ownership structure of television stations and quantity and quality of television programming between 2003 and 2006, finding that cross-owned television stations broadcast (approximately 3.0 percentage points) more local news programming.[150] Study 4.1 collected data on the news and public affairs programming provided by television stations and analyzed the relationship between the quantity of such programming and the ownership structure of each television station.[151] After examining the

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choose preferred specifications. The author of Study 6 reported several specifications and highlighted several, and the others provide additional evidence. CU, for example, also presents many specifications, some of which supported their positions, and some that did not, as noted by other commenters. *See* Tribune Reply to Media Ownership Studies at 8-12; NAA Reply to Media Ownership Studies at 11-15. We also note that the Gentzkow review did not find the methodological choices that were made by the author of Study 6 troubling. *See* note 147, *supra*.

[150] "Television Station Ownership Structure and the Quantity and Quality of TV Programming" by Gregory S. Crawford, Dept. of Econ., Univ. of Arizona (Jul. 2007) ("Media Ownership Study 3"), *available at* http://www.fcc.gov/ownership/studies.html) at 4. We find that Study 3 is reasonably reliable because peer review revealed no material bias in this study. *See* Media Ownership Study 3 Peer Review, *available at* http://www.fcc.gov/mb/peer_review/peerreview.html. The peer review report also notes that each of the study's findings is based on data derived from primetime broadcasting. We are not troubled by this limitation because this represents the time period when the most people are watching, and is thus of the greatest interest from a policymaking perspective. In addition, we find that data obtained during sweeps is reasonably reliable because sweeps is a formalized national ratings period upon which advertisers base their business decisions, and any potential resulting biases are likely to be small and unlikely to affect the basic result concerning the spread of advertising prices.

[151] "The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming," by Daniel Shiman, FCC (Rev. Sept. 2007) ("Media Ownership Study of 4.1"), *available at* http://www.fcc.gov/ownership/studies.html ("Media Ownership Study 4.1"). The study underwent three peer reviews, one by Phillip Leslie ("Leslie review"), one by Philip Napoli ("Napoli review"), and one jointly by Kenneth Goldstein, Matthew Hale, and Martin Kaplan ("GHK review"). *See* Media Ownership Study 4.1 Peer Review, *available at* http://www.fcc.gov/mb/peer_review/peerreview.html. In his peer review, Leslie notes the limitations of the data, provides three suggestions for improvement, and expresses concern about determining the rationale for some of the implied conclusions of the paper. In his response to the peer review, Shiman implemented Leslie's suggestions, and found that while adjusting standard errors for clustering is appropriate, the other suggestions yielded inferior models. We note that Prof. Leslie's concerns about interpreting the results did not focus on the television/newspaper cross-ownership result, except for the general concern that local and national news were combined in the analysis.

The Napoli review focused on the combination of local and national news and public affairs minutes in the data, and how this limits the analysis to news and public affairs programming *distributed* by television stations, and not on the programming *produced* by the stations. Napoli also suggests employing different variables, expresses concern about the potential bias to the results from collecting data only for "sweeps" weeks, and about relying on the classification of programming by TMS. We believe that his concerns should not affect the results concerning the impact of television/newspaper cross-ownership on news programming. As noted in the Napoli review, much of the impact of sweeps weeks is on the content of shows, which is not measured here, and not on the programming schedule.

The GHK review focused their criticisms on the implications of the use of unweighted total news and public affairs minutes for policy analysis. They claimed that: there is no basis for using scheduled news programming as a metric to assess diversity, competition, or localism; local and non-local news should be distinguished; minutes should be weighted according to the number of viewers; and non-commercial stations should be excluded from the analysis. The use of the quantity of scheduled news and public affairs programming is well-founded in the scholarly literature (*see* the bibliography in Study 4.1). The study included a control variable for non-commercial television stations, and the study results are robust to weighting the data by time-of-day. Because the analysis in Shiman's study and response were performed using accepted statistical practices and were peer reviewed, we find that we can rely on this Study. For these reasons, we reject the argument by the Institute for Public Representation that relying on Study 4.1 would violate the Data Quality Act. *See* IPR Nov. 29, 2007 *Ex Parte*. We find that Study 4.1 has sufficient "objectivity" within the meaning of the Data Quality Act, the implementing guidelines issued by the Office of Management and Budget, and our own data quality guidelines. *See infra* note 462.

programming of approximately 1700 stations between 2002 and 2005, the author concluded that cross-owned stations provided 11 percent (18 minutes) more news programming per day than other stations.

43. CU criticizes Studies 3, 4.1, and 6 for focusing on the effect of cross-ownership on the local news output of the particular cross-owned television station. CU argues that the studies should have focused on the local news output of all outlets in the entire market in which the cross-owned television station competes.[152] Specifically, CU states that while in some cases there may be an increase in news output at the individual cross-owned station there is a decline in the amount of local news for the market as a whole.[153] CU submits an analysis showing that newspaper/television combinations do not increase the total quantity of local news in the market.[154]

44. Due to numerous difficulties with CU's analysis, we find that we cannot rely on its conclusions. It is not clear what measure CU used for total quantity of local news, but it appears that the measure is limited to broadcast television news, which measures only a portion of local news, and ignores local news from newspapers, radio, local cable news stations, and other sources. As a result, CU's measurements are incomplete, and we cannot rely upon them. Additionally, the thrust of CU's argument is that if cross-ownership does not increase total local news (as CU measures it), the ban should be maintained. This argument may have been formed because CU statistical results do not show a statistically significant effect of cross-ownership. This lack of statistical significance may arise from CU's choice of specification and measure of local news, and as such may be unreliable. Media General submits a critique of CU's criticisms that agrees with these findings.[155] In his Econometric Review, Dr. Harold Furchtgott-Roth states that CU makes several economic and econometric mistakes that undermine the reliability of its results. First, he states that CU's decision to examine the effect of cross-ownership by aggregating to the market level is incorrect. CU's revised regressions fail to measure total news and diversity of news at the market level. In addition, he states that one of the strongest predictors of the quantity of broadcast news in a market would be the number of stations in the market. That variable, however, is omitted in the specifications by CU, resulting in regressions that are much less precise.[156] We agree that it is improper to aggregate to the market level without adjusting for the number of outlets in the market.

45. McGannon Research Center submitted a study by Michael Yan that analyzes how cross-owned stations compared with non-cross-owned stations in the provision of local news and public affairs programming.[157] The Yan Study shows that while cross-owned stations are more likely to have local news programming, they do not broadcast more local news than other stations that also provide local news, and that cross-ownership has no significant relationship with the presence or the quantity of local public affairs programming on commercial television.[158] NAA submits a statement by Professor Jerry

[152] CU Comments to Media Ownership Studies at 7, 87-89.

[153] *Id.*

[154] *Id.* at 87-109, and 190-208.

[155] Media General Reply to Media Ownership Studies, App. A, Econometric Review by Dr. Furchtgott-Roth, at 10-11 ("Furchtgott-Roth Statement").

[156] *Id.* at 2, 10, 11-12. *See also* NAA Reply to Media Ownership Studies at 6-10 and Attach. 1, Statement of Kent W. Mikkelsen, Senior V.P., Economists Inc. at 2-6; NAB Reply to Media Ownership Studies at 18 ("Given the contrary results of other studies, the results of Consumers Union, et al.'s recent research must be treated with caution and evaluated carefully, especially in light of their speculative underpinnings and their consistent overstatement of statistically insignificant results.").

[157] The Donald McGannon Communication Research Center ("McGannon Research"), Attach., "Newspaper/television Cross-Ownership and Local News and Public Affairs on Television Stations: An Empirical Analysis" by Michael Z. Yan (Oct. 2006) ("Yan Study").

[158] Yan Study at 2.

Hausman disagreeing with results of the Yan Study.[159] Professor Hausman states that the Yan Study actually shows that cross-owned stations air considerably more minutes of local news (242 minutes over the two-week study period or approximately 17 minutes per day), even when the sample size is effectively limited through Yan's econometric model to stations that air local news and when other variables are taken into account.[160] Professor Hausman explains that Yan's conclusion is misleading because the absence of statistical significance most likely stems only from the small size used in the Study, not from any lack of relationship between cross-ownership and the quantity of local news aired.[161] The Commission submitted the Yan Study and the Hausman analysis of the Yan Study to outside peer review.[162] Professor Hausman's analysis, as well as both peer review reports, are in agreement that Yan's econometric work does not support his conclusion and that the data instead provide support for the proposition that cross-owned stations actually supply more local news and more local public affairs programming, with the evidence strong in the case of news.

46. We recognize that there is disagreement in the studies. On balance, however, we conclude that the weight of evidence indicates that cross-ownership can promote localism by increasing the amount of news and information transmitted by the co-owned outlets. The inconclusiveness of some of the data and disagreement as to the outcome of the studies, however, supports our decision to undertake a case-by-case review of particular combinations in particular markets, rather than providing hard, across-the-board limits. Under our method, we can consider facts in a particular case, with a presumption in favor of allowing newspaper and radio station or non-top four television station combinations in the top 20 markets, and a presumption against combinations in all other markets. A case-by-case approach will enable the Commission to make a more fully informed assessment that a proposed transaction in a particular market actually will increase the total amount of local news generated by the combined outlets.

47. The Commission found in the *2002 Biennial Review Order* that retaining some cross-ownership limits is necessary in order to ensure diversity.[163] The *Prometheus* court agreed.[164] We continue to believe that some restrictions on cross-ownership are necessary to protect diversity.

48. Many commenters claim that consolidation will harm diversity because there are no substitutes for traditional news sources. Despite the proliferation of new media, numerous parties contend that media ownership limits are needed to preserve diversity, localism, and competition because many of the new types of media do not serve as independent voices.[165] CWA states that it is essential to retain the newspaper/television ban to preserve diversity and competition in local news, particularly because most markets have only one newspaper and three to four broadcast outlets.[166]

49. We reaffirm our findings in the *2002 Biennial Review Order* that some cross-ownership limits are necessary to guard against "an elevated risk of harm to the range and breadth of viewpoints that

[159] NAA Reply at 29-34, Attach., Statement of Professor Jerry Hausman, MIT, Concerning Studies Submitted in FCC MB Docket No. 06-121 (Jan. 16, 2007) ("Hausman Statement") at ¶¶ 3-11.

[160] NAA Reply at 30, Hausman Statement at ¶ 14.

[161] *Id.*, Hausman Statement at ¶ 8.

[162] *See* Referee Report by Stefano Della Vigna, Univ. of Ca. Berkeley and Statement of Charles Romeo, *available at* http://www.fcc.gov/mb/peer_review/reviews.html.

[163] *2002 Biennial Review Order*, 18 FCC Rcd at 13775-76, 13806-07, ¶¶ 391, 481.

[164] *Prometheus*, 373 F.3d at 400-01.

[165] *See, e.g.*, AFL-CIO Reply at 19-21.

[166] CWA Comments at 4, 54.

may be available to the public."[167] We are not in a position to conclude that ownership can never influence viewpoint. Nor are we in a position to quantify nontraditional media outlets' contribution to diversity. The record provides examples of commonly owned outlets exercising independent editorial control.[168] The record also includes examples of existing media outlets, such as newspapers, introducing a new media outlet into the market, such as an Internet website, but using both outlets to provide the same local content for consumers.[169] Therefore, our new rule is designed to promote diversity by presumptively prohibiting combinations in the markets with the fewest number of voices, while presumptively permitting certain combinations in the largest markets where the loss of diversity is not a significant risk.

50. The necessity of such cross-ownership limits for the protection of diversity depends on the particular nature of both the market at issue and the transaction at issue. An inflexible "one-size-fits-all" rule, such as the blanket newspaper broadcast cross-ownership ban, fails to recognize the diversity of media markets across the country as well as the diversity of media transactions. What may make sense for Portland, Maine, does not necessarily make sense for New York City. And certain combinations may lead to increased local news reporting and may operate with outlets retaining independent editorial voices while others may not. The revised newspaper broadcast cross-ownership rule we adopt today takes account of these realities.

51. In sum, the record before us reveals a state of tumult in the business environment that has supported the traditional local media's production of news and information for decades. We recognize that technology advancements have triggered upheavals for these entities' business models beyond any they have previously experienced. Data gathered since 2002 make plain that the roiling of the media environment has accelerated recently, with obvious losses in professional personnel employed by traditional media entities to gather and report news and information. Yet we also see some hopeful trends suggesting that the traditional media will adapt and survive in the new digital and online era.[170] Against this backdrop, we believe that our revised newspaper/broadcast rule is an appropriately cautious measure. It takes into account the realities of the modern media marketplace and will allow newspapers and broadcast stations to explore synergies in certain circumstances, but maintains safeguards to ensure that consumers continue to enjoy the benefits that flow from the operation of multiple, competing sources of news and information.

52. We replace the blanket ban on newspaper/broadcast cross-ownership with a rule that establishes clear presumptions as to the limited circumstances when we will presume a newspaper/broadcast transaction will be in the public interest and thus a waiver of the ban should be

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[167] *2002 Biennial Review Order*, 18 FCC Rcd at 13793-94, ¶ 442; *see also Prometheus*, 373 F.3d at 402.

[168] Belo Comments at 16 (stating that its cross-owned outlets WFAA-TV and The Dallas Morning News historically have not coordinated their opinions or viewpoints); FOEF Comments at 13-14 (stating that newspaper/broadcast combinations are more likely to produce more public affairs programming, and such firms are unlikely to present a monolithic viewpoint on any or all issues of public importance); Media General Comments at 34-35 (stating that its various news and information platforms, regardless of their method of disseminating content, operate separately in developing their content.); NAA Comments at 79-85 (providing examples of programming and viewpoint diversity to argue that evidence reinforces the Commission's prior conclusion that newspaper/broadcast combinations do not speak with a single coordinated voice).

[169] CU Comments, Study 8 at 136-47; AFL-CIO Comments at 24-26, 28-29, 32 (stating that cross-owned media properties serve as cross-promotional vehicles rather than as independent editorial voices, citing examples in Austin, Texas and Los Angeles, California); AFTRA Comments at 21 (stating that media conglomerates impose homogeneous editorial views across commonly owned properties).

[170] *See, e.g.* paragraph 26, note 87, *supra*.

granted.[171] Establishing presumptions, as opposed to a bright line, will allow for the evaluation of proposed newspaper/broadcast combinations under defined circumstances on a case-by-case basis. In limited cases, we will presume that a proposed combination would be in the public interest. In the vast majority of cases, we will presume that a proposed combination would not be in the public interest, and we therefore would not permit the combination. Nevertheless, no matter which presumption applies, we will consider specific factors in determining whether permitting a particular combination in a particular market would be in the public interest. In addition, our case-by-case approach should partially alleviate the concerns of the newspaper industry commenters who believe the revised rule is too modest in scope to provide sufficient opportunities for cross-ownership and that it fails to recognize the marketplace changes since 1975.[172] Moreover, because our rule presumes combinations are not consistent with the public interest in markets 21 and below and because we will continue to scrutinize combinations of newspapers and the top four television stations in markets 1-20, our rule will not harm diversity or localism, as discussed below.

### 1. Presumption Favoring Certain Combinations in Top 20 Markets

53. We adopt a presumption that it is not inconsistent with the public interest for an entity to own in the top 20 Designated Market Areas ("DMAs")[173] either (a) a newspaper and a television station if (1) the television station is not ranked among the top four stations in the DMA,[174] and (2) at least eight independent "major media voices" remain in the DMA; or (b) a newspaper and a radio station. We expect that, as a result of this presumption, a waiver of the newspaper/broadcast cross-ownership ban generally would be granted in such cases.[175]

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[171] For the same reasons as discussed in the *2002 Biennial Review Order*, we reaffirm that for purposes of the new rule, we will define a daily newspaper to include non-English dailies printed in the primary language of the market. The former Note 6 to the multiple ownership rule defined a daily newspaper as "one which is published four or more days per week, which is in the English language and which is circulated generally in the community of publication." 47 C.F.R. § 73.3555(c) (2002). The exclusion of non-English language daily newspapers in areas where the dominant language of the market is not English creates a discrepancy in treatment that must be ended. In adopting the original newspaper/broadcast cross-ownership rule, the Commission recognized that the need for diversity in Puerto Rico was the same as that elsewhere. Since the definition of a daily newspaper was adopted in 1975, the percentage of households in which Spanish has spoken has approximately doubled. *2002 Biennial Review Order*, 18 FCC Rcd 13799-800, ¶¶ 457-58. It is appropriate, therefore, at this point in time, that we apply the newspaper/broadcast cross-ownership rule to the non-English daily papers in markets in which the language that they are printed in is the dominant language of their market. Those whose primary language is not English deserve the same protections of diversity and competition as do English speakers. For consistency, we also are making the same modification to the definition of newspapers for determining voices in a market for the radio/television cross-ownership rule. *See* 47 C.F.R. § 73.3555(c)(3)(iii).

[172] Belo 12/11/07 Comments at 2-3; Gannett 12/11/07 Comments at 3-5; Morris 12/11/07 Comments at 4, 6; NAA 12/11/07 Comments at 7-9; Bonneville 12/11/07 Comments at 4. Bonneville, Shamrock, and NAA specifically oppose the rule for retaining restrictions on newspaper/radio combinations, arguing that the record shows that radio is not considered to be the equal of newspapers or broadcast television as a source of news and information. Bonneville 12/11/07 Comments at 7-9; NAA 12/11/07 Comments at 3; Shamrock 12/11/07 Comments at 2.

[173] DMAs are determined by Nielsen Media Research.

[174] We will consider ratings, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service, at the time the application is filed.

[175] We disagree with NAA's argument that inclusion of a presumption in the rule runs counter to *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). NAA 12/11/07 Comments at 12-13, n.24. Contrary to NAA's suggestion, the presumption is rebuttable and allows for consideration of an application for exemption based on special circumstances. We also disagree with criticisms that a waiver standard effectively opens the door to any proposed newspaper/broadcast combinations. CWA/AFTRA 12/11/07 Comments at 7; CU 12/11/07 Comments at (continued...)

54. Although we concluded in the *2002 Biennial Review Order* that, on balance, the benefits of precision that case-by-case review of every transaction would provide were outweighed by the benefits of bright-line rules, we believe that the built-in presumptions and the public interest test provide adequate predictability for the industry, particularly when coupled with the older "bright-line" rules that we are retaining.[176] The Commission previously has noted that bright-line rules can be over-inclusive or under-inclusive depending upon the particular rule at issue.[177] Our approach addresses such concerns. In addition, in comparison to the number of applications triggering the local radio, local television, and radio/television ownership rules, we do not anticipate that there will be as many newspaper/broadcast applications filed; thus, the more case-specific nature of the review under this cross-ownership rule will not be unduly burdensome for the industry or the Commission.[178]

55. *Top 20 Markets.* As an initial matter, the presumption that a particular newspaper/broadcast station combination is not inconsistent with the public interest will apply only to proposed combinations in the largest 20 DMAs in the country. Such combinations in the largest markets in the country generally raise fewer diversity concerns because such media markets are more vibrant and have more media outlets.[179] As CU explains, "[t]he evidence in this proceeding shows quite clearly that the larger the market, the less concentrated the media tend to be."[180] We admit that it is not possible to draw with mathematical precision the line that should separate those largest media markets where the positive presumption should apply from those smaller markets where it should not. In looking at the media marketplace in the largest DMAs in the country, however, we believe that it is most appropriate to draw the line at the top 20 DMAs.[181]

56. We find notable differences between the top 20 markets and all other DMAs, both in

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13-14; MAP 12/11/07 Comments at 4-5; UCC 12/11/07 Comments at 10-12. The Commission must always give a hard look to waiver applications – it may never close the door altogether – and arguments that the waiver threshold will be too low under the modified rule are entirely speculative.

[176] *2002 Biennial Review Order*, 18 FCC Rcd at 13645, ¶ 82 (noting certain benefits of bright-line rules, such as certainty of outcome, conservation of administrative resources, reduction of administrative delays, and lowering of transaction costs.).

[177] *Id.* at 13646, ¶ 84.

[178] Accordingly, we disagree with commenters who argue that a case-by-case approach will impose undue regulatory burdens and runs counter to the Commission's bright-line approach to other media ownership rules. *See* Belo 12/11/07 Comments at 4; CU 12/11/07 Comments at 42-43; Gannett 12/11/07 Comments at 5; NAA 12/11/07 Comments at 13; Morris 12/11/07 Comments at 8; News Corp./Fox 12/11/07 Comments at i; UCC 12/11/07 Comments at 12-13. We note that many parties support a case-by-case approach, claiming that it affords the Commission the opportunity to consider challenges to proposed transactions would otherwise be prohibited or approved pursuant to bright-line rules. *See, e.g.*, CFA/CU Petition at 41; FOEF Comments at 31; UCC Comments at 73-74.

[179] NAB 12/11/07 Comments at 11 n.20.

[180] CU 12/11/07 Comments at 14.

[181] We disagree with CU that we should use Arbitron markets rather than DMAs for purposes of applying the rule. *See* CU 12/11/07 Comments 30-31. Although the Commission analyzed radio data at the level of Arbitron radio Metro markets for purposes of developing the Diversity Index, *see 2002 Biennial Review Order*, 18 FCC Rcd at 13789-90, ¶ 429, we decline to reinstate the cross-media limits or rely on the DI here. *See supra*, paragraph 17. Further, as the Commission observed in the *2002 Biennial Review Order*, "DMAs are exhaustive classifications, covering the entire United States, and it is straightforward to count the number of television stations in a DMA," *id.* at 13789 ¶ 428. Thus, use of DMAs facilitates application of the major media voices test, which for the reasons discussed below focuses exclusively on newspapers and television stations. In addition, television stations are generally seen throughout a DMA because of mandatory carriage requirements. *See* 47 C.F.R. § 76.56 (Cable) and § 76.66 (DBS).

terms of voices and in terms of television households. We evaluated the range of media outlets available in the top 20 DMAs, and conclude that diversity in those largest markets is healthy and vibrant in comparison to all other DMAs. For example, while there are at least 10 independently owned television stations in 18 of the top 20 DMAs, none of the DMAs ranked 21 through 25 have 10 independently owned television stations. Additionally, while seventeen of the top 20 DMAs have at least two newspapers with a circulation of at least 5 percent of the households in that DMA, four of the five DMAs ranked 21 through 25 have only one such newspaper. Moreover, the top 20 markets, on average, have 15.5 major voices (independently owned television stations and major newspapers), 87.8 total voices (all independently owned television stations, radio stations, and major newspapers), and approximately 3.3 million television households.[182] Markets 21 through 30, by comparison, have, on average, 9.5 major voices, 65.0 total voices, and fewer than 1.1 million television households, representing drops of 38.5 percent, 25.9 percent, and 56.3 percent from the top 20 markets, respectively. Markets 31 through 40 and 41 through 50 have average numbers of voices for each category similar to markets 21 through 30, and even fewer television households on average, 837,800 and 679,200, respectively. Markets 50 through 210 show even more dramatic drops, with on average, 6.7 major voices, 31.2 total voices, and approximately 231,000 television households, representing drops of 56.4 percent, 61.7 percent, and 90.7 percent from the top 20 markets, respectively. The diversity in the number and types of traditional media outlets in the largest markets ensures that the public is well served by antagonistic viewpoints. Markets outside of the top 20 DMAs do not feature diversity to such an extent.

57. *Major Media Voices.* For purposes of determining the applicability of our presumption, we define major media voices as full-power commercial and noncommercial television stations and major newspapers[183] because we believe that such sources are generally the most important and relevant outlets for news and information in local markets today. Indeed, there is relatively unanimous support for the position that consumers continue predominantly to get their local news from daily newspapers and broadcast television. Data shows that consumers rely mostly on newspapers and television for news and information. The record demonstrates that traditional media still represent the most important source for local news for the majority of individuals. Media Ownership Study Number 1 ("Nielsen Survey") indicates, for example that 38.2 percent of all respondents consider broadcast television stations and 30.1 percent consider local newspapers "the most important source of local news or local current affairs,"[184] whereas only 6.7 percent of all respondents say the same concerning the Internet.[185] AFL-CIO agrees, finding that a majority of consumers cite newspapers as the most important source of local news and television as the most important source of national news.[186] CU attaches two studies to its comments in response to the *Further Notice* finding that local newspapers and television are the most commonly used sources for local news. CU's studies conclude that traditional media, television, and newspapers,

[182] Information on television stations, radio stations, and newspapers is from BIA's Media Access Pro Database. We note that we are not able to make any adjustments for radio/television cross-ownership in any market.

[183] Major newspapers are newspapers that are published at least four days a week within the DMA and have a circulation exceeding 5 percent of the households in the DMA. *See* 47 C.F.R. § 73.3555(c)(3)(iii). We disagree that the rule is inconsistent because it limits combinations of daily newspapers and broadcast stations but counts major newspapers towards the major media voices requirement. *See* Tribune 12/11/07 Comments. As explained above, we are proceeding cautiously by relaxing the existing ban on cross-ownership of a daily newspaper and broadcast station only in the largest markets with the greatest levels of viewpoint diversity. Counting as major media voices only those outlets that consumers rely upon most as sources of local news and information will ensure that we do not presume that sufficient diversity of major local news sources will remain in a top 20 market if such a presumption is not warranted.

[184] Media Ownership Study 1 at 90.

[185] *Id.* at 91.

[186] AFL-CIO Reply at 9-11.

followed by weekly newspapers and broadcast radio, are the most frequently used and most important sources of local and national news and that those that use the Internet for news and information overwhelmingly go to the web sites of local or national television sources or to the sites of daily newspapers.[187] Based on our findings, therefore, we have taken a cautious approach in designating which outlets to include as major media voices, the presence of which would support the presumption that a newspaper/broadcast combination will serve the public interest. Counting as major media voices only those outlets that consumers most rely on as sources of local news and information will ensure that we do not presume that sufficient diversity of major local news sources will remain in a top 20 market if such a presumption is not warranted.[188]

58. We fully acknowledge that other types of outlets contribute to diversity. In the *2002 Biennial Review Order*, the Commission cited to numerous sources: cable networks, weekly and college

[187] CU Comments, Attach., Study 7 at 128-33 and Study 8 at 134-47. CU's Study 7 found that, by far, newspapers and broadcast television are the most frequent and most important source of news and information followed by weekly newspapers and radio. According to the Study, 54 percent of the respondents most often use daily newspapers and television for local news, and 53 percent consider daily newspapers and television to be the most important source of local news. An additional 33 percent of the respondents answered that they most often use weekly newspapers and radio for local news, while 31 percent consider weekly newspapers and radio to be the most important source of local news. Therefore, according to the Study, at least 84 percent of the respondents look to traditional media for local news. CU's Study 8 finds that among the 11 percent of respondents who say that the Internet is their first or second most frequent source of news, the websites of local television and daily newspapers account for 51 percent of the primary sites they visit most frequently. The peer review for CU's Study 7 raises issues regarding the breadth of the Study's conclusions, but the review does not undermine its basic conclusions. *See* CU Study 7 Peer Review, Steve Wildman, Michigan State University, *available at* http://www.fcc.gov/mb/peer_review/reviews.html. Specifically, the peer review concludes that CU's Study 7 is overly broad in its rejection of the Nielsen Survey that it was intended to correct. Nonetheless, the peer review finds that CU's Study 7 provides valuable evidence for the Commission, specifically the fact that CU's Study 7 shows that the majority of Internet sites that consumers use for news are owned by the same major news organizations that own traditional broadcast media. As such, we use as evidence of the fundamental points that consumers continue to rely primarily on traditional media sources for their local news and that they use newer media sources as supplemental. Similarly, the peer review for CU's Study 8 raises questions concerning the phrasing and ordering of survey questions, and concerning the aggregation of survey responses. *See* CU Study 8 Peer Review, *available at* http://www.fcc.gov/mb/peer_review/reviews.html. The reviewer concludes that these concerns may raise questions concerning the conclusions of the Study. We note these concerns, and accept that the precision of the survey may have been reduced due to these problems, but we do not reject CU Study 8 in its entirety. Rather, we treat it as another piece of evidence that newer sources of information, including news web sites and blogs, are lesser sources of information for consumers compared to traditional sources of information. Because this study agrees fundamentally with other evidence in the record, we find that the problems raised in the peer review may reduce its precision but they do not completely undermine its results.

[188] We acknowledge that some concerns have been raised in regard to the Nielsen Survey, Media Ownership Study 1, such as the nature of the questions and the response rate. *See, e.g.,* Media Ownership Study 1 Peer Review, *available at* http://www.fcc.gov/mb/peer_review/peerreview.html; CU Comments to the Media Ownership Studies at 8-9 and 110-23 (highlighting, for example, that broadcast television or newspapers are the first or second most important source of news for 86 percent of respondents, whereas all other forms of media are first or second most important for only 14 percent of respondents); Media General Reply to the Media Ownership Studies at 12-24 (criticizing the study, but emphasizing that non-traditional outlets are important sources of news and should be counted as "voices"); NAA Comments to the Media Ownership Studies at 4-8 and Reply at 15-21 (stating that newspapers and television are still important sources of news but that Internet and other "emerging" sources are growing quickly). Nonetheless, we are not aware of figures showing the contrary. In fact, the peer review of the Nielsen Survey, Media Ownership Study 1, suggested a Pew Internet & American Life Project Study as an alternative source; the Pew Study has different percentages, but substantially the same results: 59 percent of respondents got news "yesterday" from local television, 38 percent from a local paper, but only 23 percent from the Internet. Pew Internet & American Life Project, "Online News: For Many Home Broadband Users, the Internet is a Primary News Source" (Mar. 22, 2006).

newspapers, and the Internet.[189] However, we cannot conclude that other voices are major sources of local news or information. Our data reflects only that most consumers primarily rely on newspapers and broadcast television for local news. For instance, several parties argue that cable television should count as a source of local news,[190] while others discount its contribution to local news.[191] The *Prometheus* court affirmed the Commission's decision to discount cable television as an important news source, but there remains little information on how to quantify its contribution.[192] In addition, there is much controversy centered on whether and to what degree the Internet is a source for local news.[193] AFL-CIO argues that the Internet merely repurposes the news, and should not count as a diverse voice.[194] Conversely, Belo provides examples of locally oriented Internet news sources, including websites and blogs, some of which are offered by WFAA-TV and *The Dallas Morning News*, its co-owned outlets in the Dallas DMA. CU claims that only a small percentage of people use the Internet frequently for local news and information, and about half the web sites they visit are web sites of traditional media, which generally use "repurposed" content.[195] Belo states that the Internet offers a vehicle for ongoing discussion and direct public input that is not practical to the same extent on either a local television station or via traditional print.[196]

59. Because we cannot conclude that other media sources are major sources of local news and information, we do not include them as major media voices for the eight-voice count for purposes of the presumption in the top 20 markets. We do, however, consider them as contributing to diversity in local markets. To the extent that all of the top 20 DMAs include numerous independent sources, we are comfortable in our presumption that allowing a newspaper and a radio station or a newspaper and a non-top four television station in these 20 markets to combine will not harm diversity.[197]

60. The Commission historically has used voice-count tests in other contexts (*e.g.*, in waiver standards for the radio-television cross-ownership rule) as a means of promoting diversity.[198] Here, the eight independent voices component of the rule provides an appropriate benchmark for indicating that a minimum number of sources of local news and information are present before we presume that a combination of a newspaper and a television station is not inconsistent with the public interest.[199] The

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[189] *2002 Biennial Review Order*, 18 FCC Rcd at 13765, ¶ 365.

[190] Belo Comments at 14-15; Cox Comments at 17-18; NAA Comments at 40-41; Media General Reply at 6, 12-14.

[191] AFL-CIO Comments at 15; UCC Comments at 70.

[192] *Prometheus*, 373 F.3d at 404-05.

[193] *Id.* at 405-06.

[194] AFL-CIO Comments at 15; *see also* AFTRA Comments at 11-13.

[195] CU Comments at 10-12, Attach., Study 8 at 136-47.

[196] Belo Comments at 11-13.

[197] While UCC objects that the "major voices" test and the top four restriction do not apply to newspaper/radio combinations, *see* UCC 12/11/07 Comments at 15, more stringent protections are appropriate for newspaper/television combinations than newspaper/radio combinations in light of the fact, discussed above, that television stations are more important sources of local news for consumers.

[198] *See, e.g.*, *Review of the Commission's Regulations Governing Television Broadcasting*, Report & Order, MM Docket No. 91-221, 14 FCC Rcd 12903, 12933-36, ¶¶ 64-70 (1999) ("*Local TV Ownership Report and Order*"); *clarified in* Memorandum Opinion & Second Order on Reconsideration, 16 FCC Rcd 1067 (2001).

[199] In light of the characteristics of the top 20 markets and the adoption of the top four restriction, we reject CU's arguments, *see* CU 12/11/07 Comments at 24, that the voice count test used to determine the applicability of the presumption should take into account market share or be dependent on the level of local news programming aired by a commercial television station. Nevertheless, the Commission would appropriately look at such information in (continued...)

standard we adopt today takes into account current marketplace conditions and strikes what we believe to be an appropriate balance between the efficiencies of cross-ownership and the need to safeguard diversity, as discussed above.[200] We have selected the number eight for the major media voice count because we are comfortable that assuring that minimum number of major media voices in the top 20 markets – along with the other unquantified media outlets that are present in those markets – will assure that these markets continue to enjoy an adequate diversity of local news and information sources. As noted above, there are at least 10 independently owned television stations and two major newspapers in the great majority of the top 20 markets. Further, all of those markets have at least eight television stations and one major newspaper. As we do not want to allow a significant decrease in the number of independently owned major media voices in any of those markets, we will presume that a merger is in the public interest only if at least eight major media voices will remain post-merger.

61. *Top Four Prohibition.* The presumption in the top 20 DMAs that a newspaper/television combination would not be inconsistent with the public interest will not apply to proposed combinations between a daily newspaper and a television station ranked among the top four television stations in a DMA. In the *2002 Biennial Review Order*, the Commission retained its top four restriction in the local television ownership rule, which prohibits a combination between any of the top four ranked stations in a DMA. The *Prometheus* court agreed that the Commission was justified to limit combinations to those that would not create excessive market power.[201] We consider a daily newspaper and the top four stations to be the most influential providers of local news in their markets. Thus, such combinations are likely to cause a greater harm to diversity in a market.[202] CU/CFA/Free Press support the top four restriction, while others believe that there should be no cross-ownership restrictions in the largest markets, including allowing newspapers to combine with top four television stations.[203]

62. We also believe that combinations of newspapers and non-top four television stations are more likely to result in the production of more local news in furtherance of our localism goal. Our data shows that stations below the top four are less likely to carry local news, and therefore more likely to

(Continued from previous page)
performing its case-by-case review of a proposed combination, particularly under the "concentration" factor discussed *infra*.

[200] Accordingly, we disagree with Media General's argument that the rule's eight independent voice component is inconsistent with the D.C. Circuit's decision in *Sinclair*, 284 F.3d at 164. *See* Media General 12/11/07 Comments at 14. *Sinclair* stands for the proposition that the Commission must provide a rational explanation for using different voice count tests for the purposes of different media ownership rules, not that the Commission is bound to employ the same test regardless of the goals it seeks to achieve.

[201] Evidence showed that there is a significant drop in Nielsen ratings between the fourth and fifth stations in a market, which indicates a significant difference in viewership and hence influence in the respective local markets. *Prometheus*, 373 F.3d at 416.

[202] Without submitting the relevant data, MAP asserts that nearly half of the television stations owned by people of color are in the top 20 markets and that none is rated among the top four in its market. Thus, MAP argues that those stations will be acquisition targets and the rule will have a negative impact on minority ownership. *See* MAP 12/11/07 Comments at 5-6. We note that our rule revisions will not force any owner to sell his or her station. Further, although we believe that it is appropriate to adopt measures to encourage minority ownership, as we do in the *Diversity Order* that we adopt today, we do not think it is appropriate to deny minority owners the opportunity to sell their stations in accordance with otherwise applicable Commission rules, *see* note 7, *supra*.

[203] NAA supports cross-ownership of newspapers and top four stations because it claims it is precisely those stations that are most capable of sustaining full-scale news operations. NAA 12/11/07 Comments at 2, 10; *see also* CU 12/11/07 Comments at 20-23; Gannett 12/11/07 Comments at 6; Media General 12/11/07 Comments at 18-20; News Corp./Fox 12/11/07 Comments at 10-11. NAA also opposes the cross-ownership rule because it is considerably more limiting than any of the other existing local broadcast ownership rules. NAA 12/11/07 Comments at 2, 9-10.

carry "new news" as a result of a newspaper combination. Specifically, 86 percent of stations ranked first through fourth in all DMAs provide local news, averaging 2083 minutes, while only 40 percent of stations ranked fifth and below in all DMAs provide some local news, averaging 458 minutes.[204] Based on this data, stations ranked first through fourth provide 355 percent more local news than stations ranked fifth and below.[205] Because stations outside of the top four are less likely to have top-ranked local news shows and are therefore more likely to benefit from the extensive news gathering resources of the newspaper, we presume that combinations of newspapers and television stations ranked fifth and below are in the public interest.

### 2. Presumption Against All Other Combinations

63. In adopting our new newspaper/broadcast cross-ownership rule, we presume that it is not inconsistent with the public interest for an entity to own, operate or control, in one of the top 20 DMAs, a daily newspaper and one commercial AM or FM radio station or one TV broadcast station under certain circumstances. As discussed above, we base this presumption on the vibrancy and number of voices in the top 20 DMAs. In all DMAs ranked 21 and below, we adopt a presumption that it is inconsistent with the public interest for an entity to own newspaper and broadcast combinations.[206] We adopt this presumption as a measure to protect competition and media diversity.[207] In adopting the newspaper/broadcast cross-ownership rule over 30 years ago, the Commission sought to promote competition and diversity of viewpoints.[208] Indeed, diversity of viewpoint has been especially important in the context of newspaper/broadcast cross-ownership, given the reliance the public has placed on these

[204] Staff analysis of television schedule data from TMS for May 12-18 and November 10-16, 2005.

[205] *Id. See also* CU 12/11/07 Comments at 22 (indicating that top four stations are far more likely than non-top four stations to provide local news).

[206] Despite the fact that radio stations generally have less of an impact on local diversity than television stations, we disagree with commenters who argue that the retention of any limits on newspaper/radio cross-ownership is not justified. *See* Bonneville 12/11/07 Comments at 1-2, 7-9, 10; Morris 12/11/07 Comments at 4-5; Shamrock 12/11/07 Comments at 1-2. The combination of a daily newspaper with one or more radio stations may have significant negative implications for the range of viewpoints available in a local market. Our action will allow licensees to realize the benefits of newspaper/radio cross-ownership in the largest markets, *see, e.g.,* Bonneville 12/11 Comments 8, n.18 (citing evidence that cross-owned radio stations are more likely to adopt a news format), while fostering viewpoint diversity in small and medium markets where such combinations pose a greater risk to viewpoint diversity. We also disagree that the newspaper/broadcast cross-ownership rule's numerical limit of one newspaper and one broadcast station is inconsistent with the radio/television cross-ownership rule's higher numerical limits. *See* Tribune 12/11/07 Comments at 8. The Commission traditionally has been more cautious in allowing newspaper/broadcast combinations than in allowing broadcast-only combinations due to the unique attributes of newspapers. Moreover, as discussed above, given the long history of the newspaper/broadcast cross-ownership rule, we conclude that it is appropriate to proceed cautiously in relaxing it.

[207] The Commission has previously explained that its cross-ownership and multiple ownership rules encourage "outlet" and "source" diversity as indirect means to achieve viewpoint diversity. *See 2002 Biennial Review Order,* 18 FCC Rcd at 13629-30, 13632 ¶¶ 26-27, 30, 38-39; *see also Review of the Commission's Regulations Governing Television Broadcast; Television Satellite Stations Review of Policy and Rules,* Further Notice of Proposed Rule Making, MM Docket Nos. 99-221 and 87-8, 10 FCC Rcd 3524, 3549-50 (1995). "Outlet" diversity refers to "a variety of delivery services (*e.g.,* broadcast stations) that select and present programming directly to the public"; "source" diversity refers to "a variety of program producers and owners." *Id.*

[208] The Commission stated that "[t]he multiple ownership rules," such as the newspaper/broadcast cross-ownership rule, "rest on two foundations: the twin goals of diversity of viewpoints and economic competition." *1975 Second Report & Order*, 50 FCC 2d at 1074. Ensuring that the public has access to a diversity of viewpoints promotes First Amendment values.

media as sources of local news and information.[209] This reliance may be particularly acute in markets below the top 20 DMAs. As indicated earlier, the top 20 DMAs share a robustness in media and outlet diversity that is not matched in smaller markets. We are not certain that the degree of media consolidation that the largest, more competitive markets can withstand is yet mirrored in smaller markets, and thus, we conclude that there should be a presumption against newspaper/broadcast cross-ownership in markets below the top 20.[210] We set forth in detail below policies we will adopt to safeguard the public interest as we consider proposed transactions under the new newspaper/broadcast cross-ownership rule.[211]

64. As the record establishes, the top 20 DMAs are media-rich, highly populated markets, where we believe it is appropriate to apply the presumption that limited newspaper/broadcast cross-ownership is not inconsistent with the public interest.[212] However, in addition to the presumption in favor of cross-ownership, we will also evaluate whether a proposed transaction is in the public interest by considering the specific factors enumerated below. In addition, although the action we take today establishes a presumption against newspaper/broadcast cross-ownership in DMAs ranked 21 and below (and the less populated the DMA, the heavier the presumption against cross-ownership), we acknowledge the difficulty in identifying a definitive line to draw between markets. We also recognize the need to consider factors particular to each market and proposed transaction. Thus, just as a petitioner could rebut the presumption that a transaction in markets 1-20 would be in the public interest by showing (for example) that the resulting market would be unduly concentrated, applicants in markets below DMA 20 could overcome the relevant presumption that a merger would not be in the public interest by showing countervailing benefits of the proposed transaction. While we expect such cases to be rare, we acknowledge that a particular market may have unique attributes or that the proposed transaction may present unique advantages. In either event, the Commission is resolved to analyze each transaction on its merits. Our guiding principles, of course, will be preserving competition, localism, and diversity.

65. *Reversal of Negative Presumption.* In two special circumstances, we will reverse the negative presumption that applies to those proposed combinations that do not otherwise qualify for a positive presumption. First, we adopt a failed/failing station model, based upon the same criteria that we apply in the local television waiver criteria.[213] Although this standard was not formalized until 1999, the Commission has been applying this type of analysis for over 25 years in evaluating waivers of ownership

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[209] *See* paragraph 57 & note 187, *supra*. Consumers still rely predominantly on newspapers and television for public affairs. *Id.* At the Commission's media ownership hearing in Nashville, Alex Jones, co-owner of *The Greenville Sun,* Greenville, Tennessee, explained that the vast majority of "accountability news," *i.e.*, the news of politics, policy, public affairs, business, the news that is considered essential to democracy, comes from the newspaper and local television. Jones maintains that the reported news that comes from these entities is the news of verification as opposed to the "talk that has now gotten confused with real news." Jones contends that it is talk, not news, which is in extraordinary abundance. Jones is the Director of the Joan Shorenstein Center on the Press, Politics and Public Policy at Harvard University's Kennedy School of Government. Testimony of Alex Jones, Media Ownership Hearing, Nashville, Tennessee, Dec. 11, 2006.

[210] We therefore do not agree with commenters who urge repeal of the ban, particularly in small markets, due to the unique plight of broadcasters in these markets to retain increasingly costly news operations. *See, e.g.,* Media General Comments at 7-13; Shamrock 12/11/07 Comments at 1-2; NAB Comments at 116-20.

[211] The policies we adopt herein incorporate the suggestions of commenters who, although opposed to a lifting of the ban on newspaper/broadcast cross-ownership, propose that any modification of the rule include criteria to determine whether cross-ownership would presumptively serve the public interest. *See, e.g.,* UCC Comments at 73-74.

[212] As with all applications seeking transfer of control or assignment of a broadcast license or authorization, any party may file a petition to deny any license transfer or assignment. 47 U.S.C. § 309(d).

[213] *Local TV Ownership Report and Order*, 14 FCC Rcd at 12938-40, ¶¶ 79-81.

limits.[214] Under this model, if a newspaper or broadcast outlet is failed or failing, we would apply a positive presumption. In order to qualify as failed, the newspaper or broadcast outlet has to have stopped circulating or have been dark for at least four months immediately prior to the filing of the assignment or transfer of control application, or must be involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings.[215] To qualify as failing, the applicant must show that (1) the broadcast station has had a low all-day audience share (*i.e.*, 4 percent or lower), (2) the financial condition of the newspaper or broadcast station is poor (*i.e.*, a negative cash flow for the previous three years), and (3) the combination will produce public interest benefits.[216] In addition, as with requests for failed station waivers of the local television ownership rule, the applicant must show that the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the failed or failing newspaper or station and that selling the newspaper or station to any out-of-market buyer would result in an artificially depressed price.[217] The longstanding policy implementing the waiver criteria for television duopolies is also relevant for newspaper/broadcast combinations because it could permit two entities to merge while posing minimal harm to our diversity and competition goals. In such situations, the financial situation of one of the entities typically "hampers their ability to be a viable 'voice' in the market":

> "These stations rarely have the resources to provide local news programming, and often struggle to provide significant local programming at all. Allowing a "failing" station to join with a stronger station in the market can greatly improve its ability to improve its facilities and programming operations, thus benefiting the public interest. This waiver standard may be of particular assistance to struggling stations in smaller markets that are not covered by the eight voice/top four ranked station test."[218]

66. In the past, the Commission has also considered the financial survival of a newspaper

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[214] *See, e.g.*, *1975 Second Report & Order*, 50 FCC 2d at 1085, ¶ 119 (The Commission established the following waiver standards when it adopted the cross-ownership rule, anticipating that requests would be filed. Applicants would have to show (1) an inability to sell the station, (2) that the only sale possible would be at an artificially depressed price, (3) that separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality, or (4) the purposes of the rule would be disserved by its application); *Newspaper/Radio Cross-Ownership Waiver Policy*, MM Docket No. 96-197, Notice of Inquiry, 11 FCC Rcd 13003 (1996) (The Commission considered modifying waiver criteria for cross-ownership rule); *Voice of the Caverns, Inc.*, 4 FCC 2d 946 (1966) (The Commission granted dual ownership of a satellite television station and VHF station when previous three owners were unable to maintain operations due to financial hardship); *Multiple Ownership Report and Order*, 29 Fed. Red. 7535, 7539 (1964) (adopting Note 4 to 47 C.F.R. § 73.636(a)(1), which creates an exemption to the television duopoly rule for satellite stations because of special financial hardship considerations); *Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Docket No. 18110, First Report & Order, 22 FCC 2d 306 (1970) (The Commission grandfathered existing AM-FM combinations when it amended the multiple ownership rules "where a showing was made that establishes the interdependence of the stations and the impracticability of selling and operating them as separate stations).

[215] *See Local TV Ownership Report and Order*, 14 FCC Rcd at 12937, ¶ 75.

[216] The applicant will be required to show that the tangible and verifiable public interest benefits of the combination outweigh any harms. At the end of the station's license term, the owner of the combined entities must certify to the Commission that the public interest benefits of the combination are being fulfilled, including a specific, factual showing of the program-related benefits that have accrued to the public. Cost savings or other efficiencies, standing alone, will not constitute a sufficient showing. *See id* at 12939, ¶ 81.

[217] As with the showing required of failed station waiver applicants under the local television rule, one way to satisfy this fourth criterion will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received. *See id* at 12938, ¶ 76.

[218] *Id.* at 12938-39, ¶ 79.

outlet in deciding whether to waive the newspaper/broadcast cross-ownership rule. Among other things, the Commission considered whether, under the circumstances presented, a permanent waiver was necessary to effect a long-term stratagem for the *New York Post*'s survival.[219]

67. Second, we also will reverse the negative presumption when a proposed combination results in a new source of a significant amount of local news in a market. Specifically, we will presume that a proposed newspaper/broadcast combination is not inconsistent with the public interest when it initiates local news programming of at least seven hours per week on a broadcast outlet that otherwise was not offering local newscasts prior to the combined operations. In reviewing whether broadcasters have carried out their obligations to serve the public interest with responsive programming, the Commission has historically considered their news and public affairs programming to be uniquely and particularly important. A positive presumption under this limited circumstance will increase diversity of choices, provide more local programming, and allow better local service by media outlets. We believe that it is important, however, that the Commission closely monitor whether combinations taking advantage of this reversed presumption live up to their commitment to provide new local news. Therefore, broadcast station licenses that are approved as a result of this reversed presumption will need to report to the Commission annually regarding how they have followed through on their commitment to initiate at least seven hours a week of local news.

68. *Rebutting the Presumption.* To the extent that a proposed combination does not qualify for a positive presumption, it will have a high hurdle to cross to win Commission approval. Similarly, parties objecting to a transaction with a positive presumption will have a high hurdle to persuade the Commission that the transaction should not be approved. We will require any applicant attempting to overcome a negative presumption about a major newspaper and television station combination to demonstrate by clear and convincing evidence that, post-merger, the merged entity will increase the diversity of independent news outlets (*e.g.*, separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market.[220] Our analysis of the following four factors will inform this determination: (1) the extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the Nielsen DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations.[221] We believe assessment of these factors in the context of each specific transfer application will enable the Commission to preserve and potentially increase localism and viewpoint diversity, while also providing the means for newspapers and broadcast stations to achieve the synergies available from cross-ownership.[222]

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[219] *See Fox Television Stations, Inc.*, 8 FCC Rcd 5341 (1993), *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995).

[220] Because radio is generally a less influential voice than television, proposed newspaper/radio combinations will not face as high a hurdle. Similarly, combinations involving non-major newspapers (*i.e.*, those with a circulation of fewer than 5 percent of the households in the DMA) will not face as high a hurdle as those involving major newspapers.

[221] We disagree with arguments that the four factors are too vague. *See generally* Media General 12/11/07 Comments; UCC 12/11/07 Comments. Each of the factors is discussed in detail below. The Commission's application of the factors to particular cases will provide further guidance to interested parties over time.

[222] CU argues that the newspaper/broadcast cross-ownership rule is flawed because the factors (no top four station and eight independent major media voices) that must be present in the top 20 markets to give rise to the presumption that a combination of a newspaper and a television station is not inconsistent with the public interest do not apply in the smaller markets. *See* CU 12/11/07 Comments at 13-14. Thus, they argue that the smaller markets, which are the most vulnerable, are the least protected under the rule. *Id.* These commenters misapprehend how the rule will (continued...)

69. *Increased Local News.* The record suggests that some entities operating both a newspaper and a broadcast television station may have achieved superior news operations that benefit local audiences. For example, Belo maintains that its experience as both the publisher of *The Dallas Morning News* and the owner and operator of WFAA-TV in Dallas has been the catalyst for increasing the amount and quality of local news and public affairs coverage, as well as the number of local news outlets available to Dallas residents.[223] Belo states that the fact that it co-owned media outlets in Dallas permitted it to host and cover the October 2006 gubernatorial debate and broadcast them both in English and Spanish.[224] Similarly, Media General asserts that the pooling of news-gathering resources has significantly increased the output of news content, ensuring the delivery of better, faster, and deeper news in Tampa, Florida, where it owns *The Tampa Tribune* and WFLA-TV.[225] The convergence of newspaper and broadcast outlets, according to Media General, has led to more news specials and investigative reports, more so than either outlet could have produced on its own.[226] Given the record, we believe it is appropriate that we evaluate whether a proposed newspaper/broadcast combination will increase the amount of local news disseminated and thereby further the goal of localism.

70. We reiterate that establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is, as the Commission has emphasized, an extremely important policy goal.[227] In the *2002 Biennial Review Order*, we noted that "Federal regulation of broadcasting has historically placed significant emphasis on ensuring that local television and radio stations are responsive to the needs and interests of their local communities."[228] And, in reviewing whether broadcasters have carried out their obligations to serve the public interest with responsive programming, the Commission has historically considered their news and public affairs programming to be of particular importance. We remain committed to promoting localism and local service by media outlets and intend that our actions here will foster and promote increased localism among media outlets. Therefore, when determining whether a cross-ownership combination would increase the amount of local news, we will be looking for a significant increase in the broadcast of local news. As previously discussed, we consider a significant increase to be at least seven hours a week of additional news in the market. The term "local news" includes traditional newscasts as well as programming that addresses issues of local political interest or issues of public importance in the market. In addition, we will examine the resources that the broadcast entity will be devoting to the coverage of local news, such as the hiring of additional reporters and newsroom staff. As noted in the previous section, our data show that television stations ranked fifth and below in their DMAs are less likely to

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function. The factors referred to by these commenters must be present before we will presume that a newspaper/television station combination is not inconsistent with the public interest. In the smaller markets, all such combinations are presumed to be inconsistent with the public interest, so it is not necessary to list those factors. Moreover, in considering whether an applicant has presented adequate evidence to overcome the adverse presumption in a smaller market, one of the factors that the Commission will consider is the level of concentration in the DMA. In considering this factor, the Commission will certainly take into account whether the television station that the applicant seeks to co-own is a top four station and the number of independently owned media voices in the market. Thus, contrary to CU's argument, the smaller markets will have greater, not lesser, protection under the rule.

[223] Belo Comments at 13-14.

[224] *Id.* at 15. Belo added that it aired the debate on each of its Dallas and other Texas-based platforms, on DallasNews.com, the host television stations' associated websites, and Texas Cable News ("TXCN"), its 24-hour regional cable news network.

[225] Media General Comments at 8-10.

[226] *Id.* at 10-12.

[227] Statement of FCC Chairman Kevin Martin, Public Hearing on Localism, Washington, D.C. (Oct. 31, 2007).

[228] *2002 Biennial Review Order*, 18 FCC Rcd at 13643, ¶ 74.

carry local news, and therefore hold the potential, as a result of a merger with a newspaper, to provide additional news programming to the local community.[229] It is thus appropriately an important factor that we will consider in determining whether to allow a newspaper/broadcast combination. The weight we afford this factor will be commensurate with the amount of new local news the cross-owned combination would be committing to airing.

71. *Independent News Judgment.* In adopting the newspaper/broadcast cross-ownership ban in 1975, the Commission stated that, "it is unrealistic to expect true diversity from a commonly owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[230] Today's record now reveals, however, that some co-owned newspaper/broadcast facilities are capable of maintaining separate editorial operations. Thus, Belo explains that although its television station and newspaper share newsgathering and promotional resources, WFAA-TV is "generally not privy" to the editorial positions to be taken by *The Dallas Morning News.*[231] We agree that the public is not well served when the news disseminated by a cross-owned newspaper and broadcast station represent a mirror image in their coverage of issues of vital importance to the public. We adhere to the Commission's long-standing view that independence of news sources is important to civic life and the public welfare. Therefore, in evaluating this factor, the Commission will analyze whether applicants have demonstrated that their respective media outlets will exercise independent news and editorial judgment.[232] In order to satisfy this second factor, commonly owned media outlets must each maintain their own separate news and editorial staff. In other words, the combined entity must have two separate editorial decisionmakers exercising independent judgment as to what news will be carried by each outlet. Also, the combined entity must maintain separation among any personnel who control editorials and commentaries, such as editorial boards. This requirement will help ensure that each outlet will make its own independent and separate judgment concerning what news to air and what news to publish. Other factors that will help demonstrate compliance with this factor include staff titles and descriptions of duties, facilities and technologies management; organizational charts; and any other proof that cross-owned outlets will exercise independent editorial decisions.[233] Assurance of the continued exercise of independent news judgment by each outlet will help to indicate that a particular combination would not undermine the goal of diversity of viewpoint. We note that compliance with this factor should not preclude the economic and operational synergies that we aim to encourage by allowing certain combinations. Accordingly, maintaining editorial independence does not mean that a combination will be unable to take advantage of the potential opportunity for additional newsgathering that cross-ownership may provide or require that the outlets abstain from sharing some newsgathering inputs. It is critical, however, that the broadcast outlet and the newspaper separately and independently decide their editorial positions, what stories to air and publish, how to edit those stories, and whether and how prominently to air or display them.

72. *Market Concentration.* The third factor in our public interest determination is the level of concentration in the Nielsen DMA, that is, the extent to which media outlets in a particular market

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[229] *See* paragraph 62, *supra.*

[230] *1975 Second Report & Order*, 50 FCC 2d at 1079-80, ¶ 111.

[231] Belo Comments at 17.

[232] *Cf.* CWA Comments at 4-5 (proposing application of public interest factor to cross-ownership proposals modeled after the Newspaper Preservation Act, an antitrust exemption which allows common ownership and joint operation of two newspapers under certain circumstances but requires that there shall be no combination of editorial or reportorial staffs and that editorial policies be independently determined) (citing 15 U.S.C. § 1801-1804).

[233] We stress that this factor is content neutral. In assessing editorial independence, the Commission will review the structure and operation of cross-owned newspapers and broadcast stations as it relates to news dissemination, not what stories are covered, programs are aired or articles are written.

compete in the provision of local news and information to consumers within that market and the impact that the proposed combination would have on such concentration. Examining the level of concentration existing in the market at the time the Commission undertakes its review of a transaction serves both our diversity and competition goals. Indeed, such considerations informed our decision above to limit the positive presumption to the top 20 markets and to combinations involving non-top four television stations. Nevertheless, we recognize that circumstances unique to a particular market could produce a transaction that would result in a market that is too concentrated despite being in the top 20, as well as the opposite in a market below the top 20. Reviewing this factor with respect to each transaction will ensure that we consider this important measure on a case-by-case basis, taking into account both characteristics of the market and the nature of the proposed combination. Many commenters express concern about the level of concentration in local media markets, and the resulting effect of that concentration on the viability of smaller, independently owned outlets.[234] CWA asserts that most markets have only three to four broadcast outlets and one newspaper.[235] As such, CWA maintains that mergers between news outlets may harm diversity of ownership in local markets and reduce the number of independent voices.[236] Other commenters have stated that media consolidation has spurred the financial distress of independently owned outlets due to a decrease in advertising revenue, and other negative economic factors.[237] We believe it appropriate that we ascertain the level of concentration in local markets in assessing the public interest *bona fides* of any transaction that will result in newspaper/broadcast cross-ownership.

73. In evaluating this factor, we will conduct a fact-specific inquiry into the characteristics of the market in question as well as characteristics of the proposed combination. In particular, we will look at the number of independent voices that would remain in the market after the combination as well as the relative power and influence of those voices and the outlets that the applicant proposes to own. Thus, we note that proposed newspaper/radio combinations will generally be less likely to raise concentration concerns than proposed newspaper/television combinations in light of the fact that radio is generally not as influential a voice as is television.[238] This, of course, will affect our overall analysis and make it less difficult for newspaper/radio combinations to overcome the negative presumption. We will not employ any single metric, such as the Diversity Index, because, as the Commission has learned from experience, there are too many qualitative and quantitative variables in evaluating different markets and combinations to reduce the task at hand to a precise mathematical formula. Measuring concentration across platforms in the local news and information market for the purposes of preserving diversity is not akin to measuring concentration in the market for automobiles or washing machines for antitrust purposes. Moreover, the record does not reveal any "silver bullet" formula in this regard. We stress, however, that in future adjudicative proceedings addressing proposed combinations parties are free to point to any metric of their choosing in arguing that a proposed combination either should or should not be approved. Some parties,

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[234] CWA Comments at 4; AFL-CIO Reply at 41-42; Hubbard 12/11/07 Comments at 1-2; CWA/AFTRA 12/11/07 Comments at 4-5; Koplar 12/11/2007 Comments at 2-3.

[235] CWA Comments at 4, 54-55.

[236] *Id.*

[237] Commenters indicate that larger, more consolidated media entities draw advertisers from smaller, independently owned media outlets. Because the economic model for these outlets continues to be primarily an ad-supported model, when advertisers shift to entities that can offer numerous platforms for their ads and a more flexible pricing structure, commenters argue that smaller outlets cannot compete, often relinquishing ownership of their facilities to larger media concerns, thus, reducing competition and viewpoint diversity in local markets. Alex Jones contends that relaxing cross-ownership would inevitably create a link between the local newspaper and one, or even more, of a town's handful of radio and television stations, thereby creating a combination that would dwarf all other news organizations. Testimony of Alex Jones, Media Ownership Hearing, Nashville, Tennessee, Dec. 11, 2006.

[238] *See* paragraph 57 & note 187, *supra* (discussing studies indicating that Americans rely on newspapers and television more than radio for local news and information).

for example, may wish to provide an analysis of concentration in the local advertising market or local news market. Or, as CU/CFA suggest, others may attempt to apply the Herfindahl-Hirschman Index (HHI) to the local media market in a manner informed by the Department of Justice's Merger Guidelines. Any such submission should, of course, include a thorough explanation of the metric proposed for use and why that metric is relevant to the task of evaluating whether a particular combination will or will not unduly undermine diversity and increase concentration in the provision of news and information in the local media market. Such submissions will then be subject to comment by others and evaluated by the Commission as part of the adjudicative process.

74. *Financial Condition.* We will evaluate whether a newspaper or a broadcast station in a proposed combination is in financial distress. To show financial distress, the applicant will have to show that either the newspaper or the broadcast station is operating at a loss. An applicant wishing to make a showing of financial distress may do so through tax filings, earnings statements, annual reports or other records showing that the newspaper has had several years of losses. The Commission may assess the reasonableness of the showing by comparing data regarding the newspaper's or the broadcast station's expenses with industry averages. In the case of a broadcast station, we will take into consideration factors set forth in our failed or failing waiver standards. Specifically, we will consider the situation in which a station has been struggling for an extended period of time both in terms of its audience share and in its financial performance. A failed or failing station would rarely have the resources to provide local news programming, and often struggles to provide significant local programming at all. Thus, allowing a "failing" or "failed" station to join with a stronger newspaper outlet can improve its facilities and programming operations, thus benefiting the public interest.[239] With regard to the newspaper industry, we are cognizant of the significant turmoil that has erupted since we last embarked on a media ownership review.[240] The rapidly evolving media environment, brought on in large part by new media, has wrought dramatic economic consequences for newspapers. The record indicates that the financial downturn for newspapers has in recent years been significant. NAB states that newspapers are suffering from declining circulation, increasing printing and production costs, and advertising revenues that are stagnant at best, in large part due to the movement of advertising business to other media, including Internet competitors.[241] Entities that have cross-owned newspaper and broadcast facilities, such as Belo, Tribune, and Media General, have documented on the record the unstable financial circumstances in which newspapers currently operate.[242] In light of this evidence, it is appropriate that we consider as part of our public

[239] *Cf.*, *Field Communications*, 65 FCC 2d 959 (1977) (Commission granted a permanent waiver of the newspaper/broadcast cross-ownership rule primarily due to the history of financial losses suffered by the television station in the proposed transaction).

[240] Sarah Ellison, *Ad Woes Worsen at Big Newspapers*, WALL ST. J., Oct. 20, 2006, at B4; Sarah Ellison, *Tribune to Consider Radical Action*, WALL ST. J., Sept. 21, 2006, at A3. *See also supra* para. 32. In October 2007, Belo Corporation announced that it would spin off its newspaper assets to shareholders, thus separating those assets from Belo's television stations. Following the spin-off, Belo would hold licenses for 20 television stations in 15 markets, reaching 14 percent of U.S. households and generating $750 million in annual revenue. The newspaper entity, A.H. Belo, will hold newspaper and related online assets, including *The Dallas Morning News* and *The Providence Journal*. Those assets reach 3.7 million people and generate $750 million in annual revenue. Jon Hemingway, Belo Spin Off TV and Newspaper Assets, BROAD. & CABLE, Oct. 1, 2007, *available at* http://www.broadcasting cable.com/article/CA6485750.html?industryid+47171&q+A%2EH%2E+Belo (visited Dec. 21, 2007).

[241] NAB Comments at 116; *see also* Gannett Comments at 21-25 (discussing cuts to the newsroom functions at newspapers based on financial pressures). Gannett states that newspaper circulation declined at a rate of one percent each year between 1990 and 2004. *Id.* at 21 n.75 (citing PEW Charitable Trusts, *State of the News Media Fact Sheets: Newspapers* (Mar. 2004)).

[242] Belo Comments at 18; Tribune Comments at 33-34; Media General Comments at 63. In addition, Media General states that new digital services and sources are having an impact on broadcast television. It references NBC Universal's recent announcement that it plans to reduce its workforce by 5 percent and provide lower cost, unscripted programming in the first hour of prime time in order to cut $750 million from its budget. Media General (continued...)

interest analysis the financial condition of newspapers and broadcast facilities. We seek to maintain the vitality of media voices and ensure their continued service to the public. To the extent that our newspaper/broadcast cross-ownership rule forecloses a viable avenue for a struggling newspaper or a broadcast station to prevent the loss of a source of local programming, our rule would be undermining, rather than promoting, our goals of competition, localism, and diversity. Allowing a struggling newspaper or broadcast station to combine with a stronger outlet can, under certain circumstances, improve its ability to provide local news and information, thus benefiting the public interest.

75. In those instances where a newspaper or broadcast entity makes a showing of financial distress, we will look for evidence of the owner's commitment to invest significantly in newsroom operations as a result of a proposed combination. We recognize the concern expressed by some commenters that cross-owned entities may experience a cut in staff or news operations in order to maximize economic synergies.[243] Indeed, the pressure to take such steps may be particularly acute when a newspaper is in financial distress. On the other hand, there is also evidence on the record substantiating that when newspapers and broadcast stations are permitted to consolidate, the combination results in an increase in the amount and quality of local news and public affairs programming. Going forward, we will evaluate whether adequate investment in newsroom operations will be allocated and expended in deciding whether to grant approval for such newspaper/broadcast combinations. This factor is particularly relevant where the entity is operating under financial constraints.[244] Therefore, we expect applicants to explain in detail their plans and commitments to enhance the news operations of the broadcast and newspaper outlets following transfer of control and state when those measures will be implemented.[245]

76. *Additional Matters*. As an initial matter, we do not require divestiture of the combinations grandfathered in the 1975 decision; rather these combinations remain grandfathered. In the context of the 1975 rulemaking, the Commission evaluated each of the existing newspaper/broadcast combinations to determine whether divestiture was appropriate in light of its decision to adopt the cross-ownership ban. Even in that more restrictive environment, the Commission felt that requiring the divestiture of certain combinations would be harmful and that certain combinations remained appropriate and consistent with its localism, diversity, and competition goals. Thus, the Commission required divestiture only in the most "egregious" cases (17 out of approximately 150) and grandfathered or granted

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notes other industry announcements regarding restructuring or sales transactions, including those of CBS to sell its small-growth radio stations; Clear Channel's plans to sell its smaller market radio stations; *The New York Times'* intention to sell its television stations; and LIN TV's agreement to sell its Puerto Rican assets and take steps to reduce the number of staff needed to put live newscasts on the air. *Id.* at 65. Media General states that repeal of the 1975 rule would help to reverse some of this negative trend by freeing newspaper owners and broadcasters to enter into ownership arrangements that would eliminate overlapping costs, while putting these savings into local news production to bring quality local news and information to the largest possible audiences in the market. Media General Comments at 65-66; *see also* NAA Comments at 41-43 (indicating that a natural corollary of the increasing fragmentation in the news and information marketplace has been a decline in the prominence and economic performance of local daily newspapers and broadcast outlets, and no improvement is expected in 2006). NAA states that "[w]hile newspaper circulation has been declining at a rate of one percent each year since 1990, these losses accelerated in 2005.... [when] [c]irculation went down 2.6 percent for daily newspapers and 3.1 percent for Sunday newspapers." NAA describes how "[a]dvertising revenue...also has taken a substantial hit" and how analysts have been lowering their revenue predictions for the newspaper industry. *Id.* at 42-43.

[243] AFL-CIO asserts, for example, that increased concentration puts pressure on media firms to lower costs by decreasing local news coverage, and identifies in its comments the budget and job cuts that result from reductions in local coverage. AFL-CIO states that cross-owned media properties serve as a "'cross-promotional vehicle rather than as an independent editorial voice.'" AFL-CIO Comments at 23-27.

[244] *See, e.g.,* Gannett Comments at 21-25.

[245] We authorize the Media Bureau to modify the necessary FCC filing forms in order to implement the changes we adopt herein. *See, e.g.*, FCC Forms 314, 315, and 316.

waivers for other existing combinations. In doing so, the Commission did not simply grandfather all existing combinations as a matter of due course; instead, it established standards and criteria it applied to evaluate each existing combination.[246] We have no reason to disrupt those decisions. Similarly, all permanent waivers from the prior rule that previously have been granted will continue in effect under the new rule.[247] Given that the Commission previously determined that these combinations warranted a waiver from the prior more restrictive rule, we see no reason why such combinations should not continue to receive a waiver under our less restrictive rule. Moreover, we believe that requiring divestitures of these combinations would disrupt longstanding symbiotic relationships that have provided tangible public interest benefits for affected communities.

77. We note that several temporary waivers of our former newspaper/broadcast cross-ownership rule are still pending awaiting the conclusion of our quadrennial review proceeding.[248] We will grant a limited number of pending waiver requests to permit the continuance of existing combinations of a newspaper and a single broadcast station that were formed by acquisitions occurring after the date of the broadcast station's last renewal because we find that the public interest would be served by such waivers. We thus grandfather these combinations in the same manner as the Commission did in 1975. All of these combinations were acquired prior to 2001. As the Commission has previously recognized, "divestiture introduces the possibility of disruption for the industry and hardship for individual owners."[249] One commenter notes that "there is potential for both harm to the public from the disruption from the divestiture as well as harm to employees and station and newspaper operations to consider in requiring divestiture."[250] Specifically, in the following cases, we have determined that the public interest warrants a waiver in light of the synergies that have already been achieved from the newspaper/broadcast station combination,[251] the new services provided to local communities by the combination, the harms (reviewed above) associated with required divestitures, the prolonged period of uncertainty surrounding the status of the newspaper/broadcast cross-ownership ban, and the length of time that the waiver request has been pending: Gannett's combination in Phoenix[252] as well as Media

[246] *1975 Second Report & Order*, 50 FCC 2d at 1080-84, ¶¶ 112-17.

[247] There are three such waivers: one involving the *New York Post* and WNYW-TV; one involving the *Chicago Tribune*, WGN-TV, and WGN(AM); and one involving WSCG-AM and *The Daily News* in Greenville, Michigan.

[248] Several commenters express concern about the status of those waivers and suggest resolutions, including (1) granting permanent waivers or grandfathered status to existing newspaper/broadcast combinations that were created pursuant to "footnote 25" of the 1975 decision adopting the ban or have been granted temporary or conditional waivers of the restriction, or (2) adding a new note to § 73.3555 that would indicate that the new newspaper/broadcast cross-ownership rule would not apply to the cross-ownership of a broadcast station and a daily newspaper for which the Commission has previously granted a permanent waiver of any rule that would have otherwise prohibited such cross-ownership. Tribune 12/11/07 Comments at 10-11; News Corp./Fox 12/11/07 Comments at 12. In addition, Media General asserts that any divestitures that might result from the Commission's proposal could violate First and Fifth Amendment rights. Media General 12/11/07 Comments at 17. Tribune notes that forcing divestiture would potentially harm the public, company employees, and the combined operations of broadcast stations and newspapers. Tribune 12/11/07 Comments at 11.

[249] *1975 Second Report & Order*, 50 FCC 2d at 1078, ¶ 109.

[250] Tribune 12/11/07 Comments at 11.

[251] For example, Media General has submitted extensive evidence demonstrating how, during the past seven to nine years, it has integrated the operations of the media outlets in these DMAs to expand the volume of local news and information communicated to local residents and to improve the quality of their offerings. Media General Comments at 13-22. *See also id.* at App. 4A, Exhs. B-F (Statement of Professor Adam Clayton Powell, III, reviewing local convergence benefits in each of the four markets).

[252] Gannett Co., Inc. has owned KPNX-TV, Phoenix, Arizona and *The Arizona Republic* since 2000. Gannett has submitted evidence demonstrating how, during the past seven years, it has integrated the operations of the two media outlets to expand the volume of local news and information communicated to Phoenix residents and to improve the (continued...)

General's combinations in Myrtle Beach-Florence, South Carolina[253]; Columbus, Georgia[254]; Panama City, Florida[255], and the Tri-Cities, Tennessee/Virginia DMA.[256]

78. Where a pending waiver request involves an existing combination consisting of more than one newspaper and/or more than one broadcast station[257] or an entity has been granted a waiver to hold such a combination pending the completion of this rulemaking, [258] we will afford the licensee 90 days after the effective date of this order to either amend its waiver/renewal request or file a request for permanent waiver. Because each of these combinations involves multiple newspapers and/or multiple broadcast stations, they potentially raise heightened diversity concerns, and it would be inappropriate to grant these requests or grandfather these combinations across-the-board. Rather, we will examine them on a case-by-case basis. In its filing with the Commission, the licensee should address the factors considered in this order and the impact that the combination has on the diversity of independent voices in the market, particularly as it affects news and information programming. We will hold pending waiver

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quality of its offerings. *See, e.g.,* Gannett Comments at 26-29. For example, combined efficiencies have enabled KPNX-TV to expand its local programming. *Id.* at 27. New programs include a weekday 4:30 p.m. newscast, a weekly travel and tourism program titled "Arizona Highways," and a daily news broadcast in Spanish on "12 News En Español" on KPNX-TV's Separate Audio Program ("SAP") channel. *Id.* at 26-27.

[253] In the Myrtle Beach-Florence, South Carolina DMA, Media General has owned television station WBTW(TV), which is licensed to Florence, South Carolina, and the *Morning News*, which is published in Florence, since 2000, and its waiver request has been pending for over three years. Media General reports that WBTW(TV) has found access to the archives of the *Morning News* to be crucial to ongoing coverage of news in the area and to the development of special and investigative reports, enabling WBTW(TV) to provide greater depth and expand its coverage of major events and issues in the DMA. Media General Comments at 15-16. Media General provides examples of the news staffs of WBTW(TV) and the *Morning News* collaborating on recurring features and series "that, because of convergence, are more informative and achieve wider distribution throughout the DMA." *Id.* at 16-18.

[254] In the Columbus, Georgia DMA, Media General has owned television station WRBL(TV), which is licensed to Columbus, and the *Opelika-Auburn News*, which is published in Opelika, Alabama, since 2000, and its waiver request has been pending for three years. A WRBL(TV) reporter is permanently assigned to the station's Opelika bureau, which is housed in the newspaper's building. From this facility, WRBL(TV), which does not operate a satellite truck, has the capability of transmitting live video for broadcast on WRBL(TV), which has enabled the station to broadcast improved coverage of breaking news and other events occurring in the western portion of its DMA. *Id.* at 18.

[255] In Panama City, Florida, Media General has owned television station WMBB(TV) in Panama City, and the *Jackson County Floridan*, which is published in Marianna, Florida, since 2000, and its waiver request has been pending for over three years. During that time, Media General states that these outlets have worked effectively together to increase the coverage of local news in the DMA, offering examples of the two media outlets' hurricane coverage, political forums, and investigative reporting. *Id.* at 19-22.

[256] In the Tri-Cities DMA, Media General has owned television station WJHL-TV, which is licensed to Johnson City, Tennessee, and the *Bristol (Virginia Tennessee) Herald Courier*, which is published in Bristol, a city that straddles the state border, since 1998, and its waiver request has been pending for over two-and-a-half years. Since 2000, WJHL-TV has added 90 minutes of additional local news coverage every weekday, which has enabled it to greatly expand its political coverage and broadcast numerous special reports and regularly televised series that would not be possible without access and input from the newspaper's staff. *Id.* at 13-15.

[257] We are aware of the following waiver/renewal applicants with existing combinations that fall into this category: Cox Enterprises, Inc. (Atlanta, Georgia, and Dayton, Ohio DMAs); Tribune-Review Publishing Co. (Pittsburgh, Pennsylvania DMA); Bonneville International Corp. (Salt Lake City, Utah DMA); and Scranton Times Ltd. Partnership (Wilkes Barre-Scranton, Pennsylvania DMA).

[258] Morris falls into this category with regard to its newspaper/broadcast combinations in the Amarillo, Texas, and Topeka, Kansas, DMAs. *See* Morris Comments at 13-21.

requests and renewal applications in abeyance until we receive an appropriate amendment. With respect to current temporary waivers that have been granted pending the completion of the rulemaking proceeding, those waivers will be temporarily extended pending our action on requests for permanent waivers filed within the time frame set forth above.

79. We also address one additional matter related to the processing of waiver requests. UCC argues that the modified rule will not provide adequate notice of proposed newspaper/broadcast combinations. We note that applications for Commission approval of proposed newspaper/broadcast combinations are subject to the local public notice filing requirements of Section 73.3580 of the Commission's rules. Nevertheless, to further ensure adequate local public notice, the Commission will flag such applications in its public notices as seeking waiver of the newspaper/broadcast cross-ownership rule pursuant to Section 73.3555(d) of the Commission's rules.

## IV. RADIO/TELEVISION CROSS-OWNERSHIP RULE

80. As explained in more detail below, we retain the current radio/television cross-ownership rule. The radio/television cross-ownership rule limits the number of commercial radio and television stations an entity may own in the same market, with the degree of common ownership permitted varying depending on the size of the relevant market.[259] In contrast to the newspaper/broadcast cross-ownership

[259] 47 C.F.R. § 73.3555(c) (2002); *2002 Biennial Review Order*, 18 FCC Rcd at 13767-68, ¶ 370. The current rule allows a party to own up to two television stations (provided it is permitted under the local television ownership rule to do so) and up to six radio stations (to the extent permitted under the local radio ownership rule) in a market where at least 20 independently owned media "voices" would remain post-merger. In markets where parties may own a combination of two television stations and six radio stations, the rule allows a party alternatively to own one television station and seven radio stations. A party may own up to two television stations (as permitted under the current local television ownership rule) and up to four radio stations (as permitted under the local radio ownership rule) in markets where, post-merger, at least 10 independently owned media voices would remain. A combination of two television stations (as permitted under the local television ownership rule) and one radio station is allowed regardless of the number of voices remaining in the market. *Local TV Ownership Report and Order*, 14 FCC Rcd at 12947, ¶ 100. For purposes of applying the radio/television cross-ownership rules the Commission counts (1) all independently owned and operating full-power commercial and noncommercial broadcast television stations licensed to a community in the DMA in which the community of license of the television station in question is located; (2) all independently owned and operating commercial and noncommercial broadcast radio stations that are either licensed to a community within the Arbitron radio Metro market in which the community of license of the television station in question is located or radio stations outside the radio Metro market that Arbitron or another nationally recognized audience rating service lists as having a reportable share in the Metro market; (3) all independently owned daily newspapers that are published in the DMA at issue and that have a circulation exceeding 5 percent of the households in the DMA; and (4) cable systems, which count as a single voice, provided cable service is generally available to television households in the DMA. *See id.* at 12950-52, ¶ 111. The voice test counts more voices than the revised newspaper/broadcast cross-ownership rule or current local television ownership rule. The local television ownership rule counts only broadcast television stations as voices because the local television ownership rule is designed to preserve competition in the local television market. The radio/television cross-ownership rule, by contrast, is designed to protect viewpoint diversity and thus takes into account a broader range of voices than does the local television rule. Furthermore, we count more voices in the radio/television cross-ownership rule than in the newspaper/broadcast cross-ownership rule because newspapers and television station combinations involve the two most important types of sources for news and information. *See* CU Comments at 124 ("newspapers and television are far and away the most important sources [of local news]"). It is thus appropriate that the relevant voices test applied to such combinations includes major voices in order to ensure that diversity in the market is safeguarded. The radio/television cross-ownership rule, however, involves combinations that include radio stations, and the record reflects that radio is a significantly less important source of news and information than newspapers or television. As a result, we consider additional sources of viewpoint diversity that are less significant than newspapers and television stations within the context of this rule. Moreover, given that the rule involves radio/television combinations, we find it appropriate to also count radio stations for its purposes. In this regard, we note that the revised newspaper/broadcast cross-ownership rule's voices test applies to proposed newspaper/television combinations only, not to newspaper/radio combinations.

ban, this rule has been substantially relaxed over the years.[260]

### A. Background

81. In adopting the current rule in 1999, the Commission explained that it balanced diversity and competition concerns with the desire to permit broadcasters and the public to realize the benefits of common ownership.[261] Some commenters argued for the rule's elimination, but the Commission found that it "continues to be necessary to promote a diversity of viewpoints in the broadcast media."[262] In the *2002 Biennial Review Order*, the Commission eliminated the radio/television cross-ownership rule in its entirety by finding that it no longer remained "necessary in the public interest to ensure competition, diversity or localism."[263] The Commission reasoned that the removal was warranted because "diversity and competition goals [would] be adequately protected by the local ownership rules" adopted in that proceeding.[264] These rules included cross-media limits that were "specifically designed to protect diversity of viewpoint in those markets [where] consolidation of media ownership could jeopardize such diversity."[265] The cross-media limits were challenged in *Prometheus*.[266] The *Prometheus* court concluded that although "the Commission's decision to replace its cross-ownership rules with cross-media limits" was "not of itself constitutionally flawed and [did] not violate § 202(h)," it would not uphold the cross-media limits because the "Commission [did] not provide a reasoned analysis to support the limits that it chose."[267]

### B. Discussion

82. We retain the radio/television cross-ownership rule currently in effect[268] to provide protection for diversity goals in local markets and thereby serve the public interest. Our conclusion in the *2002 Biennial Review Order* that the radio/television cross-ownership rule was no longer necessary to ensure viewpoint diversity was based in large part on our adoption of the cross-media limits in that proceeding.[269] Now that the court has invalidated the cross-media limits, we must adopt diversity protection provisions to act in their place, and therefore retain the current radio/television cross-ownership rule.[270] In doing so, we reaffirm the Commission's conclusion that "fostering the availability of diverse viewpoints remains an important policy goal, and that diversity of ownership promotes diversity of

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[260] *Local TV Ownership Report and Order*, 14 FCC Rcd at 12943-44, ¶ 92.

[261] *Id.* at 12948, ¶ 102.

[262] *Id.* at 12948, ¶ 104.

[263] *2002 Biennial Review Order*, 18 FCC Rcd at 13768, ¶ 371.

[264] *Id.* at 13768, ¶ 371. *See id.* at 13775, ¶ 389 (explaining that the radio/television cross-ownership rule was made "unnecessary and anachronistic" by the Commission's adoption of cross-media limits).

[265] *Id.* at 13775, ¶ 389, *et seq.* *See generally id.* at 13790-807, ¶¶ 432-81.

[266] 373 F.3d at 397.

[267] *Id.*

[268] 47 C.F.R. § 73.3555(c) (2002).

[269] 18 FCC Rcd at 13774-75, ¶ 389.

[270] CBS observes that the radio/television cross-ownership rule "was uncontested on appeal"; it therefore contends that the rule "is therefore not subject to review on remand." CBS Reply at 15. As we have explained, however, because the Commission eliminated the radio/television cross-ownership limits based on its adoption of the protections provided by the cross-media limits, the *Prometheus* court's vacatur of the Commission's cross-media limits necessarily revived the issue of those limits on remand. In any event, the Commission is under a continuing and independent obligation under Section 202(h) of the 1996 Act to determine quadrennially whether its ownership rules remain "necessary in the public interest as a result of competition." *See* 1996 Act, § 202(h).

viewpoints."[271]

83. Several commenters urge us to maintain or tighten the radio/television cross-ownership rule.[272] We agree with the AFTRA that the radio/television cross-ownership rule is an "essential tool[] for protecting the availability of diverse editorial perspectives and entertainment programs to local communities."[273] We also remain mindful of radio/television combinations that could potentially hamper individual editorial content and therefore act to retain limits on such combinations.[274] We see no reason to tighten the rule at this time, however, and thereby upset the balance the rule strikes between the protection of diverse viewpoints and the "efficiencies" and "public service benefits" that can result from "joint ownership and operation of both television and radio stations in the same market."[275]

84. By the same token, we disagree with those commenters who urge us to further relax or eliminate the radio/television cross-ownership rule.[276] The record does not indicate that local radio and television ownership limits provide sufficient protection to assure a diversity of viewpoints in those media markets.[277] Local service-specific limits are chiefly concerned with competition and rivalry among entities providing the same service. In contrast, cross-ownership rules aim to maintain a vibrant marketplace of ideas to ensure a diversity of editorial content. What the Commission said in 1999 remains true today – the fact that "[t]he public continues to rely on both radio and television for news and

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[271] *2002 Biennial Review Order*, 18 FCC Rcd at 13774, ¶ 389. Clear Channel's comment that "the FCC found [in the *2002 Biennial Review Order*] that diversity is not a justifiable reason to support a radio/television cross-ownership rule" is in error. Clear Channel Comments at 84. The Commission only found its radio/television cross-ownership rule was not necessary to ensure viewpoint diversity because it was adopting "modified service-specific local ownership rules" and a "new cross-media limit rule" to "protect diversity of viewpoint in those markets in which [it] believe[d] consolidation of media ownership could jeopardize such diversity." *2002 Biennial Review Order*, 18 FCC Rcd at 13774-75, ¶ 389.

[272] *See* AFTRA Comments at 22-23; UCC Comments at 74-76; and Prometheus Reply at 42-44. *See also* Remarks by John Carlson, Radio Talk Show Host, KVI-AM, Media Ownership Hearing in Seattle, Washington (Nov. 9, 2007), Transcript at 86; Remarks of Karen Bond, Executive Director, National Black Coalition for Media Justice, Media Ownership Hearing in Chicago, Illinois (Sept. 20, 2007), Transcript at 79 (generally advocating against further media consolidation).

[273] AFTRA Comments at 13.

[274] *See id.* at 22-23.

[275] *See* CBS Reply at 18-19 (radio/television cross-ownership "allows both stations to go live in breaking news situations when just one outlet has a reporter on the scene"). *See also* Remarks by Elizabeth B. Hindman, Associate Professor, Edward R. Murrow School of Communication at Washington State University, Media Ownership Hearing in Seattle, Washington (Nov. 9, 2007), Transcript at 110 (advocating tightening of radio/television cross-ownership rules) *and* Remarks by George Jones, Member, American Federation of Television and Radio Artists, Media Ownership Hearing in Nashville, Tennessee (Dec. 11, 2006) (opposing radio and television ownership consolidation). For the same reasons, we reject UCC's contention that we should ban radio/television cross-ownership entirely. UCC Comments at 76. Such a step would even more clearly foreclose the opportunity for "broadcasters and the public to realize the benefits of radio-television common ownership." *Local TV Ownership Report and Order*, 14 FCC Rcd at 12948, ¶ 102; *see also* Remarks by Joe Lewin, President and General Manager WHTM, Media Ownership Hearing in Harrisburg, Pennsylvania (Feb. 23, 2007), Transcript at 54-56 (broadcasters face many challenges and benefit from consolidation). We also believe that neither the *Prometheus* nor *Sinclair* decisions prohibit us from reinstating the 1999 rules. *Prometheus* invalidated the cross-media limits, which we no longer apply. We also answer *Sinclair*'s critique by justifying why we count non-broadcast media in our cross-ownership rules and not in our local television rule. *See Sinclair*, 284 F.3d at 162; *see also supra,* text accompanying note 259 and Section V, Local Television Ownership Rule, paragraph 100.

[276] *See* Clear Channel Comments at 80-90, CBS Comments at 4-6, and NAB Comments at 120-124.

[277] Clear Channel Comments at 86-87.

information" supports the conclusion that "the two media both contribute to the 'marketplace of ideas' and compete in the same diversity market."[278] Because the two media "serve as substitutes at least to some degree for diversity purposes," there remains a need to retain a cross-ownership rule "to ensure that viewpoint diversity is adequately protected."[279] The Commission's determination in the *2002 Biennial Review Order* that the radio/television cross-ownership rule was no longer necessary to provide such protection for diversity was based on the adoption of cross-media limits specifically designed to provide adequate alternative protection. Because the cross-media limits have now been vacated, we have determined to retain the radio/television cross-ownership rule to maintain the status quo.

85. We are not persuaded by Clear Channel's assertion that Congress' repeal of the cable/broadcast cross-ownership ban calls for us to now repeal the radio/television cross-ownership rule.[280] If Congress had desired to repeal or modify the radio/television cross-ownership rule, it could have done so explicitly; its failure to do so leaves us free to retain or eliminate the rule as the public interest warrants.[281]

86. We also reject Clear Channel's contention that the radio/television cross-ownership rule conflicts with the 1996 Act "to the extent" that such a rule would "shrink an entity's right to own radio stations" below the level permitted by the local radio ownership levels specified in Section 202(b).[282] It is Section 202(d), not Section 202(b), that addresses the Commission's radio/television cross-ownership rule. That section only requires the Commission to extend its waiver policy governing its one-to-a-market ownership rules "to any of the top 50 markets, consistent with the public interest, convenience, and necessity"; in all other respects the Commission's authority to establish or retain a radio/television cross-ownership rule remains unchanged.[283] We therefore retain the radio/television cross-ownership rule currently in effect in order to provide protection for diversity goals in local markets and thereby serve the public interest.

## V. LOCAL TELEVISION OWNERSHIP RULE

87. We find that restrictions on common ownership of television stations in local markets continue to be necessary in the public interest to protect competition for viewers and in local television advertising markets. As discussed below, we conclude that, in order to preserve adequate levels of competition within local television markets, the local television ownership rule as it is currently in effect should be retained. Accordingly, an entity may own two television stations in the same DMA if: (1) the Grade B contours of the stations do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, *and* at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the combination. To determine the number of voices remaining after the merger, the Commission counts those broadcast television stations whose Grade B signal contours overlap with the Grade B signal contour of at least one of the stations that would be commonly owned.[284]

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[278] *Local TV Ownership Report and Order*, 14 FCC Rcd at 12949, ¶ 104.

[279] *Id.* The record shows, however, that newspapers and television are "far and away the most important sources" of news and information, with radio a distant third. *See, e.g.*, CU Comments at 11.

[280] Clear Channel Comments at 88.

[281] *See* Prometheus Reply at 44 (Congress "made a conscious decision to retain the restriction on television-radio cross ownership" when it chose to eliminate the broadcast/cable cross-ownership restriction).

[282] Clear Channel Comments at 89; *see also* NAB Reply at 91-92.

[283] *See* 1996 Act, § 202(d).

[284] 47 C.F.R. § 73.3555(b)(2)(ii) (2002) ("Count only those stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combinations"). As discussed below (continued...)

### A. Background

88. Unlike the newspaper/television cross-ownership rule, which has not been modified since 1975, the local television ownership rule was relaxed as recently as 1999. In *Sinclair*, the U.S. Court of Appeals for the District of Columbia Circuit reviewed the Commission's 1999 decision modifying the local television ownership rule to the form currently in effect.[285] The court held that the Commission had adequately explained how the rule advanced its goals of preserving diversity of viewpoints and competition.[286] In reviewing the eight-voice count threshold, it acknowledged that the Commission "has wide discretion to determine where to draw administrative lines,"[287] that "[c]hoosing the number eight and defining 'voices' are quintessentially matters of line drawing invoking the Commission's expertise in projecting market results[,]"[288] and that the court is generally "unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that the lines drawn ... are patently unreasonable, having no relationship to the underlying regulatory problem."[289] While the court did not decide whether eight voices is an appropriate numerical limit, it held that the Commission had not demonstrated that the exclusion of non-broadcast media from the eight-voice test was "necessary in the public interest" under Section 202(h) of the 1996 Act.[290] Accordingly, it remanded the rule for further consideration.

89. After analyzing the rule in the *2002 Biennial Review Order*, the Commission determined that the existing rule was not necessary to promote viewpoint diversity.[291] Moreover, the Commission found that the restrictions did not foster its goals of localism and program diversity.[292] The Commission concluded, however, that restrictions on local television ownership remained necessary to promote competition among local broadcast stations.[293] It concluded that there are two potential competitive harms that may be caused by a single firm owning multiple television stations in a local market. First, multiple ownership may result in "unilateral effects," *i.e.*, one firm acquiring multiple licenses and finding it profitable to alter its competitive behavior unilaterally to the detriment of viewers.[294] Second, it concluded that multiple ownership may lead to "coordinated effects," *i.e.*, inducing a joint change in competitive behavior by market participants that harms viewers.[295]

90. The Commission decided in the *2002 Biennial Review Order* to revise the local television ownership rule to permit an entity to own up to two television stations in markets with 17 or fewer

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in this section, the rule was revised in the *2002 Biennial Review Order*, but the revised rule, set forth in the current version of the Code of Federal Regulations, was remanded and stayed.

[285] *Sinclair*, 284 F.3d at 152, 163-65 (demonstrating that the *Sinclair* court reviewed the *Local TV Ownership Report and Order*, 14 FCC Rcd at 12903 *et seq.*; *on recon.*, 16 FCC Rcd 1067 (2001)).

[286] *Sinclair*, 284 F.3d at 159-162.

[287] *Id.* at 162, *quoting AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000).

[288] *Id.* at 162.

[289] *Id.* (quoting *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998) (*quoting Home Box Office, Inc. v. FCC*, 567 F.2d 9, 60 (D.C. Cir. 1977)).

[290] *Id.* at 165.

[291] *2002 Biennial Review Order*, 18 FCC Rcd at 13686, ¶ 171.

[292] *Id.* at 13668, ¶ 133.

[293] *Id.* at 13692-93, ¶¶ 189-91.

[294] *Id.* at 13693, ¶ 190.

[295] *Id.*