received . . . a waiver of the cross-ownership rule."[67] They even told the Court that "[i]n Hartford, where Tribune also has a waiver, any decision on divestiture . . . need not be made for two years, by which time the remand should be completed; and if not, *the FCC can always extend the temporary waiver.*"[68] There is accordingly no basis for the Petitioners' suggestion now that the Third Circuit intended to preclude any waiver requests merely because it extended the stay.

Indeed, the Petitioners fundamentally misunderstand the nature and purposes of the stay and its continuation. As Tribune has explained, the Third Circuit expressly affirmed the Commission's conclusion that the blanket ban on cross-ownership had become harmful to the public interest.[69] The Court did not vacate the rules adopted in the *2003 Order*; rather, it remanded them for further explanation and continued the stay while the Commission conducted that further analysis. The Court may have expected that the stay would continue only for the short period of time required to conclude a remand proceeding – an expectation that the Petitioners apparently shared.[70] Tribune's motion for a partial lifting of the stay sought industry-wide relief — relief far broader than the instant request for temporary relief would accomplish. The Court's unwillingness to adjust the scope of its stay to allow the 2003 cross-ownership rules applicable to *all* markets with nine or more television stations to go into effect immediately says nothing about the narrower *temporary* waiver requests at issue here, which would not permit greater cross-ownership in any market but would merely continue existing ownership under the 1975 Rule and the decision adopting it. Whether or not the Third Circuit would be surprised by

[67] *Id.* at 9-10.

[68] *Id.* at 10.

[69] *Prometheus*, 373 F.3d at 398-400.

[70] *See* Citizen Opposition at 10 (remand should be completed within two years – mid-2006).

the length of time its stay has remained in effect, the court likely would be surprised to learn that its refusal to lift partially the stay had been used by the Citizen Petitioners to urge denial of *temporary relief pending conclusion of the remand proceeding, especially given the* representations of the Citizen Petitioners and the limited request for temporary relief made here by Tribune.

D. The Petitioners' Dreams and Hypotheses for a Return to the 1975 Rule, or Some Other Variation With Which Tribune's Present Ownership Would Not Comply, Are Irrelevant to Tribune's Waiver Requests.

In an effort to obfuscate the unambiguous waiver standard articulated by the Commission in the 1998 Biennial Review's *Notice of Inquiry*, the Petitioners mischaracterize Tribune's argument that its current ownership "falls within the scope of the proposals in the proceeding,"[71] instead claiming that Tribune "reasons" that the Commission is "virtually certain to authorize all five" of Tribune's cross-ownerships.[72] The Petitioners then take issue with Tribune's assertion that the Commission, upheld by the Third Circuit, reasonably concluded that the flat prohibition on cross-ownerships of newspapers and television stations no longer served the public interest, especially in the "nation's largest markets," where Tribune's cross-ownerships are located.[73] The Petitioners then claim that it is reasonable to believe that (despite the conclusions in numerous biennial reviews, the *2001 NPRM*, the *2003 Order*, and even *Prometheus*), the Commission will return to the absolute prohibition on cross-ownership adopted in 1975 given the record Petitioners have established in their comments on the *2006 FNPRM*.[74]

---

[71] *See Notice of Inquiry*, 13 FCC Rcd. at 11294; *see, e.g.*, Chicago Waiver Request at 15, 36-37.

[72] Petition at 19.

[73] *Id.* at 19-20.

[74] *Id.* at 20-21.

The Petitioners' beliefs are irrelevant to Tribune's requests for temporary relief for several reasons.

First, as shown in Section III.A above, Tribune need not demonstrate that the Commission is "virtually certain to authorize all five" cross-ownerships, but only that all five "fall within the scope of the proposals in the proceeding."[75] Tribune has demonstrated this, many times.[76] In the remand proceeding, the Commission has asked numerous questions aimed at determining whether it could justify and retain the rules it adopted in 2003 (permitting Tribune's cross-ownerships) or whether it should modify them.[77] That alone is sufficient to justify the temporary relief that Tribune has requested, regardless of the Petitioners' conjectures about what the Commission will do.

Second, the Petitioners' legalistic machinations about the Third Circuit's views on cross-ownership in the "nation's largest markets" have no relevance to Tribune's requests for temporary relief. In any event, the Commission recognized in its *2003 Order* that restrictions imposed by the 1975 Rule are less necessary in the "nation's largest markets."[78] Whatever concerns the Third Circuit had with the "diversity index" and how it translated to the cross-

---

[75] *See supra* at 12-13.

[76] *Id.*

[77] *2006 FNPRM*, 21 FCC Rcd. at 8844-48.

[78] The Commission recognized that in "large markets," its analysis indicates that no cross-media limit is necessary, nor can one be justified, given the large number of outlets and owners that typify these markets and the operation of our intra-service television and radio caps." *2003 Order*, 18 FCC Rcd. at 13806. Similarly, the Commission concluded that in "larger markets, we expect that the number of distribution outlets for local news content will be larger, and that consumers will have greater access to secondary outlets for news and information." *Id.* at 13796. The Commission also noted that, since its 1998 Biennial Review, it always had recognized that "there may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed." *Id.* at 13748 (quoting *1998 Biennial Regulatory Review*, 15 FCC Rcd. 11058, 11105 (2000)); *see also supra* at 5 n.9 (statement of then-Commissioner Martin indicating desirability of relief in largest markets).

media limits, there is no doubt that the basic conclusion that larger markets containing higher numbers of media outlets are less "at risk" from the elimination of the cross-ownership prohibition is part of the "reasoned analysis" that supported "the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."[79] The logic that so clearly underlies this conclusion likely is the reason that the Petitioners themselves, in their comments on the *2006 FNPRM*, cited as a potential alternative to the rule's elimination a new waiver standard that, in certain limited circumstances, might permit cross-ownerships in the top 5 markets.[80] In any event, even if the Commission adopts a revision to the 1975 Rule that does not reflect market size, Tribune is entitled today to its requested temporary relief based on the standard articulated in the *Notice of Inquiry*.

For these reasons, the Petitioners' various speculations about what the Commission will do on remand in the *2006 FNPRM* proceeding have no bearing on the Commission's analysis of Tribune's waiver request. In theorizing about a number of potential versions of a new rule that would permit some, but not all, of Tribune's cross-ownerships, the Petitioners demonstrate the propriety of Tribune's request. Unlike the Petitioners,[81] Tribune, in its waiver requests, relies on the proposals adopted in the *2003 Order*, as they are still under

---

[79] *Prometheus*, 373 F.3d at 398.

[80] *See* Comments of UCC, National Organization for Women, Media Alliance, Common Cause, and the Benton Foundation, MM Docket 01-317, filed October 23, 2006 (despite their unsupportable desire to return to the flat prohibition in the 1975 Rule). Of course, Tribune in no way endorses the outdated and legally unsustainable argument made by Petitioners in these comments. But as the Petitioners fail to realize in their Petition, this transfer of control proceeding is not the place to conjecture or advocate what changes should be made to the 1975 Rule on remand from the Third Circuit's affirming of the repeal of the flat prohibition.

[81] Petition at 20 ("there is no reason to expect that [the Commission] would bless any of Tribune's cross-ownerships, much less all of them."). The Petitioners then self-servingly conjure up several alternatives, without any support from the *2003 Order* or the *2006 FNPRM* that permit some, but not all, of Tribune's cross-ownerships. *Id.* at 21. The Petitioners' sole basis for their conjecture is their own hubris and citations to their own comments or others they support. *See id.* at 20-21.

review in the *2006 FNPRM*. Certainly the Commission may alter the cross-media rules that it adopted and that have been remanded. If it does, however, it will need to articulate a reasonable basis for the modified rule and will face an especially critical review if it reverses its conclusions concerning the repeal of the 1975 Rule.[82] Under the appropriate standard for a temporary waiver pending the completion of a rulemaking, and given Tribune's specific market showings, the public interest is best served by avoiding a forced and potentially unnecessary divestiture of the cross-owned properties during the comparatively short period remaining before the Commission should conclude its media ownership proceedings in the *2006 FNPRM*.[83]

IV. Tribune's News And Public Affairs Programs Are Real And Meritorious.

In an effort to defeat even temporary relief pending the conclusion of the *2006 FNPRM*, the Petitioners turn a blind eye to the programming benefits detailed by Tribune in its waiver requests, cavalierly labeling the Applicants' demonstration of Tribune's decades of leading commitment to providing local news and public service a "feeble attempt" to justify common ownership of its media properties.[84] The Petitioners further maintain that there can be

---

[82] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 57 (1983) ("an agency changing its course must supply a reasoned analysis"); *Ramaprakash v. FAA*, 346 F.3d 1121, 1125 (D.C. Cir. 2003) ("[a]n agency's failure to come to grips with conflicting precedent constitutes an inexcusable departure from the essential requirement of reasoned decision making"); *Office of Communication of the United Church of Christ v. FCC*, 560 F.2d 529, 532 (2d Cir. 1977) ("changes in policy must be rationally and explicitly justified"); *Fox Television Stations, Inc. v. FCC*, No. 06-1760, 2007 U.S. App. LEXIS 12868, at *36 (2d Cir. June 4, 2007) ("[W]hen an agency reverses its course, a court must satisfy itself that the agency knows it is changing course, has given sound reasons for the change, and has shown that the rule is consistent with the law that gives the agency its authority to act."); *Radio-Television News Directors Association v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) (refusing to permit the FCC to retain rules when it could not explain the rationale for reversing course on the findings and conclusions it had previously made concerning the rules' service of the public interest).

[83] After this relatively short period, if the Commission reasonably concludes, as determined by the court, that the prohibition on cross-ownership should apply in any or all of Tribune's markets, Tribune will comply with the new rule, including in Chicago. In the interim, even given the delay in process that has been encouraged by the Petitioners, several years of further cross-ownership in these top markets will not harm competition; divestiture will forever risk the benefits of Tribune's current service to the public.

[84] *See, e.g.*, Petition at 31-32 (denigrating the benefits provided by the joint operation of WGN-TV,

no public interest benefits to any cross-ownership, including Tribune's, unless it either prevents a media property from ceasing operation, or perhaps generates a completely new newscast that would not otherwise exist on a station that never otherwise would produce any news.[85] Worse yet, the Petitioners speculate that Tribune's public interest benefits are not likely to continue, citing Tribune's own journalists' published criticisms of Tribune's reductions in news staff and revenues.[86] Fortunately for the public, the Commission has not shared the views of Petitioners.[87]

A. Tribune's Public Interest Benefits Are Meritorious, And Count.

In each of the five cross-ownership markets, Tribune has produced new, additional and enhanced newscasts as a result of the common ownership. In New York, Los Angeles and Chicago, the Applicants have demonstrated that Tribune has increased the hours of its newscasts by 2.5 to 7.5 hours per week during Tribune's operation of the cross-owned properties.[88] The Petitioners, far removed from the news production process and its financial requirements, arrogantly disregard the significance of increasing the amount of broadcast news

---

WGN(AM), CLTV and the *Chicago Tribune*).

[85] *See supra* at 24 & n.80 (summarizing Petitioners' comments on the *2006 FNPRM*; *see, e.g.*, Petition at 32 (discounting any news produced by the sharing of resources).

[86] *See, e.g.*, Petition at 32, 38, 44-45, 52-53. The Petitioners also assert that Tribune's public interest benefits should be ignored because they could be produced without cross-ownership. *See, e.g.*, Petition at 32, 39, 57.

[87] In the past, the Commission may have believed that improved news coverage, expertise and operating efficiencies were not grounds for a *permanent* waiver, based on the view that the Commission would not relitigate in waiver cases issues it had settled in adopting the 1975 Rule. *See Renaissance*, 12 FCC Rcd. at 11887, *Hopkins Hall*, 10 FCC Rcd. at 9766; *Capital Cities/ABC*, 11 FCC Rcd. at 5894. As Tribune has shown, 30 years later, in a new era, the Commission now has revised its views, and recognizes the benefits can be achieved without unduly compromising, and indeed enhancing, diversity. *See infra* at 29-30. Of course, the Commission always has considered the programming benefits in justifying temporary waivers, or waivers of other Commission multiple ownership rules. *See, e.g., id.*; *Counterpoint I*, 16 FCC Rcd. at 15046-47; *Counterpoint III*, 20 FCC Rcd. at 8588-8589; *KLZK, Inc.*, 14 FCC Rcd. 5428, 5432-5433 (1999); *Barnco, Inc.*,14 FCC Rcd. 5414, 5417 (1999).

[88] *See*, e.g., Los Angeles Waiver Request at 21 (7.5 hours since acquisition of *LA Times*); New York Waiver Request at 22 (2.5 hours since acquisition of *Newsday*); Chicago Waiver Request at 21 (4.5 hours since 2001).

from one-half hour to one full hour per day on these stations, a fact to which Tribune can attest given its leadership in establishing television news for the public in these markets. Moreover, the Petitioners have completely and inappropriately discounted or ignored Tribune's showing that it has enhanced the local elements of the newscasts on these stations through cross-ownership.[89] To compound the callous disregard for real public interest programming, the Petitioners, in their discussion of Los Angeles, falsely claim that "the arrangement between the *LA Times* and KTLA has ended." KTLA has not stopped working with the *LA Times* to produce more and better news stories.[90] This is just not true; KTLA continues working with the *LA Times* to produce more and better news stories.[91]

In Miami, Tribune introduced a new newscast where no news programming previously existed. As Tribune has demonstrated, despite the need to contract with WTVJ for the production of its newscast, WSFL has ensured that the news programs reflect the product of Tribune's newsgathering, and are not merely repeats of WTVJ's news programs.[92] Specifically, since the removal of the "hold separate" requirement by the FCC, Tribune has ensured that the newscast reflects the newsgathering efforts of the *Sun-Sentinel*, and that is reflected by the inclusion of local stories about Broward County not otherwise available to WSFL.[93]

---

[89] *See*, e.g., Los Angeles Waiver Request at 39-41 (describing additional coverage of local issues); New York Waiver Request at 37-39 (describing additional coverage of Long Island issues and other events); Chicago Waiver Request at 31-32 (describing additional coverage of political and other local stories).

[90] *See* Petition at 57, citing "Los Angeles Waiver Request at 34, 36."

[91] Although KTLA no longer embeds a single reporter at the *LA Times*, the two media outlets have invested in new methods to work more closely to produce high quality local and national news stories for both KTLA and the newspaper.

[92] Miami Waiver Request at 30-31.

[93] *Id.* at 31.

In Hartford, the Petitioners also wrongly characterize the work of the *Courant* and WTIC/WTXX on the newscasts as producing "homogenous news stories" on the three outlets.[94] As Tribune has shown, given the nature of the market, Tribune's efforts have gone a long way to making newscasts possible at all on WTIC and WTXX.[95] The *Courant* does not produce the newscasts, which are much more than recycled *Courant* research and reporting; they are produced independently by the television stations, including the stations' News Director.[96] And while the same staff produces the WTIC and WTXX newscasts, Tribune has used the duopoly to provide different news programming options to the public at different times, including a shorter version of the newscast with early sports and weather, "time shifted" newscasts for viewers that desire to watch the news at different times, and special coverage of Waterbury, WTXX's community of license.[97] Contrary to the Petitioners' assertions, these public interest benefits have been expressly recognized by the Commission.[98]

In all five cross-ownership markets, the Petitioners also ignore the new and enhanced public affairs programs provided by the stations as the result of cross-ownership.

- In Los Angeles, KTLA's public affairs specials produced in part with *LA Times* resources have included programs on homelessness in Los Angeles, the gang problems in the Greater Los Angeles area, and weather disasters in Southern California, as well as political campaign debates.[99]

- In Hartford, the Stations have developed local public affairs and sports shows entitled "Beyond the Headlines" and "Beyond the Highlights" using, in part, *Courant*

[94] Petition at 44.

[95] Hartford Cross-Ownership Waiver Request at 38-41.

[96] *See id.* at 40.

[97] *Id.* at 39-40.

[98] *See, e.g., Counterpoint III*, 20 FCC Rcd. at 8588-89 (reviewing public interest offerings in Hartford and finding the "Tribune has delivered on every public interest benefit that it identified in its initial application to acquire WTXX).

[99] *See* Los Angeles Waiver Request at 38-39.

resources. The *Courant* resources also have been used to produce other news and public affairs specials, including political debates and analysis, and program specials involving local civic events and local sports teams.[100]

► In New York, WPIX has been able to use *Newsday* resources to help produce special programs including political debates and children's shows about, for example, summer activities, after-school programs, literacy and reading, volunteerism, anti-smoking, and health.[101]

► In Miami, WSFL has produced with the *Sun-Sentinel* numerous public affairs programs, including shows dealing with hurricanes, local children that demonstrate high moral character, crisis counseling, AIDS, childhood obesity, and the local environment.[102]

► In Chicago, WGN-TV, WGN(AM) and the *Chicago Tribune* utilized personnel and resources in collaboration on numerous specials on issues of local political concern, including the 2002 gubernatorial debate.[103]

The Petitioners offer no valid reason, other than their distaste for cross-ownership, for discounting or ignoring these public affairs programs, and there is none. The additional and enhanced public affairs programming on all of these stations are clear public interest benefits that militate against divestiture of the cross-owned properties pending completion of the Commission's rulemaking.[104]

Finally, the Petitioners also erroneously refuse to recognize the positive effects of shared participation in community events.[105] While many businesses perform community service and host charitable events, Tribune's cross-owned properties effectively use the combined power of the airwaves and print. Newspaper and broadcast combinations can greatly amplify the power of civic campaigns, as one Red Cross representative testified with gratitude at

---

[100] *See* Hartford Cross-Ownership Waiver Request at 41-43.

[101] *See* New York Waiver Request at 39.

[102] *See* Miami Waiver Request at 31-33.

[103] *See* Chicago Waiver Request at 32.

[104] *See Counterpoint III*, 20 FCC Rcd. at 8588-89.

[105] Petition at 32, 39, 46, 53, 57.

the Commission's public hearing in Tampa.[106] Tribune has demonstrated that these joint civic projects are enhanced using the electronic and print media in combination, and they should be recognized as a public interest benefit by the Commission. For example, in Hartford, Tribune has developed a "Student News" program that teaches students about producing current events stories and arranges for the broadcast and publication of these stories.[107] Regardless of the weight given to these meritorious efforts, the Commission can recognize the significant benefits Tribune's cross-ownerships have produced.

B. Sharing and Collaboration Do Not Decrease Diversity or the Amount of Coverage of Local Issues In Each Market.

The Petitioners wrongly contend that because the sharing and cooperation involved in cross-ownership decreased diversity, none of these benefits are in the public interest.[108] Whatever the Commission's views prior to the adoption of the *2003 Order*,[109] the Commission has not maintained such a narrow view. In the *2003 Order*, the Commission concluded that "television stations that are co-owned with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation."[110] The Commission further concluded that the public interest in localism and local programming supported the repeal of the 1975 Rule because the "evidence suggests

---

[106] The audio transcript of this hearing is available at www.fcc.gov/ownership/hearing-tampa043007.html.

[107] *See* Hartford Cross-Onwership Waiver Request at 43-44. *See also, e.g.*, Los Angeles Waiver Request at 41 (the annual journalism contest resulting in publication and broadcast of winning entries); Chicago Waiver Request at 39 ("Hunger Knows No Season" uses all three media to raise food donations for the needy); New York Waiver Request at 39-40 (combined properties promote Lupus walk on Long Island).

[108] *See, e.g.*, Petition at 32, 44, 57.

[109] *See supra* at 25 n.86.

[110] *See 2003 Order*, 18 FCC Rcd. at 13802. The Commission concluded that "[i]n light of the overwhelming evidence that combinations can promote the public interest by producing more and better overall local news coverage... the current rule is not necessary to promote our localism goal, and that it, in fact, is likely to hinder its attainment." *Id.* at 13759.

that the rule actually works to inhibit such programming."[111] Regarding viewpoint diversity, the Commission concluded that "the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third-parties."[112] The Commission also found that "relaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information."[113]

As Tribune has demonstrated, its cooperative efforts result in much more than "time shifting."[114] Cross-owned properties do not simply publish or broadcast the same stories. Instead, the publishers and producers and their separate editorial staffs use a common base of information to produce different presentations using different techniques and providing different insights. Newspapers can tabulate information and provide a wealth of detail. Broadcasters present the people involved in the news, their surroundings, their words and emotions. Each medium brings strengths and expertise to the process of gathering and presenting the news. Neither is engaged in recycling the other's work product. As newspapers' increasing use of video, and broadcasters' increased use of text is demonstrating on the Internet, print and broadcast media both offer tools that can be combined to better inform the public. This process does not reduce the available "viewpoints." Rather, it enables each medium to do a better and more efficient job of performing its essential function – informing the public.

---

[111] *Id.* at 13753.

[112] *Id.* at 13761.

[113] *Id.* at 13760-61.

[114] Petition at 32.

C. The Petitioners Are Mistaken in Their Contentions that Tribune Cuts Mean That The Benefits of Cross-Ownership are Illusory.

Tribune has provided detailed discussion, descriptions and examples of the public interest benefits that flow in each cross-ownership market for which it seeks temporary relief. The Petitioners, however, shamelessly cite news articles complaining of staff reductions at some Tribune newspapers — cuts necessitated by the changing marketplace — and then, without any support, leap to the conclusion that Tribune's specific benefits are not likely to continue.[115] Tribune will not here debate the merits or accuracy of the reported "cuts" cited by the Petitioners, save to say that these "down-sizings" have been a reality faced by virtually every newspaper publisher for several years. Nevertheless, the benefits enumerated by Tribune in its requests for temporary waiver continue to the present day. Tribune's cross-owned television stations have not ceased providing hour-long newscasts in prime time, and they have expanded their multi-hour newscasts in the morning. Like all media outlets, Tribune reacts and responds to consumers' choices and preferences about how they get their news, information and entertainment, and to advertisers' choices and preferences about how they desire to spend their advertising dollars. Tribune's responses to consumer and client preferences, and its decision to become privately owned, do not reflect any reduction in the company's commitment to journalism and public service. Indeed, they are designed to enable the company to compete more effectively in the digital media environment.

While the spurious conjectures of the Petitioners do not negate Tribune's public interest showing, they do serve to highlight several points that contradict Petitioners' own arguments about cross-ownership. First, the citation to various articles written by Tribune

[115] Petition at 32, 38, 44-45, 52-53 (quoting prominently Tribune columnists criticizing Tribune cuts and their effect on the ability of the media properties to cover issues).

journalists in Tribune newspapers *criticizing* Tribune management for down-sizing and cuts in resources only serves to prove that cross-ownership neither forces viewpoint conformity nor *prevents the expression of diverse, differing and highly critical viewpoints.* Simply put, where the Petitioners can cite *Newsday* and *LA Times* and *Courant* reporters propounding views that are highly critical of Tribune and its ownership and management, they cannot seriously contend in the same breath that Tribune's common ownership will restrain the expression of diverse viewpoints.

Second, the economic and business realities that underlie these cuts and down-sizings reveal the lack of market power held by newspapers and independent broadcast stations. The dominance of these properties hypothesized by the Petitioners certainly is not reflected in the falling ratings, circulations and revenues Tribune has acknowledged in its various waiver requests.[116] Contrary to the Petitioners' implication, these realities reflect the fact that Tribune's customers, viewers and readers all have plenty of other places to turn for their news and entertainment. Because of robust media competition and the resulting "cuts" and "down-sizings" cited by the Petitioners, media entities likely will need to rely more and more on the sharing of backroom efficiencies and overhead to continue to present quality local, regional and national news to the public. As Tribune has demonstrated in its waiver requests, and as the Petitioners have demonstrated through citations to the critical views of Tribune's journalists, cross-ownership can provide public interest programming without sacrificing diversity.

[116] *See, e.g.*, Hartford Cross-Ownership Waiver Request at 28-29 (*Courant* circulation falls); Los Angeles Waiver Request at 20, 26 (KTLA ratings drop and *LA Times* circulation falls); Chicago Waiver Request at 21, 28 (WGN-TV ratings drop and *Tribune* circulation falls); New York Waiver Request at 21, 28 (WPIX ratings drop and *Newsday* circulation falls); Miami Waiver Request at 19, 21 (WSFL ratings drop).

D. Tribune's Cross-ownership Benefits Are Not Possible Through Joint Ventures, as Alleged by the Petitioners.

Finally, the Petitioners wrongly discount the benefits of cross-ownership based on the assertion that all of these benefits are possible without cross-ownership, because separately owned media outlets could agree to share resources.[117] Like many of the claims asserted by the Petitioners, this contention is more properly raised in the context of the rulemaking, where Tribune and the Petitioners have argued over this policy. In this proceeding, the Petitioners have not provided any support for the proposition that Tribune's cross-ownerships would have, or could have, provided anything near the level of news and public affairs service absent the common ownership by Tribune. Indeed, the Commission has recognized in the *2003 Order* that combinations like Tribune's tend to provide more and better local news and public affairs programming than would independent stations.[118] As Tribune has indicated in the past, contractual arrangements do not result in the kind of capital commitment necessary to achieve the same public interest benefits because one property invariably is being asked to subsidize the other property with disproportionate benefits. Similarly, the commitment to long-term training and equipment investment is particularly inadequate given the shorter term nature of the agreements.[119]

Absent any indication that other separately owned broadcast stations and newspapers in these markets accomplish the public interest synergies and results of Tribune, the Commission should recognize these benefits and prevent the divestiture of the cross-owned media that produce them until it concludes the *2006 FNPRM*. As Tribune has shown, and will

---

[117] Petition at 32, 39, 57.

[118] *See supra* at 30-31 (reciting Commission findings on cross-owned properties).

[119] *See, e.g.*, Comments of Tribune, MM Docket No 01-235, filed December 3, 2001; Reply Comments of Tribune, MM Docket No. 01-235, filed January, 2006, at 6-8.

again demonstrate below, these benefits are generated without any offsetting or even cognizable decrease in diversity and competition in the five cross-ownership markets.

V. The Petitioners Have Improperly Contorted Their Geographic Market Definitions And Analysis.

In an effort to avoid the realities of the media marketplace in Tribune's cross-owned markets, the Petitioners have gerrymandered their geographic market definitions to serve their own pre-determined conclusions. Specifically, the Petitioners rely on limited language from carefully selected cases involving only *radio* stations to criticize Tribune's inclusion of all the media in the *television* station's DMA in its evaluation of competition in the market, thereby seeking to narrow the relevant markets for analysis of the *television* stations at issue here to the overlapping area of the cross-owned properties.[120] This novel approach does not comport with any FCC rule, policy or decision and must be summarily rejected. As if that were not enough, the Petitioners then refuse to apply their own standard when it does not suit their specific purposes by ignoring facts that clearly demonstrate that the relevant overlap area effectively includes the entire DMA (Chicago, Hartford, Los Angeles) or by ignoring the community of license of Tribune's television stations in New York and Florida.[121] The Commission should reject Petitioners' imaginary geographic markets and instead rely on the same marketplace realities it recognized several years ago when it changed the television duopoly rule to focus on common ownership in DMAs – television stations compete for viewers and advertisers throughout their DMAs.

---

[120] Petition at 25, 33, 40, 47, 53.

[121] *Id.*

All that is necessary to understand the absurd results advocated by the Petitioners is a review of their claims with respect to New York and Miami.[122] In New York, the Petitioners seek to limit the Commission's analysis to parts of Long Island, including Suffolk County despite the fact that WPIX is licensed to and broadcasts from New York City.[123] The Petitioners' contorted geographic market definition conveniently would have the Commission avoid consideration of any New York City television stations, radio stations and newspapers, except, presumably, WPIX.[124] In South Florida, the Petitioners similarly exclude and would have the Commission ignore all of the Miami broadcast stations located in Dade County, where WSFL is licensed and where two-thirds of its viewers reside.[125] Even a cursory review of Petitioners' suggestion that this approach could possibly define "relevant" geographic markets for the Commission's analysis reveals the arbitrary and capricious, if not flat-out silly, nature of this contention. Indeed, the Petitioners' exclusion of the community of license and most of the service area of the broadcast station would often result in stricter guidelines for cross-ownership of media properties that serve large and divergent geographic markets, like South Florida, than for media properties in markets that encompass more limited areas.

Fortunately, the Commission precedent cursorily cited by the Petitioners provides for no such result, and the relevant market is indeed the DMA of the television station. In *Hopkins Hall Broadcasting, Inc.*, on which the Petitioners place their primary reliance, the

---

[122] WPIX, licensed to New York, New York, is the Tribune television station in the New York DMA, and WSFL, licensed to Miami, Florida, is the Tribune television station in the Miami-Ft. Lauderdale DMA.

[123] Petition at 47-48. The Petitioners' claim is based in largest part on the irrelevant concept that *Newsday* brands itself with a focus on Long Island. The fact that *Newsday* has a link to "Long Island News" on its website and places the words "Long Island" below its name hardly serves as "proof" that *Newsday* is not circulated throughout New York City and the rest of the DMA. *Newsday* is most certainly circulated in parts of the DMA other than Long Island.

[124] Petition at 47-48.

[125] *Id.* at 33.

Commission held the following about the relevant geographic market for the analysis of *radio*-newspaper cross-ownership:

> In the context of this request for waiver of the newspaper/*radio* cross-ownership rule, the relevant market for analyzing the effects on diversity and competition of the proposed waiver is not the Nashville ADI, *which relates to television stations*, but rather the area in which the predicted or measured 2 mV/m contour of the AM station encompasses the entire community in which the newspaper is published.[126]

The Commission thus distinguished the *radio* market for analysis from the *television* market for analysis – the "ADI," which subsequently has been replaced by the DMA, was clearly the relevant market for television stations. Moreover, in explaining the reason for the difference, the Commission cited the rulemaking that adopted the 1975 Rule, with a parenthetical that explained that the Commission intended to assign "limited weight" to media outside the community served by the broadcast station, because those media would ignore issues pertaining to the community of license of the licensee at issue.[127] The Commission went on to point out that the radio stations it was excluding from the analysis with this geographic market definition did not compete against or serve the same area as *either* the radio station or the daily newspaper at issue.[128] In refusing to use the ADI (or now DMA) "which relates to television stations," the FCC simply was attempting to avoid consideration of radio stations that did not place a relevant contour into the service area of either of the media proposed to be commonly owned.

---

[126] *Hopkins Hall Broadcasting, Inc.*, 10 FCC Rcd. 9764, 9766 (1995) (emphasis added).

[127] *Id.* (citing *1975 Order*, 50 F.C.C.2d at 1081).

[128] *Id.* ("It is obvious that many of these 'voices' do not compete against WLIJ or the *Times-Gazette* for advertisers or audience circulation").

A review of *Columbia Montour Broadcasting Co., Inc.*,[129] also cited by the Petitioners, confirms this analysis. Citing, among other cases, *Hopkins Hall*, the Commission of course recognizes that for "newspaper/*radio* cross-ownership," the relevant market for analyzing a waiver request is the common area served by the newspaper and the 2 mV/m contour of the AM station.[130] In performing the diversity and competition analysis, however, the Commission properly included all the television stations licensed to the DMA (Wilkes-Barre/Scranton) where the community of license of the radio station was located.[131] This approach makes perfect sense because, as noted above, television stations compete for viewers and advertisers throughout the DMA. Thus, the listeners in the radio-newspaper overlap area were deemed to have received news, public service and entertainment programming from all the television stations in the DMA.

The Commission's analysis in *Columbia Montour Broadcasting* is thus completely consistent with its analysis of *television*-newspaper cross-ownerships, where the Commission has consistently analyzed competition and diversity throughout the entire DMA. In *UTV of San Francisco,* another case cited by the Petitioners, the Commission analyzed the television stations, radio stations, daily newspapers, cable television penetration and weekly newspapers in the "New York DMA" when evaluating Fox's proposal for a temporary waiver for a newspaper-*television* combination.[132] Equally important, the Commission in *UTV of San Francisco*, unlike the Petitioners here, recognized that *Newsday* was a daily newspaper that served New York City and its DMA.[133]

---

[129] 13 FCC Rcd. 13007 (1998).

[130] *Id.* at 13015 (emphasis added).

[131] *Id.*

[132] 16 FCC Rcd. at 14988-89.

[133] *Id.*

Contrary to Petitioners' claims, the Commission's evaluation of "voices" *throughout television DMAs is not new or unique, inasmuch as the DMA has been used as the* relevant geographic market in other requests for waivers of the 1975 Rule for television-newspaper combinations.[134] The Commission has recognized that the DMA is the most logical geographic market because television stations do not rely exclusively on over-the-air reception to reach their audience. Today, cable and other multi-channel video programming distributors carry the television programming of stations throughout their entire DMA. The Commission therefore has routinely used DMAs or similar geographic market definitions for its ownership rules involving television stations, including the so-called one-to-a-market rule for proposed television and radio station combinations in the top 25 markets.[135] In deciding to use commercially based definitions of geographic market areas in applying its ownership rules, the Commission did what the Petitioners refuse to do here – recognize marketplace realities. Indeed,

---

[134] In Tribune's previous requests for waiver in South Florida and Hartford, it submitted detailed information concerning its television stations' DMAs, which were assumed or considered to be the relevant market for a competition and diversity analysis. *See Counterpoint III*, 20 FCC Rcd. at 8585 (analyzing the Hartford DMA); *Renaissance*, 12 FCC Rcd. at 11885 (assuming Tribune's demonstration of the relevant geographic market is correct.).

[135] *See Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules,* Report and Order, 14 FCC Rcd. 12903, 12926 (1999), *order on reconsideration,* 16 FCC Rcd. 1067 (2001), *rev'd and remanded on other grounds, Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) ("*Local Television Order*") ("The Commission traditionally has employed DMAs or a similar geographic measure in other rules. Such a geographic measure is the Area of Dominant Influence ("ADI"), used by the Arbitron Company to define a television station's geographic market according to audience viewing patterns. In the past, we have used ADIs for purposes of calculating an entity's national television audience reach under our national television ownership rule. In the National TV Ownership Report and Order we are issuing today, we are adopting our proposal to use DMAs instead of ADIs in calculating national audience reach because Arbitron stopped updating its ADI market data in 1993. For the same reason, the Commission is now using DMAs rather than ADIs to define the market within which a broadcast television station is entitled to cable must-carry or retransmission consent. Commercial market measurements such as DMAs are presently used by the Commission to define markets in other contexts as well, e.g., waivers of the one-to-a-market rule in the top 25 television markets.")

the Commission recognized these marketplace realities as early as 1999 when it changed the local television ownership rule from a contour-based to a DMA-based rule:

> There are several benefits to defining the geographic dimensions of the local television market by reference to DMAs. Most importantly, unlike a rule relying on predicted field strength contours, DMAs reflect actual television viewing patterns and are widely used by the broadcasting and advertising industries. DMAs reflect the fact that a station's audience reach, and hence its "local market," is not necessarily coextensive with the area of its broadcast signal coverage. For example, a station's over-the-air reach can be extended by carriage on cable systems and other multichannel delivery systems, as well as through such means as satellite and translator stations. [136]

For these reasons, the Commission should reject the Petitioners' geographic market definitions and analyze diversity and competition based on today's media marketplace realities by using the DMAs in which Tribune owns a newspaper and a television station.

VI. The Petitioners Improperly Ignore And Discount The Presence of Important Voices.

In an effort to further mask the reality of these diverse markets, the Petitioners artificially exclude certain voices in each market that provide diverse choices to the public and competition to Tribune's media operations in those markets. There simply is no basis or support for Petitioners' selective exclusion of certain voices based on their subjective analysis of the weight or importance of particular voices in the market.

A. Petitioners Improperly Ignore Any Station that Does Not Provide News, Broadcasts in a Foreign Language, or Has Less Than a 1 Percent Market Share.

In their separate market analyses, the Petitioners attempt to discount any station that does not provide news, is broadcast in a foreign language, or has less than a 1 percent

[136] *Id.* at 12926-27.

audience share.[137] There is no basis or support for the exclusion of voices in a diversity analysis based on any of these criteria, and in fact there is significant Commission precedent to the contrary.

As an initial matter, it should be noted that the appropriate question in any diversity analysis is simply the number of diverse voices available to consumers in the market. All broadcast outlets are vehicles for the expression of ideas, or the presentation of news, information and entertainment. The particular content of any one of those voices is not, and indeed cannot be, a consideration in the Commission's review of the number of diverse voices in the market.[138] As the Supreme Court said in affirming the constitutionality of the Rule, the purpose of ownership limitations is to facilitate "maximum benefit to the 'public interest'... from allocation of broadcast licenses so as to promote diversification of the mass media *as a whole*."[139] The justification was not diversification of the mass media *that provides regularly scheduled news programming*. Similarly, the underlying rationale supporting the constitutionality of the Rule – indeed, of broadcast regulation in general – is the scarcity of outlets, not the scarcity of news outlets.[140] Thus, there is no support for Petitioners' suggestion that only stations that have regularly-scheduled news programming count for a diversity analysis.

Commission decisions affirm that a licensee's chosen format simply is not relevant to whether that licensee is a "voice" in the market. The Commission's diversity analysis considers every independently-owned "voice" in the relevant market; it does not examine the

[137] *See, e.g.*, Petition at 26, 34, 41, 55.

[138] *Cf.* 47 U.S.C. § 326; *Chicago Media Action*, 2007 FCC LEXIS 4575 (MB June 13, 2007) ("Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.").

[139] *FCC v. NCCB*, 436 U.S. at 798 (emphasis added).

[140] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 396 (1969).

content chosen by the licensee for broadcast and then decide to count only certain "voices" depending on that content. In *Fox Television Stations*, for example, the Commission considered the "media voices available in the city of New York," not merely the media voices *that provide news* in the city of New York.[141] Similarly, in *Counterpoint*, the Commission looked at all of the television stations and radio stations in the Hartford DMA, without regard to whether or not those stations aired news.[142]

Petitioners' suggestion that stations that are public broadcasting stations or that broadcast in a foreign language should not count as much as the English-language commercial television stations licensed to the market similarly is not supported by Commission precedent. The Commission has held that foreign-language stations and non-commercial stations are entitled to equal consideration as a voice in the market for purposes of a diversity analysis.[143] Petitioners offer no support for the contrary proposition.

B. Petitioners Improperly Assert That Radio Stations Do Not Count Because They Do Not Provide Local News.

Citing to their own comments in another proceeding, the Petitioners argue that radio stations do not "necessarily" contribute to diversity because "oftentimes" the stations discuss national and not local news.[144] Not only is this an unsubstantiated claim, it is patently

---

[141] *Fox Television Stations Inc.*, 8 FCC Rcd. 5341, 5351 (1993).

[142] *Counterpoint I*, 16 FCC Rcd. 15044, 15047-15048 (2001).

[143] *Tele-Media Company*, 10 FCC Rcd. 8615, 8617 (CB 1995), *citing Service Electric Cable TV of New Jersey, Inc.*, 102 F.C.C.2d 404, 406 (1984) (recognizing Spanish language stations for purposes of a diversity analysis); *Cf. Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules*, 100 F.C.C.2d 1544, 1550 (1985) (recognizing "noncommercial stations for purposes of measuring diversity... because noncommercial stations represent additional independent voices"); *Revision of Radio Rules and Policies*, 7 FCC Rcd. 6387, 6395 (1992) (acknowledging in the radio context that "non-commercial stations represent an additional voice in terms of traditional diversity concerns").

[144] Petition at 28, 35, 42.

untrue. The Commission cannot now logically conclude that radio station news should be ignored or even discounted, having previously found that "local radio stations provide access to information and opinion on issues of local concern."[145] Furthermore, radio stations "provide their own unique contributions to the coverage of news and public affairs, especially with regard to the more in depth coverage they often can offer with respect to some issues."[146] The Petitioners cite no market evaluation by the Commission in which radio stations were ignored as part of the diversity analysis. In any event, as Tribune demonstrates below, the five relevant cross-ownership markets are incredibly diverse and competitive, whether one considers all media present in the market, or selectively chooses to ignore and discount certain radio stations.[147]

C. The Petitioners Improperly Assert That Cable Television Penetration Does Not Matter Because Cable Channels are Not Local and the Channels are Owned by Major Media Companies.

The Petitioners also request that the Commission ignore all of the voices provided by cable, because some of the cable channels are owned by what the Petitioners have designated as "major media companies."[148] Presumably, then, the Petitioners do not object to counting the voices of those cable channels that are *not* owned by "major media companies." But even for those cable channels that are owned by what Petitioners have referred to as "major media companies" – such as CNN, for example, owned by Time Warner – Petitioners fail to explain why these channels are not "voices" for purposes of a diversity analysis simply because of the size or identity of their owner. Surely CNN is a "voice" in the market despite the fact it is owned

---

[145] *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 10 FCC Rcd. 3524, 3557-58 (1995).

[146] *Id.*

[147] In fact, the Commission previously has found diverse radio markets exist in three of Tribune's cross-ownership markets: New York, Los Angeles, and Chicago. *Stockholders of CBS*, 11 FCC Rcd. 3733, 3772 (1995).

[148] *See, e.g.*, Petition at 27, 49.

by Time Warner, a Petitioner-designated "major media company." Certain voices cannot be summarily discounted because they are owned by a company of a certain size.

Furthermore, the Petitioners fail to refute the fact that the Commission regularly considers the availability of cable systems and channels in weighing the diversity of a particular market, including some of the very markets in which Tribune has cross-ownership.[149] For example, in granting Tribune a temporary waiver to permit continuation of its common ownership in Hartford, the Commission took into account the "88 percent cable penetration ... with more than 56 different programming services."[150] In granting a permanent waiver of the 1975 Rule in New York City, the Commission considered that "[e]ight cable systems serve the five boroughs of New York City, providing between 28 and 78 channels."[151] In numerous other waiver evaluations, the Commission has considered both the number of cable channels available and the cable penetration in the relevant market.[152]

D. The Petitioners Wrongly Exclude Weekly Publications From the Diversity Analysis.

The Petitioners are also incorrect in their assertion that weekly publications are not considered in a diversity analysis.[153] At the height of inconsistency, they argue that news

---

[149] *Stockholders of CBS*, 11 FCC Rcd. at 3772 (considering cable penetration in market evaluations in New York, Los Angeles, and Chicago).

[150] *Counterpoint I*, 16 FCC Rcd. 15044, 15047-15048 (2001).

[151] *Fox Television Stations Inc.*, 8 FCC Rcd. 5341, 5351 (1993).

[152] *See, e.g., Chancellor Media/Shamrock Radio Licenses, L.L.C.*, 15 FCC Rcd. 17053, 17058 (2000) (considering the number of cable television outlets and the cable penetration rate in the market in granting a temporary waiver of the Rule); *Notice of Inquiry*, 13 FCC Rcd. at 11278 (tentatively concluding that cable television may be considered in a diversity analysis because of its capability for local origination of programming); *Columbia Montour*, 13 FCC Rcd. at 13015 (considering both the cable penetration rate and the number of cable systems in granting a permanent waiver of the Rule).

[153] *See, e.g.*, Petition at 29, 36, 48 n.54.

from weekly publications is "too localized" to be considered. The Petitioners' sole support for this proposition is the Commission's pronouncement in 1975.

In doing so, the Petitioners ignore over 30 years of subsequent decisions that consider the voices offered by weekly publications. In the New York City market evaluation in *Fox Television Stations Inc.*, the Commission considered the fact that "22 weekly newspapers, many of which cater primarily to local news, are published in the city."[154] Subsequently, the Commission again considered the weekly publications in New York City in evaluating the diversity of the market.[155] In evaluating the Hartford market, the Commission considered "more than 20 weekly/alternative/college newspapers" in its diversity analysis.[156] In other waiver contexts as well, weeklies are deemed relevant.[157] While weekly publications add immeasurably to the diversity of news coverage available in Tribune's five cross-ownership markets, as demonstrated in Tribune's waiver requests, these markets are diverse and competitive notwithstanding the consideration of weeklies.

E. The Internet Matters.

Petitioners claim that the Internet is still irrelevant because its impact on diversity is "exaggerated."[158] However, the Petitioners limit their own evaluation of the Internet to an extent that makes it irrelevant. First, the Petitioners have ignored the fact that the Internet changes diversity by making every outlet – even if it were simply the newspaper or broadcast outlets available online – accessible at the click of a mouse at any time, in any place. Moreover,

---

[154] 8 FCC Rcd. 5341 (1993).

[155] *UTV*, 16 FCC Rcd. at 14989.

[156] *Counterpoint I*, 16 FCC Rcd. at 15047-48.

[157] *See, e.g., Chancellor Media/Shamrock Radio Licenses, L.L.C.*, 15 FCC Rcd. 17053, 17058 (2000).

[158] Petition at 30, 37, 43, 49.