November 14, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
455 12th Street SW
Washington, D.C. 20544

Re: *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, MB Docket Nos. 06-121, et al.*

Dear Ms. Dortch:

The Consumer Federation of America, Consumers Union and Free Press hereby submit this filing in order to respond to several arguments presented by Industry Commenters in reply to our filing entitled "Further Comments of Consumers Union, Consumer Federation of America and Free Press," filed on November 1, 2007. As will be shown below, the attacks on our analysis are totally without merit. An outline of the *ex parte* follows.

OUTLINE

SUMMARY

We have framed the evaluation of the newspaper-TV cross-ownership rule properly and executed statistical models to test whether the restrictions are in the public interest. The FCC studies got the key elements of the policy analysis wrong.

- Market level analysis is a critical component of the policy analysis, which the Federal Communications Commission (FCC) studies of newspaper-TV cross-ownership omitted entirely. Our approach to the market level analysis is correct.
- Our formulation of the policy-based, research hypotheses is consistent with the will of the Congress as implemented by the FCC and supported by judicial rulings.
  - To relax the rule, the FCC must show that newspaper-TV combinations yield a benefit to news production that exceeds the harm to diversity.
  - The data demonstrate the opposite; there is no significant benefit and significant harm.
- The cross-ownership variable used in the FCC studies is conceptually and statistically inferior. Our focus on grandfathered newspaper-TV combinations is superior.
  - Grandfathered combinations represent the long-term effects of combinations, not strategic acquisition of TV stations already producing news.
  - Grandfathered combinations behave differently than combinations created by waiver.

Neither the supply-side nor the demand side justifications that the Chief Economist of the FCC, who designed the research studies, had hoped would demonstrate that the restriction on cross-ownership could be relaxed is supported by the data. The statistical nit picking of the Industry Commenters does not alter our findings one iota.

On the supply-side, the FCC cannot claim that there is a benefit and no cost.

- Grandfathered combinations are not associated with higher levels of production of news at the market level or the stations level.
- Cross-Ownership has a strong and significant "crowding out" effect on non-cross-owned stations, leading them to curtail their news operations. We present further empirical evidence demonstrating that markets with cross-owned stations produce significantly less total local news minutes (output by the non-cross-owned stations) than markets without cross-owned stations. **The presence of a cross-owned station leads the other stations in the market to collectively curtail their news output by about 25 percent.** These results are very robust and withstand all critiques offered by Industry commenters.
- Grandfathered stations produce slanted news that is correlated with the editorial position of the co-owned newspaper.

On the demand-side,

- Only by ignoring the direct questions about the utilization of media for local news and information can the FCC conclude that traditional media are not the overwhelmingly dominant sources of local news.

- Only by ignoring the size of the audience and the production of news can the FCC conclude that alternatives are substantial substitutes for the traditional media.

Industry Commenters produced a list of hundreds of Web sites they claim compete with traditional mass media, but we have shown these Web sites have little traffic and produce little content compared to the Web sites of the traditional mass media. Digging up a handful of additional sites, claiming that newspapers do not produce all their own content (because they rely on wire services), and focusing on weather, sports and classifieds does not shake our basic conclusion.

- Traditional web sites have vastly larger audiences and their advantage in the total number of visitors appears to be growing.
- Hyperlocal Web sites produce very little original content, frequently linking to the web sites of the traditional media.

The administration of the proceeding continues to lack transparency and hinder the ability of the public to participate effectively.

- A second round of highly critical reviews of the 10 FCC studies was published on the final day of the reply period, giving the public no time to incorporate these into their comments. As a result of this manipulation of the peer review process, Industry Commenters had the opportunity to fill the record with citation to the laudatory first reviews, but no one had the opportunity to cite the negative reviews.
- A handful of third-party studies and even comments were selected for peer review, among the hundreds that were filed, with no explanation of the criteria by which they were selected.
- In direct contradiction of the Data Quality Act, the existence of the ongoing peer review was never recorded in the FCC's peer review agenda, nor were the basic elements of the review discussed, leaving the public completely in the dark.
- The peer reviews of third party studies were published after the deadline for reply comments, denying the public the benefit of having these reviews to inform their comment.
- Some peer reviewers were given a week to respond, while others were given as much as six weeks. Some authors were in contact with their reviewers, while others were not even notified that their work was being reviewed. Some authors were given as much as 60 days to respond to their peer review within the formal comment period, while others were provided no such opportunity.
- The 2004 FCC localism study (which was never published, according to the Inspector General, as a result of rigorous internal review), has finally be subject to external review, which it passes with flying colors, with the peer review published on the final day of reply comments.

To say that this process is arbitrary and capricious is a gross understatement. It makes a mockery of the Administrative Procedures Act.

INTRODUCTION AND OVERVIEW

The Consumer Commenters have taken the comments of the peer reviewers to heart and applied them across the FCC studies. Indeed, several of the authors insisted that the analysis had to include key features that their fellow analysts neglected. In short, we did what was scientifically called for and arrived at results that are valid.

The data gathered by the FCC, when extracted from its results-driven research framework and examined through the microscope of rigorous properly specified statistical models provides clear and explicit evidence to support the policy of restricting newspaper-TV cross-ownership. As shown in this *ex parte*, the econometric critiques the Industry Commenters launch against the Consumer Commenter analysis miss the mark. The heart of the critique involves an effort to avoid the proper research questions, disdained variables or claim that no evidence can be produced to address the most important issues before the Commission.

The Industry Reply Comments, particularly the economic consultant reports, are wrong on so many levels in so many ways it is hard to know where to begin.[1] They want a weak and careless analytic framework and lob statistical complaints that are nonsensical, **but they provide no analysis to back up their critique**. Contrary to their claims, the data was available to perform exactly the analyses they suggested, they simply failed to do so, and for good reason; the analyses they propose are incorrect and would not alter our conclusion at all. Following their recommendation would produce results that fail to ask the correct policy questions and are scientifically weaker. This would be in the Industry's interest, to be sure, but not in the public interest.

This ex parte is divided into five sections. The first section deals with critical framing issues that involve the basic definition of the policy analysis – what needs to be addressed and what thresholds apply. Section II deals with analytic fundamentals – issues of how the data is created and interpreted. Section III deals with the econometric issues, which focuses on the supply-side of media markets – the production of TV news. Section IV deals with demand side issues – consumption and utilization of media outlets. Section V deals with procedural issues.

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[1] Throughout this *ex parte, unless otherwise stated,* all references are to the Reply Comments, dated November 1, 2007, filed in the following proceedings: In the Matter of 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06-121; In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277; In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, MB Docket No. 01-235; In the Matter of Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MB Docket No. 01-317; In the Matter of Definition of Radio Markets, MB Docket No. 00-244, unless otherwise noted. Harold FurchtGott-Roth, filed an *Econometric Review,* attached as an Appendix to the Media General Reply Comments and Kent W. Middelsen filed and analysis entitled *Effects of Newspaper-Television Cross-Ownerhsip on Total Market News Minutes: Reponse to "Further Comments of Consumers Union, Consumer Federation of America and Free Press,* attached to the Reply Comments of the Newspaper Association of America.

I. CRITICAL FRAMING ISSUES

THE BIG PICTURE: NEWSPAPER-TV CROSS OWNERSHIP IS NOT IN THE PUBLIC INTEREST

Our conclusion that the restriction on newspaper-TV cross-ownership is in the public interest can be most readily understood by reviewing the history of the cross-ownership ban as recounted by Tribune and others.[2]

> In 1975, however, the Commission decided, and the Supreme Court in NCCB agreed, that it would be reasonable in light of the marketplace realities of the 1970s (and the perceived "maturing" of the media market) to sacrifice the very real benefits of newspaper cross-ownership for the goal of increasing "viewpoint" diversity" The Supreme Court expressly acknowledge that the FCC had not demonstrated any connection between diversity of ownership and diversity of viewpoint, but it deferred to the FCC's expertise and held that FCC's prediction that these "hoped for" gains in diversity would materialize were "reasonable and "rational."

In this rendition, diversity is a very highly valued goal worth giving up other "positive" benefits to achieve. This is parallel to our formulation. To lose diversity through cross-ownership requires a very real benefit in some other valued goal.

Whatever the status of the "real benefit" in 1975, our research challenges the claim that cross-ownership produces a benefit today, measured by the amount of news produced, which is the most frequently claimed benefit of combinations and the one the FCC chose to examine most intensively. Consumer Commenters have shown that:

- the claim of greater output by cross-owned stations fails[3]
- non-cross-owned stations in cross-owned markets are crowded out, producing both less news and less diversity of sources.
- these two factors at the station level logically suggest that there is not more news produced in markets where there are newspaper-TV combinations and the statistical analysis confirms that the total amount of news produced in cross-owned markets is not greater; it is more likely lower.

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[2] Tribune, pp. 4-5. NAB provides a similar account, p. 4. Media General (pp. 12-13) provides a similar account, with one exception. Tribune recognizes that part of the claim to eliminate the ban on cross-ownership involves a demonstration combinations yield a benefit. As described below, Media General argues incorrectly that even if combination created harm, rather than a benefits, they should still be allowed.

[3] The NAB's claim (p. 14) that we concede that cross-owned stations produce more news is clearly incorrect. We explicitly show that they do not.

The claim that cross-ownership does not harm diversity is rejected. Consumer Commenters have shown that:

- there is slant in coverage and
- there is coordination in coverage between newspaper editorial positions and television news coverage.

Whatever the status of the evidence in the past, there is no doubt that today there is solid evidence to support the restriction on newspaper-TV cross-ownership.

After decades of insisting that no evidence exists, when confronted with contrary evidence, the media owners now argue that the Commission should go with its gut (as it did in the past), except this time in the opposite direction of the one upheld by the Supreme Court.

> Both quantifiable and non-quantifiable factors may enter into a determination of whether a rule is "necessary in the public interest as a result of competition." The regression analyses presented in both the FCC studies and the Consumer Commenters' Further Comments are based only on quantitative information and present quantitative information which statistical tests can be conducted. Classical statistical inference allows a researcher to posit a testable hypothesis and then either reject or fail to reject the hypothesis: under classical statistics, on cannot "prove" the positive outcome of a hypothesis such as whether a rule is "necessary in the public interest as a result of competition."[4]

If the Commission is going to abandon quantifiable evidence then it would do well to recall Judge Learned Hand's original framing of the issue in the decision that provided the platform for the Supreme Court to articulate the principle – "the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare." Judge Hand described the process of creating a news account as a fundamentally subjective qualitative process in which viewpoints are inherently embedded.

> News is history; recent history, it is true, but veritable history, nevertheless; and history is not total recall, but a deliberate pruning of, and calling from, the flux of events. Were it possible by some magic telepathy to reproduce an occasion in all its particularity, all reproductions would be interchangeable. The public could have no choice, provided that the process should be mechanically perfect. But there is no such magic; and if there were, its result would be immeasurably wearisome, and utterly fatuous. In the production of news every step involves the conscious intervention of some news gatherer, and two accounts of the same event will never be the same. Those who make up the first record – the reporters on the spot –are themselves seldom first hand witnesses; they must take the stories of others as their raw material, checking their veracity, eliminating their irrelevances, finally producing an ordered version which will evoke and retain the reader's attention and convince him of its truth. And the report so prepared, when

[4] Media General, p. 7.

> sent to his superiors, they in turn 'edit', before they send it out to the members; a process similar to the first. A personal impress is inevitable at every stage; it gives its value to the dispatch, which without it would be unreadable…. But these are not all: the same personal choice which must figure in preparing a dispatch operated in deciding which events are important enough to appear at all: and about that men will differ widely; as we often find, when one service "carries" what others have thought too trivial; or may have missed altogether.
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> For these reasons it is impossible to treat two news services as interchangeable, and to deprive a paper of the benefits of any service of the first rating is to deprive a paper of the means of information it should have; it is only by cross lights from varying directions that full illumination can be secured…. But the final product to the reader is not the AP dispatch; but how and where it appears in the paper as it comes before him. That paper may print it verbatim, or a summary of it, or part of it… And, even though the whole dispatch be printed verbatim, its effect is not the same in every paper; it may be on the front page, or it may be in an obscure corner; depending on the importance attached to it. The headline may plagently call it to the readers' attention, or they may be formal and unarresting. There is no part of a newspaper which is not the handiwork of those who make it up; and their influence is often most effective when most concealed. [5]

From the non-quantifiable point of view, the preservation of independent sources of information is paramount.

Industry Commenters attack the statement of the research hypothesis that we believe Congressional policy requires. Media General correctly characterizes our general approach of the analysis as follows: "Does cross-ownership increase competition or improve diversity and localism?" However, Media General complains that we have set the bar too high.

As a policy matter this is the correct formulation, as suggested by our discussion of Tribune's account of the origin of the policy restricting cross-ownership. We take our cue from the Supreme Court language which clearly leans toward more voices in its declaration that "the widest possible dissemination of information from diverse and antagonistic sources, is essential the welfare of the public" and the D.C. Circuit in Sinclair which concluded that "Congress may, in the regulation of broadcasting, constitutionally pursue values other than efficiency – including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy." Because cross-ownership reduces the number of owners in a market, it is rational to assume that it reduces diversity; it must show some other benefit if it is to be in the public interest. The FCC data gathering focused on the quantity of news produced as a potential measure of that benefit. If such a benefit could be shown, there would then be a debate over whether the trade off should be made. Should we trade less diversity for more output? In this case that more difficult debate does not occur because cross-ownership does not increase the amount of news available in the market; it is more likely to decrease it.

[5] 52 F. Supp. 372.

That this was the standard by which the policy was measured is clear in the record, as Tribune notes, the Supreme Court accepted a policy in which "the Commission sacrificed the known localism benefits of newspaper cross-ownership against "hoped for" gains in viewpoint diversity."[6] Of course, Tribune believes the arithmetic has changed (indeed, was never right). Our analysis shows there are no localism benefits of cross-ownership (measured by the quantity of news) while there are diversity costs (measured by slant and the correlation of editorial position and reportorial slant).

Media General Incorrectly Attempts to Lower the Bar to Curtail Restriction on Newspaper-TV Cross-Ownership

Media General goes farther. It wants an extremely weak hypothesis – not even that the rule does no harm.

> Under Section 202 (h)… For the Commission to retain an ownership rule such as newspaper cross-ownership, the obligation on the Commission is not to determine whether the rule does no harm but rather affirmatively to determine that the rule "is necessary in the public interest as a result of competition."[7]

So Media General hypothesizes the odd situation in which the repeal of the rule creates a harm, but it still in the public interest!

The consultant for the National Association of Newspaper (NAA) reviews claims that our critique of the FCC approach is wrong. Quoting the Chief Economist approvingly, the NAA advocates a no harm standard.

> In what follows, I assume that cross-ownership has the potential to decrease the quantity or quality of news coverage or local public affairs available in the local media. If it does not, then one could justify dropping or significantly relaxing the cross-ownership restriction on those grounds alone. The standard laid out in this statement is one that would be adopted by most economists: if certain conduct does no harm, then the conduct should not be prohibited.[8]

The standard the FCC must apply is not the will of the economists; it is the will of the Congress as allowed by the Supreme Court. If the economist's inclination is consistent

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[6] Tribune, Reply Comments, : In the Matter of 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06-121; In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277; In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, MB Docket No. 01-235; In the Matter of Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, MB Docket No. 01-317; In the Matter of Definition of Radio Markets, MB Docket No. 00-244,October 22, 2007, p. 5.

[7] Media General, p. 6.

[8] NAA, Attachment 1, p. 1.

with the will of the Congress, fine; but if it is not, as we have shown, then the will of the Congress takes precedence.

Media General plays an old refrain that has failed to carry the day. Media General, both in its Comments and in the "econometric appendix" by an outside party, claims that the Commission must modify the cross-ownership rule unless the Commission can prove that cross-ownership "affirmatively" is in the public interest and that the evidentiary support must be "clear and compelling."

> For the Commission to retain an ownership rule such as newspaper cross-ownership, the obligation on the Commission is not to determine whether the rule does no harm but rather affirmatively to determine that the rule is "necessary in the public interest as the result of competition."…Any change would require clear and compelling evidentiary support and a detailed and persuasive explanation for altering the direction laid out in 2003.[9]

Media General is wrong on both counts. First, the Commission need not prove that cross-ownership "affirmatively" is in the public interest to retain the cross-ownership ban and that failure to do so should result in "deregulation." This tired argument has been rejected, after extensive briefing, by both the DC Circuit and, in *Prometheus Radio Project* itself, the Third Circuit.[10] In interpreting the applicable legal standard, set out in §202(h) of the 1996 Telecommunications Act, the Third Circuit held that the Commission was wrong in 2003 to conclude "that §202(h) 'appears to upend traditional administrative law principles.'"[11] The Court further held that §202(h) does not provide a "deregulatory presumption" to eliminate rules that cannot be affirmatively supported with evidence.[12] Indeed, in *Prometheus Radio Project*, the Court required the FCC to justify, with reasoned analysis and substantial evidence, attempts to *modify* rules, and struck down the FCC's inability to do so.[13] While the Commission must provide reasoned analysis to modify *or* to maintain the current rule, it is reasonable to maintain the *status quo* unless evidence suggests otherwise. As the Supreme Court unanimously stated, "the revocation of an extant regulation … constitutes a reversal of the agency's former views as to the proper course. A "settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is

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[9] Media General, pp. 4-5 (citing Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970)). Media General's expert makes the same argument, with the same words. *See id.* at Appendix A, 6-7 (Econometric Review by Dr. Harold Furchtgott-Roth) ("For the Commission to retain an ownership rule such as newspaper cross-ownership, the obligation on the Commission is not to determine whether the rule does no harm but rather affirmatively to determine that the rule is 'necessary in the public interest as the result of competition.'").

[10] *See, e.g.*, Prometheus Radio Project v. F.C.C., 373 F.3d 372, 390-95 (3d Cir. 2004).

[11] *Id.*

[12] *Id.* at 395.

[13] *See, e.g., id.* at 402-412.

adhered to."[14] Here, the settled course is the total prohibition on newspaper-broadcast cross-ownership.

Second, Media General claims that clear and convincing evidence is necessary for an agency to change course and do anything short of "total repeal."[15] Its only support for this proposition is a D.C. Circuit case from 1970. That case does not support Media General's claim; it merely holds that an agency must provide a reasoned analysis: "[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute."[16] Compelling evidence is not necessary: rather, the FCC must merely provide reasoned analysis: "[N]o matter what the Commission decides to do to any particular rule—retain, repeal, or modify (whether to make more or less stringent)—it must do so in the public interest and support its decision with a reasoned analysis."[17]

More importantly, the FCC would in fact have to change course to adopt a total repeal. The only decision upheld by the Court in 2003 was that the Commission could reasonably conclude, on the then-available record, that a blanket ban was unnecessary. No rule was upheld—let alone a total ban. The FCC's unlawful rule did not even totally repeal the ban. Rather, the Third Circuit stayed implementation of any new rules, meaning that the full cross-ownership ban remained in effect, and was the last lawful rule in effect. Deviations from that rule would require reasoned basis.

Analysis of Slant Does not Violate the First Amendment and it Supports the Restriction on Newspaper-TV Cross-Ownership

The FCC commissioned a study to evaluate the slant of news broadcasts. The Industry Commenters seem to like that study as long as it supports their point of view that there is no slant in the media.[18] However, when we introduce new variables that show that there is slant in news reporting, the Industry Commenters suddenly discover that studying content is forbidden by the First Amendment. "NAB has reservations about the extent to which commenters apparently want the Commission to become involved in examining the specific content – and more problematic still the viewpoints – of news programming and whether such programming is balanced."[19]

This argument is nonsensical. The Milyo study claimed to evaluate the viewpoints of the stations – as Tribune puts it, "The Milyo Report also reinforces a point made earlier in these

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[14] *See, e.g.*, Motor Vehicle Mfrs. Assn. v. State Farm Mut., 463 U.S. 29, 41-42 (1983).

[15] Media General, p. 4.

[16] Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970) (citations omitted).

[17] Prometheus Radio Project v. F.C.C., 373 F.3d 372, 395 (3d Cir. 2004).

[18] Tribune, p. 6, "there is no *statistically significant correlation* between the slant of a newspaper and the slant of its cross-owned broadcast station." NAA, pp. 12-15, NAB, p. 30.

[19] NAB, p. 31.

proceedings that broadcast stations do not represent monolithic "viewpoints."[20] Our critique of two of its four slant variables points out that it had failed to measure slant properly because it had assumed specific types of content represented slant in a specific direction, without actually assessing what the slant of the story was. If you are going to analyze slant, as Study 6 claims, you ought to analyze it, not just assume it. Deciding an issue is democratic and counting references to it is a subjective judgment – even if the claim is that someone else rendered the judgment.

Second, the argument confuses research with regulation. A finding that the cross-ownership results in the coordinated slanting of news and editorial opinion is a comment on cross-ownership, not an attempt to regulate content.

Third, two measures of slant that we found reasonable, the amount of time candidates were shown speaking on the news and the amount of time candidates were covered, do not involve subjective judgments about who "owns" an issue or require contextual analysis of the content. With properly defined variables and correctly specified statistical models, the counting methodology shows grandfathered stations exhibit slant.

The existence of slant supports the concern about cross-ownership. The direction of the slant is irrelevant. Thus, the Media owners claim that because we note that the slant of cross-owned stations leans Republican and the economic interests of the owners does as well, we are biased toward Democrats.[21] In fact, we have argued that the behavior of the waived stations (slanting the opposite way to achieve a short term gain) is equally troubling. It is the existence of bias that matter and makes cross-ownership problematic.

Tribune touts the finding that "Professor Milyo's study found that there is no statistically significant correlation between the slants of a newspaper and its co-owned station for any of these four measures."[22] Yet, when we define the variables properly and specify the statistical model fully, showing that there is slant in reporting and a statistically significant correlation between the slant of a newspaper and the slant of its cross-owned broadcast stations, we are told "it would be highly problematic for the government to justify intrusive ownership rules based on considerations such as the actual news "stories" aired, the political or other "perspectives" offered, or the inherently subjective perception of the "balance" of the programming."[23] This is a nice *Catch 22.* A negative finding of no slant justifies getting rid of the rule, but a positive finding, based on the same measure, does not justify keeping it.

[20] Tribune, p. 6.

[21] NAB, p. 14.

[22] Tribune, p. 3.

[23] NAB, p. 31.

II. ANALYTIC FUNDAMENTALS

ANALYTIC FUNDAMENTALS

The Exercise of Market Power Can Lead to Lower Output

The consultant for the Newspaper Association of America launches his critique of our analysis with a theoretical complaint.

> Before turning to the statistical results, it is important to point out that… CU/CFA/FP provides no coherent theory of why on might expect a market-wide decrease in broadcast news minutes to result from cross-ownership… When the cost of production for a firm is reduced, economic theory predicts that the firm will expand output, other factors being equal.[24]

NAA and its consultant fail to recognize that other things are not equal when a newspaper-TV combination is created. Economic theory predicts that when a reduction in competition results in the accumulation of market power, output might be reduced to increase profits. The cross-ownership merger creates a situation in which a dominant firm gains an advantage over its rivals and leverages its preferred access to the print news. This results in a reduction in competition (i.e. "crowding out"). It then squeezes resources and increases profits by reducing its output (because it has less concern about losing its audience).

We have provided extensive analysis of the market power implications of cross-ownership mergers, demonstrating that, by the traditional standards of the Department of Justice the "raise significant competitive concern" or are likely to create or enhance market power."[25] We understand why the NAA and its consultant would not want to accept the possibility of the exercise or market power with its attendant negative impact on the public welfare, but it is incorrect to say that we have not offered a theoretical framework to justify our concern.

Aggregation of Station Output to the Market Level Output is Correct

Media General criticizes us for doing analysis at the market level. This is the proper level of analysis for the policy question. This is a routine practice, which one of the FCC's own studies undertook.[26] Moreover, we conducted the analysis in the proper manner.

Media General's effort to turn the level of analysis into a matter of statistics is nonsensical. First, Media General conceded that "within the same DMA, variation in news output can be attributed to variation in specific characteristics of the station such as ownership. When data are aggregated, the news output for a DMA reflects only the characteristics of the DMA, with more hours of broadcast news not surprisingly associated with larger DMAs in which there are more stations."[27] To say that the characteristics of stations, including ownership,

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[24] NAA, Attachment 1, p. 2.

[25] Consumer Groups, Initial Comments, October 23, 2006, Studies 16-24.

[26] Media General, Appendix A, p. 11

[27] Id

do not contribute to the total amount of news in the market is absurd. Of course, they do. It is a tautology. Nor do you lose “firm-specific information, such as ownership, affiliation, channel location”[28] As long as we count the output of the stations, that information is fully reflected in the amount of news the station produces.

To the extent that those characteristics in the aggregate might affect the aggregate output of the news in the DMA, we incorporate them as DMA level control variables. Media General recognizes this, for example, when they quibble with our formulation of the market-level affiliation variable.

The amount of news available in a market is the amount of news produced by the stations in that market and their output reflects the station’s characteristics. Of course, one should take into account the market characteristics that might also affect the amount of news produced in the market (and avoid attributing news production effects to the presence of cross–ownership that rightly belong to other market characteristics). Media General has simply ignored the exhaustive list of DMA level control variables we included to account for the characteristics of the DMA.

Covariates and Control Variables Were Properly Handled

At a number of points, Media General complains that the effects of other variables on news production are large, compared to the effects of cross-ownership (e.g. “these parent-specific effects completely overwhelm the estimated effects of cross-ownership”[29];“there is substantial variation in news production and other factors across DMAs holding other factors constant… it would not be surprising to find that differences in DMA characteristics unrelated to cross-ownership will be greater than the effect of cross-ownership in the 8 DMAs with cross-ownership waivers”.[30]) Again the critique is nonsensical, not to mention hypocritical.

Media General seems to have forgotten the purpose of introducing covariates and control variables into a statistical policy analysis. The purpose of the exercise is precisely to isolate the specific impact of the policy variables under consideration. The fact that we are controlling for important, non-policy determinants of output is a good thing. Indeed, if we had not, we would have been accused of under-specifying the model. The peer reviewers recommended additional control variables, such as controlling for parent-specific fixed effects. (We sincerely doubt that Media General intends for the FCC to regulate the parents, to eliminate the specific effects, where they have a negative effect on news production).

The implication of this position is more profound. Media General takes the position that because other things are more important, ownership is unimportant. That is simply not true. Moreover, since in media markets basic demographic characteristics tend to be the most important factors, this approach would undercut all policy analysis. Neither the Congress nor the FCC is constrained to regulating only the most important factors, although it would possibly suit Media General if that were the case.

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[28] Id.

[29] Id., p. 18.

[30] Id., p. 9.

Finally, this critique, if it were valid, would apply to the FCC studies as well, although Media General preferred to cite results it liked, rather than criticize the statistical model. Media General might have missed this point in the FCC studies because the author of Study 6 hid the coefficients on the covariates and Media General did not to look for them. If it did, it chose not to make this valid complaint.

Reporting and Characterizing the Pattern of the Evidence: What is Good for the Goose is Goose for the Gander

Sweeping statements are fine with the Industry Commenters, when they support their point of view, e.g. NAB notes:

> Professor Milyo finds that cross-owned stations offer more news overall, more local news, more local weather and sports, and more coverage of state and local politics than other stations, *with some of these differences statistically significant.*[31]

When we analyze the data with properly defined variables and fully specified statistical models that contradict the claims of the media corporations with much more precise statements, we are accused of "overstating" the results.[32] Media General points out that in one of our sets of statistical analyses, "most of the estimated coefficients are insignificant."[33] Of course, some of them are significant, but the standard for Consumer Commenters would appear to be higher than for the Industry |Commenters.

NAB goes on to argue:

> Consumers Union, *et al.'s* proclaimed negative result for the market level news total is significant in only one of the four models that Consumers Union re-estimated on a market-level. That is hardly a robust result – or one that even supports the unequivocal nature of the claims they make. Even when Consumers Union, *at al.* "[r]efine the variable to distinguish between grandfathered and waived situation" (which, as explained above, is highly dubious), only two of the four coefficients are negatively statistically significant. And when these commenters examine small markets… this claim is overstated again as the regression results are mixed and many lack statistical significance."[34]

Each of the FCC studies that address newspaper-TV cross ownership lacks robustness by *this* standard, but you would not know it from the statements of the Industry Commenters – e.g. "[w]ith the latest iteration of studies, the FCC has again received evidence of the increased news

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[31] Tribune, Reply Comments, October 22, 2007,p. 5, emphasis added.

[32] NAB, p. 38.

[33] Media General, p. 13.

[34] NAB, pp. 16-17.

benefit of cross-ownership and the corresponding lack of any correlation between cross-ownership and harm to viewpoint diversity."[35]

Our analysis reports the precise level of confidence that one can have in the coefficients by consistently describing the relationship between the coefficient and its standard error in five categories – smaller than the standard error, larger than the standard error, statistically significant at the .05, .01 and .001 levels. These are standards widely used in the econometric literature. In an econometric model, a coefficient larger than its standard error contributes to the explanation. Our precise statement of the findings as depicted by NAB, "'[e]very coefficient is negative, three of the four are larger than their standard errors' (although only one is significant, as NAB noted above)"[36], is more precise and just as correct as the claims made by the media corporations based on "some statistically significant coefficients."[37] Peer reviewers[38] and FCC authors[39] also make broad reference to patterns of coefficients, while reporting confidence intervals.

Framing the Independent Variable with a Distinction Between Grandfathered and Waived Stations is the Correct Formulation. The Cross-Owned Variable used in the FCC Studies is Incorrect and Biases the Estimate of News Production.

The peer reviewer of an earlier study, recently released by the FCC makes the point that a simple cross-owned dummy variable is highly suspect.

> Cross-ownership is not randomly assigned across stations. Ownership decisions are made by profit-maximizing companies….To keep things simple, consider Area A where there is very little demand for local news, and the television stations do not provide much local news. In Area B, instead, there is more demand for local news and the televisions indeed provide such news. Now assume that we will allow cross-ownership. The newspaper owners are more likely to buy stations in area B rather than in area A, since doing so provides more of an outlet for the news already gathered by the newspaper, allowing for cost-

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[35] Media General, p. iii.

[36] NAB, p. 16.

[37] Tribune, Reply Comments, October 22, 2007, p. 5.

[38] Referee report by Stefano DellVigna, "It is true that, in this case, as the authors say, there is on significant relationship for a positive effect of cross-ownership on the quantity of news provided. However, the sign of the coefficient on cross-ownership is still positive an quite sizeable… I would summarize this evidences as saying that there is weak (not statistically significant evidence that, even conditional on availability of local news, there ay be some effect of cross-ownership on the quantity of local news broadcast.

[39] Kenneth Lynch, Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical An Analysis of Radio Airplay," pp. 17-18, "The Implication is that as owners expand their radio operations by acquiring more stations (either in- or out-of-market), the stations they own are more likely to air news, but the quantity of news aired on each stations may gall such that the overall quantity of news is not significantly affected (note: A an experiment, the specification was also estimated including instead the count of other in market news-format stations owned by the parent and the overall number of out-of-market news-format stations owned by the parent… Although not significant, the effects of the covariate on the two parts of the model move in the same direction, providing some weak evidence that more pervasive in-market radio operating (if they are news-oriented) might air more overall. The overall marginal effect was about 13 seconds, but not statistically significant.

> saving. However, the station that is now cross-owned would have provided more news even *absent* the cross-ownership! Hence it is not the cross-ownership that is causing the local news programming, but rather the opposite.[40]

With the grandfathered stations that have been co-owned for over thirty years, there is little chance that their news production behavior reflects a strategic "purchase" decision. Their behavior reflects the effects of being in the cross-owned condition for a lengthy period of time. With the waived stations, there is a much greater danger of the strategic purchase being confounded with the cross-ownership effect, as we have argued throughout these proceedings. **Hence, our decision to distinguish between and focus on the grandfathered category is justified**.

More importantly, all of the results based on the undifferentiated cross-ownership variables are dubious. The red flag raised by this peer reviewer applies to the improperly defined variables of all the FCC studies:

> Due to endogeneity, the methodology used by the authors is not certain to provide a correct measure of the impact of cross-ownership…
>
> This kind of endogeneity problem implies that one should be very careful with conclusions from cross-sectional studies such as the one here examined. In general, the endogeneity would bias upward the estimates of the impact of cross-ownership on the provision of local news, since the stations that already were providing local news are more likely to be a target for cross-ownership. Hence, the limited evidence in this paper that cross-owned stations provide more local news may be due to endogeneity, rather than being a causal relationship. Obviously, this completely changes the interpretation of the findings.[41]

Our analysis shows that the grandfathered stations produce less news than the waived stations and behave differently in other ways. As the following exhibit shows, the differences between the coefficients are statistically significant. Therefore, the claim that cross-owned stations produce more news, so loudly trumpeted by the FCC authors and the Industry Commenters based on the incorrectly defined variable,[42] must be abandoned.

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[40] Referee report by Stefano Della Vigna, UC Berkeley: Newspaper/Television Cross-Ownership and Local News and Public Affairs Programming on Television: An Empirical Analysis by Michael Yan.

[41] Referee report by Stefano Della Vigna, UC Berkeley: Newspaper/Television Cross-Ownership and Local News and Public Affairs Programming on Television: An Empirical Analysis by Michael Yan.

[42] Tribune; Further Comments of Belo Corp., Bonneville International Corp., Media General, Morris, NAA, NAB, filed October 22, 2007; Jeffrey Milyo, "The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News," September 2007; Gregory Crawford, "Television Station Ownership Structure and the Quantity and Quality of TV Programming," July 23, 2007; Daniel Shiman, "The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming," July 24, 2007.

EXHIBIT I:
STATISTICAL SIGNIFICANCE OF DIFFERENCE BETWEEN GRANDFATHERED AND WAIVED CROSS-OWNED VARIABLES

Exhibit Number in Consumer Groups Comments	Dependent Variable	t-statistic for Difference Between Grandfathered and Waived Cross-Owned Coefficients (gfath-waiv)
VIII-6 (column 8)	Minutes of Local News	-1.01
VIII-10 (column 3)	Minutes of Local News	-2.17
VIII-13 (column 8)	Minutes of News	-2.78
VIII-17 (column 8)	Local News Seconds (excluding sports and weather)	-2.24
IV-7 (Non-Pooled, Milyo's preferred model)	Candidate Speaking Difference (D-R)	-1.50
IV-7 (Non-Pooled, Consumer Group's preferred model)	Candidate Speaking Difference (D-R)	-1.79
IV-7 (Pooled, Milyo's preferred model)	Candidate Speaking Difference (D-R)	-1.35
IV-7 (Pooled, Consumer Group's preferred model)	Candidate Speaking Difference (D-R)	-1.79
IV-7 (Non-Pooled, Milyo's preferred model)	Candidate Coverage Difference (D-R)	-1.66
IV-7 (Non-Pooled, Consumer Group's preferred model)	Candidate Coverage Difference (D-R)	-1.72
IV-7 (Pooled, Milyo's preferred model)	Candidate Coverage Difference (D-R)	-1.02
IV-7 (Pooled, Consumer Group's preferred model)	Candidate Coverage Difference (D-R)	-1.38
IV-7 (Pooled, Milyo's preferred model w/ endorsement)	Candidate Speaking Difference (D-R)	-1.45
IV-7 (Pooled, Consumer Group's preferred model w/ endorsement)	Candidate Speaking Difference (D-R)	-2.23
IV-7 (Pooled, Milyo's preferred model, w/ contributions)	Candidate Speaking Difference (D-R)	-1.39
IV-7 (Pooled, Consumer Group's preferred model, w/ contributions)	Candidate Speaking Difference (D-R)	-2.00
IV-7 (Pooled, Milyo's preferred model w/ endorsement)	Candidate Coverage Difference (D-R)	-1.04
IV-7 (Pooled, Consumer Group's preferred model w/ endorsement)	Candidate Coverage Difference (D-R)	-1.68
IV-7 (Pooled, Milyo's preferred model, w/ contributions)	Candidate Coverage Difference (D-R)	-0.68
IV-7 (Pooled, Consumer Group's preferred model, w/ contributions)	Candidate Coverage Difference (D-R)	-0.94

Correlation and Causation in Policy Analysis

Media General chides us for crossing the line between describing correlations and talking about causation. Virtually all of the analysis in these studies is essentially correlation analysis, since there are no changes across the times that are analyzed. Thus, Media General incorrectly interprets Crawford's coefficient as a temporal change. "In other words, if a station that is not cross-owned in any market were to be purchased by the unspecified parent of a local newspaper, the expected news aired by the station would *increase* as measured by the single cross-ownership variable."[43] The statement is not true when all of the relevant characteristics of the station are taken into account. It is a behavioral conjecture based on an incorrectly estimated correlation.

There is no analysis anywhere, including the FCC quantitative studies, of what happened when non-cross-owned stations were purchased by a newspaper.[44] What we have in the data are observations about what cross-owned stations do compared to non-cross owned stations, not observations about what how they behaved when they *changed* status. However, as described in the next section, our use of the grandfathered variable addresses the most obvious weakness of cross sectional analysis, identifying properly the effect of being in the condition of cross-ownership.

All of the analyses make a prediction based on the correlation of cross-ownership with the output of news about a change of status, as does Media General in its critique. It is just that the change of status statement that Media General wants to make is not supported by the data at the market or the station level.

To paraphrase the Media General formulation of the change of status prediction, we would say:

> Our analysis shows that if a market has no cross-owned station or a station is not cross-owned and a station in the market were to be purchased by the unspecified parent of a local newspaper, that amount of news produced by that station and available in that market is *more likely to decrease than increase* in the long term and the news produced by that station *is likely to be biased and correlated with the editorial point of view of the newspaper.*

[43] Media General, p. 17.

[44] Study 10 attempts a qualitative analysis of the before and after effects of the relaxation of ownership limits on minority ownership. Earlier, Consumer commenters filed a similar qualitative study, which was linked, conceptually to a quantitative cross-sectional study.

III. Specification of Variables and Tests of Hypotheses

Media General objects to our formulation and testing of the policy variable. They claim that we "speculate that there is a difference in behavior between grandfathered cross-owned operations and those operating under waiver"[45] and "postulate a theory of broadcaster behavior in markets with newspaper cross-ownership that has at least three parts:

(1) Stations with newspaper cross-ownership possibly may air more news;

(2) Other stations in the market will react by offering less news; and

(3) The net sum of broadcast news in a market will decline."[46]

Cross-Owned Stations Do Not Air More News.

Media General goes on to suggest "[t]he proper test for at least the second part of this theory is not the market-level regression analysis suggested, but never actually run, by Consumer Commenters. Rather, a better test would be based on station-level data with a dummy variable for cross-owned stations and a separate dummy variable for non-cross-owned stations in the same market with cross-owned stations."[47]

This criticism of our analysis is incorrect. First, this is actually the way we created the policy variables. With three ownership conditions – non-cross-owned, waived and cross-owned – one must drop one variable "for identification purposes."[48] The best practice is to drop the dummy variable with the largest number of observations, which we did. The resulting coefficients are to be interpreted with respect to the excluded variable, which is the policy issue before the Commission, and precisely what we did. The central policy hypothesis is fully and properly tested in our regressions. Grandfathered cross-owned stations produce less news and exhibit more bias than non-cross-owned stations. Furthermore, Media General's suggestion for a station level analysis that used "a separate dummy variable for non-cross-owned stations in the same market with cross-owned stations" would result in a multicolinearity problem, and render the analysis useless (indeed, though we do not present the results here, the simple addition of this variable to Study 3's "preferred" model renders the coefficient on cross-ownership completely insignificant, something likely due to multicolinearity introduced by the new dummy variable, which has a VIF value near 100).

Media General's objection must focus on the side issue of whether the observable difference in behavior between waived and grandfathered stations is statistically significant. That is the test that is not directly embodied in the regression, but which can be derived from it. Thus, we properly conducted tests for the first part of the theory. The Media General criticism of the test of this part of the theory is incorrect. The variable was defined correctly and, as shown above, the hypothesis was specified correctly and the additional control variables belong in the

[45] Media General, p. 7.

[46] Id., p. 13.

[47] Id.

[48] Id., p. 9.

analysis. The conclusion stands. Grandfathered, cross-owned stations do not produce more news.

The difference in the behavior of the waived and grandfathered stations was evident in our original analysis. With a strong reason to distinguish the two based on the structure of the statistical model and the data, no statistical test is necessary. The question of whether waived and grandfathered stations behave differently is addressed above in Exhibit 1. As this Exhibit shows, there is a real difference between the grandfathered and waived coefficients, which is seen in the t-statistics for the hypothesis that the difference between the coefficients is zero. In nearly every case (of the "preferred models") the hypothesis of no difference between the grandfathered and waived coefficients is rejected at the threshold of one-tailed 10 percent ($t>1.28$); in half of the cases the hypothesis of no difference is rejected at the threshold of two-tailed 10 percent ($t>1.64$).

There is a Crowding out Effect on non-Cross-Owned Stations in Cross-Owned Markets and They Produce Less News.

Contrary to Media General claim that we cannot test the hypotheses at the market level, we believe one can and must. We have actually tested the hypothesis at both levels. We present below an even more direct method to test the "crowding out" hypothesis, something we did not have time to complete in the short comment period. A direct test of the "crowding out" hypothesis is to compare the output of non-cross-owned stations in markets where there is no cross-ownership and markets where there is cross ownership. This test, which is shown in Exhibit 2, **strongly supports the crowding out hypothesis**. That is, **non-cross-owned stations in markets with cross-owners present produce less news than non-cross-owned stations in markets without cross-owners present.** The coefficients on the cross-owned variables are all negative and ***highly*** statistically significant. **The presence of a cross-owned station leads the other stations in the market to collectively curtail their local news output by about 25 percent.**[49] This is a powerful test for the second part of the theory. Furthermore, this model incorporates Media General's critique of exclusion of the number of stations from our original preferred model. While we believe the DMA size variable serves as a proper proxy for this factor, even when we control for the number of news stations (the appropriate application of Media General's critique; see explanation below), we still see that cross-ownership leads to a crowding out curtailment of news production by the non-cross-owned stations, collectively.

[49] This result is obtained from the market level analysis of Study 3's data, presented below in Exhibit 2. The average market output of local news from Study 3 was approximately 4,500 minutes. The coefficient for markets with cross-owned stations was approximately -1,100.

Exhibit 2 - Evidence Supporting the “Crowding-Out” Hypothesis

OLS on Minutes Output by Non-XO Stations	Study 3 (Local News Minutes)		Study 4 (All News Minutes)	
	Preferred XO	Preferred W&G	Preferred XO	Preferred W&G
mkt_xo_present	-1134.622126		-4528.131752	
	[185.630005]***		[665.314955]***	
mkt_xowav_present		-1045.566853		-3866.694616
		[338.925992]***		[966.191103]***
mkt_xogfatd_present		-1166.941384		-5108.620673
		[203.307049]***		[771.537511]***
Number of Non-XO News Stations	658.270892	657.602192	2,554.10	2,546.17
	[51.561722]***	[51.332209]***	[261.396781]***	[263.013309]***
dma_tvhh	650.731721	662.09395	-0.000269	-0.000264
	[374.218129]*	[379.826735]*	[0.001311]	[0.001325]
dma_tvhh_2	-48.188282	-51.434585	0	0
	[39.168585]	[41.358570]	[0.000000]	[0.000000]
poppercentblack	-1.066198	-1.14109	-20.998444	-24.70895
	[4.731105]	[4.757034]	[15.574305]	[15.397924]
poppercenthisp	6.597095	6.663918	54.959685	52.522078
	[4.830134]	[4.836471]	[22.932599]**	[22.958915]**
dmapercapitaincome	0.020187	0.020795	0.139456	0.136769
	[0.021842]	[0.022083]	[0.058244]**	[0.057869]**
mkt_pcttvhh_arecable	-7.700957	-7.638674	0	0
	[5.027231]	[5.062068]	[0.000000]***	[0.000000]***
mkt_pcttvhh_aredbs	15.625733	16.068951	-5.499805	-4.66866
	[10.681062]	[10.915621]	[16.048146]	[15.889006]
mkt_pctinternethh	-35.91184	-36.208912		
	[13.054076]***	[13.040190]***		
mkt_pctbbhh	22.061658	22.036845	0.051178	-0.004471
	[7.272969]***	[7.279834]***	[0.513029]	[0.464913]
mkt_pct_comsta	-5.564783	-5.60168	81.44715	81.119221
	[4.395354]	[4.389036]	[18.988944]***	[19.075936]***
mkt_pct_oandosta	43.40838	43.605831	118.613395	117.577801
	[14.491489]***	[14.516907]***	[48.760324]**	[48.478687]**
mkt_pct_spanlangsta	-11.559074	-11.660157	-49.685581	-57.696237
	[9.454013]	[9.435437]	[43.292918]	[43.556346]
mkt_pctofcomm_arebig3	-4.74265	-4.747181	80.390777	79.363466
	[2.953102]	[2.952997]	[16.796701]***	[16.698409]***
fox_mkt_true	-396.116536	-402.31298	-373.561193	-501.62307
	[142.098732]***	[141.300249]***	[785.886538]	[783.301031]
mkt_avg_parentuspctcovg	-28.031846	-27.912355	181.445584	143.5748
	[31.171348]	[31.273057]	[110.712032]	[105.185395]
mkt_sum_uniqparrev	-42.171094	-42.631507	-0.390308	-0.291776
	[85.400617]	[86.135736]	[0.303154]	[0.288613]
mkt_pct_duopsta	4.981085	4.870162	-6.918781	-8.848879
	[5.342601]	[5.364175]	[14.869584]	[14.745870]
mkt_pct_locown_tvsta	-0.331645	-0.18859	-24.430237	-23.299372
	[2.662713]	[2.616380]	[10.647245]**	[10.640804]**
mkt_pct_femownsta	37.018352	37.410262	132.908611	137.370326
	[14.973416]**	[15.115735]**	[51.596287]**	[50.381693]***
mkt_pct_minorownsta	-3.734835	-3.099766	4.644633	7.532904
	[15.272969]	[15.144699]	[54.560097]	[53.828212]
mkt_hhirev	-0.102652	-0.103517	-0.462724	-0.489992
	[0.037044]***	[0.036752]***	[0.177456]***	[0.178084]***
mkt_pct_vhfsta	1.679801	1.691821	0.458029	-0.255672
	[1.781815]	[1.783276]	[6.369304]	[6.275175]
dummy2003			-1088.053132	-1076.250768
			[244.439900]***	[244.931036]***
dummy2004	-29.977095	-31.000482	-536.415326	-534.495097
	[63.635842]	[64.330518]	[233.727149]**	[232.637725]**
dummy2005	-97.94097	-98.84136	-741.139053	-723.312715
	[99.657985]	[100.301432]	[296.011906]**	[294.672701]**
Observations	621	621	840	840
Adjusted R-squared	0.92	0.92	0.9	0.9

Robust standard errors in brackets
* significant at 10%; ** significant at 5%; *** significant at 1%

Markets With Newspaper–TV Combinations Do Not Have Produce More News

One still must examine the *total* output of all stations (cross-owned and non-cross-owned) in all markets to test the third part of the theory. This is what our initial market level analysis was intended to do. Media General's suggests a re-specification of the model to include the number of stations as a control or independent variable, arguing "most broadcast stations offer some news."[50] In fact, many stations do not offer local news, which is why the Heckman analysis at the station level is correct and why including "obvious proxies,"[51] as we did, makes sense at the market level.

Exhibit 3 shows that the results of introducing the number of stations providing news in the market reduces the size of the coefficient on the two policy variables – grandfathered and HHI, but it does not change the conclusion one iota. The signs are the same, all negative. The coefficients on cross-ownership are smaller than their standard errors. The coefficients on concentration (HHI) are remain significant at the .001 level.

Exhibit 3: Coefficients on Grandfathered Variable, Market Level Minutes of News Production

	Households	Households & Stations
STUDY 3 (Local News)		
Grandfathered	-281.87	-148.20
	(283.350)	(217.44)
HHI	-.421***	-.10497***
	(.051)	(.1778)
STUDY 4 (All News)		
Grandfathered	-2075.24*	-132.39
	(2111261)	(736.15)
HHI	-.1.952***	-.4935***
	(..216)	(.1778)

Cross-ownership does not deliver a "true benefit," if the benefit claimed is a greater quantity of news. And if the cross-ownership relationship leads to an increase in market concentration, it will likely lead to a significantly lower output of news at the market level.

[50] Media General, p. 11.

[51] Media General, p. 12.

Details of Model Specification

The consultants for Media General and the NAA both criticize our use of a variable that distinguishes the "big 3" and Fox, and suggests, "it is odd, however, that CU/CFA/FP treats affiliation with Fox quite differently than its treats affiliation with ABC, CBS, NBC."[52]

In fact, a quick glance at the FCC's studies shows that there is a good reason to distinguish between the "big 3" and Fox. Studies 3, 4.1 and 6, each show that the "big 3" produce much more news as Exhibit 4 shows:

Exhibit 4:
Network Affiliation and News Production

	Coefficients in Local Minutes Produces		
Network	Study 3 (Table 17)	Study 4.1 (Table 1.6)	Study 6 (Table 4)
ABC	.13	2769	320
CBS	.16	2720	327
NBC	.17	2086	322
Fox	.09	672	102

Including dummy variables for the big 3 networks separately has no impact on the analysis, except to exhaust degrees of freedom.

The NAA consultant quibbles with the variables we have included in the statistical model, noting that "[e]ven though some of these variables may be policy variable of interest to the FCC, it is appropriate to include them as explanatory variables in a regression only if there is some reason to believe that they influence the dependent variable".[53] This is a criticism that applies to the FCC studies, although the NAB did not bother to make it when they liked the results.

In fact, we pointed out that we doubted the theoretical basis for many of the variables included in the FCC models,[54] but for purposes of the analysis, we would keep the variables the FCC Studies *authors themselves* had included in the analysis. In our comments we stated:

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[52] NAA, Attachment 1, p. 4.

[53] Id., p. 3.

[54] In fact, we prefer parsimonious models, which include in the final specification only variables that are theoretical based and contribute to the explanation (i.e. have coefficients larger than their standard errors).

> The general approach of the FCC studies was to provide a number of different specifications, including and excluding different sets of variables, with the author analyzing a "preferred" specification. The theoretical basis for some of the specification was not well grounded and each of the studies used a different set of variables. There are literally thousands, if not tens of thousands of possible combinations of variables that might be considered. Given the compressed time frame allowed for comments on the studies, for the purpose of this analysis we present only the full model (see Exhibit IV-2). By that we mean we included the full fixed effects models including all of the covariates and control variables used in study 6 and the additional control variables we identified in other studies, as well as all the policy variables.[55]

This is another *Catch 22*. If we include the variables, we are accused of including too many, if we drop them, we will be accused of not conducting a fair test.

The NAB complains that our analysis in which we consider the effect of the creation of duopolies we incorrectly "attempt to change two variables (HHI and duopoly) concurrently, while holding all the other variables constant, and using the estimated coefficients appears highly questionable."[56] However, the model properly specified the independent effects of duopoly and concentration.

When examining the impact of the merger of two TV stations, two characteristics of the market change, which have two independent effects on the market. The merger creates a duopoly *and* it increases the concentration (HHI) of the market. The other characteristics do not change. A merger between a number one and a number two station will have a greater effect on the extent of competition in the market than a merger between a number five and a number six TV station. The effect through the HHI is a good measure of the effect. The FCC has correctly recognized this in its policy that does not allow mergers between the top four firms in the market.

PICKING NITS

The Industry Commenters engage in a fair amount of nit picking and name calling that does not amount to anything and is not supported with any analysis whatsoever.

Media General claims that "curiously, despite the central importance that they attach to market-level analysis, Consumer Commenters later in their report focus their attention on station-level analysis."[57] This is not curious at all. The FCC devoted an immense amount of attention to the station-level analysis, while it ignored the market level. We started with the market level, but the sheer weight of attention the FCC devoted to the station level compelled us to spend a lot of time on it.

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[55] Consumer Groups, Further Comments, October 22, 2007, p. 92.

[56] NAB, p. 25.

[57] Media General, p. 10.

"Much of the Consumer Commenters' Further Comments focuses on the alleged shortcomings in the *conception* of the FCC studies rather than in detailed refutation of the results."[58] The first 85 pages of the comments focus on conception – reviewing the background and process by which the studies came into existence, to extract relevant research hypotheses and data definitions. There are then 226 pages of text that provides detailed refutation of the results, supported by 2100 pages of statistical appendices.

Media General notes that "Professor Crawford presents two different set of regression… one set of regression results is based on DMA fixed effects presented in Table 17 and finds a significant positive coefficient with newspaper cross-ownership. The other set of regression results is based on station fixed effects as presented in Table 26 and does not find a significant coefficient for newspaper cross-ownership."[59] Both specifications are presented, and Professor Crawford emphasizes that the former, rather than the latter which represents the "strongest results."

As Media General points out, we focused on what the author of Study 3 said were his strongest results – "Consumer Commenters focus only on the results from Table 17".[60] We focused on the self-declared strongest result in the paltry time afforded for comment. We are chastised because when we "add a few station factors such as age and VHF status, the estimated coefficient on cross-ownership is no longer statistically significant…These results simply reflect the results with station fixed effects already presented by Crawford in Table 26."[61] **That is the point**. The station characteristics have been included in other studies in the literature (but Crawford did not include them.) The end result is correct. Crawford's "strong" result is weak, at best; the coefficient is not statistically significant. Without controlling for key station characteristics, Media General, regurgitates the conclusion that incorrectly attributes a difference in news production to cross-ownership, when it is caused by the other characteristics of the station.

Media General complains that "[e]xcluded is news provided by newspapers, radio stations, internet sites, etc. Thus despite claiming the centrality of total news and diversity of news in a market, Consumer Commenters' revised regressions presented in Chapter IV measure neither."[62] The FCC focused on the question of news output by TV stations, as did we in the econometric analysis. The suggestion that the presence of a cross-owned situation will induce changes in the output of other media seems a bit of a stretch, but we did examine both the demand and supply sides of the other media platforms.

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[58] Id., p. 5.

[59] Media General, Attachment A, p. 16-17.

[60] Id., p. 17.

[61] Id.

[62] Id., p. 10-11.

IV. DEMAND-SIDE ANALYSIS

The Industry Commenters are urging the FCC to bungle the audience analysis again, which will lead to another rejection by the courts. They want the FCC to analyze the wrong types of information, apply the wrong standard and do the math incorrectly.

INFORMATION ABOUT LOCAL NEWS AND CURRENT AFFAIRS, WHICH THE TRADITIONAL MEDIA STILL DOMINATE, ARE THE CENTRAL CONCERN IN THIS PROCEEDING

The FCC has finally asked questions that focus on the importance of media outlets for local news and information. However, brushing past the direct question about which are the most important sources of information about local news and current events, the Industry Commenters focus on questions about emergencies, events, sports and weather. These are certainly important pieces of information, but they are not the only types of information on which democracy depends, nor are they necessarily the most important. To the contrary, if one looks at the list of issues identified as sources of concern about localism in the early days of the Broadcast Localism Initiative, these issues are a small part of the dozens of issues.

The Third Circuit Court made the point when it examined the role of the Internet.[63]

The Supreme Court's ruling in *Red Lion* certainly points to a much broader set of concerns

> "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount…the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences…[T]he 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."[64]

Moreover, as we noted in our comments, the Chief Economist recognized that the central issues was local news and public affairs.[65] There were two questions that directly addressed the issue of local news and current affairs on which the Chief Economist focused and which can be seen to encompass the broad scope of issues that the Supreme Court suggests constitute the substance of democratic discourse.

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[63] Prometheus Radio Project. v. FCC 373 F.3d 372 at 66-68 (3rd Cir. 2004).

[64] Red Lion Broadcasting v. FCC, 395 U.S. 390 (1969).

[65] Marx, p. 15, "A study that shows that consumers use multiple sources of information for news about local public affairs, particularly sources such as the Internet or cable that would not be affected by cross-ownership between a newspaper and a local TV or radio station, would suggest that cross-ownership, even if it did reduce ownership diversity, would not have a significant detrimental effect on consumers. In addition, a study that shows that few consumers use newspaper and TV (or radio) as their primary or secondary sources of information for local public affairs would suggest that newspaper-TV (or newspaper-radio), cross-ownership would have little effect on the diversity of information available in consumers' primary and secondary sources of information."

THE AUDIENCE OF THE WEB SITES OF TRADITIONAL MEDIA VASTLY EXCEEDS THE AUDIENCE OF ALTERNATIVE WEB SITES

The Industry Commenters would also drive the FCC back down the dead end street of ignoring audiences. Counting voices, without recognizing how loudly they speak has been rejected by the courts because it leads to absurd results.[66] As the court noted,

> The Commission's decision to assign equal market shares to outlets within a media type does not jibe with the Commission's decision to assign relative weights to the different media types themselves, about which it said "we have no reason to believe that all media are of equal importance… It also negates the Commission's proffered rationale for using the HHI formula in the first place – to allow it to measure the actual loss of diversity from consolidation by taking into account the actual "diversity importance" of the merging parties, something it could not do with a simple "voices: test. Finally, assigning equal market shares to outlets that provide no local news almost certainly presents an understated view of concentration in several markets, thus contravening the Commission's goal of making "the most conservative assumption possible" about viewpoint diversity.
>
> Additionally, there is no dispute that the assignment of equal market shares generates absurd results.[67]

The Third Circuits opinion is consistent with long standing precedent, which recognizes that one of the purpose of restrictions on media ownership is to prevent excessive influence, The D.C. Circuit Court in *Sinclair* restated the broad purpose in promoting the public interest when it stated "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[68]

The Industry Commenters' analysis of growth rates of usage compounds the mistaken approach to the measurement of the importance of outlets. They loudly claim a 500 percent increase in the growth of visitors to alternative web sites. As described below, this does not represent a real increase, but an improvement in coverage. Even if did represent a real increase, the implications for public policy drawn by the Industry Commenters are dubious.

A high growth rate on a low base misrepresents the reality. Thus, Industry Commenters point out the visits to alternative Web sites increased by 500 percent*,* a much faster growth rate than for visits to Web sites of traditional media outlets, which grew at only 14 percent.[69] Because the traditional web sites started from a base that was over 70 times as large, they added many more visitors 100,000 compared to the 35,500 added by the alternative media web sites.

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[66] Mark Cooper. "Abracadabra! Hocus Pocus! Making Media Market Power Disappear with the FCC's Diversity Index," Washington, D.C.: Consumer Federation of America, Consumers Union, 2003.

[67] Prometheus Radio Project, p. 70.

[68] *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 160 (D.C. Cir. 2002).

[69] NAA, p. 17.

The reality is at present is that the traffic to the web sites of traditional media are 18 times as large – 839,000 compared to 46,000 – for a difference in traffic of almost 800,000. The absolute size of the audience is critical for economics (advertising) and for politics (influence).

If the two different kinds of Web sites grow by adding the same number of viewers every year, the growth rates will converge, but the absolute levels of traffic will continue to diverge. So, assuming they add this number of visitors each year for four years, in four years, when there is another quadrennial review, the traditional Web sites will have grown by 50 percent, to approximately 1,200,000 visitors, while the alternative Web sites will have grown by over 200 percent, to about 142,000. The traffic at the traditional Web sites will "only" be about 8.5 times as large as at the alternative Web sites. The audience at the traditional Web sites will be over 1,000,000 visitors larger.

THE CHALLENGES TO OUR STUDY OF INDEPENDENT LOCAL NEWS WEB SITES HAVE LITTLE MERIT AND ONLY STRENGTHEN OUR CONCLUSIONS

In their reply comments to the FCC, some of the biggest industry stakeholders took aim at our analysis of the independent city specific Web sites they listed as competitors. Given the findings of the study this should come as no surprise. A pillar of the case made by media companies in this proceeding is that the Internet has turned the world on its head and that they are just one fish amongst an ocean of competitors. The research performed in this study leave no doubt that the Internet has yet to produce the tidal wave in local news content that the industry claims. Not only do these alternative online outlets have a very small audience, they also lack original content and rely heavily on these same media outlets for local information. In the following section, we confront and refute every criticism made against the gathering, analyzing, and interpretation of this data.

RESPONSE TO MEDIA GENERAL

Media General's attempts to rebut the sole analysis of independent local news Web sites fail on multiple counts. The media company begins by touting the largely unsubstantiated claims it has made in this proceeding.[70] Absent from this list is any evidence demonstrating that these Web sites participate in any significant amount of original reporting, the foundation of local news gathering.

The first criticism offered by Media General is that we excluded outlets that they believe should be included. As stated in our study, we analyzed all 323 Web sites given by Media General in the Appendix entitled "Availability of Media Outlets in the Tampa/St. Petersburg, Florida, DMA".[71] We assumed, apparently incorrectly, that Media General, the dominant news provider in the area, would identify any online outlet perceived as a threat to their position. Media General provides four outlets not included in their Appendix which they presuppose "would greatly increase the number of independent news sites".[72] It is worth noting that the

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[70] Media General, p. 17-19.

[71] Initial Comments of Media General, October 23, 2006, p. iv.

[72] Media General, p. 20.

reason they believe this is the case is because only four of the 323 Web sites originally listed actually engage in providing any amount of original local news content. Nonetheless, they fail to acknowledge that we analyzed over 250 stories from the Media General cited tampablab.com. As Media General must be well aware, tampablab.com aggregates blog posts from over 100 different blogs which are listed as having a Tampa area focus. Indeed, one of the Web sites Media General claims we excluded are among those analyzed at tampablab.com.[73] Lakeland.net was excluded from our analysis due to the fact that it simply aggregated news from other sources. A quick look at the two remaining Web sites reveals that they mirror the others analyzed. The Web sites lack original reporting and the content especially in hard news categories relies heavily on the Web sites of traditional media. Furthermore, the audience is miniscule, with the traffic for both Web sites being somewhere below 2,000 unique monthly visitors. Compare this to Media General's web portal tbo.com which receives close to 350,000 unique monthly visitors.[74]

Media General also complains that we do not explain the reasoning behind reducing the number of outlets from 29 to 4.[75] In our filing, we provide the list of 29 Web sites.[76] By simply reading the information listed or traveling to the Web site, Media General would understand our reasoning for doing this. Nonetheless, we will once again do the work for them. Of the 29, 22 are Web sites owned by traditional media, clearly not the competitors Media General was referring to in their filing. Of the remaining 7, a visit to the Web sites reveals that two simply aggregate content from other sources and the third is no longer operational.

Thirdly, Media General criticizes the study for excluding the Web sites of traditional media in our "local news" classification.[77] It is obvious that Media General has missed the point of our analysis. The background section of our study states that we are investigating whether "the actual *content* of these independently owned Web sites is 'fully independent' of local television and newspaper outlets."[78] Without a doubt, the Web sites owned by their longtime competitors are no more a threat to their operations than they were in 1975. This argument is ludicrous on its face.

Media General also attacks our definition of hard news, stating our "approach suffers from an inherent content-based bias related to its own conception of what constitutes 'hard news.'"[79] In our study, we defined hard news as stories that focus on "city planning, community governance, crime, education, environment, labor, law, politics, and poverty".[80] Given the meaning behind the term "hard news" it is clear that sports, weather and human-interest stories

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73 The Web site is seminoleheights.blogspot.com.

74 Figures from Quantcast.com (Nov. 6, 2007).

75 Media General, p. 21.

76 CU, CFA, and Free Press, Exhibit VI-8, p. 141.

77 Media General, p. 21-22; See also NAB, p. 16.

78 CU, CFA, and Free Press, p. 127. [Emphasis in original]

79 Media General, p. 22.

80 CU, CFA, and Free Press, p. 142.

do not deserve this classification. A look at the sports Web sites listed reveals that only one has anything that could be construed as news gathering. The website karnac.com is a national website with a section for racing in the entire state of Florida. Furthermore, the entire Web site only receives about 10,000 unique visitors per month and over half that audience only visited a single time.[81] Media General further asserts that we should have included school district and real estate Web sites in our analysis. Including these Web sites in this analysis is nonsensical, the most important findings of the study center around original reporting and the reliance on traditional media. Neither of these categories participates in any type of newsgathering.[82] We encourage all proceeding participants to undertake their own content analysis of these Web sites or simply plug these real estate and school district Web sites into their web browser and decide for yourself whether they constitute a competitor to the local news dominance of Media General's Tampa outlets.

Media General concludes by attempting to mischaracterize our traffic analysis by stating we only included "niche or the opposite of mass appeal sites" and this "stacks the deck against counting 'visitors' to new entrant sites".[83] In fact, the exact opposite is true, we included every Web site listed by Media General that constitutes an alternative to their local news operations. We encourage Media General to provide the Commission with independent Tampa area Web sites that both engage in original reporting and receive traffic at anywhere near the numbers seen by the Tampa properties of Media General.

The local independent Web site analysis unequivocally illustrates that the Internet has yet to diminish the local news dominance of traditional media outlets, both online and offline. Media General assertions yet again do not hold up under scrutiny. We encourage the company to produce solid evidence of their claims rather than simply mischaracterize our independent research and move passed their practice of tossing out outlets in the hopes one of them will stick with the Commission.

RESPONSE TO THE NEWSPAPER ASSOCIATION OF AMERICA

The Newspaper Association of America also attempted to diminish the conclusions of our local independent news Web sites study. They begin by discussing the rise in traffic and original reporting between the two sample periods.[84] This rise in original reporting was directly

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[81] Figures from Quantcast.com (Nov. 9, 2007).

[82] In the Prometheus decision, the Third Circuit recognized this "We agree that the Internet "helps citizens discharge the obligations of citizenship in a democracy," *Order* ¶ 393, when someone can go cityofglenfalls.com to find the city council's next agenda or use sfgov.org to learn how to get a marriage license in San Francisco…But local governments are not, themselves, "media outlets" for viewpoint-diversity purposes. Like many entities, they just happen to use a particular media outlet—the Internet—to disseminate information." They state further: Similarly, advertiser-driven websites such as hvnet.com and sfadvertiser.com, *see Hearst Comments* at apps. A & C, hardly contribute to viewpoint diversity. Like local governments, the sponsors of these websites are not "media outlets" just because they have "local information" that they want the public to have—if they were, their advertisements in telephone directories would also have to count toward viewpoint diversity. Prometheus Radio Project. v. FCC 373 F.3d 372 at 67-68 (3rd Cir. 2004).

[83] Media General, p. 23.

[84] NAA, p. 17-19.

addressed in the study.[85] Much of it came from the human interest category and can be attributed to the time of year. The first content analysis took place in November 2006 and the second in August 2007. The data shows that there was an increase in the number of photographs posted, with many being of beachgoers and the like.[86] This is due to the fact that summer is one of the most popular months to travel and participate in outdoor activities thereby increasing the frequency of photo postings. Furthermore, it is worth noting the very inclusive definition we gave for original reporting. For instance, a picture of a Verizon FiOS lawn sign accompanied by a two-sentence quote from and a hyperlink to a traditional media article was counted as original reporting.

With regards to the traffic increase, it is important to note that the numbers were meant to provide a comparison between Web sites rather than being an exceedingly accurate measure of each Web site's traffic. Nonetheless, our data shows that the traffic increase between periods overwhelmingly stems from the increases amongst Web sites of the Gothamist network. The Gothamist network is now signed up as a "quantified publisher" with Quantcast. A quantified publisher is a Web site or network of Web sites who sign up to have Quantcast track their web traffic, using an embedded pixel, allowing them to gain detailed information on their visitors.[87] We contacted the Gothamist Network to inquire about the discrepancy in traffic and they revealed to us that these huge increases, eleven times by NAA's count, were the result of inaccurate data for the November period. The traffic monitoring service undercounted their audience. The company further stated that their page views went from 4.1 million in November 2006 to 7.4 million in August 2007 and that any increase larger than this is due to "them adding the pixel to our site".[88] Nonetheless, even if we assume this was an absolute increase in unique visitors, the increase in original reporting was small and devoted almost entirely to soft news topics. For hard news topics, the increase can be tracked to the fact that the sample size was smaller in the second sample period.[89]

The NAA follows this by attempting to mischaracterize our comments. The NAA claim that we argue "news outlets focusing on relatively small geographic areas and/or more narrowly defined issues are not legitimate contributors to viewpoint diversity." Our study found that these Web sites do not *significantly* contribute to source or viewpoint diversity. It said nothing of focus on a small geographic area or a narrowly defined issue. This conclusion was derived from our analysis of the data, finding that overall these Web sites lack both a sizable audience and original content. The NAA goes on to tout the "unique benefits" of hyperlocal journalism acting as though our contention was the opposite. Both the NAB and NAA tout the findings of J-Lab: The Institute for Interactive Journalism.[90] Indeed, the project has a noble aim, with many Web sites being operated in a non-profit atmosphere and employing a variety of tactics to create and

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85 CU, CFA, and Free Press, p. 132.

86 An original photo automatically counted as original reporting regardless of its content.

87 See http://www.quantcast.com/p-11lnUuPOz_qQQ; http://www.quantcast.com/quantified-publisher.jsp.

88 Email Exchange with Publishing and Ad Sales Representative Jake Dobkin, November 7, 2007.

89 Two of the Web sites were no longer operating by the time of the second sample and neither had any original hard news reporting posting during the November 2006 sample period. See CU, CFA and Free Press, p. 132.

90 NAA, p. 20-21; NAB, p. 16, 18.

popularize their independent Web sites. Nonetheless, the study hardly supports the claims made by media companies in this proceeding. The study listed this as a key takeaway from the report "citizen media is emerging as a form of bridge media, linking traditional media with forms of civic participation."[91] They expanded further:

> Many citizen journalists believe they are involved in a kind of bridge media between the traditional forms of news and local news delivery and a future where local news will be citizen-interactive – and where professional journalists will focus on the things they do best: Producing the kind of enterprise or investigative reporting that requires time, experience, travel and the backing of media companies that shoulder expenses and cut paychecks.[92]

One operator stated their success marker was "challenging traditional media to improve".[93] So far from supporting the assertions of the traditional media associations, the study is in reality further proof that whether directly or indirectly citizens are overwhelmingly relying on traditional media to gain information on local issues. Despite the best efforts of the Newspaper Association of America, the validity of findings remain intact.

RESPONSE TO THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters attempts to counter the findings of our work without considering them. We overwhelmingly found that when it comes to the small percentage of people who turn to the Internet for local news they turn to the Web sites of traditional media and that the those who do turn to other online outlets end up consuming this same content. NAB's assertion that "the Internet is a *source* to which Americans turn", does not in itself diminish the dominance of traditional media.[94]

We have discussed throughout this proceeding the importance of local news. This has always been the main focus of the Commission's consideration. Nonetheless, the NAB is still touting surveys and studies that are not relevant to this fact.[95] The statement that a survey shows that "72% of all Internet users report that they 'get news' online" adds no substantive fact to this proceeding.[96] We have submitted the results of a survey that asks the right questions and only further illustrate the dominance of traditional media.[97] The fact remains that Americans still overwhelmingly turn to traditional media to get local news.

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[91] See Jan Schaffer, "Citizen Media: Fad or the Future of News? The Rise and Prospects of Hyperlocal Journalism," 2007, p. 3, Available at http://www.j-lab.org/citizen_media.pdf.

[92] Id., p. 37.

[93] Id., p. 41.

[94] NAB, p. 9 [emphasis in original]. Also see, p. 18.

[95] Id., p. 12-17.

[96] Id., p. 13.

[97] Consumer Group Survey, August 2006, See Comments of Consumers Union, Consumer Federation of America and Free Press, Part III, "Study 8: The Internet and Local News and Information," Available at http://www.stopbigmedia.com/filing/part_3.pdf.

The NAB contends that traditional media newscasts "cannot be regarded as the sole source of all content appropriately deemed 'local'".[98] Simply put, we agree and have never limited our treatment of "local" to the content found on newscasts. This holds true for our independent Web site analysis. The broadcasters association continues their criticism by attacking our original hard news reporting classification. We certainly believe that "websites lacking these characteristics are not as important in today's media marketplace".[99] However, the NAB finds this reasoning "misguided". Original reporting is the foundation of good journalism, which in turn is the foundation of a healthy democracy. It is disturbing to think the association representing the majority of broadcasters in the United States believes that a blogger exposing corruption at city hall is no more important a story than a photo from lolcat.com.[100]

NAB further asserts that the practice of linking to traditional media Web sites "*add* value" by "serving as a mechanism for providing consumers with other diverse points of view".[101] Further stating that this is "why alternative media must be properly considered in the Commission's diversity analysis".[102] This statement is no closer to reality than the previous. This practice of hyperlinking to traditional media Web sites does not add a point of view it is the point of view.

The independent Web sites analyzed do not employ journalists and must rely on the traditional media outlets in their area for local news, no different than the rest of us. The Web sites are typically just making their readers aware of the news. More than anything it is promoting the newsgathering that takes place at traditional outlets. Consider further that these Web sites many times quote a sentence or two from the article and hyperlink to it thereby driving more traffic to the Web sites of traditional media.

As the study demonstrated, when it comes to hard news topics this reliance only increases further and this practice by alternative web sites of repurposing or directly quoting a traditional media story hardly provide consumers with "other diverse points of view". The NAB's also takes issue, in a passing statement, about the lack of a comparative analysis with traditional media.[103] The extent of reliance on wire services for news is an interesting issue, but not very relevant to the question of production of local news. Our analysis of reporter counts reinforces our review of web site content, both of which suggest that the traditional media have considerably greater ability to provide higher levels of original hard news content than the alternative Web sites we analyzed especially given our extremely generous definition of original reporting.

[98] NAB, p. 17.

[99] Id., p. 18.

[100] This was in fact the content of post analyzed in our study.

[101] NAB, p. 19. Also see NAA, p. 19.

[102] NAB, p. 19.

[103] Id., p. 19.

THE ANALYSIS STANDS -
HYPERLOCAL WEB SITES DO NOT COMPETE WITH TRADITIONAL MEDIA

The NAB began by completely mischaracterizing our conclusion. NAB states "CU claims in its reply comments that the Internet has had only "minuscule" and "minor" effects on how Americans interact with media, including in their consumption of news and information."[104] We certainly never claimed the Internet has had only minor effects on how Americans interact with media, despite the NAB's repeated characterization stating the contrary.[105] We analyzed a specific argument that is a central tenet of the competitive claims of Industry Commenters.

The Internet continues to be a revolutionary new medium but has yet to create the type of competition and diversity Industry Commenters claim. The issue before the Commission is to assess the importance of the traditional media as a source of news and information that affects democratic discourse. Lists of web sites, rhetoric about the availability of alternatives and claims backed up by, at best, anecdotal and, at worst, no evidence cannot be the basis for a rule. The Third Circuit court has made that clear.

We have consistently entered in the record original research, which has grown the knowledge base on the issues being considered in this proceeding. The Commission should note that no evidence in this or the 2003 proceeding refutes the findings of this study, nor do the criticisms lobbed at it by the Industry Commenters alter its validity.

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[104] Id., p. 8.

[105] The only use of the word "miniscule" was in reference to the traffic of a single Web site. See Reply Comments of Consumers Union, Consumer Federation of America and Free Press, January 16, 2007, p. 156.

V. ABUSE OF THE ADMINISTRATIVE PROCESS

PEER REVIEW

Media General and its consultants seem to be dazzled by the reputation of the FCC consultants. Media General asserts that "one stumbling block for challenging the FCC papers is that they were prepared by reputable scholars and were peer reviewed by other reputable scholars. Those peer reviews make suggestions and comments but largely support the methods employed and findings reached in the FCC studies."[106] In fact, two more recent peer reviews of the studies that dealt with TV are highly critical reviews, concluding that one study "**has no theoretical or substantive meaning for the regulatory question at hand**,"[107] while for another study "*the empirical data in the study is so limited that the study's conclusions do not and cannot possess the reasonable level of confidence necessary to provide policy makers with useful evidence on which to base their policy decision.*[108]

Whatever the reputation of the authors or peer reviewers, the process by which the studies were designed, the authors selected and the peer reviewers chosen was not reputable. This was not an academic exercise. These were hired consultants, one of whom was immediately hired as the FCC Chief Economist. If the industry is going to rely on the reputation of the authors and reviewer, then the process by which they were selected needs to be investigated thoroughly. The research design process was secretive. The acquisition of researchers was not subject to competitive bidding or an open process of any kind, and the peer review process thoroughly violated the Data Quality Act.

DATA QUALITY AND TRANSPARENCY

Several of the Industry Commenters bristle at our careful analysis of the abuse of the administrative process, seeking to reassure the Commission that it has done nothing wrong.[109] While the Industry Commenters claim that courts will ultimately decide, we do not believe they will decide on the basis of the arguments made by the Industry Commenters.

Media General makes a number of flawed—if not bizarre—claims about Free Press et al.'s arguments based on the Data Quality Act (DQA) and its implementing guidelines. The DQA was enacted to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by federal agencies.[110] To implement the DQA's requirements, the

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[106] Media General, p. 3.

[107] Kenneth Golstein, Matthew Hale and Martin Kaplan, "Invited Peer Review of FCC Media Ownership Study 4 Section 1: The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming, October 30, 2007, emphasis in original.

[108] Kenneth Golstein, Matthew Hale and Martin Kaplan, "Invited Peer Review of FCC Media Ownership Study 6: The Effects of Cross-Ownership on Local Content and Political Slant of Local Television News, October 30, 2007, emphasis in original.

[109] Media General, pp. 8-11; NAA, p. 4-6.

[110] Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515, *codified at* 44 U.S.C. § 3516 note (2001) ("Data Quality Act").

OMB issued guidelines in 2002[111] and additional guidelines on peer review for influential scientific information in 2005;[112] the FCC adopted guidelines in 2002.[113] On September 11, 2007, Consumer Commenters filed a Complaint Under the Data Quality Act that explained how the Commission had violated the DQA by, among other things, engaging in a "peer review" process that did not follow the DQA or usual scientific practices.[114] Rather than engage in peer review *before* publication, let alone early in the process to establish research design and methodology, the Commission asked for short comments following publication, and referred to these comments, wrongly, as "peer review" comments. An associated Motion for Extension, also filed by Free Press et al., asked the Commission to restart the peer review process and follow appropriate procedures[115]. Media General filed an Opposition to that motion for extension,[116] and Free Press et al. filed a Reply.[117] The Commission granted a short extension and then claimed it would address the DQA complaint in the course of the proceeding.[118] The Comment period ended October 22, 2007, and the Reply Comment period ended November 1, 2007.

On November 1, in Reply Comments, Media General included arguments against Free Press et al.'s DQA Complaint, somewhat overlapping Media General's arguments in its opposition. Media General's main argument is that the DQA provides no enforceable judicial rights.[119] Free Press et al. had never disputed this point. Rather, we point to the Administrative Procedure Act, which does provide enforceable judicial rights. This Act requires the Commission to engage in reasoned decision-making and have substantial evidence for its decisions. As the *Prometheus* Court stated,

> Our standard of review in the agency rulemaking context is governed first by the judicial review provision of the APA, 5 U.S.C. § 706. Under it, we "hold unlawful or set aside agency action, findings, and conclusions" that are found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law ... [or] unsupported by

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[111] Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) (republication) ("OMB Guidelines on Data Quality 2002").

[112] ; Office of Management and Budget Final Information Quality Bulletin for Peer Review, Supplementary Information, 70 Fed. Reg. 2664 (Jan. 14, 2005) ("OMB Bulletin on Peer Review 2005").

[113] Implementation of Guidelines for Ensuring and Maximizing Quality, Objectivity, Utility and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554, 17 FCC Rcd 19,890 (Oct 08, 2002) ("FCC Guidelines").

[114] Complaint Under Data Quality of Consumers Union, Consumer Federation of America, and Free Press, MB Dkt. No. 06-121 et al., Sept. 11, 2007.

[115] Motion for Extension of Time of Consumers Union, Consumer Federation of America, and Free Press, MB Dkt. No. 06-121 et al., Sept. 11, 2007.

[116] Media General, Opposition to Motions to Extend, MB Dkt. No. 06-121 et al., Sept. 21, 2007.

[117] Free Press et al., Reply to Opposition by Media General, MB Dkt. No. 06-121 et al., Sept. 28, 2007.

[118] *Media Bureau Extends Filing Deadlines for Comments on Media Ownership Studies*, MB Docket No. 06-121 et al., Sept. 28, 2007, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-4097A1.doc.

[119] *See* Media General, Reply Comments on FCC Research Studies on Media Ownership, MB Docket No. 06-121 et al., Nov. 1, 2007, pp. 9-12.

> substantial evidence." … [W]e must ensure that, in reaching its decision, the agency examined the relevant data and relevant data and articulated a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made." [120]

In this case, the FCC has wildly deviated from the OMB and FCC guidelines implementing the DQA in gathering evidence. As a result, in this proceeding at least, the evidence gathered cannot be considered "substantial" under the APA. Moreover, if the FCC fails to explain why it refused to follow the DQA implementing guidelines, it will have failed to provide a satisfactory explanation for its actions.

Media General makes the bizarre argument that Free Press et al. ignored the relevant FCC guidelines implementing the DQA, claiming that we "never explicitly cited" the guidelines; then Media General provides the cite for those guidelines.[121] But Free Press et al. cited the relevant FCC guidelines—on the first page, in the first sentence, as the very first footnote![122] We cite the guidelines throughout and base our arguments on the FCC's guidelines.[123]

Media General also suggests that the OMB guidelines are not relevant because the FCC guidelines are.[124] But the FCC guidelines adopt the substance of the OMB guidelines, as the FCC notes: "Our guidelines substantially follow the provisions of the OMB Guidelines."[125] Media General even quotes the FCC guidelines out of context to suggest that the FCC guidelines "are not applicable in rulemaking proceedings."[126] This is not true; it is merely "the procedures for filing and resolving complaints" that is different.[127] In rulemaking proceedings, the guidelines apply but affected parties should file a complaint as a public comment in the rulemaking—as Free Press et al. did.

Media General also claims that the Commission should, and does, defer consideration of DQA complaints until the Commission issues its decision. This argument is wrong and not relevant here, as discussed in Free Press et al.'s Reply to Media General's Opposition.[128]

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[120] Prometheus Radio Project v. FCC, 373 F.3d 372, 389-90 (2004).

[121] *See* Media General, Reply Comments on FCC Research Studies on Media Ownership, MB Docket No. 06-121 et al., Nov. 1, 2007, p. 10 n.23.

[122] *See* Free Press et al., DQA Complaint, p. 1 & n.1.

[123] *See, e.g., id.* at nn. 6, 30, 39.

[124] Media General, Reply Comments, p. 10.

[125] FCC Guidelines, 17 FCC Rcd 19,890, at ¶7.

[126] Media General, Reply Comments, p. 10.

[127] FCC Guidelines, 17 FCC Rcd 19,890, at Appendix §IV.1(b).

[128] Free Press et al., Reply to Opposition by Media General, MB Dkt. No. 06-121 et al., Sept. 28, 2007, pp. 1-3.

THE CONTINUING ABUSE OF ADMINISTRATIVE PROCESS

The recent release of additional peer reviews and documents puts an exclamation point on the abuse of administrative process in this proceeding.

- The FCC released revised versions of several of its studies on the same day as the filing of reply comments, thereby denying the public the opportunity to incorporate these major revisions into their comments.

- The FCC released new peer reviews of its ten studies on the final day of the reply comment period, thereby denying the public an opportunity to incorporate this information into their comments.

- There was no notice of this new set of reviews on the peer review agenda the FCC is supposed to maintain for peer review and there was no description of the elements of the peer review, as required by the guidelines.

These peer reviews and revisions are by no means minor. The revised Study 4, which has been cited by many Industry Commenters, suffers a major change in the statistical significance of its findings. The new peer reviews are highly critical of the studies dealing with newspaper-TV cross-ownership.

- As a result of this manipulation of the peer review process, Industry Commenters had the opportunity to fill the record with citations to the laudatory first reviews, but no one had the opportunity to cite the negative reviews.

On the final day of the reply comment period, the FCC also released fifteen peer reviews of third party studies. There had been no public notification on the FCC's peer review agenda that this was ongoing. Thus, there was no explanation of the nature or purpose of the peer review.

The selection of the studies for peer review and the timing of solicitation and publication of the peer reviews is secretive, arbitrary and capricious to say the least. The third party studies sent out for peer review had been on the record for nine months to a year. Several were studies conducted by commenters, but several were simply comments, which do not constitute studies. Of the hundreds of comments and dozens of studies submitted, the commission chose a handful, without any explanation, or notification to the authors of those studies that they would be reviewed.

The timing of the requests for peer review and the deadlines given to the reviewers is peculiar to say the least (see Exhibit 5).

Exhibit 5: Time Line on Filing of Studies, Request for and Release of Peer Review

June 26, 2006	Further Notice voted on
	10 Studies announced
October 22, 2006	Comments Filed
January 16, 2007	Reply Comments Filed
August 1, 2007	10 Studies Released
August 6-24, 2007	10 Studies Peer Review Requested, First Round
August 24, 2007	Third Party Peer Review Requested
September 1, 2007	First round of peer reviews on FCC studies due
September 4, 2007	10 Studies Peer Review Released
October 1, 2007	Third Party Peer Reviews Due
October 12, 2007	10 Studies Peer Review Requested, Second Round
November 1	Third Party Peer Reviews Released Revisions to 4 FCC studies released Filing Deadline for Reply Comments

The peer reviews of the 10 FCC studies were requested in two separate rounds, between one and ten weeks after publication. The deadline for responding varied from one week to three weeks from the data of the issuance of the letter requesting the review. The first set of peer reviews were released almost immediately upon receipt of the responses.

The third party study peer reviews were request many months after the studies were received. The peer reviewers were given five weeks to review them. Although all the responses do not have dates, unlike the peer reviews of the 10 studies, the FCC appears to have withheld many of the third party peer reviews for a month. They were released on the final day of the reply period, denying the public the benefit of having these reviews available to inform their comments.

The 10 studies were given as much as 60 days to respond to the peer review and have those responses published by the agency.

The crowning irony in this convoluted process is the fact that the study that triggered the controversy over suppression of research and the IG investigation, has now been declared "influential scientific information" by the agency and put out for peer review. It has fared better than several of the more recent studies and its peer reviewer accepted its findings. Needless to say, all of the derision cast on this study by the Industry Commenters must be ignored by the FCC and the central findings of the paper must be dealt with by the agency.

To say that this process is arbitrary and capricious is a gross understatement. It makes a mockery of the Administrative Procedures Act.

AVAILABILITY OF DATA

The data necessary to test most of the claimed flaws in our analysis was fully available at the FCC. Media General admits that "much of the data in Chapter IV appears to be aggregated from data presented in the FCC studies."[129] But then Media General claims that that "Ultimately none of the Consumer Commenters' transformed data or new variables is immediately accessible to the public." Media General was just too lazy to go down to the FCC to replicate the data, or to discover that our data is on the secure computers. To the extent that additional variables were created by the Consumer Interveners, they are based on commercially available data sets, which, however, are proprietary. Arrangements could have been made to make that available, although the outrageously short time reply period made that difficult.

CONCLUSION

The reply comments and critiques offered by the Industry commenters and their paid consultants do not in any way take away from our powerful and compelling evidence that abandonment of ownership rules are plainly not in the public interest. In this ex-parte filing we have responded to the critiques and strengthened our case. We demonstrated:

- Market level analysis is the proper policy frame and the proper empirical frame in which the Commission should explore the impact of ownership rules
    - To relax the rule, the FCC must show that newspaper-TV combinations yield a benefit to news production that exceeds the harm to diversity.
    - But the data demonstrates the opposite; there is no significant benefit and significant harm.

- Cross-Ownership has a strong and significant "crowding out" effect on non-cross-owned stations, leading them to curtail their news operations. We presented the Commission further empirical evidence demonstrating that markets with cross-owned stations produce significantly less total local news minutes (output by the non-cross-owned stations) than markets without cross-owned stations. **The presence of a cross-owned station leads the other stations in the market to collectively curtail their news output by about 25 percent.**

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[129] Media General, Appendix A, p. 9.

- The use of separate waived and grandfathered ownership variables is both right theoretically and empirically.
    - Grandfathered combinations represent the long-term effects of combinations, not strategic acquisition of TV stations already producing news.
    - Grandfathered combinations behave differently than combinations created by waiver.
    - Grandfathered combinations are not associated with higher levels of production of news at the market level or the stations level.
    - Grandfathered stations produce slanted news that is correlated with the editorial position of the co-owned newspaper.

Industry Commenters produced a list of hundreds of Web sites they claim compete with traditional mass media, but we have shown these Web sites have little traffic and produce little content compared to the Web sites of the traditional mass media. Traditional web sites have vastly larger audiences and their advantage in the total number of visitors appears to be growing.

Simply stated, the Industry Commenters did not provide ***any*** evidence to rebut our basic empirical conclusion that "Hyperlocal" Web sites produce very little original content.

The administration of the proceeding continues to lack transparency and hinder the ability of the public to participate effectively. While the peer reviews that supported the Industry's positions were entered into the record during the comment cycle, peer reviews that were critical of the pro-industry studies were only released as the comment cycle closed, leaving the public no opportunity to incorporate and comment on these critical reviews.

The record is clear: the process has been conducted in an arbitrary and capricious manner that favors industry and handicaps the public. An honest reading of the record can only demonstrate that there is absolutely no evidence to suggest that abandonment of the rules are in the public interest. The record is full of overwhelming and irrefutable evidence showing that removing the rules will harm the public interest by leading to fewer diverse voices producing less local news and information.

Respectfully submitted,

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