

of this Order, the Commission uses the Diversity Index to help it identify markets that are "at risk" for excessive concentration in the "viewpoint diversity market." Once those markets have been identified, and cross-media limits imposed, the actual implementation of the cross-media diversity limits will not require information on a local radio market, only on the television market (DMA) within which the radio stations are located that are part of a proposed merger. As detailed in the cross-media limits section, the analysis that the Commission uses to identify at-risk markets is based on examination of a substantial sample of the 287 Arbitron radio metro markets.

293. Daily newspaper publication and circulation data are not collected based on Arbitron radio metros. A different market concept, developed by the Department of Commerce, is used by the industry. The basic building block is the "Metropolitan Statistical Area," or "MSA." The Department of Commerce recognizes 318 metropolitan areas, which include 248 MSAs, 58 "PMSAs" (primary metropolitan statistical areas), and 12 "NECMAs" ("New England county metropolitan statistical areas"). For Diversity Index calculation purposes, these areas are matched to Arbitron radio metros. Each daily newspaper that is locally published in the metropolitan area is included in the market. The daily newspaper share of the Diversity Index is divided evenly among all daily newspapers included in the market. In the absence of market-specific information on weekly newspaper availability, the Commission makes the most conservative assumption that there is one independently-owned weekly newspaper in each local market, and assign to it the entire weekly newspaper share.

294. In terms of calculating the Index, within each medium the Commission combines commonly-owned outlets and calculate each owner's share of the total availability of that medium. The Commission then multiplies that share by the share of the medium in question in the total media universe (television plus newspaper plus radio plus Internet). Once these shares in the overall "diversity market" have been calculated, the Commission adds together the shares of properties that are commonly-owned (for example, a newspaper and a television station), square the resultant shares, and sum them to get the base Diversity Index for the market in question.

295. *Cross-Media Limits.* The Commission modifies its rules by

adopting a new set of cross-media limits ("CML") in lieu of the Commission's former newspaper/broadcast and television/radio cross-ownership rules. The CML have been designed specifically to check the acquisition by any single entity of a dominant position in local media markets—not in economic terms, but in the sense of being able to dominate public debate—through combinations of cross-media properties. Because the Commission has traditionally relied upon blanket prohibitions on certain cross-media combinations, it has never before had to confront head-on the challenge of identifying specifically which types of markets give us the greatest cause for concern in terms of preserving diversity of viewpoint, and which types of transactions are most problematic in this regard. This effort is complicated by the nature of the public interest the Commission are seeking to protect—diversity—which is as elusive as it is cherished.

296. The Commission's modification of the newspaper/broadcast and television/radio cross ownership rules into a set of cross-media limits or CML is the Commission's first comprehensive attempt to answer this difficult and complex set of questions. The CML derives from data in the record regarding the relative reliance by consumers of various types of media outlets for news and information. To help us analyze that data, the Commission uses a methodological tool—a diversity index or "DI"—that allows us to measure the degree to which any local market could be regarded as concentrated for purposes of diversity. Based on an analysis of a large sample of markets of various sizes, the diversity index suggests that the vast majority of local media markets are healthy, well-functioning, and diverse.

297. Moreover, because the Commission is adopting herein intra-service competition caps for radio and television properties, those caps will ensure that local markets will continue to be served by a diversity of voices within each of these respective services. By the nature of the exercise, markets defined for competition purposes are no broader than, and generally are narrower than, markets defined for diversity purposes. Thus, the Commission's radio and television competition caps will not only serve to promote and protect competition within the radio and television services, they will also be protective of diversity interests when television-only or radio-only transactions are at issue. For example, in a market with 12 TV stations, the Commission's intra-service

caps guarantee at least six different owners of television stations. If there are forty radio stations in the market, the Commission's radio cap will ensure at least six different owners of radio properties.

298. The Commission recognizes, however, that its intra-service caps will not address diversity concerns that may result from cross-media combinations. Although the Commission's local radio and television caps will ensure a significant number of independent voices in larger markets, cross-media combinations in very small markets might result in problematical levels of concentration for diversity purposes. Accordingly, the Commission supplements its two intra-service local rules with a narrowly drawn set of cross-media limits to reach those combinations that are not already prohibited by its television or radio caps, but which would give rise to serious diversity concerns. The cross-media limits are based on a set of assumptions drawn directly from the record evidence in this proceeding and premises that are consistent with past Commission policy and practice. Although the Commission relies in part on its data analysis to help define the CML, it clearly respects that diversity is inherently subjective and cannot be reduced to scientific formula. The CML, therefore, ultimately rests on the Commission's independent judgments about the kinds of markets that are most at-risk for viewpoint concentration, and the kinds of transactions that pose the greatest threat to diversity.

299. *Competition Caps Protect Diversity.* The Commission has adopted a cap both on the number of television stations that any one owner may hold in a market, and on the number of radio stations that any one owner may hold in a market. These caps were designed to promote and protect competition within these two distinct services. The caps are, therefore, based on product market definitions that consider only those products or services that may be regarded as reasonable substitutes for competition purposes. The Commission recognizes, however, that although radio and television outlets may not compete in economic terms with other types of speech outlets, *e.g.*, newspapers, they all inhabit the mass media landscape that Americans turn to for news and information. In that sense, whatever the confines of their markets for competition purposes, many different outlets serve core democratic functions as purveyors of ideas, outlets for opinion, and distributors of news.

300. The data in the record evidence this difference. Radio and television