DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED
AUG 23 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --Review of the Commission's Broadcast Ownership Rules Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 98-35
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197
	)	

To: The Commission

EMERGENCY PETITION FOR RELIEF OF THE NEWSPAPER ASSOCIATION OF AMERICA

John F. Sturm,
President & Chief Executive Officer
David S. J. Brown,
Senior Vice President/ Public Policy & General Counsel
E. Molly Leahy,
Legislative Counsel

NEWSPAPER ASSOCIATION OF AMERICA
1921 Gallows Road, Suite 600
Vienna, VA 22182
(703) 902-1600

Richard E. Wiley
James R. Bayes
Kenneth D. Katkin

of

WILEY, REIN & FIELDING

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Its Attorneys

August 23, 1999

No. of Copies rec'd 0+4
List ABCDE

PC DOCS #785401

TABLE OF CONTENTS

SUMMARY iii

I. The Commission Has Not Fulfilled Its Legal Obligation to Repeal or Modify All of Those Broadcast Ownership Rules That No Longer Serve the Public Interest 4

II. The FCC's Failure To Act Will Serve To Permanently and Irreparably Exclude Newspaper Publishers From Participating in the "Land Rush" of Consolidation Opportunities That Will Result From the Commission's New Local Television Ownership Rules. 6

III. The Factual and Legal Underpinnings of the Newspaper/Broadcast Cross-Ownership Rule Have Been Eliminated by Marketplace Developments and the Commission's Own Actions 11

A. The 1999 Television Ownership Order Undermines Any Remaining Rationale For the Newspaper/Broadcast Cross-Ownership Ban and Requires Its Immediate Repeal. 11

B. The Commission Has Compiled an Evidentiary Record That Is More Than Sufficient To Justify Immediate Repeal of the Newspaper/ Broadcast Cross-Ownership Rule 15

CONCLUSION 17

SUMMARY

It has long been clear that the FCC's ban on newspaper/broadcast cross-ownership does not serve any demonstrable public interest objective. Yet the FCC has failed to conclude two separate pending proceedings aimed at repealing or relaxing the ban, or to act in response to a separate petition for rulemaking filed by the NAA in 1997. The FCC's inaction cannot be reconciled with the obligations imposed on the agency by Congress under the Telecommunications Act of 1996, nor with basic principles of administrative and constitutional law.

This month, the FCC added insult to injury—and deepened the injury—by relaxing virtually every major remaining broadcast ownership restriction other than its anachronistic and constitutionally infirm newspaper/broadcast cross-ownership rule. The FCC's discriminatory policy threatens the ability of owners of daily newspapers to continue to compete effectively with other, more diversified information providers. While television station owners will now be free to acquire a second TV station and as many as six radio stations in the same market, publishers of a single newspaper will continue to be locked out of the local broadcast market.

The recent rule changes are expected to cause a "feeding frenzy" in which some broadcast station owners will rapidly expand their holdings. Yet under the still-standing and inflexibly enforced newspaper/broadcast cross-ownership rule, the newspapers' sole role in these imminent transactions would be to report on them from the sidelines. After the conclusion of such a "broadcast land rush," a belated repeal of the newspaper/broadcast restriction would yield scant consolation to the nation's newspapers. To redress the clear inequity in its disparate treatment of daily newspaper owners, the Commission must act

immediately to repeal the outdated and discriminatory newspaper/broadcast cross-ownership ban.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --Review of the Commission's Broadcast Ownership Rules Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 98-35
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197
	)	

To: The Commission

EMERGENCY PETITION FOR RELIEF OF THE NEWSPAPER ASSOCIATION OF AMERICA

Pursuant to Sections 1.41 and 1.401(a) of the Commission's Rules, the Newspaper Association of America ("NAA") hereby petitions the Commission immediately to take the steps necessary to repeal its long-outdated rule prohibiting the common ownership of a daily newspaper and a television or radio broadcast station in the same market.[1] Further, pending final repeal, the FCC should immediately suspend enforcement of the rule or implement an interim waiver policy that will enable newspaper publishers to participate in the consolidation

---

[1] See 47 C.F.R. § 73.3555(d) ("No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in [the specified contour of the station] encompassing the entire community in which such newspaper is published.").

now authorized for television broadcasters by the agency's August 5, 1999 decision in the local television ownership proceeding.

In the Telecommunications Act of 1996, Congress directed the Commission to review all of its broadcast ownership rules every two years, beginning in 1998, and to repeal those remaining ownership restrictions that cannot be shown to be necessary to serve a demonstrable public interest objective.[2] Despite that mandate, the Commission has failed to conclude the 1998 biennial review of its broadcast ownership rules—including the newspaper/broadcast cross-ownership rule—in a timely fashion. Nor has the FCC acted on either the April 28, 1997 Petition for Rulemaking filed by the NAA ("NAA Petition")[3] or its own Notice of Inquiry on the newspaper/radio waiver policy issued the previous year.[4]

Not only has the Commission failed to fulfill its statutory duty, but it has now had added insult to injury—and deepened the injury—by this month relaxing virtually every major remaining broadcast ownership restriction other than its anachronistic and constitutionally

---

[2] As demonstrated in NAA's Comments in the Biennial Review Proceeding, the FCC also is obligated under basic principles of administrative law to reassess its rules and policies in light of changes in their factual or legal underpinnings. See Comments of NAA in MM Docket No. 98-35, at 7-13 (filed July 21, 1998). The duty on the Commission is particularly strong where, as in the case of the newspaper/broadcast cross-ownership ban, the rule in question impinges on First Amendment interests. See id. at 13-17.

[3] NAA Petition for Rulemaking in the Matter of Amendment of Section 73.3555 of the Commission's Rules to Eliminate Restrictions on Newspaper/Broadcast Station Cross-Ownership (filed April 28, 1997) ("NAA Petition").

[4] Notice of Inquiry on the Newspaper/Radio Cross-Ownership Waiver Policy, 11 FCC Rcd 13003 (1996) ("Newspaper/Radio NOI").

infirm newspaper/broadcast cross-ownership rule.[5] As a result, television station owners will now be free, in many cases, to acquire a second TV station and as many as six radio stations in the same market.

Immediately upon taking effect,[6] moreover, these newly relaxed local television ownership rules are expected to cause a "feeding frenzy" in which broadcast station owners will rapidly expand their holdings to obtain the full benefits of the newly relaxed television duopoly and one-to-a-market rules. Yet because of the continuation of the archaic newspaper/broadcast cross-ownership rule, the newspapers' sole role in these imminent transactions would be to report on them from the sidelines. After the conclusion of this "broadcast land rush," a belated repeal of the newspaper/broadcast restriction would yield scant consolation to the nation's daily newspapers.

As NAA has shown exhaustively in its previous submissions,[7] the Commission's continued discrimination against newspaper owners ignores contemporary competitive realities and violates both the Telecommunications Act of 1996 and the First Amendment. The FCC's misguided policy also threatens the ability of newspapers to continue to compete effectively against other, more diversified information providers. Accordingly, NAA submits, the

---

[5] Review of the Commission's Regulations Governing Television Broadcasting, FCC 99-209, MM Docket No. 91-221, MM Docket No. 87-8, 1999 WL 591820 (Aug. 6, 1999) (Report & Order) ("1999 Television Ownership Order").

[6] The new rules are scheduled to take effect 60 days after publication of the 1999 Television Ownership Order in the Federal Register. 1999 Television Ownership Order, FCC 99-209, at ¶ 155.

[7] See, e.g., Comments of NAA in MM Docket No. 98-35 (filed July 21, 1998); Reply Comments of NAA in MM Docket No. 98-35 (filed Aug. 21, 1998); NAA Petition (filed April 28, 1997).

Commission should act immediately to eliminate this last vestige of an otherwise abandoned regulatory regime. Further, pending final repeal, the FCC should suspend enforcement or grant interim waivers of the restriction so that local newspaper owners are not frozen out of the opportunities available to their broadcast competitors.

I. The Commission Has Not Fulfilled Its Legal Obligation to Repeal or Modify All of Those Broadcast Ownership Rules That No Longer Serve the Public Interest.

On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (the "1996 Act").[8] Section 202(h) of the 1996 Act mandates that the Commission shall review

> all of its [broadcast] ownership rules biennially . . . and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.[9]

We are now rapidly approaching the end of 1999, and the required commencement of the second biennial review in the year 2000. Yet the Commission has not to date engaged in any meaningful re-evaluation of its nearly 25-year-old newspaper/broadcast cross-ownership rule. Rather, in 1996, the Commission issued a limited Notice of Inquiry regarding "possible revisions to [its] policies concerning waiver of the newspaper/radio cross-ownership restriction . . . as it applies to radio stations."[10] Subsequently, the Commission stated that it

---

8 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

9 Id. § 202(h), 110 Stat. at 111-12 (emphasis added).

10 Newspaper/Radio NOI, 11 FCC Rcd 13003, at ¶ 1 (emphasis added).

"anticipate[d] taking action in [the radio waiver proceeding] during 1998. . . ."[11] The agency's prediction did not hold true; no action has been taken. The following year, NAA sought to keep the issue moving forward by filing a Petition for Rulemaking seeking elimination of the rule.[12] Again, the Commission, to date, has taken no action in response to the NAA's Petition.

In its December 1, 1997 "Report to the Court" in Tribune Company v. FCC,[13] counsel for the Commission advised the United States Court of Appeals that, while no proposal had yet been presented that would moot the March 22, 1998 divestiture deadline in that case, "[t]his is not to suggest that the rule may not be the subject of Commission review in some form during the coming year." By way of explanation, the Report referred to "the requirements of the Telecommunications Act of 1996 that the FCC conduct biennial review of all broadcast ownership regulations beginning in 1998."[14] An FCC News Release entitled "1998 Biennial Review of FCC Regulations Begun Early" was attached to the Report.[15]

---

[11] 1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules, 13 FCC Rcd 11276, MM Docket No. 98-35, at ¶ 10 (rel. Mar. 13, 1998) (Notice of Inquiry) ("1998 Biennial Review Notice").

[12] See NAA Petition (filed April 28, 1997).

[13] FCC Report To The Court, D.C. Cir. Docket No. 97-1228 (filed Dec. 1, 1997). The court's final decision in the case was later reported at 133 F.3d 61 (D.C. Cir. 1998).

[14] Id.

[15] See id.

In March of 1998, the FCC formally commenced the biennial review, announcing that it was finally ready to take a "first step" towards reviewing its broadcast ownership rules.[16] But the Commission's long-awaited "first step" has to date been a small one indeed. Instead of proposing to actually "repeal or modify any regulation it determines to be no longer in the public interest,"[17] as required by the 1996 Act, the agency merely issued another Notice of Inquiry promising only to "review the comments and issue a report."[18] Even this unambitious promise has not been kept. In the year-and-a-half since the Notice was released, the Commission has taken no further action with respect to the newspaper/broadcast cross-ownership rule.

II. The FCC's Failure To Act Will Serve To Permanently and Irreparably Exclude Newspaper Publishers From Participating in the "Land Rush" of Consolidation Opportunities That Will Result From the Commission's New Local Television Ownership Rules.

Although the FCC has failed to come to grips with its duty to re-examine the newspaper/broadcast cross-ownership restrictions, it has, in the meantime, taken yet another in an ongoing series of steps to relax other outdated mass media ownership restrictions put in place in the 1970s. Thus, in its recent 1999 Television Ownership Order, the Commission voted, inter alia, to significantly relax two of its long-standing rules governing local television

---

16 1998 Biennial Review Notice, 13 FCC Rcd 11276, at ¶ 1.

17 1996 Act § 202(h), 110 Stat. 56, 111-12 (1996).

18 1998 Biennial Review Notice, 13 FCC Rcd 11276, at ¶ 3.

ownership: the "duopoly" rule and the "one-to-a-market" rule.[19] Under the newly modified duopoly rule, established broadcast owners will be permitted to own two television stations in markets where there are a sufficient number of other, independently owned stations.[20] In addition, ownership of a second local TV outlet will be permitted where failed or failing stations are involved or where the combination will permit the establishment of a new station in the market.[21] Under the new one-to-a-market rule, moreover, broadcasters generally will be permitted to own two television stations in the same markets in which they own as many as six radio stations, or a single television station and up to seven radio outlets.[22]

The FCC's rule changes were applauded by the broadcast industry.[23] And NAA commends the Commission for its long overdue recognition that changes in the marketplace necessitate substantial changes in its decades-old ownership regulatory regime. The steps the agency has taken, however, are incomplete and will serve only to heighten the severe disadvantage at which newspapers already are forced to operate. Thus, as FCC officials and broadcast executives each acknowledged, the "[n]ew rules could create [a] land rush for

---

19 See generally 1999 Television Ownership Order, FCC 99-209.

20 See id. at ¶¶ 8, 64-70.

21 See id. at ¶¶ 73-77 (failed stations); ¶¶ 79-82 (failing stations); ¶¶ 84-87 (combinations that will permit establishment of new station in market).

22 See id. at ¶¶ 9, 100.

23 See, e.g., FCC Eases Duopoly Broadcast Ownership, Tightens Other Rules, Comm. Daily, 1999 WL 7580119, Aug. 6, 1999, at 1 (reporting that broadcast group owners "generally were pleased with FCC decisions [adopted August 5, 1999] revising broadcast ownership rules").

broadcasters. . . ."[24] Indeed, in reporting the effect of the decision, the New York Times predicted on its front page that:

> One immediate result of the decision may be a rush by big TV companies like the broadcast networks to sweep up any available television stations in cities where they already own a station. As put in one memo to the top corporate officers at one of the four big broadcast networks, 'The race is on.'[25]

Like any high-speed race, the impending "land rush for broadcasters" will be over quickly. This is so because the Commission's revised duopoly rule generally allows joint ownership of two local television stations only where "at least eight independently owned and operating full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located."[26] As one senior network executive remarked, the eight-independent-station threshold is likely to create "an intense game of musical chairs . . . [where] you know you may have to get in fast."[27]

---

[24] Id. at 2 (quoting FCC officials); accord Bill Carter, FCC Will Permit Owning 2 Stations in Big TV Markets: 'Land Rush' is Expected, New York Times, Aug. 6, 1999, at A1, C5.

[25] Bill Carter, FCC Will Permit Owning 2 Stations in Big TV Markets: 'Land Rush' is Expected, N.Y. Times, Aug. 6, 1999, at A1. See also id. (quoting Salomon Smith Barney analyst Paul T. Sweeney's prediction that "we are going to start seeing a lot of big-ticket deals.").

[26] 1999 Television Ownership Order, FCC 99-209, at ¶ 64.

[27] Bill Carter, FCC Will Permit Owning 2 Stations in Big TV Markets: 'Land Rush' is Expected, N.Y. Times, Aug. 6, 1999, at A1, C5; see also Martin Peers, Shop At Home Hires Bankers to Advise It On Alternatives, Including Possible Sale, Wall St. J., Aug. 12, 1999, at B12 ("TV station groups have to act quickly to take advantage of the FCC's rule change because broadcasters will only be allowed to buy a second station in a market if that market retains at least eight independent stations afterward. That limits the number of markets where (Continued...)

Predictably, established broadcasters—including the networks and major group owners—are indeed planning to "get in fast."[28] In response, the owners of "independent" major market television stations are planning to "get out" equally fast.[29] Paxson Communications, which owns stations in 43 of the top 50 markets, reportedly has already initiated discussions with potential purchasers of its holdings,[30] and has hired investment banking firm Salomon Smith Barney to pursue a possible deal with a major network or station

---

(...Continued)
such deals can occur and also puts time pressure on broadcasters that wish to buy.") (emphasis added); Kyle Pope and Martin Peers, TV Preview: Buying Spree by Broadcasters Is Expected, Wall St. J., Aug. 9, 1999, at B1 ("Because the scope of the new rules is limited, applying mainly to the top 50 markets, the buying binge is expected to be intense but short."); Premium on Moving Quickly: 'Bigger Guys Are Going to Double Up' With Duopolies, Comm. Daily, Aug. 16, 1999, at 3 (agreeing with a group executive's assessment that "'[t]here's a real premium in moving quickly' . . . [since] duopoly applications will be considered on a first-come basis and since only the very largest markets are eligible for more than one.").

[28] See Bill Carter, FCC Will Permit Owning 2 Stations in Big TV Markets: 'Land Rush' is Expected, N.Y. Times, Aug. 6, 1999, at A1, C5 ("Networks like CBS and News Corporation's Fox broadcasting unit are expected to be especially aggressive in seeking second stations in cities where they already own one."); Kyle Pope and Martin Peers, TV Preview: Buying Spree by Broadcasters Is Expected, Wall St. J., Aug. 9, 1999, at B1 ("the ruling is likely to spur several broadcasters to step up their buying activity. Among them: the big broadcast networks as well as station groups like Hearst Argyle Television Inc., Sinclair Broadcast Group Inc., Clear Channel Communications Inc. and Tribune Co."); Premium on Moving Quickly: 'Bigger Guys Are Going to Double Up' With Duopolies, Comm. Daily, Aug. 16, 1999, at 3 ("The bigger guys are going to double up wherever they can") (quoting Kalil & Co. broker Richard Beesemyer).

[29] See, e.g., Premium on Moving Quickly: 'Bigger Guys Are Going to Double Up' With Duopolies, Comm. Daily, Aug. 16, 1999, at 3 (since FCC decision, broadcast group owner's phones "have been ringing off the hook from people who want to sell. . . .").

[30] Bill Carter, FCC Will Permit Owning 2 Stations in Big TV Markets: 'Land Rush' is Expected, N.Y. Times, Aug. 6, 1999, at A1, C5.

group.[31] Not to be outdone, competitor Shop At Home Inc. has hired three separate investment banking firms to advise the company on its "strategic alternatives," ranging from the sale of its six major market television outlets to the sale of the entire company.[32] Twelve-station group Young Broadcasting, Spanish-language broadcaster Telemundo Holdings Inc., which owns seven major-market stations, and Granite Broadcasting Corp., which owns two major-market WB network affiliates, have also expressed their openness to similar approaches.[33]

Although large broadcast group owners and small station owners are busily preparing for their forthcoming "intense game of musical chairs,"[34] the nation's daily newspaper publishers, alone among media entities, are currently denied the opportunity to participate in that game. As discussed in Part I, supra, the Commission's failure to decide whether or not its newspaper/broadcast cross-ownership ban remains in the public interest constitutes a dereliction of the duty imposed by Congress in the 1996 Act. The FCC's inaction also ignores the agency's duty, under fundamental principles of administrative law, to re-evaluate its rules

---

[31] Martin Peers, Shop At Home Hires Bankers to Advise It On Alternatives, Including Possible Sale, Wall St. J., Aug. 12, 1999, at B12; Kyle Pope and Martin Peers, TV Preview: Buying Spree by Broadcasters Is Expected, Wall St. J., Aug. 9, 1999, at B1.

[32] Martin Peers, Shop At Home Hires Bankers to Advise It On Alternatives, Including Possible Sale, Wall St. J., Aug. 12, 1999, at B12. Shop at Home's Chief Executive Kent Lillie announced that the FCC's duopoly decision was the "stimulus" that led the company to consider such alternatives. Id.

[33] Kyle Pope and Martin Peers, TV Preview: Buying Spree by Broadcasters Is Expected, Wall St. J., Aug. 9, 1999, at B1.

[34] Bill Carter, FCC Will Permit Owning 2 Stations in Big TV Markets: 'Land Rush' is Expected, N.Y. Times, Aug. 6, 1999, at A1, C5.

and policies when changes in the factual or regulatory environment undermine their continuing validity.[35] Thus, NAA submits, the Commission must act immediately to end its discriminatory treatment of newspaper publishers.

III. The Factual and Legal Underpinnings of the Newspaper/Broadcast Cross-Ownership Rule Have Been Eliminated by Marketplace Developments and the Commission's Own Actions.

A. The 1999 Television Ownership Order Undermines Any Remaining Rationale For the Newspaper/Broadcast Cross-Ownership Ban and Requires Its Immediate Repeal.

Ironically, in the very 1999 Television Ownership Order that created the need for this Emergency Petition, the FCC effectively eliminated any principled basis for continuing to maintain an absolute ban on newspaper/broadcast cross-ownership. Thus, in announcing its decision to greatly relax the television duopoly and one-to-a-market rules, the Commission observed:

> The record reflects that there has been an increase in the number and types of media outlets available to local communities. With respect to cable television, we recognize that clustering of systems in the major population centers enables cable to compete more effectively for advertising dollars. In markets with many separate licensees and a variety of other media outlets, we believe the benefits of joint ownership in certain instances outweigh the cost to diversity from permitting such combinations.[36]

Further, the Commission expressly recognized that:

> There is evidence concerning the efficiencies inherent in joint ownership and operation of television stations in the same

---

[35] See Comments of NAA in MM Docket No. 98-35, at 7-13 (filed July 21, 1988).

[36] 1999 Television Ownership Order, FCC 99-209, at ¶ 37.

> market, and of radio-television combinations. These efficiencies can lead to cost savings, which in turn can lead to programming and other service benefits that serve the public interest.[37]

Elsewhere, the agency repeated these observations and concluded that "[i]n markets with many separate television licensees, the public interest benefits of common ownership can outweigh any cost to diversity and competition of permitting combinations."[38]

Based on these considerations, the FCC determined to jettison its decades-old "one outlet per customer per market" television ownership regime and allow common ownership of two television stations and up to six radio stations, at least in large and competitive markets. As NAA and numerous other parties have shown, precisely the same considerations fully justify elimination of the anachronistic newspaper/broadcast ban so that newspaper publishers—the best-qualified parties to augment local news and informational content—may be allowed to combine with broadcast outlets to increase efficiency and improve service to the public.

Indeed, the Commission's own observations suggest that newspaper/broadcast cross-ownership implicates the agency's oft-cited diversity concerns to a lesser degree than common ownership of two television stations in the same market. The conclusions reached by the FCC in the 1999 Television Ownership Order, and other proceedings, thus warrant immediate repeal of the newspaper/broadcast ban. Pending completion of any necessary steps to repeal the rule, joint newspaper/broadcast station ownership should be permitted at least to the same extent as TV duopoly and TV/radio cross-ownership.

---

[37] Id.

[38] Id. at ¶ 57.

Specifically, in its recent decision, the Commission stated that "broadcast television, more so than any other media, continues to have a special, pervasive impact in our society given its role as the preeminent source of news and entertainment for most Americans."[39] Under the newly adopted local television ownership rules, however, two local television stations—which the FCC itself has identified as the most directly significant media voices in the local marketplace—are permitted to combine and, in many cases, to be owned in common with multiple radio outlets. For purposes of the revised duopoly rule, moreover, the agency established an "eight remaining voices" test that takes into account only television stations and gives no weight to daily newspapers.[40]

The Commission also pointed to changed marketplace realities in determining "that the public interest would be best served at this time by relaxing the radio-television cross-ownership rule to permit same-market joint ownership of radio and television facilities up to a level that permits broadcasters and the public to realize the benefits of common ownership while not undermining our competition and diversity concerns."[41] The Commission explained that "the revised rule reflects the changes in the local broadcast media marketplace" and, "[a]t

---

[39] Id. at ¶ 68.

[40] See id. at ¶ 69.

[41] Id. at ¶100. Specifically, the new "one-to-a-market" rule allows common ownership of two television stations and up to six radio stations (or one TV and seven radio stations) in markets with "at least 20 independently owned media voices." In markets with at least 10 independently owned media voices, combinations of two TV and up to four radio stations will be permitted. Finally, common ownership of two TV stations and a single radio station will be permitted in any market, regardless of the number of voices present. Id.

the same time, the voice test components of the revised rule also ensure that the local market remains sufficiently diverse and competitive."[42]

For purposes of the new one-to-a-market rule, the agency announced that it will take into account commercial and noncommercial television stations and radio stations, daily newspapers published in the DMA and having a circulation exceeding 5% of DMA households, and cable systems providing service generally available in the DMA.[43] The FCC stated that it had determined to include daily newspapers and cable systems in its voice count "because we believe that such media are an important source of news and information on issues of local concern and compete with radio and television, at least to some extent, as advertising outlets."[44]

In sum, the Commission recognized that newspapers and broadcast stations are participants in the same marketplace, and viewed television stations -- and not daily newspapers -- as the dominant voices insofar as the Commission's objectives are concerned. Yet the FCC continued to exclude only daily newspaper publishers from the recognized benefits of joint ownership. In this new regulatory environment, where common ownership of two TV stations and as many as six radio stations will be permissible, it is patently arbitrary and unconstitutionally discriminatory to continue to prohibit newspaper publishers from acquiring interests in even a single co-located television or radio station.

---

42 Id. at ¶102.

43 Id. at ¶111.

44 Id. at ¶113.

B. The Commission Has Compiled an Evidentiary Record That Is More Than Sufficient To Justify Immediate Repeal of the Newspaper/ Broadcast Cross-Ownership Rule.

During the quarter-century that the newspaper/broadcast cross-ownership rule has been in effect, and especially in connection with the proceedings described in Part I, supra, the Commission has been presented with mountains of evidence demonstrating that the restriction does not serve the public interest. In the still-pending 1998 biennial review proceeding alone, the NAA and other parties provided extensive and detailed evidentiary submissions establishing that:

- The marketplace for news, information, and entertainment is vastly more diverse and competitive than in 1975, eviscerating the scarcity rationale previously employed to justify intrusive governmental oversight of broadcasting and eliminating any legitimate concerns with respect to programming or viewpoint diversity;[45]
- Daily newspapers and broadcast stations face extensive competition from weekly newspapers, direct mail, yellow pages, outdoor advertising, magazines, cable operators, and other locally oriented advertising vehicles, and no broadcast/newspaper combination is likely to have the potential to exercise market power;[46]
- As the Commission has determined in numerous other proceedings eliminating or relaxing outdated multiple-ownership restrictions—including, now, the local television ownership proceeding—common

---

[45] See, e.g., NAA Comments in MM Docket No. 98-35, at 31-35 (filed July 21, 1998); Assoc. of Local Television Stations ("ALTV") Comments at 31-33; Cox Broadcasting, Inc. and Media General, Inc. ("Cox/Media General") Comments at 6-12; Gannett Company, Inc. ("Gannett") Comments at 12-16; The Hearst Corporation ("Hearst") Comments at 10-15; Media Institute Comments at 8, 14; National Association of Broadcasters ("NAB") Comments at 4, app. A; Tribune Company ("Tribune") Comments at 22-51.

[46] See, e.g., NAA Comments at 75-83, app. B; A. H. Belo Corporation ("Belo") Comments at 29-32; Gannett Comments at 7, 11-17, 24; Hearst Comments 17-19; Media Institute Comments at 2-3.

ownership of media outlets fosters diversity in content and enhances programming in the public interest;[47]

- Commonly owned newspapers and broadcast stations typically maintain separate news and editorial staffs, enjoy operational independence, and compete vigorously with each other as well as with the extensive array of independently owned media outlets in the local marketplace;[48] and

- Co-owners tend to provide more and better local news and public affairs programming and often create "value added" services and new information products that would, in the absence of joint ownership, be too expensive to provide.[49]

In short, the Commission has before it a wealth of concrete and reliable evidence demonstrating that the newspaper/broadcast cross-ownership rule serves only to prevent newspaper publishers from utilizing their extensive news-gathering resources, journalistic expertise, and community ties to expand and improve broadcast coverage of local news and public affairs and to develop new and innovative information services and outlets.[50] Based on this evidence, and taking into account the dramatic regulatory relief that has now been afforded to broadcasters in the 1999 Television Ownership Order, the Commission is obligated

---

[47] See, e.g., NAA Comments at 55-59; ALTV Comments at 34-36; The Chronicle Publishing Company ("Chronicle") Comments at 13-25; Cox/Media General Comments at 9-12; Gannett Comments at 27-28, app. B; Media Institute Comments at 5-6; NAB Comments at 8-11, app. B; Tribune Comments at 9-13.

[48] See, e.g., NAA Comments at 60-65; Belo Comments at 20-22; Chronicle Comments at 16-20; Gannett Comments at app. A; Lee Enterprises Comments at 4-5; NAB Comments 8-11, app. B; Tribune Comments at 28-51.

[49] See, e.g., NAA Comments at 60-65; Belo Comments at 15-20; Chronicle Comments at 16-25, Exh. B; Gannett Comments at 27-32; Hearst Comments at 15-16, 19-22; Media Institute Comments at 15; Tribune Comments at 59-72.

[50] See generally Reply Statement in MM Docket No. 98-35 of Lloyd G. Schermer, former Chief Executive Officer of Lee Enterprises, Inc. and former Chairman of the American Newspaper Publishers Association (filed Aug. 21, 1998).

under the 1996 Act as well as basic principles of administrative and constitutional law to repeal the newspaper ban forthwith.

CONCLUSION

To redress the inequity caused by its own failure to complete its biennial review proceedings in a timely fashion, compounded by the inevitable effect of the recent relaxation of virtually all of the other significant local broadcast ownership restrictions, the FCC should immediately take the steps necessary to repeal its anachronistic and unnecessary newspaper/broadcast cross-ownership ban. Moreover, based upon the extensive record already before it, and the conclusions reached in the 1999 Television Ownership Order, the Commission has an ample basis to suspend enforcement of the ban or, alternatively, to implement a broad interim waiver policy pending its repeal. These actions should take effect immediately, so that newspaper publishers are not foreclosed from the opportunities that will be available to broadcasters to acquire additional outlets in their local markets.

Respectfully submitted,

John F. Sturm,
President & Chief Executive Officer
David S. J. Brown,
Senior Vice President/ Public
Policy & General Counsel
E. Molly Leahy,
Legislative Counsel

NEWSPAPER ASSOCIATION OF AMERICA
1921 Gallows Road, Suite 600
Vienna, VA 22182
(703) 902-1600

Richard E. Wiley
James R. Bayes
Kenneth D. Katkin

of

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Its Attorneys

August 23, 1999