

appropriate weights to apply to the various media, the Commission has decided to give no weight to cable television or magazines as sources of local news, notwithstanding the results in the Nielsen survey to the contrary. The Commission recognizes that consumers in certain markets do have access to local news from local magazines, local cable news channels, and PEG channels, but the Commission believes that the Nielsen survey overstates this influence. On a national basis, the Commission believes most consumers either do not have access to such sources (such as a local news magazine) or rely very little on them (such as PEG channels). In sum, excluding these sources or factors from the DI does not undermine the general conclusions the Commission reaches about market concentration because the DI is not capable of capturing particularized market characteristics; it is intended to capture generalized, typical market structures and identify trends.

266. *Rationale for the Diversity Index.* Fostering diversity is one of the principal goals of the Commission's media broadcast ownership rules. In the past, the Commission has described its diversity goal as fostering "competition in the marketplace of ideas." Viewpoint diversity refers to availability of a wide range of information and political perspectives on important issues. Information and political viewpoints are crucial inputs that help citizens discharge the obligations of citizenship in a democracy. The Commission recognizes that the number of political viewpoints or the number of perspectives on a particular issue may be greater than the number of media outlets in a market. And the Commission recognizes that, in an effort to cater to viewer/listener/reader preferences any single outlet may choose to present multiple viewpoints on an issue. However, the Commission does not expect every outlet to present every perspective on every issue. The competition analogy suggests that having multiple independent decision-makers (*i.e.*, owners of media outlets) ensures that a wide range of viewpoints will be made available in the marketplace.

267. News and public affairs programming is the clearest example of programming that can provide viewpoint diversity. The Commission regards viewpoint diversity to be at the core of its public interest responsibility, and recognizes that it is a product that can be delivered by multiple media. Hence, in contrast to the Commission's competition-based rules, diversity

issues require cross-media analysis. Because what ultimately matters here is the range of choices available to the public, the Commission believes that the appropriate geographic market for viewpoint diversity is local, *i.e.*, people generally have access to only media available in their home market. To assist in its analysis of existing media diversity, and to help us determine whether any cross-media restrictions are necessary in the public interest, the Commission uses a summary index that reflects the general or overall structure of the market for diverse viewpoints. By analogy with competition analysis, the diversity index is inspired by the Herfindahl-Hirschmann Index (HHI) formulation, calculating the sum of squared market shares of relevant providers in each local market. The HHI measure, however, is particularly attractive for two reasons. First, its mathematical properties correspond to the Commission's beliefs about the effects a merger would cause. Each possible measure of market concentration has benefits and weakness that can be captured by the list of mathematical properties, or axioms, that that particular measure satisfies. In the case of measuring market concentration, a list of reasonable requirements or axioms limit us to the choice of few mathematical formulas. Within this class of admissible indices, the HHI can be thought of as a very conservative choice in the following sense. If the Commission asks "what is the loss of competition from a merger," known as the "delta" in the antitrust field, the HHI measure reflects the assumptions that: (i) An acquisition of a firm with given size will lead to a larger harm the larger the acquiring firm, and (ii) this harm is proportional to the size of both the merging parties.

268. Applying a similar analysis to the Diversity Index, the Index reflects the assumptions that if newspapers have twice the diversity importance of television, a newspaper's acquisition of a broadcast television station will cause twice the loss of diversity as will a merger of two broadcast television stations. Conversely, if radio has less diversity weight than television, then a merger of a television and a radio station will cause less of a loss of diversity than will a merger of two television stations. In contrast, if the Commission were to adopt a simple "voice test," for example, then it would be assuming that the loss of voice due to a merger is independent of the diversity importance of either party. Similarly, if the Commission were to

adopt a concentration ratio measure, then it would implicitly be assuming that the loss of diversity is independent of the size of the larger firm in the transaction. It is in this sense—that the size of the diversity loss increases as does the diversity importance of either merging party—that the Diversity Index developed here is a conservative measure, and one which the Commission adopts in the interest of prudence. Moreover, the HHI, from which the Commission's chosen measure derives, is widely used in economics and in antitrust. Thus, the Commission can draw on its experience with the HHI in competition policy to determine threshold values for the Diversity Index.

269. The Commission assigns market shares to these providers based in part on the results of responses to the Nielsen survey described in MOWG Study No. 8. The Diversity Index itself, however, is a blunt tool capable only of capturing and measuring large effects or trends in typical markets. Thus, the DI change from a particular transaction in a particular market might be more or less than the Commission anticipates, or that it might result in a market DI higher or lower than that suggested by the Commission's examples. This is of no moment as the DI is a tool useful only in the aggregate and will not—and cannot in its current form—be applied on a particularized basis.

270. There are several conservative assumptions in the Commission's analysis of viewpoint concentration. First, the Commission premises its analysis on people's actual usage patterns across media today. The Commission's method for measuring viewpoint diversity weights outlets based on the way people actually use them rather than what is actually available as a local news source. The Commission adopts this approach out of an abundance of caution because the Commission is protecting its core policy objective of viewpoint diversity. Second, the Commission's diversity analysis is based on preserving viewpoint diversity among local, not national, news sources. The effect is that the Commission excludes, for purposes of measuring viewpoint concentration, the large number of national news sources such as all-news cable channels and news sources on the Internet and instead focus exclusively on the smaller set of outlets that people rely on for local news. Excluding those national sources thus leaves us with a smaller set of "market participants" that the Commission regulates to protect local news diversity in a way that might be unnecessary to protect diversity among