

entire community in which such newspaper is published[.]”² Cox seeks a 12-month temporary waiver of the radio/newspaper cross ownership rule to facilitate the larger transaction, of which the WFOX(FM) assignment is a part, and to permit it to come into compliance with the rule in an orderly fashion.³ Without such a waiver, Cox would be prohibited from acquiring WFOX(FM) because the 1 mV/m contour of the station completely encompasses the city of Atlanta, Georgia, wherein the Atlanta Newspapers Division of Cox publishes *The Atlanta Constitution* (morning) and *The Atlanta Journal* (afternoon) daily newspapers (“*The Atlanta Journal-Constitution*”).⁴

3. In support of its waiver request, Cox asserts that, because WFOX(FM) and *The Atlanta Journal-Constitution* are not located in the same community, the cross-ownership situation at issue in the instant case is far different from other instances in which the Commission has considered waiver requests. Cox argues that there is no effective competition between the newspaper and the radio station. Cox asserts that WFOX(FM)’s community of license, Gainesville, is located 55 miles (approximately 76 minutes drive time) from Atlanta, and that Atlanta and Gainesville are in separate newspaper markets. Cox points out that *The Gainesville Times* is published in Gainesville, and has a circulation of 38.9 percent in Hall County, in which Gainesville and WFOX(FM) are located. In contrast, *The Atlanta Journal-Constitution* has a combined circulation of 9.5% in Hall County. Cox also argues that Gainesville and Atlanta are located in separate radio markets. Although Arbitron considers WFOX(FM) to be an Atlanta home market station and attributes its audience ratings and advertising revenues to the Atlanta radio metro market, Hall County is not within the Atlanta radio metro market. Cox asserts there are few political ties between Atlanta and Gainesville, given their locations in different counties and their representation in the U.S. House of Representatives by different Members of Congress.

4. Cox also claims that there is substantial diversity within the geographic market relevant to evaluation of its temporary waiver request, and provides information as to the number of independently

² In 1996, the Commission initiated an inquiry concerning proposed changes to the newspaper/radio cross-ownership waiver policy and invited public comment. See *Newspaper/Radio Cross-Ownership Waiver Policy, Notice of Inquiry*, MM Docket No. 96-197, 11 FCC Rcd 13003 (1996) (“*Newspaper/Radio NOI*”). The comments filed in that proceeding were considered in the Commission’s 1998 Biennial Regulatory Review, wherein we sought comment on whether the newspaper/broadcast cross-ownership rule should be retained, modified or eliminated. See *1998 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry*, 13 FCC Rcd 11276, 11288 (1998). On May 26, 2000, the Commission adopted the Biennial Review Report, in which we determined that, as a general matter, the rule should be retained because it continues to serve the public interest by furthering our important and substantial policy of viewpoint diversity. However, as we stated in the Biennial Review Report, “we believe that there may be circumstances in which the rule may not be necessary to achieve its intended public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.” See *Biennial Review Report*, MM Docket 98-35, FCC 00-191, at ¶ 88 (rel. June 20, 2000).

³ Pursuant to an Asset Exchange Agreement between Cox and AMFM, Inc., dated August 30, 1999, the parties will exchange the licenses and assets of 15 radio stations, including WFOX(FM). Specifically, AMFM is selling 13 stations to Cox, including WFOX(FM), as well as stations in: Stamford-Norwalk, Connecticut; Miami, Florida; and Jacksonville, Florida. In exchange, AMFM will acquire two stations from Cox in Los Angeles, California. This station exchange between Cox and AMFM will also facilitate AMFM’s merger with Clear Channel Communications, Inc. Clear Channel’s acquisition of the stations that AMFM proposes to sell to Cox would cause the merged entity to violate the Commission’s multiple ownership rules.

⁴ A combined paper is published on Saturdays and Sundays.

owned radio and television stations providing service to the counties that are located within the 1 mV/m service area of WFOX(FM) (the “WFOX(FM) Coverage Area”) and where the *Atlanta Journal-Constitution* enjoys significant circulation. Cox asserts the level of diversity in the Atlanta media market, and more specifically, within the WFOX(FM) Coverage Area, exceeds that found to be sufficient in other cases in which the Commission has granted temporary waivers of the broadcast/newspaper cross ownership rule. Specifically, Cox provides contour maps and other engineering exhibits showing that 12 full-power television stations (including Cox-owned WSB-TV, Atlanta, Georgia) and 106 radio stations (not including WFOX or the five Cox affiliated stations) provide service to some portion of the WFOX(FM) Coverage Area. According to Cox, at least 36 cable companies serve more than 870,000 subscribers within the WFOX(FM) Coverage Area, and at least five different daily papers, published by four companies other than Cox, are published in counties located entirely within the 1 mV/m contour. Cox also notes that at least 36 weekly papers, owned by 22 different owners, are published in the area, and MMDS, MDS, DBS, outdoor advertising and direct mail are all players in the economic and information marketplace. Cox asserts that diversity would not be adversely impacted because Cox’s newspaper and broadcast stations are operated separately.

5. As further support for its waiver request, Cox notes that in 1997 the Commission granted a temporary waiver to permit Cox to acquire WJZF(FM), La Grange, Georgia, from NewCity Communications, Inc.⁵ A waiver was required because the 1 mV/m contour of WJZF(FM) encompasses Atlanta, thus triggering the radio/newspaper cross-ownership rule’s contour encompassment prohibition with regard to common ownership of WJZF(FM) and *The Atlanta Journal-Constitution*. The Commission’s decision there was based on its determination that abundant competition and diversity would remain in the Atlanta market following the acquisition of WJZF(FM).⁶ Cox asserts that competition and diversity among media voices in the Atlanta market is at least as strong today as it was when the Commission granted the *NewCity* application.

DISCUSSION

6. In adopting the 1975 rule that generally prohibited the common ownership of a newspaper and broadcast station serving the same community, the Commission made it clear that fostering diverse viewpoints from antagonistic sources is at the heart of our licensing responsibility.⁷ The Commission concluded that granting a broadcast license to an entity in the same community as that in which the entity also publishes a newspaper could harm local diversity.⁸ At the same time, the Commission noted its expectation that there could be meritorious waiver requests and specified four circumstances in which

⁵ *NewCity Communications, Inc.* 12 FCC Rcd 3929 (1997) (Commission granted temporary waiver of 47 C.F.R. § 73.3555(d) for a period ending six months from the date of a final order in MM Docket 96-197).

⁶ In *New City*, Cox provided information that nine television stations, eight low power television stations, and 68 radio stations (exclusive of Cox stations) were licensed to communities within the WJZF(FM) 1 mV/m contour area, as well as the presence of 37 cable systems, seven daily newspapers (not including the *Atlanta Journal-Constitution*) and 33 weekly newspapers. *Id.* at 3952.

⁷ *Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 FCC 2d 1046, 1079 (1975) (“*Second Report and Order*”), *recon.*, 53 FCC 2d 589 (1975) (“*Recon. Order*”), *aff’d sub. nom. Federal Communications Commission v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).

⁸ *Second Report and Order*, 50 FCC 2d at 1075.

waivers would be warranted: (1) where a licensee is unable to sell a station; (2) where the only sale possible would be at an artificially depressed price; (3) where separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality; or (4) where, for whatever reason, the purposes of the rule would be disserved by its application.⁹

7. The Commission has granted temporary waivers of the multiple ownership rules, including the daily newspaper/broadcast cross-ownership rule, in order to facilitate transactions involving stations in different markets. *See Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5895 (1996) (granting 12-month waivers of radio-newspaper cross-ownership rule to the Walt Disney Company in Fort Worth, Texas and Detroit-Pontiac, Michigan); *Multimedia, Inc.*, 11 FCC Rcd 4883, 4891 (1995) (granting 12-month waiver of television-newspaper cross-ownership rule to Gannett Co., Inc. in Cincinnati, Ohio). *See also, Shareholders of CBS Corporation and Viacom, Inc.*, FCC 00-155 (May 3, 2000) (granting 12-month waivers of the Dual Network Rule and the National Television Ownership Cap). In *Multimedia, Inc.*, we stated that where “mergers or transfers of multiple stations are involved, in general we believe that the benefits derived from such transactions support grant of a reasonable waiver period to effectuate the merger and permit time to come into compliance with our rules.” *Multimedia, Inc.*, 11 FCC Rcd at 4885. We believe that a temporary waiver period is appropriate in the instant case to effectuate the overall station exchange between Cox and AMFM, Inc., and to avoid a forced sale of WFOX(FM) or the newspaper. Accordingly, we grant Cox a temporary 12-month waiver to allow an orderly divestiture of either WFOX(FM) or the *The Atlanta Journal-Constitution* newspapers.¹⁰

8. The Commission has determined that the relevant market for analyzing the effects of a newspaper/radio cross-ownership waiver on diversity and competition is the common area served by the newspaper and the 1 mV/m contour of the FM station.¹¹ Because we are convinced that *The Atlanta Journal-Constitution* serves portions of at least 41 of the 43 counties that are contained either in whole or in part within the WFOX(FM) Coverage Area, we accept Cox’s characterization of the relevant geographic market.¹² Furthermore, given that the *Atlanta Journal-Constitution*’s daily circulation in almost every

⁹ *Second Report and Order*, 50 FCC 2d at 1085.

¹⁰ As stated in *Capital Cities/ABC, Inc.*, 11 FCC Rcd at 5895, a 12-month period should be sufficient to avoid a forced sale. Moreover, the Commission’s observation in *Stockholders of CBS Inc.*, that “today’s economic climate appears robust” and thus a 12-month waiver provided the “transferee with ample time to locate potential purchasers and to negotiate purchase agreements for the stations to be divested” applies with equal force to the circumstances here. 11 FCC Rcd 3733, 3755-56 (1995).

¹¹ *See Columbia Montour Broadcasting Co., Inc.*, 13 FCC Rcd 13007, 13015 (1998). *Also see Newspaper/Radio NOI*, 11 FCC Rcd at 13011; *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5890 (1996); *Hopkins Hall Broadcasting, Inc.*, 10 FCC Rcd 9764, 9766 (1995).

¹² This is consistent with our decision in *Columbia Montour*, wherein we accepted the applicant’s description of Columbia County, Pennsylvania, as being the relevant market because the boundaries of Columbia County approximated the common area served by the newspaper and the 2 mV/m contour of WCNR. Similarly, in *Stockholders of Renaissance Communications Corporation*, we concurred in the applicants’ contention that the relevant geographic market was Dade, Broward and Palm Beach counties, because WDZL(TV)’s Grade A contour (the relevant contour when testing a newspaper/television cross ownership waiver) included portions of each of these counties, and the *Sun-Sentinel* was distributed in each county. *Stockholders of Renaissance Communications Corporation*, 12 FCC Rcd 11866 (1997).

county within the WFOX(FM) Coverage Area exceeds five percent,¹³ we are further convinced that the relevant geographic market for our diversity and competition analysis is the entire area within the WFOX(FM) Coverage Area.

9. We note that while the temporary waiver we granted in *NewCity* is support for the action taken herein, the diversity finding we made there is not dispositive of the finding in the instant case. The relevant market for our diversity analysis in *NewCity* was the area of overlap between WJZF(FM)'s 1 mV/m contour and the service area of the *Atlanta Journal-Constitution*. In contrast, the relevant market in the instant case is the area of overlap between the WFOX(FM) Coverage Area and the service area of the *Atlanta Journal-Constitution*. La Grange (the community at issue in *New City*) is located 67 miles southwest of Atlanta, and Gainesville is located 55 miles northeast of Atlanta. La Grange and Gainesville are approximately 120 miles apart, and the newspapers and broadcast services available to them are not the same.

10. For its diversity analysis, Cox has provided a listing of all of the radio and television stations licensed to communities within the WFOX(FM) Coverage Area, as well as contour maps and a listing of all of the broadcast stations that serve the WFOX(FM) Coverage Area, but are not licensed to communities therein. Considering the impact of the proposed combination on local diversity, our analysis indicates that the relevant market is served by a wide variety of media. Specifically, Cox has shown that eleven full-time television stations are licensed to communities located within the WFOX(FM) Coverage Area. Aural service to the overlap area is also substantial. Cox has stated that at least 90 radio stations (excluding Cox stations) are licensed to communities located within the WFOX(FM) Coverage Area. As described above, numerous broadcast stations provide service to the WFOX(FM) Coverage Area.

11. According to an engineering study provided by Cox, the WFOX(FM) Coverage Area includes portions, if not all, of 43 counties in Georgia and South Carolina (the "Overlap Counties"). Cox's waiver request included a listing of each AM, FM and television station providing service within the Overlap Counties.¹⁴ Based on a review of that information, we are satisfied that there is sufficient diversity of viewpoint in the Overlap Counties to counter the loss of one independent viewpoint during the 12-month temporary waiver period. Specifically, in the Overlap Counties in which *The Atlanta Journal Constitution's* circulation exceeds 12.6% (which is the average circulation of all the Overlap Counties combined), Cox has shown that 46 AMs, 29 FMs and 10 television stations, representing at least 57 independently-owned media voices, provide service. In addition, none of the Overlap Counties appears to be served by fewer than seven broadcast stations, representing no fewer than seven independently-owned broadcast voices.

¹³ In just nine of the 43 counties that fall wholly or partially within the WFOX(FM) Coverage Area does the *Journal-Constitution* have less than five percent circulation. The *Atlanta Journal-Constitution's* average level of daily circulation among all counties contained within the WFOX(FM) Coverage Area is 12.6%. The *Atlanta Journal-Constitution's* circulation is above average in 20 counties within the WFOX(FM) Coverage Area.

¹⁴ Cox determined the number of stations providing service within the overlap area as follows: for AM stations, the 2 mV/m contour was used; for FMs, the 1.0 mV/m contour was used; and for TV, the Grade A contour was used. As used herein, these contours are referred to as the "requisite level of service." This approach is consistent with the approach taken by the applicant in *WDRQ, Inc.*, 12 FCC Rcd. 11671 (1997) in which we granted a four-month waiver of the rule to allow ABC, Inc. to own both WDRQ(FM), Detroit, Michigan, and the *Oakland Press & Reminder*, which is published within the 1 mV/m contour of WDRQ(FM). *WDRQ, Inc.*, 12 FCC Rcd. at 11673.

12. Although we find that Cox's current ownership of five radio stations and one television station within the WFOX(FM) Coverage Area is not inconsequential, overall, we find that the *Atlanta Journal-Constitution* faces competition from other media sources in Gainesville and the surrounding area sufficient to offset the concern for loss of diversity during the 12-month temporary waiver period. In addition to the *Atlanta Journal-Constitution*, five daily newspapers, published by four different entities, are published in counties within the WFOX(FM) Coverage Area.¹⁵ At least 36 weekly newspapers are published within the WFOX(FM) Coverage Area by 22 different owners. The *Atlanta Journal-Constitution* has a combined daily circulation of just 9.5% in Hall County, yet *The Gainesville Times*, the only daily newspaper published in either Hall County or Gainesville, has a circulation of 38.9% in Hall County. Cable television penetration throughout the area is substantial. There are 36 cable television systems serving communities in the overlap area. Given this information, we are satisfied that there is adequate diversity of viewpoint within the relevant market to counter the loss of diversity from common ownership of WFOX(FM) and *The Atlanta Journal-Constitution* during the 12-month temporary waiver period.

13. In conclusion, we believe that a temporary 12-month waiver of the radio/newspaper cross ownership rule is in the public interest, in order to allow Cox time to divest itself of either WFOX(FM) or the *Atlanta Journal-Constitution*. Moreover, we find that the parties are fully qualified and that grant of the application would serve the public interest.

14. ACCORDINGLY, IT IS ORDERED, that the request for a temporary 12-month waiver of Section 73.3555(d) IS GRANTED, subject to the condition that within twelve months of the date of consummation of the proposed assignment of WFOX(FM), Gainesville, Georgia, from Chancellor Media/Shamrock Radio Licenses, L.L.C. to Cox Radio, Inc., Cox Radio Inc. comes into compliance with 47 C.F.R. § 73.3555(d) either by filing an application to divest itself of its interest in WFOX(FM) or taking such other action as may be necessary to bring it into compliance with 47 C.F.R. § 73.3555(d). Any request to extend this temporary period should be filed at least 45 days prior to the end of the period and will be closely scrutinized.

15. IT IS FURTHER ORDERED, that the above-captioned application to assign the license of WFOX(FM), Gainesville, Georgia, from Chancellor Media/Shamrock Radio Licenses, L.L.C. to Cox Radio, Inc. (File No. BALH-19991116AAT) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹⁵ The *Marietta Daily Journal* is published in Cobb County, the *Gwinnett Daily Post* is published in Gwinnett County, the *Rockdale Citizen* is published in Rockdale County, the *Athens Banner Herald/ Daily News* is published in Clarke County, and the *Gainesville Times* is published in Hall County, WFOX's home county.