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

In the Matter of	)	
	)	
Cross Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197
	)	

Reply Comments of the
American Federation of Labor and Congress of Industrial Organizations

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EXECUTIVE SUMMARY

The newspaper/broadcast cross-ownership rule is as necessary today as it was in 1975 when the Commission first adopted the rule to promote the twin goals of diversity and competition. That is the common theme sounded in comments in this proceeding from organizations representing consumers, women, civil rights, religious, and labor organizations.

The more than 171,000 members of AFL-CIO unions who are employed in the broadcast and newspaper industries work hard every day to provide their local communities with news and information from the widest possible array of diverse and antagonistic sources. But all too often they face powerful constraints as they go about their jobs—constraints imposed by the business objectives of the large media conglomerates, newspaper chains, and corporations who own the media outlets where they work. These constraints have multiplied in recent years as large and distant media corporations have taken over local newspapers and radio and television stations, imposing profit goals that can only be met by large cuts in news budgets and through reduced local news coverage. These working journalists know from daily experience that media ownership influences to the content, depth, and quality of the news and information they are able to publish and air over the public airwaves. Maintaining the newspaper/broadcast cross-ownership ban is important to protect against further erosion of diversity, localism, and quality in local newsgathering.

Working people and their families, including the 13 million union members represented by AFL-CIO affiliated unions and the 40 million people in union households, depend upon diverse and antagonistic news sources to provide the news and information

they need to participate as citizens in a democratic society. Elimination of the cross-ownership ban in a media environment dominated by a handful of large multi-media corporations would diminish the number of alternate voices that is so essential to our democracy. It would threaten the already abysmally small amount of reporting that exists today about workers, their families and their unions.

The publishers, their trade association, and the broadcaster's trade association present a seriously flawed picture of the media market in the comments provided to the Commission in this proceeding. These companies' would have the Commission believe that alternative media is flourishing in local communities, and that concentrated ownership should be of no concern since media ownership does not influence the content. This is nonsense. In fact, in most communities, with only a small number of exceptions, there are only four or five local media outlets with significant audience reach: the monopoly newspaper and the three or four local broadcast stations. Combining ownership of two of these media outlets into one would indeed result in significant public interest harm by reducing diversity of voice and competition.

As the Commission reviews the full record in this proceeding, we emphasize the following:

- **The First Amendment justifies maintaining the rule.** In *AP v U.S.,* the Supreme Court noted that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." On this basis, the Supreme Court upheld the cross-ownership ban. The legal burden of proof, therefore, requires those who want to eliminate the rule to demonstrate that its elimination will *not* cause harm to the twin goals of diversity and competition. In their various comments to the Commission, the opponents of the rule have failed to demonstrate this.

- **Current media market conditions characterized by concentration and consolidation reduce diversity, localism and quality journalism.** Aided by relaxed ownership regulations over the last few years, national media conglomerates have purchased local media outlets of all types (newspapers, TV, radio, cable, Internet). This has dramatically reduced the number of owners and certainly the number of local owners. Non-local broadcast and print media owners have put increasing pressure on their local outlets to cut costs, resulting in cutbacks in news production operations, with concomitant reductions in journalistic quality, diversity, and local coverage. Eliminating the newspaper/TV cross-ownership ban in local markets would accelerate this trend.

- **There is little competition and diversity in *local* media *news and information* markets.** The market studies submitted by the publishers, their trade association, and the NAB attempt to demonstrate that there is a profusion of local media outlets. But these studies are seriously flawed. Any serious study of local media markets must, at a minimum, analyze market share. The publishers and broadcast studies all fail to do this. Their market studies are simply lists of outlets. These studies also fail to differentiate between outlets that provide local news/information and those that are simply advertisers or entertainment. They fail to provide ownership information, giving the impression that a local cable news network or Internet site is a different voice, when in fact it is owned and its content is provided by the local newspaper or TV station. The market study submitted by the United Church of Christ (UCC) et al and data provided by the Consumers Union et al demonstrate that local media markets are highly concentrated and have become more concentrated in recent years. Relaxing the newspaper/cross-ownership ban in these concentrated markets would therefore result in anti-competitive behavior in local ad markets, in addition to reduced diversity of viewpoint. The AFL-CIO urges the Commission to conduct its own comprehensive analysis of local media markets considering market share, ownership, and change over time, among other factors, in order to get an accurate picture of local media markets.

- **Ownership matters for viewpoint diversity.** Ownership shapes and influences news content in numerous ways, including decisions about what news to cover, how to cover it, what news sources to interview, and of course, editorial voice. Media owners' views set the boundaries and sometimes dictate what is broadcast or published. Owners' concern for advertising revenues often leads to tailoring news content to mass audience interests and underreporting of issues of concern to the less affluent, elderly, women, labor, and minorities, groups who are not of as much interest to advertisers. In contrast, studies demonstrate that minority ownership of media outlets results in greater coverage of minority community issues. Multi-media conglomerates in particular tend to underreport issues of concern to consumers and working families that could conflict with the owners' economic interests. Because ownership affects viewpoint, eliminating the cross-ownership ban would lead to reduced viewpoint diversity.

- **Co-owned media outlets reduce viewpoint diversity.** The newspaper publishers' own examples of the commingling of news operations at co-owned properties provide clear evidence that cross-ownership eliminates one independent media voice in the local market. According to Media General, convergence at its Tampa co-owned *The*

Tampa Tribune, WFLA-TV, and Tampa Bay Online features a "Multi-Media Desk, which is continuously staffed by editors from all three media and facilitates the rapid exchange of story ideas, news content, and video images among the three outlets." In Phoenix, Gannett describes commingling of operations at co-owned *The Arizona Republic ,* KPNX-TV, and azcentral.com where "(m)ore than 30 print reporters have participated in KPNX newscasts and special programs. KPNX reporters write special reports for print. All contribute to the web site azcentral.com. KNPNX's *12 News* stories are promoted in the newspaper and vice versa." In these comments, we provide further evidence of co-mingling of operations at other grandfathered co-owned properties where The Newspaper Guild/Communications Workers of America represent newsroom staff. We need look no further than across our northern border to a current controversy raging in Canada to see how cross ownership reduces local voice. In December 2001, CanWest, owner of Canada's largest TV broadcast and newspaper chains, adopted a policy requiring its 14 largest dailies to publish the same editorial generated at corporate headquarters in Winnipeg. CanWest forbid local editors to publish local editorials at odds with national policy. Cross-ownership by a multi-media conglomerate dramatically and controversially reduced local voice, with no media alternative.

- **Claims by publishers and broadcasters that they need the rule changed to maintain financial viability and resources for growth are disingenuous: these are highly profitable companies.** According to company annual reports, the largest 11 newspaper chains had an average profit margin of 18 percent in the past two years, dipping slightly to 11 percent in first three-quarters of 2001, despite the recession. Profit margins at the two largest newspaper/broadcast owners—Gannett and Tribune—were at 30 percent and 25 percent, respectively, over the same period, including the first three-quarters of 2001. The media conglomerates that own the Big Four broadcasters (GE/NBC; Viacom/CBS; Disney/ABC; and Newscorp/Fox) have posted 11 percent profit margins during the past two years and the first three-quarters of 2002. The Commission should not change the ownership rule, which would unleash a wave of consolidation to the detriment of diversity and competition goals, simply to provide relief from cyclical economic downturns experienced by media companies, exacerbated by the unique and tragic events of Sept 11.

- **The Commission's waiver policy has worked and should be maintained with some revisions.** The cross-ownership rule allows the Commission to grant cross-ownership waivers on a case-by-case basis. This policy allows the Commission to evaluate local market conditions in granting waivers and to condition waivers, when necessary, on specific market conditions. For example, the temporary waiver allowing the Tribune to purchase WBZL(TV) in Miami was conditioned on the station being entirely separate from Tribune's *Sun-Sentinel* newspaper. The AFL-CIO supports modification in the waiver policy to include the following language modeled after the Newspaper Preservation Act: "There shall be no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined." Such language would ensure that cross-ownership would preserve the First Amendment goal of two antagonistic news outlets. Should the

Commission conclude that modification of the cross-ownership rule is appropriate, the Commission should require separation of editorial and reportorial staff using similar language. However, given the difficulties involved in enforcing structural safeguards, AFL-CIO believes the twin goals of diversity and competition require maintenance of rule.

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ATTACHMENT A

I. INTRODUCTION

These are the reply comments submitted by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), filed in response to the Federal Communications Commission *Order and Notice of Proposed Rulemaking* to consider revisions to its newspaper/broadcast cross-ownership rule. In this proceeding, the Commission seeks comments on whether and to what extent it should revise this rule that bars common ownership of a broadcast station and a daily newspaper in the same market.

The AFL-CIO is a federation of national and international unions representing 13 million working people and their families. Over 171,000 of our members work in the broadcast and newspaper industries. Many of them have job-related concerns regarding the on-going restructuring and consolidation of media ownership over the past few decades, a transformation enabled and accelerated by the introduction of powerful, rapidly evolving digital information and networking technologies**.**

Print and broadcast journalists represented by AFL-CIO unions, in particular, know that whoever owns their media outlets makes a difference to their ability to report broadly, widely, critically, and antagonistically**.** As media professionals, they are concerned that the consolidation of media ownership threatens to undermine the five fundamental *principals of quality journalism and responsible media* outlined below:

- ***Diversity.*** Media and journalism should promote the widest possible coverage and dissemination of news and information; assure the use of a variety of authoritative news sources; and provide a wide range of opinions that will frame the analysis and interpretation of events and information that affect citizens locally, nationally, and globally.

- ***Local Identity.*** Media and journalism should preserve the identity and values of the local communities, disseminate the views, values, and information that are important to the various groups within the local community, as well as educate communities about national and global perspectives.

- ***Just and Respectful Employment Practices.*** Democratic principles of worker representation and participation are the means to promote compensation and working conditions that foster quality and independent journalism. To continually produce quality journalism, workers must be offered opportunities to improve and advance their skills and be assured that their new skills and contributions will be fairly rewarded. Reporters must be free from interference or influence by the business side of the media operation in the reporting and editorial process.

- ***Comprehensive Coverage.*** Each form of media relies on different technology to disseminate news, information and entertainment to our communities. The technology offers different strengths: the immediacy of radio and television, the visual impact of TV, the interactive capabilities of radio, the in-depth analysis of print journalism. Assuring each form of media its role in the responsibility of transmitting and interpreting information according to its strengths assures comprehensive coverage and access to information.

- ***Financial arrangements that enhance and support the other principles of quality journalism.*** Media ownership must be transparent to the public, preserve and foster the diversity of content, opinion, and perspective, and honor just and respectful employment practices. It must be diverse in itself to assure comprehensive coverage, full public access to all news, information, and entertainment through a variety of media technology. It must ensure that editorial policies, practices, and judgment are kept independent from business considerations.

These principles provide a useful benchmark for assessing the impact of policies such as the cross-ownership ban. We conclude that preserving the cross-ownership ban is necessary to maintain the diversity of local views and high standards of journalism in the broadcast and print media.

Our members are also consumers of broadcasting and print media, and more important, they are citizens of a democratic society whose preservation depends on wide public access to diverse sources of information and viewpoints available through multiple media channels. The AFL-CIO and its member unions have become increasingly concerned with the growing concentration of media markets, both nationally and locally, and the implications of this trend for democratic public discourse. The 40 million working people in households represented by the AFL-CIO know that who owns the media outlets makes a big difference as to whether stories about working people and their unions are covered, and when these stories are covered, that it is objective, analytical, and in-depth. Allowing cross-ownership of the monopoly newspaper and one of a few TV stations within a local community would weaken both these goals, particularly given the domination of media today by handful of multi-media conglomerates.

The Congressional mandate in the Telecommunications Act of 1996 calling for a biennial review of ownership rules requires the Commission to determine whether the rule is "necessary in the *public interest* as a result of competition [*our emphasis*]."[1] The large number of public interest organizations filing comments—consumers, women, civil rights, religious and labor, which together represent the interests of the vast majority of U.S. citizens—support the cross-ownership rule because we view it as a vital protection of the twin public interest goals of diversity and competition in an era of multi-media concentration and consolidation.[2]

The only commentators who want to change the cross-ownership rule are companies with private economic interests.[3] They argue that the increased concentration

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[1] *Telecommunications Act of 1996*, Section 202(h), Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] *See* Comments of American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001; Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project ("CU et al"), *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001; Comments of the Office of Communication, Inc. of the United Church of Christ, National Organization for Women and Media Alliance ("UCC et al"), *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001.

[3] *See* Comments of the Newspaper Association of America ("NAA"), *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001 and Comments of the National Association of Broadcasters ("NAB"), *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001. *See also* Comments of Media General, New York Times, Hearst Corporation, Tribune, Belo Corporation, Gannett, Cox, Hearst-Argyle TV.

and reduced competition that would result from eliminating the rule would produce beneficial "synergies" for their operations resulting in greater efficiencies and profitability. In fact, the price of these "synergies" would be a reduction in the number of media voices in local communities and a substantial growth in market power within local media markets, enabling media conglomerates to raise advertisement rates to anti-competitive levels.[4]

In sum, the rule is as necessary today as it was in 1975, when it was established to achieve the twin goals of diversity and competition. Although we focus our comments on the diversity goal, we agree with commentators who provide strong evidence that elimination of the rule would have an anti-competitive effect in local ad markets.[5]

II. THE FIRST AMENDMENT JUSTIFIES MAINTAINING THE RULE

The cross-ownership rule "is centrally premised on the First Amendment diversity principle."[6] As United Church of Christ, et al ("UCC et al") point out, the Supreme Court in *FCC v National Citizens Comm. for Broadcasting (NCCB)* upheld the constitutionality of the rule, noting that "(t)he regulations are a reasonable means of promoting the public interest in diversified mass communications; they do not violate the First Amendment rights of those who will be denied broadcast licenses pursuant to them."[7] Since the Supreme Court found the rule constitutional, lower courts lack the authority to overturn that decision.[8]

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[4] Douglas Gomery, *The FCC's Newspaper-Broadcast Cross-Ownership Rule: An Analysis*, Washington, D.C.: Economic Policy Institute, Feb. 15, 2001, 2 ("Gomery") attached as Attachment A.
[5] CU et al, 98-115; UCC et al, 8-13.
[6] CU et al, 25.
[7] UCC et al, 22, citing *FCC v National Citizens Comm. for Broadcasting,* 436 U.S. 801-802 (1978).
[8] UCC et al, 23.

Moreover, the publishers are wrong when they argue that the rule violates their First Amendment rights. As the Supreme Court recognized in *FCC v NCCB,* denial of a broadcast license does not violate an applicant's First Amendment rights since the airwaves are not available to all. In analyzing First Amendment claims in the context of broadcasting, courts must balance broadcasters' rights against those of the public. In case of a conflict

> *It is the right of viewers and listeners, not the right of broadcasters, which is paramount.* It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance the monopolization of the market, whether it be by the Government itself or a private licensee.[9]

Further, as consumer commentators note, the D.C. Circuit decision in *Time Warner II* is not relevant to this proceeding.[10] The *Time Warner II* decision was about the implementation of 1992 Cable Act rules. The language therefore does not implicate the Commission's mandate to ensure that broadcast stations are licensed to serve the public interest.[11]

Finally, changes in technology do not alter the First Amendment basis for the cross-ownership rule. As UCC et al argue, scarcity of the broadcast spectrum underlying the *NCCB* and *Red Lion* decisions remain today. Broadcast spectrum limitations for television and radio continue to exist and far more people want to use the spectrum than can be accommodated. Thus, the Supreme Court's observation in *Red Lion* that '[a]dvances in technology…have led to more efficient utilization of the frequency spectrum, but uses for the spectrum have also grown apace' remains true today."[12]

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[9] UCC et al, 23-24, citing *Red Lion*, 395 U.S. at 390 (citations omitted, emphasis added).
[10] CU et al, 24-25; UCC et al 21-28.
[11] UCC et al, 24.
[12] UCC et al, pp.25ff. See *Red Lion* 395 U.S. at 396-97.

In sum, the First Amendment foundation for the cross-ownership ruling remains intact and valid.

III. CURRENT MEDIA MARKET CONDITIONS CHARACTERIZED BY CONCENTRATION AND CONSOLIDATION REDUCE DIVERSITY, LOCALISM AND QUALITY JOURNALISM

A. Relaxation of Ownership Restrictions Has Accelerated Media Concentration and Consolidation

The AFL-CIO and other commentators provide strong evidence to demonstrate that media ownership has become increasingly concentrated since the cross-ownership rule was set in 1975. This trend has accelerated as a result of relaxation in ownership restrictions in the Telecommunications Act of 1996 and recent Commission rulemakings. These market trends are an important backdrop to this proceeding, since media market consolidation has lead to reduced news coverage in general, and less coverage of local and diverse voices, in particular.[13] These "(c)hanges in the telecommunications marketplace over the last quarter century, rather than diminishing the usefulness of the newspaper-broadcast cross-ownership rule, have made it more important than ever."[14]

The AFL-CIO and other commentators document the vast changes in the media marketplace since 1975.

- **Consolidation in Newspaper Publishing.** In 1975, three-quarters of all dailies were owned by local families and associates.[15] Today, most of the nation's 1,500 dailies are owned by national chains, while only less than two percent are family owned. Three large chains, Gannett, Knight Ridder and the Tribune Co., together account for a quarter of all the daily newspaper circulation in the nation. Gannett, after a multi-billion dollar rash of acquisitions in 2000, has grown from 74 daily newspapers to 99. Gannett now produces one out of every seven newspapers sold

[13] *See* AFL-CIO, 2-5; UCC et al, 2-13; CU et al, 67-109. *See also* Gomery, 9-10.
[14] Gomery, 1.
[15] Ben Bagdikian, *The Media Monopoly,* Boston: Beacon Press, 6th edition, 2000, xxxii.

in the United States.[16] Other major chains include Newhouse, Dow Jones, Times Mirror, New York Times Co., Washington Post Co., and Hearst. Most metropolitan areas have one monopoly newspaper that is owned by one of these chains.[17]

- **Consolidation in Local Broadcasting.** The local affiliates of NBC, CBS, ABC, and Fox are the local news broadcasters of record. Behind today's seeming plethora of television choices are five conglomerates: Disney (which owns ABC), Viacom (CBS and United Paramount Network), AOL Time Warner (The WB), News Corporation (Fox), and General Electric (NBC).[18] Since relaxation of television ownership caps, the number of entities owning commercial TV stations has dropped from 543 in 1995 to only 350.[19] The UCC et al study of 10 local television markets found that the four networks dominate local television markets. In the small- to medium-sized survey cities, the four networks control virtually the entire market; in Los Angeles and New York, five owners control the market. Concentration of ownership has increased substantially since 1993.[20]

- **Radio Ownership Dominated by Two Companies.** Clear Channel and Infinity now dominate the local radio market. Since enactment of the Telecommunications Act which substantially reduced radio ownership restrictions, the number of owners of commercial radio stations declined from approximately 5,100 to approximately 3,800, a decrease of 25 percent.[21] One entity owns 1,000 stations. The UCC et al's study of 10 local radio markets found that four owners control almost 100 percent of the local radio market, except in the two largest cities—New York and Los Angeles—where the big four controlled two-thirds of the radio market share. In all ten markets, the top two radio owners dominated, with between half to three-quarters market share. Concentration of ownership has exploded since 1993.[22]

  The UCC et al study shows that ownership diversity actually stabilized, and in some cases increased in medium to small markets where there are fewer than eight independent television stations, and therefore not subject to the changes in the Duopoly Rule. These differences "suggest that prophylactic ownership limits, such as the application of the 'eight-voices test' can help preserve help the small amount of existing diversity and competition in medium and small television markets."[23]

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[16] Thomas Kunkel and Gene Roberts, "Leaving Readers Behind: The Age of Corporate Newspapering." Vol. 23 No. 4 *American Journalism Review* (May 1, 2001).
[17] Gomery, 2-3.
[18] Gomery, 5, 9-10.
[19] *Notice of Proposed Rulemaking,* In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235; and Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197. September 20, 2001 (Rel.) ("Cross-Ownership *NPRM*").
[20] See UCC et al, *Attachment 3, Local Television Ownership and Concentration Study.*
[21] Cross-Ownership *NPRM.*
[22] UCC et al, 6. See *Attachment 2, Local Radio Ownership and Concentration Study.*
[23] UCC et al, 8.

- **Cable and DBS Concentration.** Cable ownership itself is also highly concentrated, including many of the same corporations that own major broadcast and newspaper assets. The top two cable system owners, AT&T and AOL Time Warner have over 27 million subscribers, accounting for 40 percent of all cable households. Two companies control the direct-broadcast satellite market. The five broadcasting networks also dominate cable programming (ABC, Viacom, AOL Time Warner, GE, and News Corp.)[24]

- **Multi-Media Conglomerates Dominate Media Market.** Consolidation is taking place across media sectors as well. Today, six huge, multinational conglomerates dominate American mass media—GE, Viacom, Disney, Bertelsmann, AOL Time Warner, and Rupert Murdoch's.[25]

Lifting the ban on newspaper/broadcast cross-ownership would further accelerate media concentration, which would accelerate the accompanying trend toward reduced depth, quality, and diversity in local news and information.

B. Media Concentration and Consolidation Reduces Local Voice and Diversity of Voice

The AFL-CIO and the consumer commentators have provided to this Commission ample evidence that media concentration—which will accelerate should the Commission eliminate the newspaper/broadcast ownership ban—has put pressure on local newspapers and broadcast stations to reduce their costs and increase profits, with adverse consequences for local news coverage. In an important speech to the American Society of Newspaper Editors, former *San Jose-Mercury News* editor Jay Harris described how the pressure from Knight-Ridder corporate offices to meet constantly rising profit targets forced him to cut staff so sharply that he could no longer produce a quality newspaper.

[24] Dean Alger, *Megamedia*, Lanham, MD: Rowman & Littlefield Publishers, Inc.,1998, 91.
[25] Bagdikian, x.

He quit instead. As he told the annual meeting of newspaper editors: "The drive for ever-increasing profits is pulling quality down."[26]

The impact of these pressures to meet super-high profit margins on print and broadcast news and information programming is well-documented: editors must cut staff and local newshole.[27] In Asbury Park, N.J., Des Moines, Ia., Louisville, Ky., Long Beach, Ca., and in numerous communities across the United States, editors have been forced to cut local reporting after to meet these profit margins after newspaper chains bought local newspapers.[28] News and public affairs programming suffers. More than half of all TV stations surveyed by the Project on Excellence in Journalism reported budget cuts or layoffs last year.[29] As a result, newspapers and TV stations are cutting back on coverage of local events, local government, and investigative reporting.[30]

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[26] Jay Harris speech to American Society of Newspaper Editors, April 6, 2001 as reprinted in *The Guild Reporter,* April 20, 2001, available at www.newsguild.org.

[27] Leonard Downie Jr. and Robert G. Kaiser, *The News about the News*: *American Journalism in Peril*, New York: Alfred A. Knopf, 2002, 78-79 and 174-5 ("Downie and Kaiser").

[28] For example, when Gannett purchased the *Asbury Park Press*, New Jersey's second-largest paper, in 1997, the newly appointed publisher slashed the newsroom staff from 240 to 185. The *Press*, once considered one of the most enterprising independent papers in the nation, experienced an exodus of its most talented people, shortened stories, de-emphasized government news and more trivialized local news See AFL-CIO Comments, 5-9; Kunkel and Roberts. Similarly, a *Columbia Journalism Review* study of the decline in news quality after Gannett takeovers of the *Des Moines Register* and the *Louisville Courier-Journal* found that at both papers, after the initial years of the chain's ownership, the new leadership severed the last major links to family ownership and required greater obedience to the parent corporation. The *Courier-Journal,* which had a history of quality before being absorbed by Gannett, had five fewer general-assignment reporters in late 1997 than in 1990. Some of the papers' employees in interviews complained of Gannett's "revolving-door system of executive advancement," whereby editors, chief editors and publishers are frequently transferred to other papers in the chain, making it difficult to stay anywhere long enough to understand the communities they are in or develop a loyalty or affection for them. When editors or publishers do not understand an area and are not generally involved in or committed to it, they cannot provide the news leadership the community deserves. See Sig Gissler, "What Happens When Gannett Takes Over," *Columbia Journalism Review,* November-December, 1997, 42-45 as cited in Alger,170-171.

[29] Marion Just, Rosalind Levine and Todd Belt. "Thinner, Cheaper, Longer." Special Report: Local TV News, *Columbia Journalism Review/Project on Excellence in Journalism* (November/December 2001). 12-13.

[30] Project on the State of the American Newspaper, Kunkel and Roberts, *id*.; Brady, Lee Ann and Atiba Pertilla. "The Look of Local News." Special Report: Local TV News, *Columbia Journalism Review*/Project on Excellence in Journalism (November/December 2001), 11-12.

To cut costs, local news outlets increasingly rely on stories and resources fed to them by distant corporate owners. Some radio stations have carried this to the extreme. At a recent media conference, a journalism instructor from rural South Carolina asked a radio corporation panelist what he could do about making weather warnings available at one of the company's small town stations. During the last tornado, it was impossible for the people in the town to find out the location and track of the dangerous storm on their single local radio outlet because all of its programming was delivered from Atlanta, Georgia. There was literally no local weather information during that crisis.[31]

As the highly-regarded former editor of the *Philadelphia Inquirer* Gene Roberts and Dean of the University of Maryland College of Journalism, Thomas Kunkel, concluded after a two-year exhaustive study of the state of American journalism:

> In the newspaper industry, consolidation—in tandem with the chains' desperation to maintain unrealistic profit levels (most of these big companies now being publicly traded)—is actually *reducing* the amount of real news being gathered and disseminated, most conspicuously at the local and state levels, where consumers need it most. This is because consolidation has resulted in far fewer news outlets, and the economic pressures have resulted in fewer reporters with fewer inches in the paper to say anything.[32]

Elimination of the ban on newspaper/broadcast cross-ownership will accelerate these trends, reducing coverage of local news and information by media outlets owned by distant multi-media conglomerates driven by Wall Street's financial targets, not local community values and principles of quality journalism.

[31] TNG-CWA, "The Newspaper Build-CWA In a Multi-Media World," Feb. 2002 (mimeo), p.5 ("TNG-CWA").
[32] Kunkel and Roberts, 36.

IV. THERE IS LITTLE COMPETITION AND DIVERSITY IN *LOCAL* MEDIA *NEWS AND INFORMATION* MARKETS. THE NEWSPAPER PUBLISHERS AND BROADCASTERS' MARKET STUDIES ARE SERIOUSLY FLAWED

Consumer commentators provide evidence to demonstrate that local broadcast TV, radio, and newspaper markets are separate and highly concentrated, with HHIs well above DOJ standards for highly-concentrated markets.[33] Relaxing the cross-ownership ban under such market conditions would allow the already merged company to dominate local ad and media markets, with the market power to charge anti-competitive ad rates and reduce local voices.

Local news and information media markets are dominated by newspaper monopolies and a broadcast oligopolies.[34] Cable, DBS, and the Internet offer no serious competition as alternative news sources. Only about 4 percent of consumers use the Internet for news.[35] Cable news channels are limited to the top 25 markets, are largely owned by the local TV stations and newspaper, and rarely obtain shares of the audience above 2 percent.[36]

Virtually all of the studies provided to the Commission by the newspaper publishers and broadcasters that attempt to show a proliferation of media outlets are seriously flawed. The Commission cannot make an accurate assessment of local media markets based on these studies. Therefore, the Commission must undertake a comprehensive study of its own to determine the state of competition among diverse and antagonistic news outlets in the various local media markets. This study should then be released for public comment. Absent such a comprehensive study, subject to public

[33] CU et al, 67-109; UCC et al, 2-13
[34] Gomery, 1-6.
[35] CU et al, 91ff.

comment and review, the Commission does not have adequate data upon which to justify a change in the rule.

Any serious study of local media markets must, at a minimum, analyze market share, indicate media outlet ownership, and change over time in both these areas. The publishers' and broadcasters' studies fail to do this.[37] The market studies are simply lists of outlets, with no market share data. The studies fail to differentiate between outlets that provide local news and information and those that are simply advertisers or entertainment. The studies fail to provide ownership information, giving the impression that a local cable news network or Internet site is a different voice, when in fact it is owned and its content is provided by the local newspaper or TV station. Individual studies often inaccurately ascribe media outlets to the wrong DMA. To cite just one example, the Tribune includes *Newsday* in the New York DMA whereas, according to the Audit Bureau, *Newsday* is actually in a different DMA, the Long Island DMA.[38]

The NAB study fails to account for the impact of Local Marketing Agreements, which are agreements by which a group owner pays a station owner for the right of control over a station (and profits from that station) without obtaining actual ownership. Through these devices, group owners have control over many more stations than the NAB study indicates.[39]

[36] Gomery, 5.
[37] *See* for example, NAA, 11-15 and Appendix IV; Comments of New York Times, 2-7 and Attachment 1; Comments of Hearst Corp., 18-19 and Appendices A-C; Comments of Hearst-Argyle, Exhibit 1; Comments of Gannett, 14-15 and Exhibit B; Comments of Media General, 19-26 and Appendices 9-14; Comments of Belo, 8-9; Comments of Tribune, 12-33.
[38] Comments of Tribune, 16; Audit Bureau market definition at http://www.accessabc.com
[39] NAB, 12-13. U.S. Representative Howard Berman (D-CA) has called for hearings on how Clear Channel has been using Local Marketing Agreements and other methods to get around ownership limits in radio markets.

The market study submitted by the United Church of Christ et al and data provided by the Consumers Union et al demonstrate that local media markets are highly concentrated and have become more concentrated in recent years. Relaxing the newspaper/cross-ownership ban in these concentrated markets therefore would result in anti-competitive behavior in local ad markets in addition to reduced diversity of viewpoint.

In sum, the publishers and broadcasters are wrong when they posit a proliferation of local media outlets. As Ben Bagdikian notes:

> It is a favorite axiom of large media operators that, while they have great power, if they abuse it the public will reject them. But in order to have the power of rejection, the public needs real choices and choice is inoperative where there is monopoly, which is the case in 98 percent of the daily newspaper business, or market dominance of the few, which is the case with television and most other mass media.[40]

Before the Commission changes this important rule, it must conduct a comprehensive study that accurately describes the local news and information media market. The publishers' and broadcasters' studies do not provide that picture, and while the UCC et al study is valuable, its limited scope needs to be replicated for more local markets.

V. OWNERSHIP MATTERS FOR VIEWPOINT DIVERSITY.

A. Who Owns the Media Outlet Influences and Shapes Journalistic Content

As any journalist knows, ownership affects content. Therefore, allowing the dominant local newspaper to merge with a local broadcaster would harm the public interest by eliminating one distinct voice in the local media market.

[40] Bagdikian, 8-9.

When we asked union members who are journalists, writers, editors, and producers of news and information programming to respond to the publishers' and broadcasters' argument that "ownership doesn't affect content," these professional reporters provided us with a wealth of anecdotes to demonstrate how ownership influences news reporting. We include two stories that are typical, though not particularly dramatic, examples of how owners' priorities shape the way they cover stories.

- **From a reporter in a medium-sized city working for a newspaper where the owner also owns the local television station: "**When the Nielsen TV ratings come out, I know I am expected to write a big story if the co-owned station's ratings are good and to bury the story if the co-owned station's ratings are down. Or another example. A few years ago, I ran a survey asking readers what they thought of local television news programs. My general manager told me that next time I do something that might affect our sister station, I better check with him first. I got the message—I haven't done a similar project since then."

- **From a reporter covering economic development and transportation for a newspaper in a Midwestern city:** "Every reporter is aware of the owners' interests. The CEO of our newspaper started a business coalition for economic growth. I knew that I was expected to give the coalition lots of favorable coverage. I've been here six years, I knew that, although no words were spoken."

These are not isolated examples. As Ben Bagdikian explains, most intervention by owners "is subtle, some not even occurring at a conscious level, as when subordinates learn by habit to conform to owners' ideas."[41] The result is a tendency by editors and journalists in local markets to practice various degrees of self-censorship in the way they choose sources, write or edit their stories, or make editorial commentary. Sometimes, conflicts do surface. Thus, Bagdikian notes:

> Every year there is a 'distressing list' of reporters and editors of newspapers and magazines who are fired or demoted because they stumbled on the private politics of the owners, or a list of television producers and writers who make professionally competent decisions that run counter to the politics of the corporation. Even when

[41] Bagdikian, 45

> such firings and demotions are clear interventions of corporate politics into the editorial process, the worst damage is not in one particular incident but in the long-standing aftermath in which working professionals at the editorial level behave as though under orders from above, although no explicit orders have been given.[42]

Among the "distressing list of reporters and editors" called to task because their reporting conflicted with owners' economic interests was Pulitzer winner Sydney Schanberg, whose column in *The New York Times* was canceled for criticizing the press for ignoring a major real estate scandal in New York.[43] Others acquiesce. The publisher of Hearst's *San Francisco Examiner* promised to stem his paper's criticism of Mayor Willie Brown if the mayor didn't oppose Hearst's takeover of the rival *Chronicle.*[44] The *Los Angeles Times* failed to report a controversial real estate and recreational project that benefited the *Times'* parent, *Times-Mirror*, although the story was reported by other papers including *The New York Times* and *The Bakersfield Californian.*[45]

Academic studies and surveys of working journalists further document what our common sense knows is true: media ownership influences editorial voice. Professor C. Edwin Baker, then of the Shorenstein Center at Harvard, reviewed the academic literature on the impact of newspaper chain ownership on content, profit orientation, and news quality. One study found that after Southam Press bought the Canadian *Windsor Star,* the *Star* greatly increased its reliance on the chain's news service for its front-page leads, leading to greater uniformity in news in the chain's newspapers. Another study of Gannett newspapers found that they were more likely to take editorial positions and were

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[42] Bagdikian, 36-37.
[43] Northwest Passage Productions in association with KTEH, "Fear and Favor in the Newsroom." Description of the documentary is available at http://www.Northwest Passage Productions/Fear and Favor in the Newsroom.
[44] Kunkel and Roberts, 36.
[45] Bagdikian, 39-41.

much more homogeneous in the positions they took compared to non-chain papers.[46] A survey of journalists by the Pew Research Center reported that almost half (48%) of all local news staff—and a majority of African-American journalists—believe corporate executives exert either a fair amount or a great deal of influence over news content.[47]

The wall between the business and editorial side of many newspapers is eroding, if not breaking down entirely.[48] The most recent and notorious example occurred in 1999 when the *Los Angeles Times* struck a deal with the Staples office supply company to publish a section of the newspaper about a Staples-sponsored new downtown sports arena, sharing advertising revenue with Staples. This cross-over of journalistic independence took place within the context of a mandate from Times Mirror, the *Los Angeles Times'* corporate parents, for "closer cooperation" between the news and business departments at the newspaper. [49] A few years ago, when the editor of Knight Ridder's paper in Columbia, South Carolina disagreed with his publisher about the direction of local coverage, he was told "dissent was not in his job description." Similarly, Gannett sent a memo to its editors stating: "The publisher is responsible for the entire newspaper, including the quality of the news report."[50] This attitude was succinctly expressed by former GE CEO Jack Welch after GE bought NBC, when he bluntly told the news chief: "You work for GE."[51]

Corporate owners are increasingly pressuring their local TV stations to improve their profit margins, which are largely dependent on maintaining advertisement revenues.

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[46] Alger, 180-181
[47] Pew Research Center for The People & The Press, *Striking the Balance: Audience Interests, Business Pressures and Journalists' Values,* nd. 21.
[48] Downie and Kaiser, 241.
[49] Downie and Kaiser, 245.
[50] Kunkel and Roberts, 39.
[51] Quoted in Alger, 169.

These pressures can affect the ability of local news stations to maintain their journalistic independence. Local TV news directors are pressured to tailor their news programming to satisfy large local advertisers. The Project on Excellence in Journalism, an affiliate of the Columbia University Graduate School of Journalism, found in its survey of 118 news directors around the country that 53 percent reported that advertisers pressure them to kill negative stories or run positive ones. The survey also found that news directors believe that the wall between sales and news is getting harder to maintain, and sales are having more and more influence on newscasts. Almost one in five news directors—especially in smaller markets—say that their sponsors try to prevent them from covering stories. One quarter of news directors in small markets report that they have been pressured to censor their news. The report concludes that "the findings and comments (in the survey) raise questions about the journalistic independence of local television news."[52]

B. Corporate Ownership Influences Local News Coverage Relevant to the Interests of Minorities, Labor and Consumers

The record in this proceeding includes research by Joel Waldfogel of the University of Pennsylvania's Wharton School which documents that minority ownership of media outlets results in increased coverage of issues of concern to minority communities.[53] In light of these findings, the currently miniscule amount <u>and</u> declining

[52] Marion Just and Rosalind Levine, "News For Sale." Special Report: Local TV News, *Columbia Journalism Review/Project on Excellence in Journalism* (November/December 2001). Pp. 2-3

[53] Joel Waldfogel, "Comments on Consolidation and Localism," Statement for *FCC Roundtable on Media Ownership Policies* (October 29, 2001); Peter Siegelman and Joel Waldfogel, "Race and Radio: Preference Externalities, Minority Ownership and the Provision of Programming to Minorities," Attachment to *Statement for FCC Roundtable on Media Ownership Policies*; Joel Waldfogel, "Preference Externalities: An Empirical Study of Who Benefits Whom in Differentiated Product Markets," *NBER Working Paper 7391* (October 1999); Lisa George and Joel Waldfogel, "Who Benefits Whom in Daily Newspaper Markets?" *NBER Working Paper 7944* (October 2000); Felix Olberhozer-Gee and Joel Waldfogel, "Electoral Acceleration: The Affect of Minority Population on Minority Voter Turnout," *NBER Working Paper 8252* (April 2001).

level of minority-owned media raises concerns that ethnic and racial minority communities are not well served by our media industries. It is very likely, that if the cross-ownership rule is eliminated or weakened, the mostly small and family-owned minority media businesses will be driven out by the large industrial media giants, resulting in significantly greater reductions in media voices that reflect minority tastes and needs.

Corporate dominance of local media markets has added to the general reduction of public interest reporting, for example of consumer issues, which run counter to the media conglomerates' economic self interest.[54] The AFL-CIO is especially concerned about the neglect of labor issues, and sometime the outright refusal to air ads paid for by labor organizations because they might antagonize advertisers. Media coverage of union and workers' issues has declined precipitously over the past several decades. This includes a dramatic drop in the number of labor editors, and a finding by the media watchdog group, Fairness and Accuracy in Reporting (FAIR) that the evening news programs of CBS, ABC and NBC recently devoted only two percent of their total air time to workers' issues, including child care, the minimum wage and workplace health and safety.[55]

There are a number of reported instances in which local media refused to run ads paid by labor organization because the ads threatened corporate ownership interests. Ben Bagdikian recounts an early example in which the *Chicago Sun-Times,* owned by

[54] See Alger, 165.
[55] Cited in Matt Witt, "As media turn away, the working class has become all but invisible," *The Guild Reporter,* October 22, 1999, pp.4-5. See also Frank Swoboda, "Labor coverage? Forget about it!" *The Guild Reporter,* October 22, 1999, 4-5.

Marshall Field Enterprises, refused to run ads from the Amalgamated Clothing Workers explaining why the union was picketing the Marshall Fields Department store.[56]

The Communications Workers of America (CWA) have documented numerous recent examples in which local media outlets have rejected CWA ads designed to educate the public about a labor dispute. These stories underscore the importance of a multitude of media outlets under diverse ownership in a local market, so that an organization spurned by one outlet has an alternative.

- In 1995-96, the NBC and CBS affiliates in Washington, D.C. and NBC and Fox affiliates in Philadelphia refused to air CWA television spots because the stations did not want to offend a big advertiser (a large telecommunications company).

- In 1997, in a dispute with another telecommunications company, the *Dallas Morning News* refused to run a print ad telling the CWA side of the story.

- In 1997, during an organizing campaign at a major U.S. airline, CNN refused to air CWA TV spots on their closed circuit airport lounge telecasts that provided positive messages about CWA as an experienced customer service union. The airline pressured the media buyers not to run them.

- In 1997, CWA ran radio ads in Little Rock, Ar. during contract negotiations with a telecommunications company, but the stations stopped running them after a telecommunications company executive called the stations and threatened to pull company advertising.

- During a lockout by a broadcast network in 1998-99, the ABC radio network refused CWA's radio spots, as did virtually every other radio station or network we tried to buy—a matter of broadcaster solidarity against unions.

- In 1999, during a newspaper lockout, CWA attempted to run positive non-confrontational radio spots on behalf of The Newspaper Guild, but every major station in the city turned them down, except one small African-American owned station.

Because ownership affects media content, eliminating the cross-ownership ban would not be in the public interest. It would reduce a significant and unique local media voice.

[56] Bagdikian, 42.

VI. CO-OWNED LOCAL MEDIA OUTLETS REDUCE VIEWPOINT DIVERSITY

Allowing cross-ownership will accelerate media concentration and expand media conglomerates' dominance over local markets, reducing the number of genuinely competitive local media voices. As Gomery notes:

> "[i]f the rule were to be dropped, the emergence of unregulated local media gatekeepers, the newspaper-TV combinations, would be able to dominate the local political and cultural discourse and thus seriously challenge the rights of individuals in a free society to speak and receive all manner of communications."[57]

The publishers and their trade association argue that eliminating the ban would allow cross-owned properties to realize "synergies" that would provide greater resources to use to expand local news and information reporting. The publishers and the newspaper association provide the Commission examples of these "synergies" at work at their co-owned properties.

But these "synergies" are not in the public interest. In Tampa and Phoenix, for example, these synergies result from co-mingling of news operations and news staff, reducing editorial competition. Interviews the Communications Workers of America conducted with union-represented journalists at co-owned newspapers in Youngstown, Ohio, Milwaukee, Wi., Phoenix, Az., and Cincinnati, Oh. provide further evidence that cross-ownership reduces competitive newsgathering. In Canada, CanWest, the dominant broadcast and newspaper chain, recently reversed journalistic tradition of local editorial independence when it mandated that its 14 largest daily newspapers publish weekly editorials written at corporate headquarters. In addition, cross-ownership would allow a

[57] Gomery, 7.

newspaper/broadcast combination to dominate the local ad market and raise rates to anti-competitive levels.

As the Supreme Court, Congress and the Commission itself have repeatedly stressed, efficiency is not the only nor the most important goal of the rule. Rather, *maintaining diversity of viewpoint was and remains the paramount reason the rule was established and should be retained*.

A. Cross-Owned Outlets Show Reduced Voice

Two of the best known examples of print-broadcast media convergence are the Tribune Co.-owned *Chicago Tribune* and Chicago television station WGN among several other media properties[58] and Media General's[59] ownership of the *Tampa Tribune*, WFLA-TV and Tampa Bay Online. Tribune Co. executives boast that theirs is a "content company" in which the *Chicago Tribune* and its other newspapers are used as "content factories" for online sites, local television stations and cable news outlets.[60]

Media General's convergence of Tampa, Fl. station WFLA-TV, Channel 8, and *The Tampa Tribune* goes further. It brings together its print, television and online operations under the same roof in the same building, ostensibly to make it easier to exchange stories and resources.[61] Its goal is to create a single news-gathering operation to feed print, television, and the web. Last year it reported more than 600 "acts of

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[58] Tribune Co. properties include 4 newspapers, 16 TV states (with shared ownership of two others), 4 radio stations, 3 local cable news networks, an educational book division, a producer and syndicator of TV programming, including Geraldo Rivera's daytime talk show, a partnership in the new WB television network, the Chicago Cubs and other new-media investments. Ken Auletta, "The State of the American Newspaper." *American Journalism Review* (June 1998).

[59] Media General owns 26 daily newspapers and 21 television stations in 10 states from Virginia to Mississippi (www.media-general.com).

[60] Autletta.

[61] Al Tompkins and Aly Colon, "Tampa's media trio," Vol. 130, Issue 15 *Broadcasting & Cable* (April 10, 2000)

convergence," defined as print, broadcast and Web staff working together to report one story.[62]

Media General's comments in these proceedings provide powerful examples of how it commingles its media properties in Tampa.[63] Its convergence activities began almost ten years ago, when WFLA-TV and *The Tribune* coordinated coverage of local high school football and other sports, began sharing political polling information and coordinating political coverage, and the paper's religious columnist began making on-air reports on WFLA-TV. After Media General began full convergence two years ago of its Tampa television station, newspaper and Tampa Bay Online ("TBO.com") web-site, it established a central news desk, the "Multi-Media Desk," continuously staffed by editors from all three media to facilitate "the rapid exchange of story ideas, news content, and video images among the three outlets." According to Media General

> . . . newspaper reporters are writing scripts for television newscasts and appearing on-air, and the newspaper has made its archives available to the other two outlets. With the provision of special equipment to the photographers of all three outlets, The Tampa Tribune and TBO.com have been able to provide stories with pictures that otherwise would have been only text, including aerial footage obtained from WFLA-TV's helicopter. Similarly, The Tampa Tribune's photojournalist have been able to provide WFLA-TV with video for airing on its newscasts. . . . Finally, by working together, the three outlets have gained better access to political candidates and government officials. Together, they now conduct their own joint polls, hold town meetings, and organize other community events. . .

Media General is planning to adapt its Tampa model to five other markets in Alabama, Georgia, South Carolina, Tennessee/Virginia and Florida where it operates newspapers near television stations and has joint Web sites. The comments note that

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[62] Rabasca, Lisa. "Benefits, Costs, and Convergence" *Presstime Magazine* (June 2001) (www.naa.org/presstime/0106/convergence.html).

[63] Comments of Media General, Inc., *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001 ("Media General").

although these operations do not have the same advantage of co-location as Tampa, "the news staffs at these co-owned properties regularly share story ideas by e-mail, fax, and telephone, and they publicize each other's news content."[64]

Media General's co-mingling of once separate and antagonistic news and information outlets undermines the First Amendment and public interest goals that are at issue in this proceeding, and demonstrate why maintenance of the rule is so important to foster the widest possible dissemination of diverse and antagonistic information.

As Kunkel and Roberts note in describing Tampa

> Under the Tampa model, news decisions for all these outlets are made in a coordinated way, sometimes in the same meeting. In effect, the same group of minds decides what 'news' is. . . .This isn't sinister, it's just not competition.[65]

Similar examples of the co-mingling of news sources and reporting and of cross-promotion are evident in a small survey of existing co-owned newspaper and broadcasting properties undertaken by the Communications Workers of America (CWA). in an effort to assess the impact of cross-ownership on media voice.[66] In this study, CWA interviewed union members employed in newsrooms in four co-owned properties that had been grand-fathered when the cross-ownership rule was promulgated in 1975.

The *Milwaukee Journal Sentinel,* WTMJ-TV, WTMJ-AM and WKTI-FM in Milwaukee, Wi. are owned by Journal Communications. TNG/CWA represents the journalists at the *Milwaukee Journal Sentinel*. In their comments, the Newspaper Association of America (NAA) claim that the newspaper and broadcast stations do not share staff members or news bureaus, though Journal Communications can "achieve

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[64] Media General, 6-10.
[65] Kunkel and Roberts, 36.

substantial cost savings through the use of some of the same news sources as well as a number of centralized business and administrative operations. In particular, . . . all utilize centralized payroll, treasury, tax, audit, and legal services."[67]

The CWA interviews reveal, however, that although this describes the situation in the past, things are changing. For example, cross-promotion of stories is now common. Newspaper editors send top stories to the cross-owned television station, which in turn promote the stories in the newscast and direct viewers to read the *Sentinel-Journal* or the Journal-owned suburban weekly for more information. *Sentinel-Journal* editors have told newspaper reporters to give their stories to the TV station, which then "scoop" the newspaper. Other examples of commingling include a short newspaper column provided by the TV meteorologist, and newspaper reporters (such as a business reporter) reporting on a story on TV. Requiring print journalists who have not been trained in on-air reporting to do TV broadcast is not good journalism and it makes the reporter look bad.

Whatever other benefits co-ownership may produce for the parent company or even to the community, there is clear constraining of media viewpoint. While the newspaper reporters treat the TV newsroom as a competitor, the public views the paper, WTMJ (the voice of the *Milwaukee Journal*), and the radio as the same voice. Gomery describes how this situation created a serious conflict of interest (and corroborated in the interviews). While the *Journal's* CEO and publisher sat on the commission making decisions about public funding of the Milwaukee Brewers baseball station, its radio

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[66] The Newspaper Guild (TNG-CWA) and the National Association of Broadcast Employees and Technicians (NABET-CWA), which are affiliated with CWA, represent more than 60,000 technicians, advertising employees and others in print and broadcast journalism.
[67] NAA, 18-19.

station received lucrative revenues from broadcasting the Brewers' games, a relationship Gomery claims influenced reporting of the issue.[68]

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

> Through cross-ownership . . . newspaper reporters may have time to work on an element or dimension of the story television reporters would not have the ability to cover, and can talk about it on the air. The same reporters who appear on television can write for the newspaper or web site. The same video cameras that supply pictures for television newscasts can supply full motion video for online newspaper "viewers."[69]

CWA represents the printers at the paper. As Gannett reports, there is a significant sharing of staff. More than 30 print reporters participate in KNPX newscasts and special programs. At the same time, KPNX reporters write special reports for print. All contribute to the web site Azcentral.com. KPNX's *12 News* stories are promoted in the newspaper, and vice versa. KPNX's *Call 12 for Action* problem-solving team has begun a bi-weekly column in print. Commingling of reporting and editorializing between the paper and television station staff range from political coverage, weather forecasting and sports coverage.[70]

At the co-owned Youngstown, Oh. paper *The Vindicator* and WFMJ-TV, the CWA interviews did not indicate any commingling of staff. However one interviewee told two troubling stories of how co-ownership affects coverage, as already discussed in

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[68] Gomery, 7.
[69] Comments of Gannett Co, Inc., *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001 ("Gannett"), 9-10. Gannett acquired Central Newspapers, Inc. ("CNI"), Phoenix Newspapers, Inc. previously a subsidiary of CNI, which publishes *The Arizona Republic*, on August 1, 2000. It already owned KPNX, the NBC affiliate. Gannett has a temporary waiver for this arrangement pending KPNX's license renewal filing in 2006.
[70] Gannett, 10.

Section V *supra.* First, she said she was told that she was expected to give good coverage when the TV station received good Nielsen ratings but to check with the general manager/publisher of the paper if she wanted to criticize the station. Second, in the mid-1990s, she did a poll in the paper asking readers to rate aspects of the local TV news broadcasts, which turn out to be unfavorable to WFMJ. The general manager then told her that next time, she should check with him first. This and the Brewers' conflict of interest example illustrate one of the serious consequences of shrinking local media voices, especially where there is only one local newspaper: the loss of independent local media sources capable of generating critical editorials, opinions and reportage regarding local broadcast programming, or business interests tied to broadcasters, or politicians who favor such business interests.[71]

At the co-owned Scripps-Howard *Cincinnati Post* and WCPO-TV, there is some co-mingling of staff and cross-promotion, although the worst abuses are constrained because collective bargaining agreements require additional compensation if print reporters are required to appear on-air.[72] However, there is increased cooperation between the co-mingled properties. The *Post* sends its schedule (summary of stories) that will appear in the next day's paper to WCPO and WCPO provides a summary of its spot news stories to the newspaper. A TV consumer reporter writes a column for the *Post.* As in Milwaukee, the journalists in the *Post* newsroom see WCPO as a competitor, but management cooperates in sharing sources and stories.

[71] Gene Kimmelman, Co-Director, Washington Office, Consumers Union. Testimony Before the Senate Committee on Commerce, Science, and Transportation on Media Consolidation (July 17, 2001).
[72] Where they exist, collective bargaining agreements can protect print and broadcast journalists—and media consumers—from employers who otherwise might require the journalist to report in print, over the air, and on-line, without adequate training in the new medium or compensation for the additional responsibilities.

Perhaps one of the most egregious examples of the dangers of newspaper/ broadcast co-ownership is that of CanWest, owner of Canada's largest broadcast chain (CTV), which recently purchased Canada's largest newspaper chain with 50 percent of the papers in Canada.

In its decision on the broadcast license renewal for CanWest in August 2001, the Canadian Radio-Television and Telecommunications Commission (CRTC) concluded that common ownership "could potentially lead to the complete integration of the owner's television and newspaper operations. This integration could eventually result in a reduction of the diversity of information presented to the public and of the diversity of distinct editorial voices available in the markets served." CTRC therefore conditioned license renewal on separation of news management functions, though not newsgathering activities (that is, the. newsrooms can be commingled).[73] This language provides inadequate protection, since it allows commingling of the daily reporting and news dissemination tasks of reporters. In Section VIII. below, we argue that at a minimum, the Commission must condition any waivers or changes in the cross-ownership rules on requirements that cross-owned properties maintain separate newsrooms and news staff.

Just four months after CRTC approval of its broadcast license renewal, CanWest adopted policies that clearly undermine journalistic quality, viewpoint diversity, and local identity. In December 2001, the media giant announced that its 14 big city newspapers would have to run the same national editorial each week, issued from headquarters in Winnipeg. Any unsigned editorials written locally at the 14 papers must not contradict

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[73] NPRM ¶51 references . Comments of CanWest Global Communications Corp., *In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, In the Matter of Newspaper/Radio Cross-Ownership Waiver Policy*, MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001

the national editorials.[74] This flies in the face of Canadian and U.S. standards of local autonomy in editorial policy. In reaction to this outrageous behavior, *Montreal Gazette* journalists held a two-day byline strike in opposition, several columnists resigned, 175 articles were written denouncing the move, and there is a call for parliamentary hearings.

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

B. Co-Owned Newspaper/Broadcast Combinations Would Diminish Quality, Homogenize News Products and Reduce Independent Local Media Voices

In their comments, Mid-West Family Stations ("Mid-West"), a group of related companies which operate 37 radio stations in 20 midwestern communities, provide an example of how radio/newspaper cross-ownership "simply serve(s) as a cross-promotional vehicle rather than as an independent editorial voice." In Madison, Wi., where three radio station group owners and their affiliates account for the vast majority of the radio market, "such skewing of the editorial process is already taking place." For example, the local daily newspaper monopoly recently sponsored a local blues music festival, an event which conflicted with a music and food festival sponsored by the Greater Madison Convention & Visitors Bureau. The newspaper did not cover the food and music event that did not carry its logo, although it was an important event sponsored by a major civic organization. Mid-West concludes that "[i]f this publisher had also

[74] DeNeen L. Brown, "Canadian Publisher Raises Hackles: Family is Accused of Trying to Restrict Local Newspapers' Autonomy", *Washington Post,* Jan. 27, 2002, A25.

owned a significant segment of the local radio market, one might imagine that many people in the community would have had little chance to learn about all of the event in that community, especially events that compete with those sponsored by the combined media entity. The flow of community information would be seriously compromised by an exercise of market power, control and dominance. Such an outcome is not in the public interest."[75]

Gomery cites a study of the Zanesville, Ohio media market in the 1970s where the only newspaper, radio station, and television station were under common ownership. The residents of Zanesville used the news media less, and were less well informed, than residents of similarly sized cities with more media outlets.[76] In addition, when a newspaper and broadcast television station are under a single operation, more often than not it will be part of a media conglomerate with many other interests as well.[77]

Cross-ownership undermines media diversity by blurring the boundaries between the different media. As Gomery notes, "newspapers and broadcasters provide different functions in the civic discourse." Newspapers, broadcast networks, cable, satellite, and the Internet each provides a distinct product of news, information, and analysis. Each has its own institutional framework, geographic orientation, and relationship with the user. The various print and electronic media organizations are not homogeneous or interchangeable media outlets, but have distinct roles in informing and engaging citizens. Gomery is rightly concerned that relaxing the cross-ownership rule will weaken the

[75] Comments of the Mid-West Family Stations, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001, 4
[76] G. Stempel, "TV Station Group Ownership, and Cross-Media Monopoly." *Journalism Quarterly* 72(2) 1973: 10-28. Cited in Gomery, 7
[77] Gomery, 8-9.

institutions "that provide in-depth analysis, opinion, and investigative reporting, and will threaten the unique institutional motivation and perspective that newspapers bring to public debate."[78]

In the new, cross-owned multi-media environment, many reporters are required to learn and do jobs outside their primary media, and joint reporting is becoming more common. Journalists and other media workers find themselves with additional burdens, as they are required to practice their craft in multimedia formats for which they have had little prior experience or training. Reporters who once worked just for television or for print, are now writing a TV story, writing a newspaper article on the same story, and producing an online version. Employees are required to do double and treble duty producing copy for the different media meeting continuous, rather than daily, deadlines. Newspaper photojournalists are being required to carry both still and video cameras on their assignments.[79] Often the raw material for an article written by newspaper reporters goes onto web-sites which almost every newspaper in the country, and probably most local television stations, now own—before a final edited version appears in print.[80]

VII. CLAIMS BY PUBLISHERS AND BROADCASTERS THAT THEY NEED THE RULE CHANGE TO MAINTAIN FINANCIAL VIABILITY AND RESOURCES FOR GROWTH ARE DISINGENUOUS: THESE ARE HIGHLY PROFITABLE COMPANIES

The proponents of abolishing the cross-ownership rule have claimed that this action is necessary to help them maintain their profitability. All analysts, however, acknowledge that these are in fact highly profitable companies and industries—their

[78] Gomery, 10.
[79] Auletta.

profit margins are double to triple that of the S&P 500.[81] Our analysis of financial data provided by the media companies to the Securities and Exchange Commission finds that the average operating profit margin for 1999 and 2000 at the 11 largest newspaper chains were 18.3 percent and 17.5 percent, respectively. During the first three quarters of 2001, the operating profit margin was a healthy 10.7 percent. The operating margins at the four largest broadcast conglomerates were 11 percent in 1999, 2000, and first three quarters of 2001.[82] Although the post-9/11 economic slump and the recession have reduced ad revenues and cut into profits, this is a temporary phenomenon. It therefore is not a genuine question to ask whether newspapers will survive if the cross-ownership rule is not eliminated.

The real motivation of the newspapers and broadcasters is tied their need to seek higher and higher profit margins, even at the expense of journalistic quality, diversity, and localism, in order to meet the short-term profit demands of Wall Street. The multi-media conglomerates are looking for ways to boost their profits by cutting news operations (i.e., through cross-owned efficiencies and synergies) and increased opportunities to charge higher ad rates through market domination.

This is the climate in which Commission is considering change in the cross-ownership rule. It is not to prevent media bankruptcies, nor to provide cash flow for growth, but rather to help large media companies reduce competition so they can reap even higher profits.

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[80] Phone conversations with Linda Foley, president and Larkie Gildersleeve, director of research, The Newspaper Guild-Communications Workers of America, November 30/December 3, 2001.
[81] Gomery, 11; Bagdikian, xxxiii; Kunkel and Roberts, 34.
[82] The 11 newspaper chains are Media General, New York Times, Washington Post, Tribune, Gannett, Belo, Knight-Ridder, Hollinger, Media News Group, EW Scripps, and McClatchy. The four conglomerates that own the broadcast networks are General Electric (NBC), Disney (ABC), Viacom (CBS, UPN),

VIII. THE COMMISSION'S WAIVER POLICY HAS WORKED

In its *NPRM,* the Commission asked commentators to comment on its current waiver policy.[83] In general, waivers allow the Commission to examine cross-ownership on a case-by-case basis. If market conditions are sufficiently competitive, or if there is genuine failure of an existing outlet, then the Commission can and has granted waivers. Waiver policy allows the Commission to differentiate places where cross-ownership efficiencies might benefit the public from those places where efficiencies would simply allow media conglomerate to boost profits by reducing competition in newsgathering and advertising. The most recent combinations are certainly not examples of a failing newspaper, radio station, or TV station, but rather are part of large, profitable, public media conglomerates. In a recent waiver proceeding, the Commission granted the Tribune a waiver conditioned on a requirement that the *Fort Lauderdale Sun-Sentinel* maintain a separate newsroom from the co-owned WDZL(TV).[84] We support this condition.

Newscorp (Fox). Author's calculations based on company SEC 10-K and 10-Q reports for 2001 and third quarter 2001; yahoo.marketguide.com and Medianews.com.

[83] Cross-Ownership *NPRM,* 19. Under current policy, the Commission presumes it is in the public interest to waive the newspaper/broadcast cross-ownership rule if a combination could not sell a station; a combination could only sell a station at an artificially depressed prices; separate ownership and operations of a newspaper and a station could not be supported locally; or, for whatever reason, the purposes of the rule would be disserved.

[84] Comments of the Tribune Company, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001, 4

The Commission's waiver policy to date has worked sufficiently well that there is no need to eliminate the cross-ownership rule. The AFL-CIO does support strengthening the waiver rules to require that any waiver must be conditioned upon maintenance of separate news staff and editorial operations. The Newspaper Preservation Act, an anti-trust exemption passed by Congress in 1970 to preserve two newspaper voices in a local community where one newspaper is failing, allows the two newspapers to jointly operate the business and printing functions. But the Newspaper Preservation Act, in order to preserve independent editorial voice of the otherwise jointly operating entities, requires that "there shall be no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined."[85]

Further, should the Commission conclude that modification of the cross-ownership rule is appropriate, the Commission should require cross-owned media outlets to maintain separate newsrooms and staff, using language modeled after the Newspaper Preservation Act. However, given the difficulties in enforcing structural safeguards, the AFL-CIO believes the twin goals of diversity and competition are best served by maintaining the current rule.

IX. CONCLUSION

The AFL-CIO is opposed to elimination or modification of the newspaper/broadcast cross-ownership rule. It strongly believes that the rule is vital for maintaining diverse and antagonistic sources of news and information that is critical to our democracy. The publishers and broadcasters have attempted to show that the rule is not justified by the First Amendment, that media competition has grown in local markets,

[85] US Code: Title 15, § 1801- § 1804, Sec. 3(2).

that ownership does not affect diversity of viewpoint, and that the rule's elimination would not reduce media voice in local markets. In these reply comments we have shown that each of these points is incorrect.

First, the cross-ownership rule was initially promulgated and subsequently affirmed by the Supreme Court on the First Amendment grounds of protecting diversity of viewpoint. The legal burden of proof, therefore, requires those who want to eliminate the rule to demonstrate that its elimination will *not* cause harm to the twin goals of diversity and competition.

Second, aided by relaxed ownership regulations media concentration has accelerated over the last few years, enabling national media conglomerates to purchase local media outlets of all types (newspapers, TV, radio, cable, Internet). This has dramatically reduced the number of owners and certainly the number of local owners, reducing local voice and diversity of voice. Non-local broadcast and print media owners have put increasing pressure on their local outlets to cut costs, resulting in cutbacks in news production operations, with concomitant reductions in journalistic quality, diversity, and local coverage.

Third, there is little competition and diversity in local media news and information markets. The market studies submitted by the publishers, their trade association, and the NAB to demonstrate that there is a profusion of local media outlets. are flawed. Any serious study of local media markets must, at a minimum, analyze market share. The AFL-CIO urges the Commission to conduct its own comprehensive analysis of local media markets considering market share, ownership, and change over time, among other factors, in order to get an accurate picture of local media markets

Fourth, ownership matters for viewpoint diversity. Ownership shapes and influences news content in numerous ways, including decisions about what news to cover, how to cover it, what news sources to interview, and editorial voice. Media owners' views set the boundaries and sometimes dictate what is broadcast or published. Owners' concern for advertising revenues often leads to tailoring news content to mass audience interests and underreporting of issues of concern to the less affluent, elderly, women, labor, and minorities, groups who are not of as much interest to advertisers.

Fifth, co-owned media outlets reduce viewpoint diversity. The newspaper publishers' own examples of the commingling of news operations at co-owned properties, and grand-fathered combinations that we reviewed, provide clear evidence that cross-ownership eliminates one independent media voice in the local market. Cross-ownership by a multi-media conglomerate dramatically and controversially reduced local voice, with no media alternative.

Sixth, claims by publishers and broadcasters that they need the rule changed to maintain financial viability and resources for growth are disingenuous. The data shows that these are highly profitable companies only concerned with increasing their bottom-lines, rather than fostering media diversity and journalistic quality.

Finally, the Commission's waiver policy has worked and should be maintained with some revisions. The AFL-CIO supports modifying waiver policy to include language that maintains separation between the reportorial and editorial staffs. Any modification of the cross-ownership rule should use similar language. However, the AFL-CIO strongly urges the Commission to maintain the rule to preserve diversity and competition in local media markets.