

Cross-media combinations involving television and radio properties also, therefore, are likely to give rise to systematic diversity concerns in at-risk markets. The Commission's DI analysis confirms this fact. The Commission therefore adopts a rule prohibiting the combination of broadcast radio and broadcast television facilities in any market with three or fewer television properties. The television/radio cross-ownership rule is triggered when the radio station's community of license is in the commonly owned television station's DMA. Similar to requests for waiver of the newspaper/broadcast cross-ownership rule, parties seeking waiver of the television/radio cross-ownership rule can rebut this by showing that the stations' signals do not overlap and the television station is not carried on cable systems in the radio station's market.

**322. *Additional Cross-Media Limits in Small to Medium-Size Markets.***

Although markets with four or more licensed television stations do not qualify, in the Commission's judgment, as at-risk markets, a combination of a daily newspaper with a television duopoly and a significant radio presence can, in small to medium-size markets result in substantial changes in the level of diversity. The potential for rapid concentration that may result from a combination of a newspaper with a television duopoly in markets with between four and eight licensed television stations leads the Commission to conclude that it would be prudent, in these markets, to impose additional local ownership restrictions as part of its CML.

323. The Commission is cognizant, however, of the fact that substantial public interest benefits may flow from broadcast/newspaper combinations. Television stations that are co-owned with daily newspapers tend to produce more, and arguably better, local news and public affairs programming than stations that have no newspaper affiliation. Because of the news resources available to local newspapers, the Commission expects similar benefits to be associated with newspaper ownership of radio stations (e.g., radio stations affiliated with a local newspaper may have an enhanced ability to produce local, all-news radio programming and to cover local political and cultural events in greater depth than stations unaffiliated with a newspaper). Accordingly, the Commission is not inclined to prohibit outright newspaper/ broadcast combinations in markets with 4–8 television stations (referred to below as “small to medium size markets”).

324. Balancing these interests, the Commission believes it appropriate, in small to medium size markets (those with between four and eight television stations) to allow the following: (1) One entity may own a combination that includes radio, television and newspaper properties, but the entity may not exceed 50% of either of the applicable local radio or the local television caps in the market; (2) a radio station group owner that also owns a newspaper in the market, but which does not own any television properties in the market, may acquire radio stations up to 100% of the applicable radio cap. In these small to medium size markets, therefore, the Commission will prohibit: television broadcasters that also own a daily newspaper in the market from having a television duopoly in that market; a broadcaster with a duopoly from obtaining a daily newspaper in the same DMA; a newspaper owner from purchasing more than a single television station within the DMA; and a radio station owner that also owns a daily newspaper and a television station in the market from exceeding 50% of the applicable radio cap for the market.<sup>30</sup>

325. Although there may be economic benefits to the owner from more extensive combinations, it is not as clear that those benefits will accrue to the public in any meaningful way; at least the public interest component of these benefits is likely to decline incrementally as the number of stations increases. Given that no owner will be permitted, in accordance with the Commission's local television cap, to hold more than two television stations in a small to medium size market, a limit of one station in these markets for owners of local newspapers will maximize the public interest benefits, while reducing any loss of diversity. Although the loss of diversity that might result were that owner to add a significant radio presence in the market warrants a further 50% limit in the number of radio properties that owner might hold, such is not the case if the combination does not include any television properties.

<sup>30</sup> For these purposes, the Commission uses the Arbitron or contour-overlap market definitions discussed above in determining whether the newspaper and a radio station serve the same market. We are not imposing a limitation that would preclude a top four television stations in a market from being combined in common with a newspaper or radio station similar to the restriction imposed in the local television rule context. The top four restriction imposed under the local TV ownership rule is specifically designed to protect competition, as fully discussed in that section. The cross-media limit, on the other hand, is designed to protect viewpoint diversity, not economic competition.

326. The Commission has engaged in this analysis using its DI and a randomly selected sample of markets not with the idea of slavishly following the numbers that the index generated, but to confirm and support the judgments the Commission makes regarding the kinds of markets that are most susceptible to viewpoint concentration, and the kinds of transactions that are most likely to have a significant impact on the level of diversity available in any given market. The Commission does not believe that markets with between four and eight television stations can be regarded as moderately concentrated for viewpoint purposes or otherwise “at risk.” The Commission does, however, believe, and the DI confirms, that these markets are approaching a level of viewpoint concentration that the Commission would regard as moderate, and it is concerned that some combinations involving the three major sources of local news and public affairs information in these markets would lead to inordinate diversity losses. Accordingly, the Commission will permit television/radio combinations in small to medium size markets, provided they comply with the local radio and television rules.

327. With respect to markets with nine or more TV stations (“large markets”), the Commission imposes no cross-media restrictions. To begin with, markets of this size today tend to have robust media cultures characterized by a large number of outlets and a wide variety of owners. New York City, for instance, which has 23 licensed television stations, 61 radio stations, and 21 daily newspapers, had 61 different owners of broadcast stations and daily newspapers as of November 2002. Using the Commission's diversity index as a measure, New York City today has a base DI of only 373. More striking, perhaps, is the example provided by Kansas City, Missouri, which has only nine licensed television stations. The Commission's Ten City Study reveals that Kansas City had 35 different owners and the Commission's Diversity Index analysis shows that Kansas City has a base DI today of only 509.

328. Again, to ensure that the results of the Commission's Ten City Study were not anomalous, the Commission conducted a DI analysis on a random sample of markets of various sizes, including markets with nine licensed television stations, markets with ten television stations, markets with fifteen television stations, and markets with twenty television stations. Among the Commission's sample markets, the