

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

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of	)	MB Docket No. 06-121
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	)	MB Docket No. 02-277
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	)	MM Docket No. 01-235
Newspapers	)	
	)	
Rules and Policies Concerning Multiple	)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in Local	)	
Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

**FURTHER REPLY COMMENTS OF TRIBUNE COMPANY  
ON RESEARCH STUDIES ON MEDIA OWNERSHIP**

Pursuant to the Commission’s Public Notice, dated July 31, 2007 (DA 07-3470), Tribune Company (“Tribune”) submits these further reply comments on the peer-reviewed research studies that have been submitted in this proceeding.

As Tribune and others have demonstrated, the Commission’s Studies 3, 4, and 6 demonstrate (1) that the newspaper rule provides no public interest benefit in terms of viewpoint diversity, because the slant of a newspaper does not correlate with the slant of its cross-owned station, and (2) that the newspaper rule affirmatively harms localism, because cross-owned stations provide more and better coverage of local news and issues than other stations. The

results of the Commission's studies are consistent with one another, and each study has been subjected to a rigorous peer review process that ensures the soundness and the reliability of the results. For these reasons, the rule is not only unnecessary and counterproductive, it has become an unconstitutional restriction on speech regardless of what test is applied under the First Amendment. *See* Tribune Further Comments (filed Oct. 22, 2007) at 7-8.

Consumers Union, Consumer Federation of America, and Free Press (hereinafter, "CU"), however, disagree with both conclusions and with the way the studies were conducted. CU criticizes the first conclusion only at a conceptual level, but as shown below in Section I, those criticisms are frivolous. With respect to the second conclusion, CU has taken the data from Studies 3, 4, and 6 and run numerous alternative regression analyses with additional variables and other modifications that go far beyond what any of the peer reviewers suggested. These alternative models, which have not been subjected to any review at all (much less peer review), provide a set of results that vary wildly from regression to regression. As a result, as shown below in Section II, CU's attempted re-analysis of the data on localism from Studies 3, 4, and 6 are patently unreliable on their face and should not be relied upon in this proceeding for any purpose.

**I. CONSUMERS UNION'S CRITICISMS OF PROFESSOR MILYO'S FINDINGS IN STUDY 6 ON VIEWPOINT DIVERSITY ARE UNFOUNDED.**

Both the Commission and the courts have consistently recognized that the newspaper rule harms localism.<sup>1</sup> The only justification for the newspaper rule has been the largely unexamined assumption that it promotes viewpoint diversity within the overall set of speech outlets (which

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<sup>1</sup> *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, 50 FCC 2d 1046, ¶¶ 62-65, 109 (1975); *2002 Biennial Regulatory Review*, 18 FCC Rcd. 13620, ¶ 342 (2003); *Prometheus Radio Project v. FCC*, 373 F.3d 372, 399 (3d Cir. 2004).

today includes not only broadcast stations and newspapers but also the Internet, cable, satellite, and other new sources). If the rule does not actually promote or has no appreciable effect on viewpoint diversity, then rule would be not only unnecessary but unconstitutional. In Study 6, Professor Milyo tested whether the slant of a newspaper correlated with the slant of its cross-owned television station, using four measures of the slant of a station's local news coverage – the amount of time a candidate is allowed to speak in her own words, the amount of coverage of a candidate, the time devoted to reporting poll results favoring a candidate, and the amount of time devoted to covering stories that favor one party or the other. Milyo Report at 7-8. Professor Milyo's study found that there is no statistically significant correlation between the slants of a newspaper and its co-owned station for any of these four measures. *Id.* at 21-22. This study was peer-reviewed, and the reviewer found that the study was well constructed and that the conclusions are sound.

CU does not mount any serious criticism of those findings. Indeed, CU concedes that the first two of these four measures are valid measures of slant. CU at 254; *see also id.* at 103. Accordingly, Professor Milyo's basic conclusion that cross-ownership does not affect slant would stand, even if the other two findings were unusable, as CU claims.

But CU's criticisms of the other two findings are frivolous. CU only briefly criticizes Professor Milyo's third measure of slant – time devoted to covering opinion polls favorable to one party or the other – on the ground that, in fact, refusing to report on polls favorable to the station's preferred candidate would be a "partisan act." CU at 254. The objection is meritless, because in Professor Milyo's methodology the slant of the newspaper is measured against the amount of time devoted to reporting poll results – which would capture the *absence* as well as the presence of any such reporting.

CU trains almost all of its fire on Professor Milyo's fourth finding, that cross-ownership does not affect slant as measured by coverage of partisan issues. CU at 254-56. Although CU derides this as "contentless content analysis," CU does not appear to understand Professor Milyo's methodology.<sup>2</sup> Professor Milyo measures slant by measuring the time each station devotes to news stories favored by one political party or the other. As Tribune and others have explained many times before, broadcast television stations rarely have any overt slant – *i.e.*, they do not endorse political candidates or editorialize as newspapers do, and television reporters and anchors covering news stories follow accepted journalistic standards and present both sides of an issue. Accordingly, as Professor Milyo recognizes, if television stations exhibit slant it will be in subtle ways, such as editorial decisions about which issues to cover and how much time to devote to each issue. And, to ensure that his characterization of an issue as favoring one party or the other is not purely subjective, Professor Milyo looks at the political parties' own websites to determine which issues the parties themselves believed worked in their favor. This is an eminently reasonable approach: Democrats would prefer television stations to spend as much time as possible covering stories like the Mark Foley scandal, whereas Republicans would prefer stations to cover stories like low unemployment. *See* Milyo Report at 47 (Table A1); CU at 255.

In essence, CU believes that Professor Milyo should have used a more subjective approach that takes into account what was "actually said" about each issue – an approach that would not be scientifically reproducible (*see* Milyo Report at 8). To that end, CU subjectively second-guesses two of the 22 characterizations that Professor Milyo derived from the political

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<sup>2</sup> Indeed, the vast majority of CU's discussion of this point is completely irrelevant. CU spends thirty-five pages – its entire Chapter IX (entitled "Contentless Content Analysis") – criticizing a *different*, earlier study by Professor Milyo that attempted to measure political bias in newspapers by measuring the number of times they mentioned think tanks favored by one political party or the other in their news stories. *See* CU at 217-51. Professor Milyo did not use that methodology in the study he submitted in this proceeding. *See* Milyo Report at 11-13.

parties' own websites. Both of these pot-shots miss the mark. First, CU claims that Professor Milyo incorrectly classifies "the Iraq war" as a Democratic issue in the 2006 congressional campaign, because such coverage could involve a speech by President Bush urging persistence in the war. CU at 255. As anyone who was not vacationing on the planet Mars last fall knows, the Iraq war was an issue that favored the Democrats in the 2006 election. In all events, CU is mischaracterizing the Milyo Report, which makes clear that it was treating coverage of Iraq war *deaths* as a Democratic issue, which the Democratic Party was emphasizing on its website. *See* Milyo Report at 52 (Table A1) ("Iraq audit/deaths"). Second, CU finds it "quite ironic" that the Milyo Report treats "calls for Rumsfeld's resignation" as a Democratic issue, because "[p]rominent Republicans (including Arlen Specter) are convinced" that if Secretary of Defense Rumsfeld had resigned publicly before the election, the Republicans could have maintained their Senate majority. CU at 256. That is precisely Professor Milyo's point: prior to the election, Rumsfeld's refusal to resign was an issue that *Democrats* wanted to emphasize. For all of these reasons, CU's criticisms of Professor Milyo's findings on viewpoint diversity are devoid of substance.<sup>3</sup>

CU has nothing else to say about viewpoint diversity in its entire submission, except for its bizarre attempt to manipulate the data in Professor Milyo's study to demonstrate that cross-

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<sup>3</sup> CU's other criticisms are also insubstantial. CU questions (at 252-53) whether Professor Milyo also should have analyzed additional weeks from other times of the year, but this criticism does not call Professor Milyo's actual findings into question. CU also argues (at 256-57) that coverage of two of the 22 stories might reflect the "hard to avoid" local importance of a story rather than slant, but the fact remains that Professor Milyo found no correlation between the slant of the newspaper and the stations' coverage – *i.e.*, regardless of the importance of the story, the stations neither suppressed nor played up the stories in line with the cross-owned newspapers' slants, and viewpoint diversity was unaffected. CU also questions whether Professor Milyo should have included stories reflecting national rather than local issues (at 257-58), but again, the issue is viewpoint diversity; if cross-ownership indeed affects slant, then we would expect to observe a correlation, but none was found.

owned stations grandfathered under the pre-1975 rule “lean Republican” while cross-owned stations operating under a temporary waiver “lean Democratic.” *See* CU at 103-07. First, CU’s assertion is simply incorrect, because it is based on yet another misunderstanding of Professor’s Milyo’s methodology. As Professor Milyo is at pains to explain, these measures of slant are only valid in relation to other stations in the same market, not in relation to some absolute standard of “fairness.” *See* Milyo Report at 24 (“an important point to keep in mind . . . is that there is no baseline for determining whether coverage is appropriately balanced or not”; “these estimates are *uninformative* about whether any particular station’s coverage is balanced or biased”). In other words, a station that CU claims “leans Republican” may actually provide coverage that is consistently biased in favor of Democrats (it just may lean more Republican than most of the other stations in that city).

But the lesson CU draws from its erroneous assertion is even more objectionable. CU argues that stations operating under a waiver will want to be on their “best behavior,” and thus may slant their coverage toward the Democrats in order to curry favor with those arguing for divestiture of their cross-owned properties, but that once the waivers become permanent “their behavior may change, perhaps in the direction of the grandfathered stations,” which “we might expect . . . to lean Republican.” CU at 90-91; *see also id.* at 194. Although CU does not use these observations to make an explicit argument, the clear implication is that the Commission should retain the newspaper rule to prevent the creation of additional Republican-leaning stations. This insultingly deterministic argument has nothing to do with promoting viewpoint diversity, but rather is an invitation for the Commission to engage in unconstitutional viewpoint *discrimination*. *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (“[T]he First Amendment forbids the government to regulate speech in ways

that favor some viewpoints or ideas at the expense of others.”) (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)). Indeed, CU makes little attempt to hide its clearly illegitimate assumption that the most important purpose of the Commission’s media ownership rules is to manipulate political outcomes. *See, e.g.*, CU at 30-31, 36-38, 90-91, 103, 248-251.<sup>4</sup>

In short, Professor Milyo’s findings with respect to viewpoint diversity stand essentially un rebutted, and as Tribune explained in its Further Comments, the newspaper rule is therefore not only unnecessary – it has become unconstitutional even if one assumes that the scarcity doctrine and the Supreme Court’s decision in *NCCB* remain applicable. *See* Tribune Further Comments at 7-8; *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

## **II. CONSUMERS UNION’S CRITICISMS OF THE STUDIES’ FINDINGS ON LOCALISM ARE UNFOUNDED.**

The Commission’s studies also uniformly find that newspaper cross-ownership results in an increase in coverage of local issues on the cross-owned station. This finding comports with plain common sense and is consistent with a long line of Commission orders and court opinions – including the Third Circuit’s opinion in *Prometheus* – concluding that the newspaper rule *harms* localism. The Commission’s studies provide a very consistent set of findings on these points, and all of the studies have been peer reviewed and found to be sound.

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<sup>4</sup> CU’s only other argument is that the Milyo Report contains a “major disconnect” in that the “dependent variable is defined with Congressional races, but then the study measures political orientation with Presidential election outcomes.” CU at 258. This criticism does not apply to Professor Milyo’s measures of the effect of cross-ownership, but to his further regression analysis (*see* Milyo Report at 24, 51 (Table 19)), suggesting that television stations’ slants correlate with the political preferences of its audiences. Even if the criticism had merit, the Table 19 regression is not necessary to Professor Milyo’s analysis, nor is it relevant to the questions the Commission is considering in this proceeding.

CU provides no reason for the Commission to discount these studies. CU contends that these professors erred by not including certain additional variables in their analyses, and therefore CU takes the underlying data and runs the regressions again, this time adding an array of what it considers to be “policy-relevant” variables, such as whether the station is part of a duopoly, the “HHI” of the market, whether the station is part of a Local Marketing Agreement, whether it is a VHF station, the age of the station in years, and so on. *See* CU 189-90. These modifications go far beyond what any of the peer reviewers recommended, and CU has not offered any sound theory for why these “policy-related” variables should be included; its bare assertion that “we feel strongly” about it is not an argument. *See* CU at 189 (“We also feel strongly that the models used in Study 3, 4 and 6 missed important control variables whose omission may have led to a positive bias on the cross-ownership variable”). CU’s numerous modifications to the studies result in wild gyrations in the significance and effect of the variables from iteration to iteration, which illustrates the inappropriateness of adding these variables in the first place.

Indeed, CU’s alternative regression analyses are remarkably self-contradictory, and frequently inconsistent with many of CU’s ideological articles of faith. For example, with respect to Study 3, CU first re-runs the analysis with the statistical adjustments suggested by the peer reviewers and finds that the results (and the statistical significance) do not change. *See* CU at 193, 195. Then, CU junks up the analysis with its “station” and “policy” control variables, and finds that local ownership of a station leads to a statistically significant *decrease* in coverage of local issues. CU at 198-99. Whoops! CU quickly “caution[s] against causal interpretation of this result” because of the possibility that local owners may nonetheless provide higher quality coverage of local issues even if they do less of it (*see id.* at 199), but CU is apparently oblivious

to the fact that the same argument would apply even more to its alternative “findings” on the effect of newspaper cross-ownership (for which the effect on local news remains positive but no longer statistically significant). CU then runs separate regression analyses for Big-4 stations and non-Big-4 stations, and finds that, for Big 4 stations, there is a statistically significant increase in the amount of local news provided depending on how large the parent company is in terms of revenue. In other words, CU’s model demonstrates a statistically significant link between “media consolidation” and an increase in local coverage – a link that remains statistically significant even as CU includes all of its preferred variables. CU at 200-01, 206-07 (Exhibits VIII-7, VIII-8, VIII-11, VIII-12). Whoops again! Even more embarrassing, CU’s final, preferred “Heckman” models all show that minority ownership leads to a statistically significant *decrease* in local coverage, another result that actually becomes more statistically significant the more CU junks up the model. *Id.* at 206-07.

Also, CU’s adjusted models separating Big 4 and non-Big 4 stations show a statistically significant increase in local news for non-Big-4 grandfathered cross-owned stations, which is the exact opposite of its “findings” in its other manipulated studies (and also contrary to its “good behavior” theory). CU at 200-01 (Exhibits VIII-7 and VIII-8). CU attributes this to the fact that the only non-Big-4 grandfathered station in the country is Tribune’s WGN in Chicago. CU at 203. In other words, CU’s own model demonstrates that Tribune’s ownership of WGN leads to a statistically significant increase in local news coverage.

CU’s retooled models deserve no weight. First, many variables added by CU appear to be correlated, such as duopoly and HHI, and VHF and station age. Adding correlated variables without appropriate corrections is a fundamental statistical mistake that will infect the entire analysis. Moreover, the inclusion of VHF and station age variables into these models is

especially suspect. There is no rationale for including these variables, because there is no reason to believe that being a VHF station or being an old station has any causal effect on local news coverage. These two variables, however, do *happen* to map largely to which broadcast stations have a local news show in the first place, and thus these variables function in the model like a variable for whether the station has a local news show. In other words, if one were to run a regression analysis to predict minutes of local news against a set of variables that includes whether the station has a local news program at all, the model will of course predict that having a local news show is a major determinant of how many minutes the station devotes to local news. Not surprisingly, then, adding the VHF and station age variables dwarfs the effect of everything else and suddenly appears to explain everything – but such a model is scientifically unsound and worthless.

CU's manipulation of Study 4, which relates only to overall (not local) news coverage, leads to similar results. First, CU makes certain adjustments suggested by peer reviewers and again finds no change. Then CU junks up the study with its policy-related control variables, but the result remains a statistically significant increase in overall news coverage for cross-owned stations. *See* CU at 208-09 (Exhibit VIII-13). CU tries some further manipulations, separating out waived and grandfathered stations and Big 4 and non-Big 4 stations, but the grandfathered stations once again are shown to provide a statistically significant increase in news coverage – contrary to CU's prior manipulations of other studies and again disproving its "good behavior" theory. CU claims that Tribune's ownership of WGN is dominating the results, but that would only prove once again that Tribune provides a statistically significant increase in local coverage in Chicago. And all of CU's models, no matter how CU slices the data, find that news coverage increases with TV-radio cross-ownership and with parent revenue, and that locally owned

stations air *less* news and network owned and operated stations air *more* news – all findings that remain strongly statistically significant even in CU’s most manipulated models, and all of which contradict CU’s preconceived notions. *See* CU at 208-12 (Exhibits VIII-13, VIII-14, & VIII-15). CU has little to say on these points, except that “[w]e think that the lessons from Study 4 on the impact of cross-ownership are limited by the study’s lack of observations on local news programming.” CU at 208.

Finally, CU pulls the same tricks with Professor Milyo’s estimates of minutes of local news. Professor Milyo found that, for the week he studied, newspaper cross-ownership correlated with an increase in local news, but that the increase was not statistically significant. CU adds all of its “station” and “policy” variables and finds virtually no change in the significance of any variable (and those modified models still contain statistically significant findings that newspaper/radio/TV cross-ownership leads to more local news, as does the size of the parent, neither of which CU mentions). CU at 214 & Exhibit VIII-16. CU then manipulates the data further by performing another regression including “parent-fixed” effects, but as Professor Milyo explains in his paper (at 15 n.15), such an adjustment is improper “due to collinearity with market-fixed effects,” a conclusion that did not draw an objection from the peer reviewer. Only in CU’s “parent-fixed” models does CU find any deviation from Professor Milyo’s results – although these models again find that both grandfathered stations and newspaper/radio/TV cross-ownership lead to statistically significant increases in local news.

Despite CU’s misguided efforts, it is clear that cross-owned stations provide more coverage of local issues, as CU essentially concedes. *See* CU at 7. But CU thinks it has an answer for that as well: it claims that the correct way to do the analysis is not to look at the effect on the cross-owned station, but to look at the effect on the total minutes of local news

coverage in the entire market. CU at 92-97. Allowing a newspaper to own a television station, CU argues, creates a single “dominant firm,” and in response other stations simply give up trying to compete and cut back on their local news coverage, resulting in an overall decrease in local news coverage in the market as a whole (even though the cross-owned station provides more). CU at 97; *see also id.* at 7. In an attempt to prove this nonsensical proposition, CU takes the data from Studies 3 and 4 and performs new regression analyses using market-wide variables (such as the presence of cross-owned stations and percentage of locally owned stations) and including its “policy” variables. *See* CU at 92-95. There is only one problem: CU’s re-analysis shows that the presence of a cross-owned station has no statistically significant effect on the total amount of local news in the market. *See* CU at 96 (Exhibit IV-3, columns 1, 2, 5 & 6). But CU’s re-analysis does contain several other embarrassing findings that *are* statistically significant, including (1) increasing minority ownership in a market results in a statistically significant overall decrease in local public affairs coverage (and female ownership also correlates with a decrease in local coverage in some of CU’s analyses), and (2) the presence of duopolies results in a strongly significant increase in overall local news coverage. *Id.* at 96-98. CU tries to put the best face on these backfiring studies by explaining (at 97) that the effect of female and minority ownership “should be interpreted with great caution” because the purpose of increasing female and minority ownership is to provide different points of view even if it results in an overall reduction in the amount of local coverage in the market, but again the same argument could be made about newspaper cross-ownership, which historically has resulted in higher quality and more in-depth coverage of local issues (and, unlike these other variables, does not result in any statistically significant reduction in overall coverage even in CU’s model).

In short, CU's many re-analyses of these studies are completely unreliable and should not be used in this proceeding for any purpose. Studies 3, 4, and 6 provide a consistent set of results, and they have been subjected to rigorous peer review and are sound. CU's multiple re-analyses, by contrast, have not been subjected to any review. Moreover, CU's various regressions produce results that are all over the map, and offer wildly different conclusions about the effects on local news coverage not only of newspaper-broadcast cross-ownership, but also of local ownership, minority ownership, duopolies, waived and grandfathered cross-owned stations, Big 4 and non-Big 4 stations, the size of the parent, and much else. Any attempt to fashion media ownership policy on the basis of CU's set of dramatically inconsistent studies would be patently arbitrary.

### CONCLUSION

For the reasons stated here and in Tribune's previous submissions, the newspaper rule should be repealed.

Respectfully submitted,

TRIBUNE COMPANY

/s/ R. Clark Wadlow

Crane H. Kenney  
Charles J. Sennet

Tribune Company  
435 N. Michigan Avenue  
Chicago, IL 60611  
(312) 222-9100

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R. Clark Wadlow  
James P. Young

Sidley Austin LLP  
1501 K Street NW  
Washington, DC 20005  
(202) 736-8000

Its Attorneys