

June 21, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Room TW-B204
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation 2014 Quadrennial Regulatory Review –
Review of the Commission’s Broadcast Ownership Rules and Other Rules
Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,
et al., MB Docket Nos. 14-50, 09-182, 07-294, 04-256

Dear Ms. Dortch:

On June 17, 2016, Kenneth E. Satten and the undersigned of Wilkinson Barker Knauer, LLP, representing Bonneville International Corporation and The Scranton Times, L.P. (“Bonneville-Scranton”), met with Commissioner Michael O’Rielly and his Legal Advisor Erin McGrath concerning the Further Notice of Proposed Rulemaking in the above-referenced docket (“Quadrennial Review”). Mr. Satten and I also met the same day with Marc Paul, Legal Advisor to Commissioner Jessica Rosenworcel. Specifically, Bonneville-Scranton advocated that the Commission should conclude that the newspaper/radio cross-ownership ban serves none of the FCC’s identified goals for its media ownership restraints and, accordingly, eliminate the restriction. We also urged the Commission to address the eligible entity definition and proposals advanced by the Multicultural Media, Telecom and Internet Council (“MMTC”) as directed by the U.S. Court of Appeals for the Third Circuit in its May 25, 2016 decision in *Prometheus Radio Project et al. v. FCC* (Nos. 15-3863, 15-3864, 15-3865, 15-3866) (“*Prometheus III*”) and complete the 2014 Quadrennial Review by or before the end of 2016.

We noted that Bonneville-Scranton is on record in this proceeding in support of FCC efforts to foster greater minority and female ownership of broadcast stations. We explained that Commission advancement of minority and female ownership does not preclude elimination of the newspaper/radio rule. Evidence in the docket indicates that the rule is not an impediment to minority ownership. Moreover, radio, because of the sheer number of stations and lower cost structure, already offers new entrants attractive options for ownership, which the Commission’s actions in establishing the low-power FM service and revitalizing AM radio have usefully

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enhanced. Access to capital, not the availability of radio stations, remains the obstacle for some new entrants.

Bonneville-Scranton agrees with the Commission's tentative conclusion that the newspaper/radio rule is not necessary to serve the FCC's competition goal in this proceeding and may actually impede the agency's localism goal – conclusions that the Third Circuit already has affirmed in earlier phases of the *Prometheus* litigation concerning the media ownership rules. We also noted that the Third Circuit in its new *Prometheus III* decision made specific reference to Commission inaction on the newspaper/radio rule as a matter of concern. In the 46 years since the Commission first began contemplating restrictions on newspaper/broadcast cross-ownership, the FCC has recognized over and over that, with respect to the purposes of the rule, radio is different because it is not a significant source of local news.¹ Original newsgathering and reporting is the only logical focus for the Commission's definition of "viewpoint diversity" in the specific context of the newspaper/broadcast cross-ownership rule. Consideration of other content, such as commentary on news gathered by others, would require the agency in reviewing the newspaper/radio rule to evaluate the impact of the wide-ranging news commentary available on the Internet. We noted that the docket is replete with empirical evidence that radio stations, with a very few exceptions, do not engage in local newsgathering or produce a significant amount of local news. Bonneville-Scranton provided Commissioner O'Rielly, Ms. McGrath, and Mr. Paul with updated statistics concerning local radio news production and also recent data concerning the continuing contraction of the newspaper industry.²

We explained that the Commission's legal obligations, including constitutional considerations and the statutory mandates of Section 202(h) of the Telecommunications Act and Section 706 of the Administrative Procedure Act, compel swift rescission of the ban. Given the rulemaking record now before the agency, it is long past time for the Commission to match its actions to its often-expressed recognition that the newspaper/radio cross-ownership ban serves no policy goal.

¹ We provided a list of excerpts concerning these earlier FCC pronouncements to Commissioner O'Rielly, Ms. McGrath, and Mr. Paul, appended here as Attachment A.

² The handout is appended here as Attachment B.

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Should any questions arise concerning this submission, kindly contact the undersigned.

Respectfully submitted,

Rosemary Harold /s/

Rosemary C. Harold

*Counsel to Bonneville International
Corporation and The Scranton Times, L.P.*

cc: Commissioner O'Rielly
Erin McGrath
Marc Paul

HISTORICAL OVERVIEW:
FCC COMMENTS ON NEWSPAPER/RADIO CROSS-OWNERSHIP

- 1970** – The Notice of Proposed Rulemaking that led to adoption of the NBCO rule stated that “[i]t has now become clear that **the most significant aspect of the problem is the common control of television stations and newspapers** of general circulation. [T]he studies presented in this record and otherwise available are in full agreement that the public looks primarily to these two sources for its news and information on public affairs. **Other broadcast services** and other printed publications are **substantially less significant** in this respect.”¹
- 1975** – Even as it imposed NBCO restraints on newspaper/radio combinations, the FCC noted that “[r]ealistically, a radio station cannot be considered the equal of either the paper or the television station in any sense, least of all in terms of being a source for news or being the medium turned to for discussion of matters of local concern.”² While recognizing the argument that “the larger number of radio facilities means there already is more diversity than in television,” the agency nevertheless imposed the new restraint because “the fact is that we wish to encourage still greater diversity. This to us is a worthwhile goal which does not depend on its being urgent to be justified.”³ Still, at the same time the FCC conceded that only in communities unserved by any local TV station would a newspaper/radio combination pose the same policy concern as a newspaper/television combination.⁴
- 1996** – Responding to debate in a transactional proceeding that predated the 1996 Act, the FCC opened an inquiry to consider easing waiver standards for newspaper/radio combinations. In doing so, the agency noted that “[w]e have

¹ *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, Further Notice of Proposed Rulemaking, 22 FCC 2d 339, 344 ¶ 26 (“1970 NPRM”); *see also id.* at ¶ 27. (“The various groups which have studied the degree of public reliance on various forms of communications – television, radio, newspapers, magazines, other people or sources – are unanimous in the conclusion that television and the daily newspaper of general circulation are preeminent in importance.”). In addition, the 1970 NPRM noted a substantial drop in the number of people identifying radio as their primary source of local news from 1959 to 1968, *see id.*, a time period that coincides with the growth of television newscasts.

² *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 FCC 2d 1046, 1083 ¶ 115 (1975) (“1975 Second Report and Order”) (“[T]he radio station standing by itself cannot be considered as providing significant diversity or as constituting a meaningful competitor at all”).

³ *Id.* at 1076 ¶ 104. The 1975 Second Report and Order devoted one paragraph of a 135-paragraph document to the Commission’s policy rationale for extending the NBCO rule to radio/newspaper combinations. In contrast, at least 17 paragraphs of the 1975 Second Report and Order were solely devoted to discussion of newspaper/TV combinations, which included review of studies and hearing testimony.

⁴ *Id.* at 1083 ¶ 116.

previously determined that a television station is, relatively speaking, more a source of news than is a radio station.”⁵

1998 – The FCC folded the record of its 1996 inquiry into its first mandated review of the broadcast ownership rules under the 1996 Act. Once again, the FCC duly noted that **Americans relied upon radio as a news and information source “to a lesser extent than television and newspapers.”⁶**

2003 – In its first omnibus review order under the 1996 Act, the FCC found that **“broadcast radio generally has less of an impact on local diversity than broadcast television”** and so would only have restricted newspaper/radio combinations in “at-risk” markets with three or fewer television stations.”⁷

2007 – The agency again determined that **“proposed newspaper/radio combinations will generally be less likely to raise concentration concerns than proposed newspaper/television combinations in light of the fact that radio is generally not as influential a voice as is television.”⁸** Consistent with that view, the FCC expected that its new NBCO rule will “make it less difficult for newspaper/radio combinations to overcome the negative presumption.”⁹

2011 – The FCC’s consistent recognition of radio’s relatively slight contribution to local newsgathering extends to the still-pending 2010 quadrennial review. In discussing the NBCO rule, the *2011 NPRM* tentatively concluded that **“radio stations are not the primary outlets that contribute to local viewpoint diversity.”¹⁰**

⁵ *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13003, 13010 ¶ 11 (1996); *see also id.* at 13012 ¶ 15.

⁶ *1998 Biennial Regulatory Review – 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, 11289 ¶ 41 (1998) (citing 1997 professional polling data).

⁷ *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13800 ¶ 459, 13803–04 ¶ 469 (2003); *rev’d and remanded*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004).

⁸ *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2052 ¶ 73 (2008) (citing FCC-commissioned and commenter studies indicating that “Americans rely on newspapers and television more than radio for local news and information”); *see also id.* at 2044 ¶ 59 n.197, 2057 ¶ 80 n.259. The Commission also anticipated that it would more readily approve newspaper/radio combinations in markets below the top 20 “in light of the fact that radio is generally not as influential a voice as is television.” *Id.* at 2052 ¶ 73; *see also id.* at 2049 ¶ 68 n.220.

⁹ *Id.* at 2052 ¶ 73.

¹⁰ *See, e.g., 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, ¶¶ 89, 96, 112 (2011) (“*2011 NPRM*”).

2014 – In the current Further Notice, the FCC recognizes that the “diverse and antagonistic sources” that the NBCO rule historically has protected are daily newspapers and local television stations.¹¹ The agency states that “[r]esearch shows that most radio stations do not produce significant amounts of local news and that most consumers do not rely on radio stations as their primary source of local news” and that “the newspaper/television restriction has always been the ‘crux’” of the NBCO rule.¹² The FCC also “tentatively agree[s] ... that the NBCO rule does not have a significant impact on minority ownership.”¹³ In seeking comment on the elimination of the newspaper/radio cross-ownership restriction, the *Further Notice* acknowledges that the FCC has recognized since at least 1970 that radio does not play a dominant role in promoting viewpoint diversity.¹⁴

Submitted for the record in MB Docket No. 14-50

By Wilkinson Barker Knauer, LLP

*On behalf of Bonneville International Corporation
and The Scranton Times, LLP*

June 6, 2016

¹¹ 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, MB Docket No. 14-50, FCC 14-28 (2014) (“*Further Notice*”) at ¶ 115.

¹² *Id.* at ¶ 116.

¹³ *Id.* at ¶ 120.

¹⁴ *Id.* at ¶ 147.

**JUNE 2016 UPDATE ON MARKETPLACE STATISTICS
RELEVANT TO THE NEWSPAPER/RADIO CROSS-OWNERSHIP RULE**

- Since Bonneville/Scranton’s reply comments submission in 2014, statistics concerning the paucity of radio stations that do original newsgathering and reporting have not changed – if anything, they’re gotten a bit worse:
 - Latest info on number of all-news stations: Only about 30 or 31 commercial all-news stations left, based on the last two Pew *State of the News Media*” reports. And Pew’s 2016 “State of the News Media” report, released on June 15, 2016, notes that its reported numbers does not reflect former all-news stations that recently changed to other formats.
See <http://www.journalism.org/2016/06/15/audio-fact-sheet/>; <http://www.journalism.org/2015/04/29/audio-fact-sheet/>
 - In April 2016, Cumulus laid off most of the news staff – approximately 30 people or more – employed by its formerly all-news KGO(AM).
See http://www.mercurynews.com/tv/ci_29709673/ronn-owens-moves-ksfo-major-bay-area-radio. The station’s format shifted to syndicated talk radio.
See <http://www.journalism.org/2016/06/15/audio-fact-sheet/>.
 - In April 2014, Empire Broadcasting converted its local news station in San Jose to a country-music format that will be mostly automated. The company reportedly ran it at a loss for 30 years. In the switch, four of the five journalists on staff were laid off. See San Jose Mercury News: http://www.mercurynews.com/bay-area-news/ci_29752807/kliv-san-joses-independent-all-news-radio-station?source=pkg
 - Bob Papper, the long-time professor/researcher at Hofstra who works with RTDNA on industry statistics, reported in 2015 and/or 2016 that:
 - Of the stations that have radio news operations, on average, those stations have a full-time news staff of just one person – a number that has been flat for 20 years (in contrast to rise in TV newsroom employment). Statistics for 2016 not yet reported.
See http://www.rtdna.org/article/rtdna_research_newsroom_employment_rises
 - Overall radio news salaries declined 4.1 percent in 2015; statistics for 2016 not yet reported.
See http://www.rtdna.org/article/research_rtdna_salary_survey
 - The overall percentage of radio stations running local news was down nearly 8 percent in 2014, down a further 3.8 percent in 2015, then up 3.0 percent in 2016. End result: Down more than 8 percent in three years.
See http://www.rtdna.org/article/research_tracking_local_news; http://www.rtdna.org/article/rtdna_research_local_news_by_the_numbers

- The average amount of time radio stations devoted to local news slid by just over two minutes a day in 2015, then rose by just under 2 percent in 2016. End result: Flat or slight decline.
See http://www.rtdna.org/article/research_tracking_local_news; http://www.rtdna.org/article/rtdna_research_local_news_by_the_numbers
 - Weekday *average* number of minutes devoted to local news in 2015 was 75.6 minutes (about 5 minutes per hour assuming a 5 AM-8PM broadcast news day); in 2016 it was 77.4 minutes (also about 5 minutes per hour assuming a 5 AM-8PM broadcast news day). Weekend time is well under half the weekday time.
See http://www.rtdna.org/article/research_tracking_local_news; http://www.rtdna.org/article/rtdna_research_local_news_by_the_numbers
 - *Median* amount of local news time was identical for 2015 and 2016: 50 minutes per weekday (3.3 minutes per hour time assuming a 5 AM-8PM broadcast news day) and zero on the weekends.
See http://www.rtdna.org/article/research_tracking_local_news; http://www.rtdna.org/article/rtdna_research_local_news_by_the_numbers
 - Caveat from study author: Stats re radio news likely too high because survey depends on self-reporting, not representative sample.
See http://www.rtdna.org/article/research_tracking_local_news; http://www.rtdna.org/article/rtdna_research_local_news_by_the_numbers
 - Pew’s 2016 *State of the New Media* report – released just days ago – stated that:
 - The cohort of all-news stations is small and in 2015 garnered **about 1% of overall audience share of Americans 12 years of age or older**, according to Nielsen. That was identical to the 2014 all-news share.
See <http://www.journalism.org/2016/06/15/audio-fact-sheet/> (emphasis added).
 - Although ownership of the remaining 31 (or so) all-news stations is divided among 16 entities, one company – CBS Corporation – owns 10, or about one-third of all of these stations. But in mid-March 2016, CBS announced that the company was exploring a range of options to [sell or spin off its entire radio division](#) of 117 stations, including the 10 news stations. See <http://www.journalism.org/2016/06/15/audio-fact-sheet/>.
- Newspapers, which do try to keep producing local news, continue to shed reporters – or shut down entirely:
 - Bob Papper (drawing on American Society of News Editors data) reported that the number of newsroom employees at daily newspapers shrank 10.4 percent from 2014 to 2015.
See http://www.rtdna.org/article/update_tv_and_newspaper_staffing
 - According to the 2015 Pew Research Center *State of the News Media* report, newspapers saw circulation decline by 3% from the year before, and advertising

revenue was down 4% in the same period. Ad revenue is now *less than half* of what it was a decade ago and daily circulation is down 19% over that same period. See <http://www.pewresearch.org/fact-tank/2015/04/29/5-key-takeaways-from-state-of-the-news-media-2015/>

- The latest Pew analysis – the *2016 State of the News Media* report – paints an even bleaker picture:
 - For newspapers, 2015 might as well have been a recession year. Weekday circulation fell 7% and Sunday circulation fell 4%, both showing their greatest declines since 2010. At the same time, advertising revenue experienced its greatest drop since 2009, falling nearly 8% from 2014 to 2015. See <http://www.journalism.org/2016/06/15/newspapers-fact-sheet/>.
 - Newsroom employment also declined 10%, more than in any other year since 2009. The newspaper workforce has shrunk by about 20,000 positions, or 39%, in the last 20 years. See <http://www.journalism.org/2016/06/15/newspapers-fact-sheet/>.
- On December 31, 2015, two small-town dailies near Pittsburgh closed, one after 131 years of operation. Eighty-seven journalists lost their jobs. See Pittsburgh Post-Gazette: <http://www.post-gazette.com/business/2015/12/31/It-s-the-end-of-an-era-for-the-McKeesport-Daily-News/stories/201512310188>)
- The owners of a half-dozen newspapers in the San Francisco Bay area – including the once-storied *San Jose Mercury News* and the *Oakland Tribune* – announced plans in March 2016 to consolidate operations into two regional newspapers, and lay-off 20 percent of the newsroom staff in the process. See <http://www.sfgate.com/business/article/Bay-Area-News-Group-consolidates-newspapers-6863720.php>
- The Poynter Institute in late 2015, see <http://www.poynter.org/2015/whats-behind-this-falls-wave-of-layoffs-and-buyouts/383259/>, reported:
 - 46 layoffs at the *Philadelphia Inquirer/Daily News/Philly.com*
 - 75 layoffs at the *Los Angeles Times*
 - 50 layoffs at the *New York Daily News*
 - 40 layoffs at the *Boston Globe*
- Pew’s 2016 *State of the News Media* report cited an even larger round of layoffs, covering journalist job losses at the *Philadelphia Inquirer* and *Daily News*, Tribune Publishing (including the *Los Angeles Times* and the *Chicago Tribune*), the *Wall Street Journal*, the *New York Daily News*, the *San Diego Union-Tribune*, the *Orange County Register*, McClatchy’s foreign bureaus, the *Seattle Times* and *Newsday*, the *Denver Post* and the *Boston Globe*. Pew even noted that *Globe* editorial employees spent one Sunday helping to deliver the paper in order to

address subscriber problems with a new delivery service.)
See <http://www.journalism.org/2016/06/15/newspapers-fact-sheet/>.

- The site “NewspaperDeathWatch.com,” see <http://newspaperdeathwatch.com/>, reports similar grim numbers:
 - The *Orange County Register* thought it had a deep-pocketed savior of a new owner three years ago – but the company filed for bankruptcy protection last year.
 - The *New Orleans Times-Picayune* announced a 21 percent cut in overall staff.

- And the *New York Times* is struggling to avoid layoffs domestically – at least for now – by shutting some operations in Europe and offering a buy-out that may, or may not, forestall layoffs next year.
See <http://www.vanityfair.com/news/2016/04/new-york-times-lay-off-rumors>.
; <http://www.nytimes.com/2016/05/26/business/media/new-york-times-co-to-offer-buyouts-to-employees.html>
 - This despite having more than 1 million digital subscribers, but the revenue from digital ads and subscriptions aren’t fully replacing lost print ad revenue. See, e.g., <http://fortune.com/2016/02/05/nyt-profit/>

Submitted for the record in MB Docket No. 14-50

*By Wilkinson Barker Knauer, LLP
On behalf of Bonneville International Corporation
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