

industries generally. Accordingly, except as specifically prohibited herein, cross-media combinations will not be subject to anything other than routine Commission review, *i.e.*, unless the transaction is barred by the CML or the Commission's other ownership rules, the combination is permissible under the Commission's rules, and the Commission will not apply the DI to it.²⁷

316. Combinations of daily newspaper and broadcast properties in at-risk markets present a serious threat to local viewpoint diversity. The Commission therefore, adopts a rule prohibiting common ownership of broadcast stations and daily newspapers, and TV/radio combinations, in markets with three or fewer television stations. In order to determine which markets have 3 or fewer broadcast television stations, the Commission will rely on Nielsen television Designated Market Areas (DMAs). The Commission includes for these purposes, commercial and noncommercial television stations assigned to the DMA.

317. A number of parties have questioned whether a cross-ownership rule applicable to entities other than broadcasters, *e.g.*, newspaper owners, would be constitutional. The Commission continues to believe that a narrowly-drawn rule prohibiting or limiting common ownership of broadcast properties and daily newspapers is consistent with its constitutional framework. The Commission's current newspaper/broadcast cross-ownership rule has been upheld by the Supreme Court against constitutional challenge and, as discussed above, broadcast/newspaper and radio/television cross-ownership rules, like broadcast ownership rules, are reviewed under the rational basis standard. The Commission believes that its new cross-media limits satisfy this standard because they are "a reasonable means of promoting the public interest in diversified mass communications," and they are founded on a substantial record.

318. *Television-Newspaper.* Nielsen survey data reveal that daily newspapers and broadcast television remain the two most important sources of local news and information. The

importance of these outlets is reflected in the Commission's DI. A combination of a daily newspaper and a television station in a market with only three television stations leads to an average DI change of 331 points. These combinations in markets with only two or one television station lead to DI changes of 731 and 910 DI points, respectively. In these at-risk markets, a single combination of a daily newspaper and a television station could quickly jeopardize the range of viewpoints available to consumers in the market. The Commission therefore, adopts a rule prohibiting the combination of a daily newspaper and a broadcast television facility in any market with three or fewer television properties. To trigger the rule, the Commission will count all television stations assigned to the DMA that contains the newspaper's community of publication. The Commission presumes that broadcast television stations are generally carried throughout the DMA to which the station is assigned. The Commission's rules will not, however, bar a broadcast television station in such a market from starting a new newspaper, as that would expand, not decrease, diversity.

319. One additional issue in the cross-interest context is the definition of "daily newspaper" for the purposes of newspaper/broadcast cross-ownership. Currently, Note 6 to the multiple ownership rule defines a daily newspaper as "one which is published four or more days per week, which is in the English language and which is circulated generally in the community of publication." The exclusion of non-English language daily newspapers in areas where the dominant language of the market is not English creates a discrepancy in treatment that must be ended. Since the definition of a daily newspaper was adopted in 1975, the percentage of households in which Spanish was spoken has approximately doubled. It is appropriate, therefore, at this point in time, that the Commission applies the CML to non-English daily papers in markets in which the language that they are printed in is the dominant language of their market.²⁸

320. *Radio-Newspaper.* Although broadcast radio generally has less of an impact on local diversity than broadcast television, according to the results of the Nielsen survey, in at-risk markets the

combination of a daily newspaper with one or more broadcast radio facilities can nonetheless have significant negative implications for the range of viewpoints available. Indeed, markets with three or fewer television stations have, on average, only 21 radio stations. Under the Commission's radio cap, a single owner in a market with 21 stations could own six stations, or 29% of all the radio outlets in the market. Combining such a station group with, perhaps, the only daily newspaper could, therefore, seriously impair the range of independent viewpoints available in the market. The Commission therefore, adopts a rule prohibiting the combination of a daily newspaper and a broadcast radio facility in any market with three or fewer television properties. To trigger the rule for newspaper/radio combinations the Commission will retain its current standard. That standard requires complete encompassment of the newspaper's community of publication by the requisite signal strength contour of the commonly owned radio station(s).²⁹

321. *Television-Radio.* Combinations involving daily newspapers and broadcast properties are not the only cross-media combinations that present diversity concerns in at-risk markets. Approximately one-fourth of Americans rely on radio as a source of local news and information, and one-third use broadcast television for this purpose.

²⁹ For AM radio stations that standard is complete encompassment of the newspaper's community of publication by the predicted or measured 2mV/m contour computed in accordance with Section 73.183 or Section 73.186 of the Commission's Rules. For FM radio stations the standard is complete encompassment of the newspaper's community of publication by the 1 mV/m contour computed in accordance with Section 73.313 of the Commission's Rules. Previously, we discussed the inherent flaws in defining radio markets using a contour-based definition, and decided to move to a geographic based definition. Specifically, we found that a contour based definition for defining radio markets can create inconsistencies in counting stations that comprise a market, counting stations that an entity owns in a market, and determining a radio market's size and geographic area. See *Local Radio/Problems with the Existing Radio Market Definition and Counting Methodologies*, Section VI(B)(1)(a)(ii)(a) of the R&O. However, such problems do not arise in the context of using contours to determine whether the cross-media limits rule is triggered. Here, we are concerned with the physical proximity of the broadcast station and the newspaper's community of publication, or in the case of radio/television cross-ownership, we are concerned with the relative distance between two specific stations. Because the cross-media rule relies, in part, on a geographic location, *i.e.* the community of publication or the communities of license, parties cannot take advantage of such discussed inconsistencies to circumvent the rules. Moreover, we are not relying on a contour-based definition to define a cross-media market; we are only using it to determine whether the rule is triggered.

²⁷ Bright lines provide the certainty and predictability needed for companies to make business plans and for capital markets to make investments in the growth and innovation in media markets. Conversely, case-by-case review of even below-cap mergers on diversity grounds would lead to uncertainty and undermine our efforts to encourage growth in broadcast services. Accordingly, petitioners should not use the petition to deny process to relitigate the issues resolved in this proceeding.

²⁸ To trigger the rule, the Commission will count all television stations assigned to the DMA that contains the newspaper's community of publication. For the purposes of evaluating whether the non-English daily is printed in the primary language of the "market," however, the market shall be defined as the newspaper's community of publication.