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

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

REPLY COMMENTS OF TRIBUNE COMPANY

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Tribune Company ("Tribune") submits the following Reply Comments in regard to the Notice of Proposed Rulemaking ("Notice") issued by the Federal Communications Commission ("FCC" or "Commission") reviewing, *inter alia*, the daily newspaper-broadcast common ownership rule (the "Rule" or the "cross-ownership rule"), codified at 47 C.F.R. 73.3555(d) (2000).

INTRODUCTION

The comments filed in this proceeding are uniform in their regard for the important role newspapers play in informing our citizenry and covering news at the local level.[1] All filing comments also concur on the public interest benefits of local news coverage and agree broadcasters and publishers face unprecedented competition from media forms not in existence

[1] *See, e.g.*, Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project, (collectively, "Consumers Union, et. al.") supporting the Rule's retention and citing newspapers for their "unique role [in] reporting as a fourth estate, checking waste, fraud and abuse of power by governments and corporations." *Id*. at 15. They later correctly report "Newspapers devote greater attention to local news and provide a distinct role through broad, deep coverage

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when the Rule was adopted 27 years ago. The comments diverge over whether common ownership of a newspaper and broadcast station in the same market enhances or harms a broadcaster's ability to provide local news and public affairs programming within a diverse media environment. On this point, the data and other factual information provided by those who oppose the Rule stand in sharp contrast to the outdated theories offered by the Rule's proponents.

The detailed analysis and facts marshaled by those opposing the Rule describe how the Rule harms the quality, quantity and diversity of local programming. The comments describe how cross-ownership brings the assets of American's best news sources to consumers who choose to inform themselves via television. The uncontroverted facts show that markets with newspaper/television combinations remain intensely competitive and do not suffer from the diversity-related concerns used to justify the Rule in 1975. This factual record supporting the liberation of publishers to compete in the broadcasting marketplace is overwhelming, especially when compared to the evidentiary vacuum offered by defenders of the Rule. Given this record, the Commission's obligation is unmistakable: the Rule must be repealed.

I. THE RECORD SHOWS THAT THE ANTICIPATED HARMS OF CROSS-OWNERSHIP ARE MYTH: MULTIPLE VOICES AND COMPETITION THRIVE IN MARKETS WHERE CROSS-OWNERSHIP EXISTS.

A. Evidence From Cross-Owned Markets Supports Repeal Of The Rule.

When the Commission adopted the newspaper-broadcast cross-ownership ban more than a quarter century ago, it did so in the face of an impressive and consistent record of newspaper publishers' civic-minded stewardship of broadcast stations.[2] The Commission

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and investigative reporting." *Id*. at 63.

[2] *See* Comments of Tribune Company at 6-7. The evidence obtained during the public rulemaking process provided little support for the Rule. Instead, the evidence showed broadcast stations owned by newspaper publishers had a

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adopted the Rule based on an unproven theory that viewpoint diversity and competition would be enhanced by prohibiting common ownership; however the Commission allowed approximately 442 then-existing newspaper/broadcast combinations to continue.[3] In reviewing the wisdom of the Rule's retention, the performance record of these "grandfathered" combinations should be a guide to this Commission.

Like the record in the proceeding adopting the Rule, this record is completely void of any credible evidence that commonly-owned media engage in viewpoint constriction, suppression, censorship or any of the other diversity-related concerns that prompted the Rule. Advocates favoring retention of the Rule are dismayed about media concentration, shrinking news budgets and insufficient coverage of minority issues, but they cannot identify one single example during the past 27 years that shows cross-owned media eliminating a voice from the marketplace. In fact, new evidence regarding the tendencies of cross-owned media concludes there is "a wealth of 'diverse and antagonistic' information in situations of newspaper/broadcasting cross-ownership."[4]

An independent review and analysis of the coverage and editorial opinions of newspaper/broadcast combinations has found "common ownership does not inevitably result in

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"long record of service to the public" and produced a larger percentage of news, public affairs and other public service programming than did independently-owned stations. Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, 50 FCC 2d 1046, 1078, 1132 (¶ 109 & n.26 and Appendix C) (1975), *recon*. 50 FCC 2d 589 ("The Order"). The Commission also found newspaper owners should be credited for their pioneering efforts to launch both radio and television broadcasting. Order at 1074. *See also* Comments of The National Association of Broadcasters at 39.

[3] The Commission grandfathered approximately 370 of 380 then-existing newspaper/radio combinations and 72 of the 79 then-existing newspaper television combinations. *See*, Comments of Hearst-Argyle Television, Inc., at 2, *citing* Multiple Ownership of Standard, FM and Television Broadcast Stations, Second Report and Order, 50 FCC 2d 1046, *recon*., 53 FCC 2d 589, ¶ 2.

[4] David Pritchard, A Tale of Three Cities: "Diverse and Antagonistic" Information in Situations of Local Newspaper/Broadcast Cross-Ownership, 54 Fed. Comm. L. J. 31, 49 (Dec. 2001) ("FCLJ").

common viewpoints."[5] The study recorded the "bias," if one could be detected, of hundreds of news reports in Chicago, Dallas and Milwaukee – three markets where common ownership of newspapers and television stations is grandfathered – regarding the hotly-contested 2000 presidential election. Published in December, 2001, the study concluded:

> This Article examined whether three existing newspaper/broadcast combinations in major markets provided information about the 2000 presidential campaign from 'diverse and antagonistic sources.' The results show clearly that they did provide a wide range of diverse information. In other words, the Commission's historical assumption that media ownership inevitably shapes the news to suit its own interests may no longer be true (if it ever was) . . . .
>
> The evidence of the study reported in this Article suggests that the prohibition on newspaper/broadcast cross-ownership has outlived its usefulness.[6]

The study also concluded,

> [T]he evidence does not support the fears of those who claim that common ownership of newspaper and broadcast stations in a community inevitably leads to a narrowing, whether intentional or unintentional, of the range of news and opinions in the community.[7]

This analysis is consistent with Tribune's 77 years of experience operating a newspaper and broadcast stations in Chicago.[8] During that time, as described in Tribune's comments, competition and programming diversity have exploded. The same is true in Dallas/Ft. Worth, where Belo Corp. has operated a newspaper/television station combination for

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[5] FCLJ at 47.

[6] FCLJ at 51.

[7] FCLJ at 49.

[8] *See* Comments of Tribune Company at 38-42.

50 years,[9] in Topeka, Kansas, and Amarillo, Texas, where Morris Communication owns newspaper/radio combinations that have existed for 44 years,[10] and throughout the country. Based on the record in this proceeding, it is uncontroverted that existing cross-owned markets, both large and small, have exhibited diverse media discourse and vibrant competition.

The most vocal critics of cross-ownership have singled out Tribune Company as a principal target due to our efforts at synergy between print and broadcast properties in common markets.[11] After describing the objectives of content sharing, these advocates caution against hypothetical "dangers" such as the possibility of "favorable newspaper reviews of a broadcaster's programming," or "positive editorials/opinion articles about business interests of a broadcaster or politicians who favor such business interests."[12] Again, however, these theorists provide no evidence of actual harm to the marketplace of ideas that has occurred during Tribune's 77 years of cross-ownership in Chicago. In fact, in a confusing hairpin discussion of the topic, even these critics of cross-ownership concede, "we do not mean to suggest that there is anything wrong with [Tribune] company's behavior. On the contrary, economic 'synergies' may certainly help Tribune improve the quality of its media products."[13]

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[9] Comments of Belo Corp., at 4-9 and Appendix I.

[10] Comments of Morris Communications Corporation at 7-12, 14-16 and 17-24.

[11] *See* Comments of Consumers Union, et. al, at 63.

[12] *Id*. at 64.

[13] *Id*.

B. Journalistic Integrity Is Not Compromised By Cross-Ownership.

Those favoring retention of the Rule argue the integrity of print journalists is inevitably compromised whenever their employer acquires a television station in the same market.[14] This misconception is evident in Professor Ben Bagdikian's statement regarding the *Los Angeles Times'* failure to disclose to its journalists in 1999 that it partnered with the Staples Center on a special Sunday newspaper section.[15] Bagdikian correctly points out that this section caused an uproar in which the paper's publisher was accused of violating a long-standing tradition of keeping advertiser influence out of the news. But Bagdikian then attempts to confuse the Commission by alleging this represents an accepted deterioration of news standards caused by corporate ownership. In fact, Bagdikian's presentation reports only half of the story. The remainder of the story confirms that there are forces working in the marketplace that are much more adept at preventing the alleged ills of cross-ownership than the antiquated Rule.

Far from being accepted, the "Staples Affair" was criticized by journalists locally and nationwide and had enormous cost and consequence to those who allowed it to happen. The issue triggered an editorial house-cleaning in which the publisher and editor of the *Los Angeles Times* were forced out and the newspaper was the subject of enormous public outcry and internal debate and criticism. Even more significantly, the incident contributed to the decision by the owners of the *Los Angeles Times* to seek new stewardship of their company, ultimately merging Times Mirror Company with Tribune in June 2000. Far from symbolizing the deterioration of

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[14] *See Id*. at 63.

[15] *See* Comments of Ben Bagdikian at 6, Comments of Consumers Union, et. al., Appendix A.

news standards, the Staples Affair stands for the enduring triumph of journalistic principles.[16] Moreover, the story demonstrates that there is a marketplace force that counters the alleged wrongs that proponents of the Rule argue must be prevented.

The reason common-ownership does not threaten journalistic integrity is plain to anyone with media experience. As the FCLJ article notes:

> Journalists are not mindless automatons. Although their work is standardized and routinized to an extent, strong professional norms of autonomy exist in newsrooms across the United States. Any attempt by ownership to influence the slant of political news would certainly be resisted and even revealed by journalists.[17]

Even the Rule's supporters tacitly acknowledge print journalists' independence and integrity, reciting what they term the print journalists' "century-old creed: I believe in the professionalism of journalism. I believe that the public journal is a public trust; that all connected with it are, to the full measure of their responsibility, trustees for the public; that acceptance of lesser service than the public service is a betrayal of this trust."[18] As one would expect, it is the experience in cross-owned markets that this century-old commitment to the public trust can only further elevate the standards of broadcast journalism. And again, the Rule's supporters offer no evidence to the contrary.

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[16] As former Assistant Manager Editor for National News at the Washington Post, Bagdikian worked at a company that also owns multiple television stations. He claims to have "reported on and followed broadcast policies and their impact on communities and the country at large for more than 50 years." As such, he doubtless had the opportunity to observe any impact of common ownership on the coverage or opinions expressed at the Washington Post and other newspapers. Yet notably absent from his comments in this record is any evidence of negative impact from his personal experience as a journalist. Indeed, the only example he offers from personal experience is an appearance on a radio program in San Francisco in which he was asked not to mention the date or weather so his comments could be sent to others across the country. In conflict with his assertion that common ownership limits diversity, his example illustrates an occasion where his voice presumably increased diversity by being added to a market he would not otherwise reach. *See* Comments of Ben Bagdikian at 3.

[17] FCLJ at 50.

[18] Comments of Consumers Union, et. al., at 63.

C. Competition Is Not Threatened By Cross-Ownership.

The Notice invites comment on the effect of newspaper-broadcast combinations on competition.[19] The comments divide this inquiry into two separate competition analyses: competition for audience and competition for advertising. Supporters of the Rule argue broadcasters and publishers do not compete in the news marketplace. They claim, "broadcasters do not compete against newspapers . . . in the most significant area addressed by this proceeding – news and information."[20] If true, it's difficult to see how allowing a combination of two entities that do not compete would pose significant harm. That is, if the consumer does not use print and broadcast interchangeably, then a newspaper speaking in the broadcast market reaches a new audience and does not reduce competition. Their argument is different, and is compounded by the fact they refuse to realize that multiple media do compete for the consumers' time, as Tribune and others have demonstrated is the reality in today's marketplace. For if they do, the wealth of information and programming choices available makes diversity an inevitable result.

Competition for advertising is a distinctly different question, yet the comments filed in this proceeding yield the same conclusion. The evidence from cross-owned markets demonstrates that robust advertising competition exists notwithstanding common ownership.[21] In response, those supporting retention of the Rule offer examples of cross-ownership synergies and mislabel them as anticompetitive. For example, The United Church of Christ notes Tribune

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[19] Notice, ¶¶ 19-27.

[20] Comments of Consumers Union, et. al, at 4, 19 ("different types of media – in this case, print and broadcast – represent distinct product and geographic markets.").

[21] *See, e.g.*, Comments of The Newspaper Association of America at 66-72 & n.194 (citing the "ample evidence to suggest that many alternative outlets compete vigorously with newspapers for advertising revenue."); Comments of The National Association of Broadcasters at 14.

Company offers advertisers in Chicago the opportunity to sponsor WGN-TV's chief meteorologist on both television and in the dedicated weather page of *The Chicago Tribune*. It claims this gives Tribune an unfair advantage over other broadcasters and the *Chicago Sun-Times*, another Chicago daily newspaper. As criticism, this approach is off base.

First, the Commission is not concerned with competition among newspapers, and this proceeding is not intended to protect the interests of individual newspapers, even if there were any impact. Second, and more importantly, not one single complaint has been registered about Tribune's cross-ownership in Chicago, whether from other local broadcasters, the *Sun-Times* or any advertisers. In fact, other broadcasters in Chicago—the parties most likely to be impacted by this hypothetical harm—have filed comments in this proceeding seeking elimination of the Rule.[22] Finally, to the extent such selling were to constitute impermissible "tying," this is precisely the sort of activity the antitrust laws are designed to remedy. Thus, even without the Rule, parties suffering anticompetitive behavior have a forum to express their grievances and laws designed to protect them.

D. The Impact Of Cross-Ownership On Jobs Is Pure Conjecture.

Since the occupational security of media employees must be subordinate to the Constitutional and legal mandate at stake in this rulemaking, the Commission need not consider the notion suggested by the AFL-CIO that cross-ownership leads to fewer jobs. Regardless, that notion is purely speculative and fails to consider the number of jobs lost when television stations close newsrooms or "outsource" their newscasts because of the expense of producing local

[22] *See, e.g.*, Comments of the News Corporation Limited and Fox Television Holdings, Inc. (Fox owns WFLD-TV, Channel 32 in Chicago).

news.[23] It also ignores the number of jobs saved when such newsrooms remain open through common ownership with a newspaper. Moreover, the comments offer no evidence that the impact on jobs at grandfathered newspaper/broadcast combinations is greater than at independent newspapers or stations in the same markets.[24]

The AFL-CIO also argues common-ownership poses unfair burdens for journalists who are asked to become involved in multimedia formats.[25] The hallmark of journalism has always been the ability to adapt to modern media – from scribe, to printing press, to telegraph, to radio, to television, to cable, etc. Surely the AFL-CIO does not expect the FCC to restrict newspapers from providing content in the manner the public demands. In any event, consideration of the propriety of new media training strays far from the Commission's stated objective, from Congressional and Constitutional mandate, and from the larger public interest obligation.

II. THE RECORD DEMONSTRATES THAT AMIDST THE EXPLOSION OF MEDIA, THE RULE PREJUDICES NEWSPAPERS – THE MEDIUM MOST COMMITTED TO LOCAL NEWS.

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[23] *See* Comments of Tribune Company at 26, 42-43, 49-50 (detailing Tribune's experience in South Florida). Rather than making the enormous capital commitment needed to launch a new newscast, WBZL contracts with NBC-owned WTVJ to purchase a news broadcast. The 30-minute, 10 p.m. news broadcast features on-air talent employed by, and stories generated by, WTVJ's news department. Tribune has little incentive to make a long-term capital investment in a WBZL newscast. Thus, instead of launching a new voice in the market, presumably with new personnel, WBZL airs a newscast produced and staffed by a competitor. *See also* Comments of Consumers Union, et. al, at 80 (trend - with the Rule in place - shows number of television newsrooms is declining); Kathy Bergen, TV news' sacred status now old story, Chi. Trib., Feb. 10, 2002, Business at 1.

[24] The Comments of AFL-CIO are wholly deficient in this regard. There is no doubt some media companies have regrettably been forced to reduce staff, change job functions, or cut coverage as a result of the economy and declines in readership. But the AFL-CIO presents no evidence this impact has been greater at stations under common ownership with a newspaper. *See, e.g.,* Drivers approve job cuts, avert newspaper's demise, Chi. Trib., February 3, 2002 (The Jersey Journal, a 135-year-old daily newspaper, forced to cut half its staff to avoid closing its doors due to declining readership and advertising revenues).

[25] Comments of American Federation of Labor and Congress of Industrial Organizations at 6.

A. The Media Marketplace Has Experienced Dramatic Growth, Rendering Traditional Media Vulnerable To New Competitors.

Advocates for retention of the Rule and those favoring its repeal agree the number of media outlets in communities across the nation has exploded since the Rule's adoption. The Commission makes note of this fact in the Notice and media owners in markets large and small provide substantial data describing the increases in programming diversity and competition that have occurred since 1975.[26]

All of the commentary and data also concur that newspaper circulation and television ratings have suffered significant declines as a result of the emergence of new media competition, principally from cable/satellite and the Internet.[27] Today, cable competes for and wins a significant share of the most popular programming available.[28] Using its dual revenue streams, cable can simply outspend over-the-air broadcasters for key programming. For example, in January 2002 the National Basketball Association signed $4.6 billion rights agreements with Disney (ESPN, ABC) and AOL Time Warner (TNT). In an historic shift, ABC will air only 15 regular season games plus five early-round playoff games and the NBA Finals. All other games, including the All-Star game and conference finals, will be carried exclusively on ESPN, TNT and a newly-formed cable channel owned jointly by the NBA and AOL Time

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[26] *See, e.g.*, Comments of New York Times Company at 2-7; Comments of Belo Corp. at 8-9; Comments of Morris Communications Corporation at 16-23; Comments of The Hearst Corporation at 5-12; Comments of The Media Institute at 5-6; and numerous others. Defenders of the Rule focus on consolidation of ownership, but admit that as measured by the number of voices, public discourse is more robust today that it was when the Rule was adopted. *See, e.g.,* Comments of The Office of Communication, Inc. of The United Church of Christ, National Organization for Women and Media Alliance (collectively "United Church of Christ, et. al"), at 4 (showing growth in number of radio stations).

[27] *See, e.g.*, Kathy Bergen, TV news' sacred status now old story, Chi. Trib., Feb. 10, 2002, Business at 1.

[28] In coverage of news in general, and America's War on Terrorism in particular, more and more Americans are turning to cable networks instead of over-the-air stations. *See, e.g.*, Mark Jurkowitz, In TV news, this is war. Networks may be losing the battle as more viewers turn to cable counterparts, Chi. Trib., Dec. 18, 2001, Tempo at

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Warner. Following the trend of Major League Baseball, the NBA recognized "the difference in distribution is dwindling from broadcast to cable. For anyone truly interested in watching these games, they won't be difficult to find."[29]

As the Commission acknowledged last month, viewers are following the programming to cable or another form of multichannel video programming delivery service ("MVPD"). In January, the Commission announced pay TV subscribers jumped 4.6% in the year ending June, 2001, with growth in satellite service outpacing cable by more than double.[30] More than 88 million U.S. households subscribe to some MVPD and the broadband audience has surpassed 21 million.[31] Cable/satellite subscriptions in many communities approximate total coverage. In Hartford, Connecticut, more than 88% of television viewers subscribe to cable or another MVPD, making any discussion of the over-the-air television marketplace a hypothetical exercise. Internet sites provide additional competition without providing local news.[32] And as the Commission's January report suggests, these trends will continue.

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[29] Ed Sherman, Cable snares bulk of games; ABC joins ESPN, TNT in package, Chi. Trib., Jan. 23, 2002, Sports at 7, quoting ESPN's George Bodenheimer (ESPN and TNT were able to pay the NBA 25% more than the incumbent broadcast network NBC in the 2002 pact. "The NBA had to go the cable route in order to generate the increase. NBC came in with a substantially lower bid after claiming it lost $300 million during the last two seasons of the current deal."). *See also*, Stefan Fatsis, Broadcast Bounce: NBA's Pact With AOL, Disney Puts Most Games in Cable's Court, Wall St. J., Dec. 17, 2001, § B at 6.

[30] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (CS Docket 01-129) Jan. 14, 2002, at ¶ 6. *See also*, Reuters, Pay television subscriber numbers up 4.6% - FCC, Jan. 14, 2002.

[31] Nielsen/NetRatings, Broadband audience surpasses 21 million in November, setting a record high, according to Nielsen NetRatings, (Nov. 2001).

[32] Diversity and competition, the two principles supporting the Rule, may actually be at odds in today's media marketplace. For instance, classified advertising – a major revenue source for newspapers – is being eroded by online competitors such as Monster.com, Autobytel and Homehunter.com. Advocates of the Rule admit these new media operations do not significantly contribute to the marketplace for local news. That is, they do not measurably contribute to diversity of local voices. However, such entities clearly add to the competition facing newspapers. They take revenue and the resulting financial impact on newspapers merely advantages these companies that do not

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B. Rising Newsgathering Costs Jeopardize Viewpoint Diversity And Cross-Ownership Provides A Remedy.

Both sides of the debate acknowledge the cost of producing a unique television newscast has escalated dramatically since the Rule's adoption.[33] Those supporting the Rule lament "the dramatic decline in the rate at which TV stations have news operations."[34] It is also noted that some stations now opt to "outsource" their newscasts or use pooled news services, all of which lead to content homogenization.[35] Ironically, these maladies have occurred since the Rule was adopted and cross-ownership banned. In fact, Tribune's comments offer a candid example of this economics of news dilemma and illustrate how cross-ownership is the remedy to this phenomenon.[36]

Tribune's comments describe its interest in launching a new newscast in South Florida. There, Tribune owns both the news-rich *Sun-Sentinel* newspaper and the seventh-rated television station, WBZL. After acquiring WBZL in 1996 as part of a six-station transaction, Tribune sought a permanent waiver of the cross-ownership rule, but agreed to a temporary waiver that prohibited sharing of news resources, even though WBZL did not produce a newscast at that time. In effect, the terms of the waiver extinguished the possibility WBZL could launch a new newscast using the resources of the *Sun-Sentinel*. Instead, WBZL has opted for the financially prudent carriage of a newscast produced by a competing television station in the market and viewers in South Florida are deprived of an independent television newscast.

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inform the public or add to the marketplace of ideas.

[33] *See, e.g.*, Comments of Consumers Union, et. al, at 80. *See also*, Kathy Bergen, TV news' sacred status now old story, Chi. Trib. Feb. 10, 2002, Business at 1.

[34] Comments of Consumers Union, et. al, at 80.

[35] *Id*. at 57-58.

C. The Rule Is Biased Against Newspapers.

None of the comments deny newspapers play an important role in informing our citizenry and are committed to covering news at the local level.[37] The record also demonstrates how broadcast stations under common ownership with a newspaper produce significantly more local news.[38]

Yet while both sides agree on the importance of newspapers to an informed public, advocates of the Rule's retention reach the incongruous conclusion that diversity and the quality of news coverage will improve if the Commission continues to deny broadcast ownership to enterprises that by their nature are the most committed to local news. If this were true, one might expect greater quality local coverage in markets without grandfathered combinations. But there is no evidence of such, in this record or otherwise. For example, proponents of the Rule do not claim that Washington, D.C., with no remaining grandfathered combinations, has better local news coverage or diversity because of it, than does Chicago, New York, Atlanta, Dallas or Los Angeles.

Nor do they claim – because they cannot – that lack of diversity is a major problem with local news. As demonstrated in the filings of Tribune, Gannett Co., Inc., The New York Times Company, The Hearst Corporation, Morris Communications Corporation, Belo Corp., Cox Enterprises, Inc., E.W. Scripps Company, and others, common ownership actually

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[36] Comments of Tribune Company at 43, 49-50.

[37] *See* supra, note 1. See also, Comments of Consumers Union, et. al, at 61-62 ("Television does not perform the same function as newspapers and neither replaces radio. Broadcast does not compete effectively with newspapers in the news function. Newspapers provide a different type of information service with different impact . . . than video or radio, with much longer and in depth treatment of issues. In this they have adopted to a role distinct from television.").

[38] *See, e.g.*, Comments of Media General at 11 and Appendix 5; *see also*, supra, note 2.

increases the amount, quality and viewpoint diversity of local news and public affairs programming. Common ownership spurs broader local television news coverage over the air in the same way it has given birth to local all-news cable channels, such as ChicagoLand Television News.

Those who oppose any change to the Rule would do well to remember that the goal of the Rule is not to prohibit newspaper publishers from owning television stations, but to increase the diversity of voices and the level of local news in the marketplace – a goal that is impaired by this timeworn regulation.

III. OUTDATED THEORIES OF SOURCE DIVERSITY ARE NOT SUPPORTED BY THE RECORD.

Proponents of the Rule today base their arguments on hyperbole and hypothesis, rather than facts. They have adopted new names for the theories propounded in the past, such as "Empirical Concept of Diversity"[39] and "institutional diversity";[40] however, at their essence, these theories simply restate the aged source diversity theory that launched the Rule in 1975.[41] Offering no basis in fact or experience, these theories allege that increasing the number of broadcast station owners necessarily yields diverse viewpoints, while concentrated ownership results in viewpoint repetition.

The fallacy of the source diversity theory is demonstrated above and in Tribune's earlier comments. As described above, the economic realities of newsgathering have caused all news operations, whether independent or commonly owned with other newspapers or broadcast

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[39] Comments of Consumers Union, et. al, at 50.

[40] *Id*. at 51.

[41] *See, e.g.*, *id*. at 53; Comments of the United Church of Christ, et. al, at 15.

stations, to consider pooling news with competitors or outsourcing their news operation altogether. In South Florida, for example, NBC programs newscasts on three stations, including Tribune's WBZL, while CBS programs newscasts on two stations. Similarly, as demonstrated by the FCBJ article and Tribune's comments, television stations and newspapers do not speak with one voice simply because they are commonly owned.

News operations often expand in cross-owned markets[42] and other programming diversification occurs in search of new viewers. Recently, the trend toward more targeted programming took another step as Viacom announced it was exploring a gay-oriented TV channel for what the company called an "underserved audience niche."[43] Also last month, Univision launched a new network, Telefutura, with special appeal to bilingual audiences. These efforts underscore the incentive of major media companies to develop content that serves diverse communities. This stands in strong contrast to the allegation by those who support the Rule that larger media companies produce only homogeneous content.

What the proponents of the Rule seem to desire is a guaranteed outlet for every view.[44] Some even suggest the resuscitation of the Fairness Doctrine, the Political Editorial Rule and the Personal Attack Rule.[45] These theorists refuse to recognize that the American system entrusts the private sector with the role of qualifying viewpoints and leaves the marketplace as

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[42] For example, despite the large investigative staff at the *Chicago Tribune*, Tribune's WGN-TV established a new investigative unit in July 2000. This unit pursues news investigation independent of the newspaper.

[43] Associated Press, Media giant may launch gay channel, Chi. Sun Times, Jan. 15, 2002, Features at 36.

[44] *See, e.g.* Comments of Consumers Union, et. al, at 52 ("Under the First Amendment, we can never tell people what to say, and we certainly cannot make them listen, but under the Communications Act and to serve our Constitutional principles we can organize the structural rules of the industry to increase the probabilities that more people will engage in civic discourse.").

[45] *See* Comments of The United Church of Christ at 20.

the guarantor of viewpoint diversity. In today's multiple-media environment, with myriad sources and outlets for content, and varied and diverse consumer groups demanding news and information targeted to meet their needs and interests, the market will work. The elimination of the Rule will only facilitate a free market.

IV. THE LEGAL FRAMEWORK PROPOSED BY ADVOCATES OF THE RULE PERVERTS THE FIRST AMENDMENT AND IGNORES THE LIMITED CONSTITUTIONAL BASIS FOR NEWSPAPER/BROADCAST REGULATION.

Perhaps most troubling about the legal analysis asserted by those who would retain the Rule is the failure to address the evaporation of the scarcity doctrine – the now-obsolete premise of the Rule. The once limited (scarce) broadcast spectrum arguably heightened the need to preserve diversity among existing voices. In today's marketplace, the concept of scarcity that supported the Rule is outdated, and the Supreme Court has hinted it would recognize as much in this media landscape.[46] As new media and MVPDs dominate the landscape, the limitations of a scarce broadcast spectrum – the Constitutional linchpin for the Rule – have been eliminated.

Advocates for retention cite decades-old precedent, and rely on legal framework based on a media marketplace that no longer exists. They prop up scarcity around the edges – inaccurately claiming that the Internet does not attract viewers away from newspapers or broadcasters.[47] But they cannot challenge the facts that show more and more consumers get news and information from sources other than the daily newspaper and the local broadcast

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[46] FCC v. League of Women Voters, 468 U.S. 364, 376 & n.11, *appeal dismissed*, 468 U.S. 1205 (1984) (noting the scarcity rationale "has come under increasing criticism in recent years" and highlighting those who argue the availability of cable and satellite television technology render the doctrine "obsolete"). *See also*, News America Publishing, Inc., v. FCC, 844 F.2d 800, 811 (D.C. Cir. 1988) (The Supreme Court "has recognized that new technology may render the [scarcity] doctrine obsolete – indeed, may have already done so.").

[47] *See, e.g.*, Comments of Consumers Union, et. al, at 9.

station.[48] In short, the antiquated concept of scarcity is not defended because that scarcity no longer exists.

The Constitution and the Telecommunications Act of 1996 squarely place the burden of persuasion on advocates of continued regulation. The Rule has been in place for 27 years, and conjecture, speculative gain and predictions of doom can no longer serve as its basis. More than a quarter century of facts and experience now demonstrate the impact of the Rule and the results of common ownership in grandfathered markets – and this evidence clearly shows that in today's marketplace, common ownership does not harm diversity.

> "Where the agency applies [a general] policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy."[49]

Section 202(h) of the 1996 Telecommunications Act directs the Commission to review all its ownership rules biennially to determine if they "are necessary in the public interest as the result of competition."[50] This law requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest." Accordingly, the Commission must presume there is no need for regulation and justify any portion of the Rule it opts to retain. Absent

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[48] *See*, Comments of Tribune Company, at 10 and 31-34 (demonstrating decline in readership and viewership of traditional media as new alternatives fragment the marketplace). Also, the most recent study of online usage found that among those who use the Internet at work, Internet usage exceeds newspaper usage in every daypart and exceeds all other media except radio in the morning, TV in the evening and magazines in the early evening (pre-prime time), in terms of time spent during various dayparts. *See*, Online Publishers Association, Topline Summary, Media Consumption Study, conducted by Millward Brown Intelliquest (Jan. 2002), available at www.online-publishers.org.

[49] Bechtel v. FCC, 957 F.2d 873, 881 (D.C. Cir. 1992), *quoting* Pacific Gas & Elec. v. FPC, 506 F.2d 33, 38-39 (D.C. Cir. 1974). For a good discussion of this point, *see*, Comments of the Newspaper Association of America at 89-92, *citing* 1998 Biennial Review Report, 15 FCC Rcd at 11151 (Separate Statement of Comm'r Michael K. Powell).

evidence the cross-ownership rule is necessary to preserve competition and diversity, and is narrowly crafted to achieve those objectives, the Commission cannot maintain the Rule.

In *Bechtel v. FCC*, the Court of Appeals concluded the Commission had an obligation to consider and explain whether its longstanding policy favoring integration of ownership and management in comparative licensing hearings was still in the public interest in light of other regulatory changes.[51] The Court said "it is settled law that an agency may be forced to reexamine its approach 'if a significant factual predicate of a prior decision . . . has been removed'."[52] The Commission, the Court noted, "should stand ready to alter its rule if necessary to serve the public interest more fully."[53]

Those who oppose any change to the Rule ignore the law, cite to legal references that begin "in the abstract, . . ."[54] and wrongly conclude that in this proceeding the burden of proof is on those advocating unburdening the First Amendment. Even so, they do not contest that absent a compelling public interest or any facts that demonstrate a need for its restrictions, the Rule would fail. Here, there is no evidence the Rule is necessary or serves the public interest and the Commission's conclusion is self-evident.

V. CONCLUSION: TOTAL ELIMINATION OF THE RULE IS THE ONLY OUTCOME JUSTIFIED BY THE RECORD.

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[50] Pub.L. 104-104 § 202(h), 110 Stat. 111-12 (1996).

[51] Bechtel v. FCC, 957 F.2d at 881.

[52] *Id*. at 881, *quoting* WWHT, Inc. v. FCC, 656 F.2d 807, 819 (D.C. Cir. 1981).

[53] Bechtel v. FCC, 957 F.2d at 881, *quoting* FCC v. WNCN Listeners Guild, 450 U.S. 582, 603 (1981).

[54] Comments of Consumers Union, et. al, at 23, *citing* Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm, 463 U.S. 29 (1983).

The Commission adopted the Rule more than a quarter century ago in the face of an impressive and consistent record of newspaper publishers' civic-minded stewardship of broadcast stations. As in 1975, the facts in this proceeding support the benefits of allowing newspaper publishers to own radio and television stations. The evidence is uncontroverted: common ownership means more news, more local coverage and nothing in the record suggests commonly-owned markets practice viewpoint constriction, suppression or censorship.

Since 1975, the information marketplace has exploded and diversified, and the world has changed. Now it is time for the Rule to change. The 1996 Act was adopted to expunge this regulatory relic, and in a system where individuals and private entities are allowed freedom of speech, that freedom ought not differentiate among individuals merely because one might own a printing press. Absent decisive Commission action, the Courts will provide a remedy, as it is all but conceded that the Rule will not pass Constitutional muster in the 21st Century.

For the foregoing reasons, Tribune asks the Commission to eliminate the Rule in its entirety. Tribune adopts and incorporates the comments of the Newspaper Association of America and the National Association of Broadcasters, among many others advocating elimination of the Rule.

Respectfully submitted,

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