Executive Summary
Comments in the Federal Communication Commission Proceeding Considering the Newspaper/Broadcast Ownership Rule
December 3, 2001

The groups joining in these comments represent a wide array of consumer, civil rights, and public interest organizations of various types including direct membership grass roots organizations whose purpose is to promote the public interest in media policy.[1] Our initial comments and the accompanying appendices by Pulitzer Prize winning journalist Benjamin Bagdikian, legal scholar C. Edwin Baker, and Wharton economist Joel Waldfogel demonstrate that the legal and marketplace basis for the Newspaper-Broadcast Cross Ownership Rule is stronger than ever.

The Commission's *Notice of Proposed Rulemaking* provides neither a sound understanding of the critical role these ownership limits play in our democracy, nor does it offer adequate data or analysis of media market structure to justify changes to this rule. We ground our analysis in:

- the U.S. Constitution's imperative to promote diverse ownership of media as a cornerstone of the checks and balances necessary to preserve a vibrant democracy and
- substantial empirical evidence of current market conditions combined with detailed analysis of economic incentives showing where traditional market forces fall short.

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[1] Consumers Union, publisher of Consumer Reports, is an independent, nonprofit testing and information organization serving only consumers. CU is online at www.consumersunion.org.. The Consumer Federation of America is the nation's largest consumer advocacy group, composed of two hundred and eighty state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than fifty million individual members. CFA is online at www.consumerfed.org. The Center for Digital Democracy is committed to preserving the openness and diversity of the Internet in the broadband era, and to realizing the full potential of digital communications through the development and encouragement of noncommercial, public interest programming. The Civil Rights Forum on Communications Policy, a project of the Tides Center, pursues the twin goals of introducing civil rights principles and advocacy to the implementation of the 1996 Telecommunications Act, and to reframe the discussion over the role of media in our society around the needs of communities and the rights of citizens through education, research, and by forging working links between the civil rights community and others. CRF is online at www.civilrightsforum.org. The Leadership Conference on Civil Rights was founded in 1950, and consists of more than 185 national organizations, representing 50 million Americans that represent persons of color, women, children, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians and civil liberties and human rights groups. LCCR is online at www.civilrights.org. Media Access Project MAP is a 28 year-old non-profit, public interest telecommunications law firm which represents civil rights, civil liberties, consumer, religious and other citizens groups before the FCC, other federal agencies and the Courts. MAP is online at www.mediaaccess.org.

The fundamental question raised in this proceeding is whether the central goal of the First Amendment as articulated by the Supreme Court in it's 1945 decision in *Associated Press*—information dissemination from diverse and antagonistic sources—can be preserved if newspapers and broadcasting stations in the same community are commonly owned. A diverse information environment is an essential prerequisite of American self-governance. It fuels political participation and animates debate about policy, social norms, cultural values, individual aspirations and community needs in our society.

In Part I, we recognize that the goal articulated in the Supreme Court in 1945 is an open-ended ever-reaching ideal. If some absolute standard of information availability and human intellectual capacity had been adopted by the Supreme Court in 1945, then by 1970 the goal would have certainly been achieved. It would have been all too easy for public policy to declare victory in the struggle to deepen and defend civic discourse and our democracy would be much poorer as a result. Failing to strengthen civic discourse in the face of the information age–which increases rather than decreases the importance of the media to our citizens–will sell Americans short. It will dramatically reduce the capacity for the enlightened debate that the Supreme Court has determined is essential to American democracy.

We also remind the Commission, in Part I, of its heavy burden in this proceeding. The Newspaper/Broadcast Ownership Rule has been upheld by the Supreme Court and explicitly endorsed by Congress for many years. This imperative and governing administrative law require that the Commission affirmatively justify any change to this rule. It may not alter it on the basis of an inconclusive record.

Part II shows that the media's characteristics call into question reliance on certain market principles. Although the market serves many goals well, because of both democratic principles and characteristics of media as a product, an unfettered media market is not likely to promote the public interest of the citizenry. We show, based on the attached analysis of Professors Baker and Waldfogel, that media as a product is not likely to be produced effectively in the marketplace and will not serve all audiences efficiently and fairly.

The production and dissemination of newspaper and broadcast media content involve enormous fixed costs, also called high first-copy costs. To cover these costs, media producers have a strong incentive to produce content for the largest number of consumers, presenting material that serves, and does not offend general, majority tastes. On the other hand, media products are also "non-substitutable"– for viewers, the NBC sit-com *Friends* is not interchangeable with the WB's African-American centered *Moesha*. *CBS Nightly News* is not interchangeable with *Entertainment Tonight*, or with programming on the Fox News Channel.

Moreover, the media marketplace will not necessarily produce the content people want to watch. Advertiser preferences often trump viewers' preferences because the media relies so heavily on advertising revenue. Advertisers, who want people to be in a receptive mood to learn about their products, do not necessarily mirror viewers' desires. Finally, media is a public good and possesses significant "positive externalities." Like clean air and national defense, benefits accrue to society at large that cannot be captured by the market. For example, investigative journalism uncovering government waste or consumer fraud benefits all–even those who do not read the newspaper or advertise on its pages.

Taken together, economists and experts find that these economic characteristics of media markets lead natural market forces to discriminate against the preferences of minorities – racial, ethnic, and any other relatively small groups whose tastes in media differ from the majority's. Eliminating a newspaper or broadcast voice deprives all citizens of an independent voice and will likely diminish the welfare of the "non-majority"; their economic and political need for news, information, and other vital content will be under-served even in a well-functioning market.

These economic attributes, when combined with media concentration, endanger democracy. The enormous power that goes with ownership allows media owners to promote their own interests or biases through the media in a manner harmful to democratic discourse. Examples of this power are myriad—from GE dictating that its subsidiary, NBC, not cover GE's pollution of the Hudson River with toxic chemicals[1] to the television networks' failure to cover Congress' decision to grant broadcasters free additional spectrum for digital television.[2] If the Commission declaws the watchdog by eliminating the Newspaper/Broadcast Ownership rule, we will lose one of the most crucial pieces of our democracy.

The second half of Part II explains the important and different expertise that newspapers and broadcasting each bring to the public. This "institutional diversity" inheres in the financial structure, culture and professional ethics of each medium. Their differing expertise affects their ability to serve as checks and balances on each other's business interests and reporting bias. As Benjamin Bagdikian points out, while separately owned newspapers and broadcasters generally criticize each other's content, the two media under common ownership "far from offering mutual criticism … become promotional media publicizing the other subsidiary."

Part III focuses on traditional economic factors to refute the contention that a wide range of media are in the same economic market. We show that people rely on newspapers and broadcast television for different kinds of information, depth of analysis, spend vastly different amounts of time with each, consume them in different environments, and pay for them in different ways. In economic terms these are separate markets with weak substitution effects. This is not to say that these markets are not

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[1] Richard Pollack , "Is GE Mightier Than the Hudson?" *The Nation* (May 28, 2001).

[2] Dean Alger, *Megamedia: How Giant Corporations Dominate Mass Media, Distort Competition, and Endanger Democracy* (Rowman & Littlefield, 1998). In fact, NBC censored a satirical piece on this topic from its television program Saturday Night Live between its first airing and later broadcasts. *See* http:/www.freespeech.org/ramfiles/fair.ram (visited on Dec. 3, 2001).

adjacent and there is no rivalry, but that, for example, newspapers' classified advertising mainstay in no way resembles the high-priced pharmaceutical and auto advertising splashed across national prime time television. In this section we also show that the data in the Commission's Notice overlook significant facts about these markets and their players. For example, the Commission incorrectly concludes that the number of local television newsrooms increased since 1975, when its own data show that newsrooms decreased by 10 percent.

Finally, in Part IV we cover the rampant consolidation and market power in each media market. Local newspapers have become print monopolies in about 95 percent of communities, with very few or our nation's largest cities supporting multiple papers. Market concentration in cable television ownership is at an all-time high. We show that each market is highly concentrated and adjacent to one another.

The number of owners of the media on which most Americans rely for information, television stations and daily newspapers, has fallen dramatically since the Commission first adopted its rule. One-third of television owners and two-thirds of newspaper owners have disappeared since 1975. There are half as many owners of these media today as there were when the rule was adopted.

While the Internet has changed many things in our society, it has not altered the fundamentals of civic discourse. Compared to the traditional mass media, the Internet accounts for a miniscule share (less than 5 percent) of individual news gathering time or industry advertising revenue.[3] Furthermore, Internet usage is dominated by four providers, which accounted for fifty percent of user minutes online.[4] And last year, one-third of all user minutes spent on the Internet were within the confines of a single company's site—AOL.[5]

Under even conservative antitrust theory, mergers across these markets are dangerous to competition. We review the well-established literature demonstrating that harms associated with vertical and conglomerate mergers. These create barriers to entry, enhance the effectiveness of anti-competitive conduct, and market players will shift from competition to cooperation. While many product markets exhibit some imperfections, the implications of market failure in media are much more profound. These failures will not produce insufficient manufacture of widgets. They will underproduce information that is essential for citizens to become educated, meaningful participants in the democratic process.

If local television broadcasters were allowed to merge with local newspapers, combining the two most important means by which consumers obtain news and information, the combined owner's editorial bias and economic incentives to under-serve

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[3] *See generally,* UCLA Center for Communication Policy, "Surveying the Digital Future: Year Two" (November 2001).
[4] Jupiter Media Metrix Inc., "Online Media Consolidation Offers No Argument for Media Deregulation" (June 4, 2001)
[5] *Id.*

the needs of minorities will skew public discourse and thereby harm our nation's democracy. Unless new technologies develop to change the fundamental cost structure of media information production and dissemination, and until print and television programming markers become significantly less concentrated and their products more competitive, the Newspaper/Broadcast Ownership rule will be necessary to protect the economic and civic interests of consumers.

If the combination of newspaper and broadcast properties in a community leads newspapers to reduce their in-depth, investigative reporting in order to serve the more homogenized, superficial, mass-market advertiser-driven needs of broadcast television, then Justice Brandeis' fear that we not become a society of couch potatoes, "an inert people," will be realized, undermining "a fundamental principle of American government."[6]

To meet its obligations under the U.S. Constitution and Congressional directives, the Commission must maintain the cross-ownership ban. This rule is essential to protect the diversity of independently owned institutional structures that disseminate news and information. This will provide "the widest possible dissemination of information from diverse and antagonistic sources"—the U.S. Supreme Court's articulation of what "… is essential to the welfare of the public," interpreting the First Amendment of the Constitution to mean that "a free press is a condition of a free society."[7]

[6] *Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J., concurring).
[7] *Associated Press v. U.S.*, 326 U.S. 1 (1945).