18.
[100] Williams and Roberts, 19, Chart XIII. *See* also Baker, 18.
[101] George Williams, Keith Brown, and Peter Alexander, "Radio Market Structure and Music Diversity," FCC Media Ownership Working Group Study #9, "Radio Market Structure and Music Diversity, Sept. 2002.
[102] Baker, 18.
[103] Baker also cautions that the findings of the study are limited because it does not examine change over time. *Id*., 18-19.
[104] J.M. Ford-Livene Levy and A. Levine, FCC Media Ownership Working Group Study #11, "Broadcast Television: Survivor In a Sea of Competition," Sept. 2002 ("Levy et al").
[105] *Id.,* 21.
[106] *Id.,* 21.

Alexander, FCC Study #6).[107] This study found that greater concentration would allow broadcasters to exercise market power by increasing the amount of airtime they devote to advertising and by increasing the price they charge advertisers.[108] As a result, according to Dr. Baker, "public welfare declines as a result of increased concentration in broadcasting" because the study finds that "the consumption of broadcast material will fall as concentration increases, and that advertisers will pay higher rates."[109]

- The study by Scott Roberts, Jane Frenette, and Dione Stearns ("Roberts et al," FCC Study #1) compared the availability and ownership of media in local markets at three points in time—1960, 1980, and 2000.[110] The study counted the number of distinct TV, radio, newspaper, cable, and direct broadcast satellite system outlets and owners in 10 local radio markets in 1960, 1980, and 2000. The Roberts et al study documents a substantial slowdown in the rate of increase in the number of owners in all 10 markets and a slowdown in the rate of increase in media outlets in nine of the 10 markets in the 1980-2000 period compared to the earlier 1960-1980 period.[111] The slowdown in growth between 1980 and 2000 is especially striking, given the growth in new types of media (cable, DBS) and population over this period. Using data from the Roberts et al study, Dr. Dean Baker calculated the change in growth rates in the number of media outlets and the number of owners between 1960-1980 and 1980-2000. Growth rates of media outlets slowed substantially: by two-thirds in Altoona, Pa., Burlington, Vt., Lancaster, Pa., Myrtle Beach, S.C., Terre Haute, In., and even New York City, and by one-half in the other markets except Charlottesville, Va. Slower rates of growth in the number of owners was even more striking, dropping by 80 percent in Birmingham, Al., Burlington, Vt., Little Rock, Ar., Terre Haute, In., and New York City; and by one-half or more in Charlottesville, Va. and Lancaster, Pa. In Kansas City, Mo. there was virtually no growth in owners over the entire twenty-year period.[112] Dr. Baker concludes "it is clear from the table above that the rate of growth of media outlets has slowed substantially in the last two decades."[113] (Table 4.)

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[107] Brendan C. Cunningham and Peter J. Alexander, FCC Media Ownership Working Group Study #6, "A Theory of Broadcast Media Concentration and Commercial Advertising," ("Cunningham and Alexander"), Sept. 2002.
[108] *Id.*, i.
[109] Baker, 4.
[110] Scott Roberts, Jane Frenette and Dione Stearns, Media Ownership Working Group Study #1, "A Comparison of Media Outlets and owners for Ten Selected Markets (1960, 1980, 2000)," ("Roberts, et al"), Sept. 2002.
[111] *Id.*, 15.
[112] The Commission claims that the decline in growth rate for media outlets is due to the fact that spectrum was already allocated. Yet, new technologies such as cable and satellite, or new print outlets could have resulted in an increase in outlets. The Commission does not contest Baker's conclusion that the rate of growth in the number of independent owners decreased considerably. 15-16.
[113] *Id*.

| Table 4. Growth Rate in Outlets and Owners in Ten Selected Media Markets | | | | |
|---|---|---|---|---|
| | **Media Outlets** | | **Media Owners** | |
| | **1960-1980** | **1980-2000** | **1960-1980** | **1980-2000** |
| Altoona | 73% | 21% | 33% | 25% |
| Birmingham | 57% | 34% | 70% | 12% |
| Burlington | 147% | 43% | 115% | 21% |
| Charlottesville | 62% | 77% | 100% | 40% |
| Kansas City | 100% | 20% | 106% | 0% |
| Lancaster | 50% | 19% | 60% | 25% |
| Little Rock | 106% | 71% | 114% | 10% |
| Myrtle Beach | 267% | 43% | 115% | 44% |
| New York | 73% | 20% | 93% | -2% |
| Terre Haute | 117% | 27% | 138% | 16% |
| Source: Baker, 16 calculated from Roberts et al., Table 1. | | | | |

In summary, despite the advent of new technologies, the local newspaper and the handful of television stations dominate local news and information markets. Congressional and Commission relaxation of radio and television ownership rules in recent years reduced the number of independently-owned local media outlets, drove up advertising prices, and resulted in less diversity in the media markets.

## V. LOCAL MEDIA OUTLETS ARE FINANCIALLY HEALTHY – THEY DO NOT NEED TO MERGE TO SURVIVE AND GROW

Publishers and broadcasters claim they need relaxation of local ownership rules to realize economic efficiencies that will allow them to maintain financial viability and provide needed resources for growth. Yet, the evidence strongly contradicts their pleas of financial distress. Newspapers and broadcast companies are highly profitable entities. Recent transactions reveal that buyers pay handsomely for media outlets. Wall Street clearly values these properties, with an average ratio of price to earnings for the printing and publishing industry of 23.71 and for the broadcasting and cable industry of 31.59 percent, both of which exceed the S&P average price/earnings ratio of 20.14.[114]

Media companies do not have to merge in order to survive and grow. Rather, a strategy for growth that invests in quality journalism and innovative use of new technological platforms such as the Internet and digital television provides an alternative that does not sacrifice the First Amendment goals of diversity, competition, and local identity.

### A. NEWSPAPERS AND TELEVISION STATIONS ARE FINANCIALLY STRONG

Operating profit margins at newspapers continue to average 20 percent, and local television stations typically generate 40 to 50 percent margins, compared to 11 percent for Fortune 500 companies.[115] As John Morton, the highly-respected newspaper industry analyst, notes, the newspaper industry remains quite lucrative.

> It is worth bringing some facts to bear in the midst of all the agonizing [over the future of newspapers.] Despite weak advertising and rising newsprint costs, newspapers remain highly profitable businesses by the standards of most other industries. The average operating profit margin of the newspaper segments of publicly reporting companies was 20.5 percent in 2004 and slipped only to a hair under 19 percent through the first nine months of 2005; the average may slip another point or two when the results for all 2005 are in, but even with that *the margin remains fat* (emphasis added).[116]

Similarly, local television stations are highly valued for their ability to generate cash and earnings, with the news operation accounting for more than 42 percent of a station's revenue, based on 2004

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[114] Calculations by Reuters as of Sept. 26, 2006. Available at http://www.investor.wallst.com/stocks/Ratios.asp

[115] For newspaper profit margins, *see* Rachel Smolkin, "Adapt for Die," *American Journalism Review,* June/July 2006; Katherine Q. Seelye, "What-Ifs of a Media Eclipse; *The New York Times,* Section 3, August 27, 2006; Project for Excellence in Journalism, The State of the News Media: 2006, Newspapers: Economics, 1. For local television profit margins, *see* The State of the News Media: 2006, Local TV: Intro, 1; John M. Higgins, "Nice Price; Despite recent deal snags, the station market is relatively strong," *Broadcasting & Cable,* Feb. 20, 2006, 6.

figures.[117] A recent *Broadcasting and Cable* article on the economics of local television stations underscored the financial strength of local television.

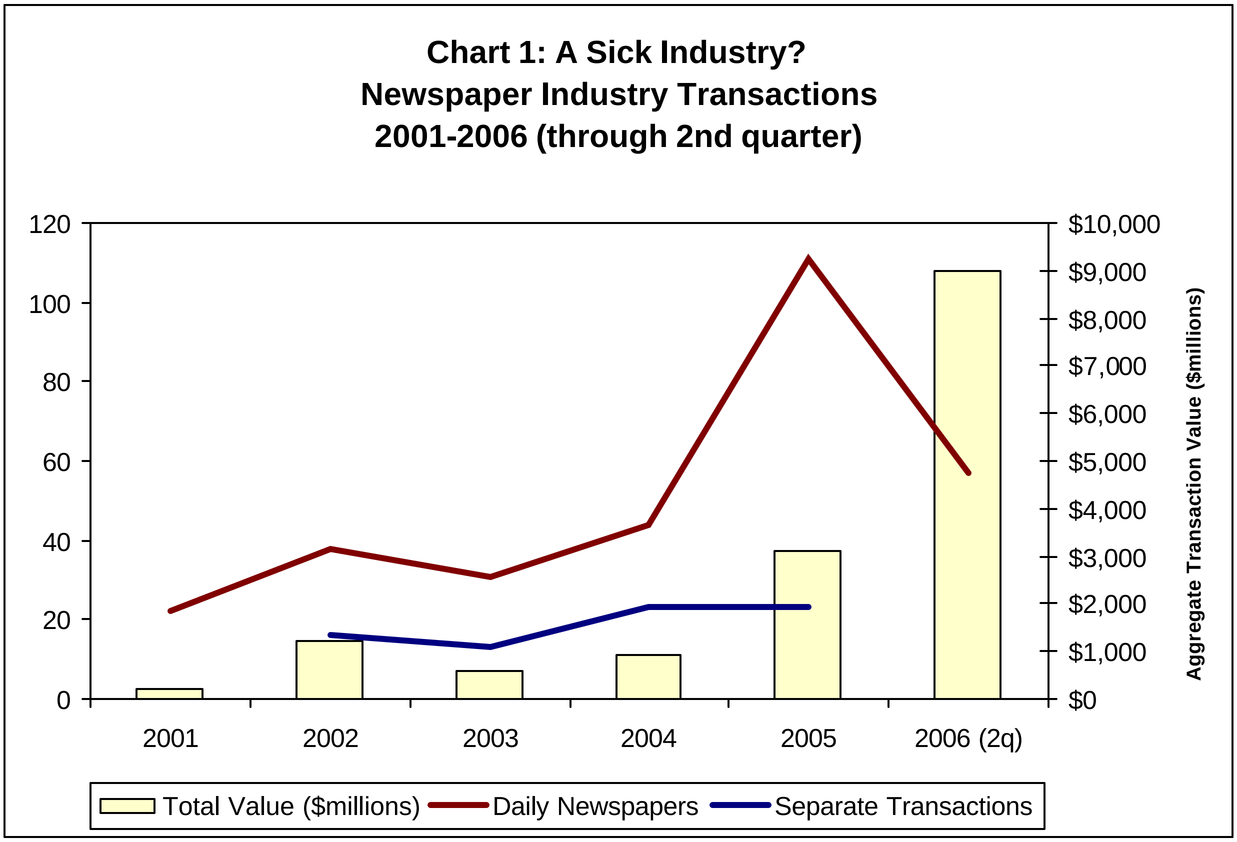
> The first attraction is that stations generate lots of cash flow, with margins often hitting 40% to 50%...Those earnings are relatively predictable, so lenders allow high leverage. That helps enhance returns on investment.[118]

Operating margins over the past year at the large newspaper and television chains are extremely robust (Table 5). Gannett, the largest newspaper chain, earned 26 percent, Hearst-Argyle (24 percent), McClatchy (22 percent), Tribune and E.W. Scripps (20 percent), Belo (18 percent), and Media General (14 percent). The major television networks also turned handsome operating margins: Sinclair Broadcasting (23 percent), LIN TV (20 percent), NBC Universal (21 percent), CBS' television segment (20 percent), and Disney/ABC's Media Networks segment (21 percent)

116 John Morton, Morton-Groves Newsletter, Jan. 20, 2006.
117 2006 State of the News Media, Local TV: Economics.
118 *Broadcasting & Cable*, Feb. 20, 2006, 6.

| **Table 5. Newspaper and Television Companies Earn Healthy Profits over Past Year** (Most recent 12 months, unless indicated) | |
|---|---|
| **Company** | **Profit Margin (%)** |
| Gannett | 25.95 |
| Hearst-Argyle | 23.53 |
| McClatchy | 21.97 |
| E.W. Scripps | 19.76 |
| Tribune | 19.61 |
| Journal-Register | 19.51 |
| Lee Enterprises | 17.51 |
| Belo | 17.75 |
| News Corp | 15.27 |
| MediaNews Group | 14.79 |
| Journal Communications | 13.87 |
| Washington Post | 13.48 |
| Media General | 13.10 |
| New York Times | 9.78 |
| Dow Jones & Co | 6.46 |
| Sinclair Broadcasting | 23.46 |
| LIN TV | 19.92 |
| NBC Universal | 21.00 |
| Disney/ABC – Media | 20.8 |
| CBS – Television | 19.6 |
| All data except as noted below are from Reuters, reflecting Trailing Twelve Months (TTM) from most recent SEC Form 10-Q as of Sept. 2006. LIN TV data from Thompson Financial from 2006 SEC Form 10-K for year-ended Dec. 31, 2005 (LIN's 2nd quarter 2006 write-down of broadcast licenses distorts TTM profitability figures). MediaNews Group, NBC Universal segment, Disney/ABC Media Networks segment, CBS Television segment data from SEC Form 10-K for year-ended Dec. 31, 2005. | |

Recent newspaper and television properties sales indicate that buyers place a high value on these properties. In 2005, 111 daily newspapers changed hands in 23 separate transactions totaling $3.09 billion in sales.[119] In just the first nine months of 2006, 119 television stations have been sold for a total value of $16.1 billion.




As another indicator of the value capital markets place on media outlets, buyers of newspaper and television properties have been willing to pay quite handsome sums. Table 6 provides the detail for recent newspaper and Tables 7 and 8 for recent television transactions.

[119] Dirks, Van Essen & Murray. date

# TABLE 6: SELECTED NEWSPAPER INDUSTRY TRANSACTIONS

| YEAR | PROPERTIES | SELLER | PURCHASER | PRICE ($millions) | CASH FLOW MULTIPLE | REVENUE MULTIPLE | PRICE PER "AVERAGE DAILY CIRCU-LATION UNIT" | NOTE | SOURCE |
|---|---|---|---|---|---|---|---|---|---|
| 1993 | Boston Globe | Boston Globe | New York Times | $1,100.0 | | | | | MG-v.1.1, 3/15/02 |
| 1997 | Cowles Media (including Minneapolis Star Tribune) | Cowles Media | McClatchy Newspapers | $1,400.0 | | | | | MG-v.1.1, 3/15/02 |
| 1997 | 4 papers including Kansas City Star and Ft Worth Star-Telegram | Disney Co. | Knight Ridder | $1,650.0 | | | | | MG-v.1.1, 3/15/02 |
| 2002 | Howard Publications | Howard Publications | Lee Enterprises | $694.0 | 12.3/14.1 | 3.0 | $1,437 | CF Multiples for 2 sequential years | MG-v.1.1, 3/15/02 |
| 2002 | 4 Ottaway Newspapers dailies | Dow Jones & Co. | Community Newspaper Holdings | $182.0 | 12.2 | 3.9 | $1,886 | | MG-v.1.1, 3/15/02 |
| 2002 | 3 Ottaway Newspapers dailies (in Eastern MA) | Dow Jones & Co. | Eagle-Tribune (Lawrence, MA) | $70.0 | 10.0 | 2.5 | $1,173 | | MG-v.1.2, 4/15/02 |
| 2002 | Sioux City Journal (50%) | Hagadone Corp | Lee Enterprises | $60.3 | 11.5 | | | Lee acquired other 50% share of paper in Howard Publications acquisition | MG-v.1.4, 6/17/02 |
| 2002 | 3 Glasgow, Scotland dailies | | Gannett | $346.0 | | | $1,932 | | MG-v.2.1, 1/15/03 |
| 2003 | The Record (Stockton, CA) | Omaha World-Herald Co. | Dow Jones & Co. (Ottaway) | $144.0 | 13.6 | 3.9 | $2,264 | | MG-v.2.5, 5/21/03 |
| 2003 | Merced (Calif) Sun-Star and 5 associated weeklies | Pacific-Sierra Publishing | McClatchy Newspapers | $40.5 | 13.0-14.0/ 10.0-11.0 | 3.2 | $2,292 | CF estimates; 13.0-14.0 for 1st yr; 10.0-11.0 adjusted for tax savings from amort of intangible assets | MG-v.2.10[12], 12/15/03 [nb: issue numbered 10 but should be 12] |
| 2004 | 21st Century Newspapers | 21st Century Newspapers | Journal Register Company | $415.0 | 11.9/11.5 | 2.7 | $2,897 | Includes 4 small/mid-sized dailies, 87 non-dailies | MG-v.3.7, 7/15/04 |
| 2005 | Pulitzer | Pulitzer | Lee Enterprises | $1,460.0 | 13.5 | 2.9 | $2,389 | 14 dailies including St. Louis Post-Dispatch | MG-v.4.2, 2/25/05 |
| 2006 | Knight Ridder | Knight Ridder | McClatchy Newspapers | $6,500/$6,000 | 9.5 | 2.2/2.0 | $1,898/ $1,752 | Multiple based on $6.0 billion price, adjusted for $500 million minority interest; circulation unit calculation by RB | MG-v.5.3, 3/20/06; MNI Analysts Presentation |
| 2006 | All 12 Dailies Sold | McClatchy Newspapers | Multiple Buyers | $2,100.0 | 11.0 | 1.7 | $1,369 | Revenue multiple calculations by RB | MG-v.5.7, 7/18/06 |

| Table 7: Television Station Sales Have Been Skyrocketing | | |
|---|---|---|
| | | |
| | Number of | |
| | Television | |
| **YTD - Mid/Late September . . .** | **Stations Sold** | **Value (000)** |
| 2006 | 119 | $16,102,079 |
| 2005 | 84 | $2,662,439 |
| 2004 | 65 | $897,661 |
| 2003 | 70 | $500,601 |
| | | |
| Source: Broadcasting & Cable | | |
| http://www.broadcastingcable.com/article/CA6376565.html | | |
| http://www.broadcastingcable.com/article/CA6257811.html | | |
| http://www.broadcastingcable.com/article/CA455841.html | | |

| TABLE 8: RECENT TELEVISION STATION DEALS | | | |
|---|---|---|---|
| **Buyer** | **Seller** | **Price (million)** | **Cash flow multiple** |
| **Journal Communications** | Emmis | $235 | 16.1x |
| **Blackstone and SJL** | Emmis | $259 | 15.7x |
| **LIN TV** | Emmis | $260 | 14.7x |
| **Gray** | Emmis | $186 | 14.7x |
| **Raycom** | Liberty Corp. | $987 | 13.0x |
| **LIN TV** | Viacom | $85 | 10.6x |
| **Source**: Wall Street reports | | | |
| | | | |
| Broadcasting & Cable; Feb. 20, 2006 | | | |
| http://www.broadcastingcable.com/article/CA6308569.html | | | |

The $6.5 billion sale of the Knight Ridder chain this year illustrates that newspapers continue to be regarded as good investments. McClatchy Newspapers paid 9.5 times cash flow for the 32 newspapers it purchased from Knight Ridder, and then turned around and sold 12 of what it considered the “slower growth” papers for an even higher 11.1 cash flow multiple. McClatchy kept the 20 papers with operating cash flow margins of 30.4 percent, and divested papers with “only” 17.8 percent margins.[120] According to financial analyst John Morton, the Knight Ridder transactions underscore the value of newspaper properties.

> If the sale of these papers serves as a referendum on the value of newspapers, as many have suggested, the answer based on the prices McClatchy negotiated is a positive one. Considering that these papers were the least attractive of the Knight Ridder properties in terms of market growth and profitability, the overall multiple of 11.1 EBITDA (earnings before interest, tax, depreciation and amortization) was especially favorable for McClatchy. McClatchy only paid 9.5 times EBITDA for all of Knight Ridder…[121]

Newspaper sales over the past five years have all gone for double-digit cash flow multiples (Table 6). In 2005, for example, Lee Enterprises paid $1.5 billion, or 13.5 times cash flow for the 14 dailies it bought from Pulitzer (including the St. Louis Post-Dispatch.)

Television stations have sold for even higher multiples than newspapers. Liberty Corp. sold stations to Raycom for 13 times cash flow, and Emmis’ $681 million sale of 13 of its 16 television stations to Gray, LIN, Blackstone and SJL, and Journal Communications went for multiples 14.7 to 16.1 times cash flow, leaving analysts with “feeling good” about the local television market.[122]

Corporate media owners point to declining stock prices as evidence of their financial distress. But as we have illustrated, when it comes time to sell, there are buyers ready to pay a good price. To be sure, traditional media are in the midst of a transition period, adjusting to the challenges of the online platform and digital technologies. Ironically, those media owners that have succumbed to Wall Street’s short-sighted

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[120] *See* McClatchy Investor Presentation, Mar. 13, 2006, 23; Jennifer Saba, “It’s Official: McClatchy Sells 5 KR Papers – To 4 Companies,” *Editor and Publisher*, June 8, 2006.
[121] John Morton, Morton-Groves Newspaper newsletter, June 21, 2006.
[122] Broadcasting and Cable, Feb. 20, 2006. Available at http://www.broadcastingcable.com/article/CA6308569.html.; Geoff Doughery, “Emmis Communications Sells 9 TV Stations for $681 M, *Chicago Tribune*, Aug. 23, 2005; 2006 State of the News Media, Local TV: Ownership.

focus on short-term profits at the expense of journalistic quality have experienced further decline in audience share.

### B. THE STRATEGY FOR GROWTH: INVEST IN QUALITY JOURNALISM AND REALIZE "SYNERGIES" THROUGH DIGITAL PLATFORMS

Newspaper and broadcasting companies continue to cut staff and news gathering resources, threatening the quality of their news product. A growing body of evidence documents that this is a self-defeating strategy, leading to a "death spiral" of declining audience share, revenues, and profits. There is an alternative: invest in a quality product and take full advantage of new technological platforms, including affiliated websites and, for broadcasters, new digital spectrum.

#### i. Investment in Quality Journalism Is the Path to Boost Audience, Revenue, and Profits

In its 2006 State of the Media report, the Project for Excellent in Journalism noted the prior year's "ominous announcements" of job cuts. The *New York Times* cut 60 people from its newsroom, the *Los Angeles Times* cut 85; Knight Ridder's *San Jose Mercury News* cut 16 percent, the *Philadelphia Inquirer* dropped 15 percent, and that after cutting another 15 percent only five years earlier. As recently as 1990, the *Philadelphia Inquirer* had 46 reporters covering the city, in 2005 it had 24.[123] Since 2000, the newspaper industry cut newsroom staff by an estimated 3,500 to 3,800 jobs, or approximately seven percent.[124] Based on current trends, the Project expected the reduction of 1,250 to 1,500 full-time newsroom professionals in 2006.[125] This number is likely too low, as buyers of the Knight-Ridder papers continue to announce large lay-offs at their acquired properties.

[123] 2006 State of the Media, Overview: Intro, 1.
[124] *Id.*, Overview: News Investment.
[125] *Id.* Newspapers: Intro.

Public controversy over the cost-cutting path to boost short-term profitability erupted at the *Los Angeles Times* earlier this year, as the Chandler family and civic leaders protested corporate owner Tribune Company's demands for further newsroom cutbacks, despite operating profits of 20 percent at the paper. A letter from 20 Los Angeles civic leaders warned the media company "to resist economic pressures to make additional cuts which could remove it from the top ranks of American journalism" and urged the paper to put more, not less money into the newspaper. The Chandler family challenged Tribune's entire rationale for owning television and newspapers in the same market. The debate came on the wake of last year's cost-cutting as Tribune tried to boost earnings to offset the high debt it took on in its Times Mirror acquisition.[126]

For years, journalists have complained about the impact of cost-cutting at the once-highly regarded Knight-Ridder newspapers, as the company aimed to please Wall Street by pushing margins above 20 percent.[127] But deep cuts did not ultimately satisfy Wall Street, nor save the chain. In post-mortem after the sale, a Merrill Lynch analyst acknowledged that "you can't cut the journalism and still put out a good paper" while a Goldman Sachs analyst concluded that "financial restructuring is not the answer to what ails the newspaper industry."[128]

Studies of the employment effects of media consolidation and restructuring underscore these troubling trends. A survey of media workers conducted by Lauer Research, Inc. on behalf of four unions representing workers in the industry found that the impact of stations buyouts, understaffing, and an increased focus on the bottom line led to a decrease in the overall quality of journalism, loss of credibility

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[126] Highly-regarded *L.A. Times* editor John S. Carroll resigned in protest in 2005 against corporate demands to slash newsroom staff. Richard Siklos and Katharine Q. Seelye, "Fitfully Blending Papers and TV," *The New York Times*, June 19, 2006, C1. James Rainey, "Local Leaders Urge Owner of the Times to Avoid Cuts," *Los Angeles Times*, Sept. 14, 2006.
[127] *See* Davis Merritt, *Knightfall: Knight Ridder and How the Erosion of Newspaper Journalism is Putting Democracy at Risk* (New York: AMACOM Books, 2005).
[128] Katherine Q. Seelye, "What-Ifs of a Media Eclipse," *The New York Times*, Aug. 27, 2006, 3:1.

with the public, and an increase in local coverage of entertainment, weather and sensationalistic scandal stories at the expense of covering local news and public affairs. One in five respondents reported personally being laid off in the past five years, with 26 percent reporting job loss at national companies that have undergone a merger or buyout.[129]

These findings are confirmed by a survey conducted by the Pew Center for The People and the Press in collaboration with the Project for Excellence in Journalism and the Committee of Concerned Journalists. Two-thirds (66 percent) of journalists at national news organizations and 57 percent reported that profit pressures are hurting coverage. Half the print journalists and one-third (31 percent) of local television journalists reported cuts in newsroom staff over the past three years.[130]

A Study by The Future of Music Coalition documents that radio consolidation has not only homogenized music formats, but has also led to significant job loss and depressed wage growth.[131] The Institute for Women's Policy Research also found declining employment in the radio (6 percent) and newspaper (19 percent) industries over the past 15 years, with women and minorities experiencing the most significant loss in jobs and earnings.[132]

Yet, this downward spiral is not inevitable. Rather, as the Project for Excellence in Journalism reports, newspapers that have avoided severe cuts are those that are "dedicated to long-term investment and to building circulation." Over time, according to the authors, "they are the ones that have shown the best

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[129] Lauer Research Inc., "Media Professionals and Their Industry: A Survey of Workers and Their Attitudes," Survey conducted Feb. 21-25, 2004 on behalf of AFTRA, National Association of Broadcast Employees and Technicians/CWA, The Newspaper Guild/CWA, and The Writers Guild of America, East.
[130] Pew Research Center for the People & the Press, the Project for Excellence in Journalism, and the Committee of Concerned Journalists, "How Journalists See Journalists in 2004."
[131] Peter DiCola, Future of Music Coalition, "Employment and Wage Effects of Radio Consolidation," Aug. 9, 2006. Available at http://www.futureofmusic.org/research/
[132] Vicky Lovell, Heidi Hartmann, Jessica Koski, *Making the Right Call: Jobs and Diversity in the Communications and Media Sector,"* Washington, D.C.: Institute for Women's Policy Research, 2006.

long-term results." Papers with better than average circulation performance are those known "for commitment to editorial quality and steady investment in their newsrooms." This trend, the report concludes, illustrates "that the more frugal and short-term approach of others was, as some critics charges, a self-fulfilling prophecy toward newspaper decline."[133] Even Wall Street analysts, rarely opponents of cost-cutting, worried that newsroom cuts were going too far. Peter Appert of Goldman Sachs noted that downsizing was "dramatic to the point where readers will notice" and circulation and ad losses might follow.[134]

Numerous studies find that investment in journalistic quality improves circulation and revenue.

- The most thorough analysis of 35 years' of academic literature conducted by a team of scholars led by Dr. Esther Thorson at the University of Missouri found that study after study established the long-term relationship between newsroom spending, quality content, increased circulation, and revenue. They estimated that news investment accounted for 20 percent of the variance among papers.[135]

- Dr. Phillip Meyer of the University of North Carolina in his 2004 book, *The Vanishing Newspaper: Saving Journalism in the Information Age*, concludes that when newspapers cut investment in news, they risk a "death spiral" in which circulation falls, revenue growth slows, and those developments then become the false rationale for further cuts.[136]

- A 2006 study of newspaper financial performance concluded that "investment in the newspaper product itself has resulted in solid long-term revenue growth."[137]

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[133] McClatchy (a public company) with 22 percent margins and Advance (a private company) are examples of companies that have invested in quality and seen the results in increased circulation and revenues. The 2006 State of the Media Report , Newspapers: Audience.

[134] Jennifer Saba, "Analysts Worry About Newsroom Cuts, as Top Editors in Philly and San Jose Review Options," *Editor & Publisher* online, Sept. 28, 2005.

[135] Esther Thorson, "What 35 Years of Academic Research Tell Us," Remarks delivered at the American Society of Newspaper Editors Annual Convention, New Orleans, La. April 9, 2003. available at http://www.poynter.org/content/content_view.asp?id=29033.

[136] Phillip Meyer, *The Vanishing Newspaper: Saving Journalism in the Information Age.* Columbia: University of Missouri Press, 2004.

[137] "In general, the financial performance of newspapers is less volatile than is true of many other industries. Profit margins are high, and the ability to ride out economic downturns in good." Soontae An, Hyun Seung Jim, and Todd Simon, "Ownership Structure of Publicly Traded Newspaper Companies and Their Financial Performance," *Journal of Media Economics,* 19(2), 2006, 119-36.

- A 2004 study of 27 daily newspapers identified by *Editor & Publisher* magazine as having improved newspaper quality had stronger circulations growth than a national representative sample of 98 dailies. The highest percentage increase in weekday average circulation was associated with the investment in larger news staffs. Other quality improvements that correlate well with circulation increases include move and improved local coverage and better in-depth reporting.[138]

- A 2004 study by Tom Rosensteil and Amy Mitchell of Inland Press Association data for the for the years 1987-2001 found that investing more in the newsroom had a powerful and positive impact on circulation, advertising, and total revenue.[139]

Too many media owners have created their own "death spiral" of budget-cuts, declining quality, reduced audience, reduced revenue, leading to further cuts. Those media that have taken on high debt to purchase other properties repeat the process, cutting newsgathering resources and staff to boost earnings and reduce leverage. There is an alternative. Some traditional media companies are turning the corner not only by investing in a quality product, but learning how to earn revenues from online and digital platforms.

### ii. Investment in Online Platforms and Digital Spectrum Will Create Economic "Synergies," Boost Audience, Revenue, and Profits without Sacrificing Diversity of Ownership

The traditional media are beginning to make the transition to the Internet age, using their Internet sites to gain readers, viewers, and advertising dollars. While online news site do not represent an independent news source for diversity purposes (see Section III *supra)*, they do provide cross-platform distribution mechanisms to extend the reach of the traditional news media. Unlike cross-media mergers or television duopolies, these economic synergies do not come at the expense of the core policy objective of fostering diverse ownership among local media outlets.

[138] Sooyoung Cho, Esther Thorson, Stephen Lacky, "Increased Circulation Follows Investments in Newsroom," *Newspaper Research Journal*, 25:4, Oct 1, 2004.
[139] Tom Rosenstiel and Amy Mitchell, "The Impact of Investing in Newsroom Resources," *Newspaper Research Journal*,

Newspaper web sites are growing. About 50 million Americans check the news online on a typical day, going to a TV, newspaper, or web portal site.[140] According to a recent Newspaper Association of America study, there were more than 55.5 million unique visitors to newspaper websites per month in the first half of 2006.[141] The decline in newspaper circulation is now being reversed by the number of people who read the newspaper online.[142] For example, the *Arizona Republic*'s online site has increased the reach of its print circulation by seven percent[143] The *Wall Street Journal* has 764,000 paid subscribers, and *The New York Times* "Times Select" site had 336,000 subscribers, about 45 percent paid (the remainder were subscribers to the print edition who had registered to get the service free.)[144]

Much of the revenue growth at traditional newspapers comes from online advertising, which grew about 30 percent in 2005 to take in approximately $12 billion and is expected to grow another 34 percent in 2006.[145] Belo reports web-related sales increased 50 percent in 2006 as it expanded its online operations.[146] Internet advertising generates higher profits than newspaper advertising, since there is so little overhead. According to one newspaper chief executive, 40 cents of newspaper internet advertising actually produces more profit than a dollar of print revenue.[147] Newspaper analyst John Morton emphasizes that

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25:1 (winter 2004), 84-97.

[140] John B. Horrigan, Pew Internet and American Life Project, "Online News: For many home broadband users, the internet is a primary news source," March 22, 2006, 1. Available at http://www.pewinternet.org

[141] Robert MacMillan, "Online newspaper readership grows," Reuters. Oct 4, 2006.

[142] Pew Research Center for the People & the Press, "Maturing Internet News Audience – Broader Than Deep: Online Papers Modestly Boost Newspaper Readership," July 30, 2006.

[143] 2006 State of the Media Report, Newspapers: Audience.

[144] 2006 State of the Media Report, Newspapers: Economics.

[145] Project for Excellence in Journalism, "The State of the News Media, 2006," Overview, 2 and Overview: Economics. Available at http://www.stateofthenewsmedia.com/2006/index.asp; John Morton, Morton-Groves Newspaper Newsletter, Oct. 19, 2006.

[146] *Communications Daily,* Oct. 17, 2006.

[147] The chief executive is Dean Singleton, chief executive of MediaNews, quoted in John Morton, Morton-Groves Newspaper Newsletter, Jan. 20, 2006.

newspapers, as the premier newsgathering operations in local markets, are learning to take economic advantage of the Internet.

> A lot of anguish stems from fears about what the Internet will do to the newspaper business, but it is not as if newspapers themselves have not taken advantage of the Internet. Because of newspapers' strong brand names in every city they are published in, they have some of the strongest Web sites available in almost any market. And newspaper Internet advertising, which is growing 30 to 40 percent annually, can be highly profitable.[148]

Traditional media are using the Internet to pull viewers into the newsroom, taking advantage of the immediacy, interactivity, and options for customization of online communications. Newspapers are investing in online blogs, chatrooms, podcasts, video, audio, interactive maps; creating links so readers can send news tips and post information; creating options that allow readers to customize the content they view; establishing services that deliver financial news directly to subscribers BlackBerries; and a host of other new experiments.

As television stations make the mandated transition from analog to digital over-the-air delivery, a number of media companies are utilizing this new technology to slice up the bandwidth to broadcast multiple program streams. Disney/ABC and NBC Universal have been the leaders in this area. Both companies are already broadcasting the over-the-air signal in digital format at their owned and operated stations in the top ten markets. The major portion of the bandwidth is used to carry high-definition programs on their main digital channel ( at ABC's New York, L.A., Chicago and San Francisco stations this channel is referred to as 7.1) while also broadcasting a mix of live and taped programs on multiple secondary digital channels (designated as 7.2 and 7.3 at those ABC stations).

[148] *Id*.

Disney/ABC has even created a new business division, the Owned Stations Digital Media Group, which according to a recent press release, "will be responsible for developing and implementing group strategies and initiatives involving the Internet, secondary digital channels and other evolving new digital media for the 10 ABC-owned TV stations by supporting the ongoing rollout of local digital content geared to their individual markets."

With additional broadcast steams, media companies can generate new revenue without the need to purchase multiple stations in any one market.

As the media invest in online platforms and broadcasters take advantage of new spectrum, they will find business models that draw on their traditional strength in newsgathering to attract the public and advertisers. These new technologies provide new platforms to realize economic synergies; the Commission does not have to sacrifice outlet diversity on the alter of economic efficiency.

Although media owners claim that relaxation of media ownership rules will promote the goal of localism by increasing the resources available to local news operations through more efficient combined operations, many commonly-owned media properties have not in fact generated the promised economic benefits. In its dispute with Tribune management, the Chandler family exposed the absence of benefits from Tribune's newspaper/broadcast combinations in Los Angeles, New York, and even the grandfathered properties in Chicago.[149] According to one report

> The Tribune properties in Los Angeles and New York have fared particularly poorly. Circulation is down, below the industry standards at both The Los Angeles Times and Newsday; at KTLA and WPIX, viewers have vanished and audience share has plummeted. Nor has a synergistic bump in ad revenue materialized.[150]

[149] Siklos and Seelye, "At Tribune, A Call for a Split," *The New York Times*, C1, June 15, 2006.

[150] According to Nielsen Media Research, KTLA audience drew 105,000 views a day during the first five months of 2006, down from 202,000 a day for the full year of 2001. WPIX drew an average of 168,000 viewers during the first five months of 2006, down from 301,000 in 2001. Richard Siklos and Katharine Q. Seelye, "Fitfully Blending papers and TV," *The New*

## VI. THE COMMISSION MUST ADOPT STRUCTURAL OWNERSHIP RULES TO PROMOTE DIVERSITY, COMPETITION, AND LOCALISM

New media outlets such as cable, satellite, and the Internet have not led to a proliferation of independently owned local news and public affairs programming. As the Commission concluded in the *2002 Biennial Review Order*, newspapers and television continue to be the dominant means by which Americans receive their news.[151] They are highly concentrated markets, and have become more concentrated as Congress and the Commission have reduced media ownership limits.

The Commission and the Courts have repeatedly affirmed that ownership diversity is a means to promote viewpoint diversity. Therefore, the Commission must adopt strong structural safeguards to protect and promote diverse ownership as a means to advance the First Amendment goal of wide dissemination of news and information from diverse and antagonistic sources.

### A. THE COMMISSION SHOULD RETAIN THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE

The newspaper/broadcast cross-ownership rule protects against the loss of one of only a handful of independently owned local news and information sources. This rule is as important today as it was in 1975 when it was first adopted. As the Supreme Court noted in its 1978 decision upholding the rule, "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency

*York Times*, C1, June 19, 2006.

[151] *2002 Biennial Review Order*, 342, 456.

of their viewpoints cannot be expected to be the same as if they were antagonistically run."[152] In the *Sinclair* decision, the U.S. Court of Appeals upheld the Commission's judgment that common ownership reduces diversity.[153]

In the *2002 Biennial Review*, the Commission eviscerated the newspaper/broadcast cross-ownership rule on the most flimsy and flawed evidence. The Commission reached the erroneous conclusion that common ownership of newspapers and broadcasting outlets in the same market would promote localism through efficiencies that would enhance the quality of local news and information.[154] The Commission discounted its own conclusion that newspapers and broadcast television are the dominant sources for local news, thereby dismissing the threat common ownership of a newspaper and television station pose to diversity, the Commission's core policy objective for democratic discourse.

The Commission cited seriously defective studies in reaching its conclusion that common ownership would promote localism. First, the Commission cited the Spavins et al research (FCC Study #7) on news quality. This study purported to find that television broadcast stations affiliated with a major broadcast television network that are co-owned with newspapers experience greater success in terms of quality and quantity of local news programming than other network affiliates.[155] The Commission chose completely to ignore a serious critique of that study by Dr. Dean Baker entered into the record in that proceeding. Dr. Baker criticized the study for its snapshot approach, failing to evaluate station news quality and quantity over time, and neglecting standard statistical methods of analysis to isolate explanatory relationships. Dr. Baker noted that the study's methodology of making simple comparisons of averages for network owned stations

[152] NCCB, 779.
[153] Sinclair, 161.
[154] *2002 Biennial Review Order*, 356.
[155] *2002 Biennial Review Order*, 343-4.

and network affiliates (or newspaper owned affiliates) provided very little information about what happens to stations when they are taken over by a network or a newspaper.

> It is possible that the stations bought by networks or newspapers always had better coverage than other affiliates. Such stations may have always had better news coverage because they were older or more established. Regression analysis could have shed light on such variables….Regression analysis would also explain whether other factors could explain the apparent superiority of news coverage on network owned stations or newspaper own affiliates.[156]

The Commission also cited as evidence several studies that it also criticized as being methodologically flawed. For example, the Commission cited a study by the Project for Excellence in Journalism (PEJ) purporting to show superior news at commonly owned stations, yet the Commission discounted the results of the PEJ study as "statistically insignificant" which "cannot be considered unreliable or convincing evidence."[157] Similarly, the Commission cited a study that claimed to show that grandfathered newspaper-television combinations delivered more audience share than other leading stations in the same market. Here, too, the Commission noted that this study was flawed because it looked at only a few of the cross-owned combinations, not all of them.[158]

The Commission sponsored a study by Pritchard (FCC Study #2) designed to test whether cross-ownership of newspapers and television stations is likely to lead to a homogenization of viewpoints, i.e. that a single owner imposes a common slant to the news presented in both outlets. The Commission acknowledged the limited scope of the Pritchard study, which purported to find that in half of the 10 newspaper/television combinations studies, the overall slant of the coverage of a company's television stations was noticeably different from the slant of the same company's newspaper. The Commission cited

[156] "Baker," 7.
[157] *2002 Biennial Review Order*, 245 and n.766.
[158] *Id.*, 357 and n. 797 citing Miller Comments in MM Docket No. 01-235 at 24-28, Ex. 8.

various criticisms of that study: Dr. Dean Baker's analysis found that actually seven of the ten combinations had a similar slant, and it failed to include a control group in the study.[159]

A pattern emerges here. The Commission acknowledges the methodological flaws in the very studies it uses as evidence to support its conclusion that newspaper/broadcast combinations produce superior quality and quantity of news. It is on the basis of this highly problematic research that the Third Circuit Court in the *Prometheus* decision reasoned that the Commission acted rationally in concluding that newspaper/broadcast combinations can promote localism.[160] Such reasoning is not supported by the evidence in the record.

In fact, the record in the *2002 Biennial Review* makes abundantly clear that 1) viewpoint diversity is a core goal of the Commission's media rules; 2) ownership affects viewpoint; 2) independent ownership of media outlets by multiple entities in a market promotes viewpoint diversity; 4) viewpoint diversity is best measured by news and information programming in local markets; 5) newspapers and television are the dominant sources of local news and information programming. Therefore, the public interest in a diverse local market for news and information is best served by maintaining the current rule that bars common ownership of a newspaper and television outlet in the same market.

We emphasize that the current newspaper/broadcast cross-ownership rule provides the Commission the flexibility it needs to issue waivers on a case-by-case basis. If market conditions are sufficiently competitive, or if there is genuine failing of an existing outlet, the Commission can and has granted waivers. Waiver policy allows the Commission to differentiate places where cross-ownership efficiencies might benefit the public from those instances where efficiencies would simply allow media conglomerates to

[159] *2002 Biennial Review Order*, 361-2. *See also* Baker, 5-7.

eliminate competition. In a recent waiver proceeding, the Commission granted the Tribune a waiver conditioned on a requirement that the *Fort Lauderdale Sun-Sentinel* maintain a separate newsroom from the co-owned WDZL-TV. We support this condition.[161]

## B. SHOULD THE COMMISSION ADOPT A SINGLE CROSS-MEDIA LIMIT, IT SHOULD FOLLOW THE METHODOLOGY OF THE COURT IN THE *PROMETHEUS* DECISION AND BAR ANY MERGERS THAT WOULD VIOLATE THE DEPARTMENT OF JUSTICE STANDARDS FOR "MODERATELY CONCENTRATED" MARKETS

While CWA strongly believes that the evidence supports retaining the newspaper/broadcast rule, should Commission determine to construct a single local media ownership rule, the Third Circuit Court in the *Prometheus* decision outlined an appropriate methodology for the construction of such a single cross-media limit.[162]

First, select the appropriate geographic market for purposes of measuring diversity. The Commission's determination in the *2002 Biennial Review Order* to match media to the Arbitron radio metro markets is based on sound judgment and analysis.[163]

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[160] *Prometheus*, 398-9.

[161] Comments of Tribune Company, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001, 4. The Commission most recently in granting a transfer request from of Fox' commonly-owned properties in the New York City area extended to Fox Entertainment Group, Inc. a permanent waiver of the newspaper/broadcast cross-ownership prohibition to permit the common ownership of WNYW(TV), New York, N.Y. , and *The New York Post* and a temporary waiver of the same rule to permit the common ownership of WWOR-TV, Secaucus, N.J., *The New York Post*; as well as a waiver of the local ownership rule for station KFCT(TV) Fort Collins, Co. and KDVR(TV), Denver, Co. Fox originally received the waiver for the New York City properties in 1995 and 2001. *See* Memorandum Opinion and Order, *In the Matter of K. Rupert Murdoch (Transferor) and Fox Entertainment Group (Transferee) Applications for Transfer of Control of Fox Television Stations, Inc.,* File No. BTCCT-20050819AAF, *et. al.,* Oct. 6, 2006 (rel). In April 2005, the Commission granted Tribune Company's request for a temporary waiver to retain both WTXX (WB) in Waterbury, Ct. and the *Hartford Courant;* Tribune also owns WTIC (Fox) in the same market. *See Communications Daily,* April 15, 2005.

[162] *Prometheus,* 402-410. We adopt a methodology very similar to the one outline in Mark Cooper, "When Law and Social Science Go Hand in Glove: Usage and Important of Local and National News Sources: Critical Questions and Answers for Media Market Analysis," Paper Presented to Telecommunications Policy Research Conference, Oct. 3, 1994

[163] *2002 Biennial Review Order,* 430.

Second, select the choice of media. The Commission's determination in the *2002 Biennial Review Order* to analyze the media that provide local news and information programming is based on the sound judgment that viewpoint diversity is best measured by news and information programming. The media that are independent sources for local news and information are daily and weekly newspapers, television, and radio. Cable and the Internet are not independent sources for local news and information (*See* Section III *supra*)

Third, assign different statistical weights to the different media types based on an accurate survey of consumer usage of different media types for local news and information programming (e.g. how much consumers turn to a daily and weekly newspaper, broadcast television, and radio for local news and information.)

Fourth, assign different statistical weights to the different media outlets within each media type by market share. As the Commission itself noted, "not all voices speak with the same volume."[164] (The Third Circuit Court soundly criticized the Commission for its assignment of equal market shares in its Diversity Index, generating the "absurd" result granting the Dutchess Community College television station the same share as the ABC affiliate, and an even greater weight in the New York City market than *The New York Times*.)[165]

Fifth, calculate a Diversity Index that takes into account <u>both</u> the rate of consumer usage of a particular media type (step 3, above) <u>and</u> market share within a media type (step four, above).

Sixth, establish a clear line which prohibits any cross-media merger that would increase the level of media concentration above the "moderately concentrated" level, as defined by the Department of

[164] *Id.*, 445.

Justice/Federal Trade Commission (DOJ/FTC) Horizontal Merger Guidelines.[166] Where the Commission through rigorous analysis determines that a proposed merger would *not* increase the diversity index above the DOJ/FTC "moderately concentrated" level, cross-media mergers would be permitted with the burden of proof on the merging parties to demonstrate that the combination is in the public interest.

Seventh, require any cross-media mergers to maintain separate newsrooms and editorial staff in order to preserve and promote viewpoint diversity. This qualifier is modeled after language in the Newspaper Preservation Act, an anti-trust exemption passed by Congress in 1970 to preserve two newspaper voices in a local community where one newspaper is failing. While the Newspaper Preservation Act allows common ownership and joint operation of business and printing functions, it requires that "there shall be no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined."[167]

### C. THE COMMISSION SHOULD RETAIN THE LOCAL TELEVISION OWNERSHIP RULE

The Commission in the *2002 Biennial Review Order* concluded that "limits imposed on television station combinations designed to protect competition in local delivered video markets necessarily also protect diversity."[168] The Commission then relaxed the local television rule to permit triopolies in any market with 18 or more television stations, duopolies in markets with 5 – 17 television stations, and a prohibition against common ownership of television stations in a market with fewer than five television stations.[169] The new rule would allow triopolies or duopolies in over 160 markets covering 95 percent of the population,

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[165] *Prometheus,* 408-9.
[166] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, Revised April 8, 1997.
[167] U.S. Code Title 15. Sec. 1801-1804. Sec. 3(2).
[168] *2002 Biennial Review Order*, 178.
[169] *Id,*.134.

and permit triopolies in markets covering 23 percent of the population.[170] The Commission also maintained (and the Third Circuit Court upheld) the Dual Network Rule that prohibits the merger of any stations among the "top-four" networks, i.e. ABC, CBS, Fox and NBC.[171]

The Third Circuit Court in *Prometheus* remanded to the Commission the numerical limits in the modified local television ownership rule. The Third Circuit Court concluded that the modified rule is "unreasonable" because it would allow levels of concentration considered by the DOJ/FTC and the Commission as highly concentrated (with an HHI exceeding 1800). In the words of the Third Circuit Court, this would result in a "glaring inconsistency between rationale and result."[172]

The Commission has ample justification for retaining the current rule. However, if it chooses to revise the rule, the Commission should calculate the market shares of television in the relevant geographic market, and permit no merger that would result in fewer than 10-equal-sized voices in the market (or an HHI above 1000). The Commission should also reinstitute the waiver policy that would require a failing firm to demonstrate that there is no potential buyer as part of the waiver review process.

### D. THE COMMISSION SHOULD RETAIN THE LOCAL RADIO OWNERSHIP RULE

Finally, the Commission in the *2002 Biennial Review Order* chose to retain the few remaining limits on local radio ownership. The Third Circuit Court in *Prometheus* remanded to the Commission its numerical limits for further justification. The Commission should find ample evidence to maintain, and indeed to strengthen, local radio ownership rules. After national limits were eliminated and local ownership limits were severely relaxed in the Telecommunications Act of 1996, consolidation of local radio markets

[170] Cooper, *Media Ownership and Democracy,* 192.
[171] *2002 Biennial Review Order*, 592; *Prometheus,* 388.
[172] *Prometheus,* 420.

skyrocketed, so that now the largest radio owner (Clear Channel) owns 1,200 stations. Local radio identify is fast disappearing, as corporate owners broadcast to multiple local from centralized locations.

### E. THE COMMISSION MUST ADOPT RULES TO STRENGTHEN MINORITY AND WOMEN'S OWNERSHIP OPPORTUNITIES

The Commission has affirmed minority and female diversity as a policy goal, but was criticized by the Third Circuit Court for repealing the Failed Station Solicitation Rule in the *2002 Order*, its only policy aimed at fostering minority television station ownership. Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations. Women comprise 51 percent of the U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations. There has been no improvement in the level of minority broadcast television ownership since 1998, even as the total universe of stations has increased by approximately 12 percent. There has been a marked decrease in the total number of black or African-American owned stations, dropping nearly 30 percent since 1998.[173]

The Third Circuit Court instructed the Commission to consider proposals by the Minority Media and Telecommunications Council (MMTC) for enhancing ownership opportunities for women and minorities, which the Commission had deferred for future consideration.[174] As the Commission reviews its local media ownership rules, it must pay close attention to the Third Circuit's strong language regarding the Commission's failure to justify its rule changes in regards to female and minority ownership. In addition, the Commission should conduct a comprehensive study of every broadcast radio and television station to

[173] S. Derek Turner and Mark Cooper, "Out of the Picture: Minority & Female TV Station Ownership in the United States," Sept. 2006.
[174] *Prometheus*, 435 fn. 82.

determine the true level of female and minority ownership, as well as female and minority employment. The Commission should also revise and simplify the public display of individual Form 3232 station filings and expand the universe of stations that are required to file Form 323.

## VII. CONCLUSION

The stakes could not be higher in this proceeding. The Commission has the opportunity at last to get it right in setting structural ownership limits that will preserve diversity, competition, and local identity. The future of our democracy depends upon a robust media marketplace characterized by wide dissemination of diverse and antagonistic viewpoints. Protecting, preserving, and promoting a multiplicity of owners of media outlets is therefore necessary to serve the public interest. Because the local newspaper and the handful of television stations are the dominant source of local news and information, the Commission should maintain the newspaper/broadcast cross-ownership rule and adopt strong limits on common ownership of television and radio outlets in the same market. The Commission must pay particular attention to the impact of its ownership rules on women and minorities. Finally, if the Commission pursues a single cross-media rule, it should follow the careful and rigorous methodology outlined by the Third Circuit Court to protect against undue concentration in local media markets.

Respectfully submitted,

Debbie Goldman
Research Economist
Communications Workers of America

Dated: October 23, 2003

**DECLARATION OF DEBBIE GOLDMAN**

My name is Debbie Goldman. I am Research Economist with the Communications Workers of America. My business address is 501 Third Street N.W., Washington, D.C. 2001.

The Communications Workers of America is a labor organization representing 700,000 workers, half of whom work in the communications industry, including wireline, wireless, Internet access, cable, broadcasting, and publishing.

I am familiar with the contents of the foregoing Comments. The factual assertions made in the petition are true to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 23, 2006.

Debbie Goldman

Debbie Goldman