Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
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	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

OPPOSITION TO
MOTION FOR REVISION OF PROCEDURAL DATES

Media General, Inc. ("Media General"), by its attorneys and pursuant to 47 C.F.R. Sections 1.45(b) and 1.46, hereby submits this Opposition to the Motion for Revision of Procedural Dates, Expansion of the Scope of the Proceeding, and Inclusion of Additional Studies in the Record (the "Motion") jointly filed on October 10, 2002, by the Minority Media and Telecommunications Council and the National Association of Black Owned Broadcasters (collectively, the "Petitioners") in the Commission's above-referenced omnibus proceeding concerning its broadcast ownership restrictions.[1] A grant of the Motion, to the extent it extends the comment filing deadlines, would unnecessarily delay this proceeding in contravention of the public interest and the Commission's statutory obligations. Accordingly, the Commission should deny the Motion forthwith.

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1 This motion is timely filed pursuant to 47 C.F.R. Section 1.45(b).

It is the policy of the Commission that extensions of time are not routinely granted.[2] While the Commission has recognized that its statutory obligations compel the prompt conclusion of this proceeding, the Petitioners now attempt to delay the Commission's efforts. The Petitioners and all other interested parties have ample time to prepare comments in this proceeding, and the Petitioners have offered no compelling basis to justify a departure from the Commission's oft-stated policy of disallowing extensions of time. Consequently, the Motion is lacking in merit and should be denied.

I. Further Delaying the Commission's Long-Overdue Inquiry into the Newspaper/Broadcast Cross-Ownership Rule Should Not Be Permitted.

In 1975, the Commission adopted its prohibition on the cross-ownership of daily newspapers and broadcast stations serving the same market (the "NBCO Rule").[3] At that time, "there were approximately 1,700 daily newspapers, 7,500 radio stations, and fewer than 1,000 TV stations."[4] Now, some twenty-seven years later, the media landscape, all of the Commission's other broadcast ownership restrictions, and even constitutional jurisprudence are dramatically and profoundly different than they were during the middle of Gerald Ford's Presidency.[5] Nevertheless, the Commission has never once modified the NBCO Rule or even completed a meaningful review of it. As Media General has demonstrated in extensive Comments and Reply Comments filed in MM Docket No. 01-235 and in other proceedings, the Commission's failure to revisit this anachronistic and outmoded ownership restriction and to complete a thorough evaluation of the NBCO Rule in light of the marketplace and legal developments that have occurred since 1975 cannot be justified or delayed any longer.

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2 47 C.F.R. Section 1.46(a).

3 *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*, Docket No. 18110, Second Report & Order, 50 FCC 2d 1046 (1975), *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978).

4 *Cross-Ownership of Broadcast Stations and Newspapers*, Order and Notice of Proposed Rule Making, MM Docket No. 01-235, 2001 FCC LEXIS 4994, ¶ 1 (rel. Sept. 20, 2001).

Four years ago, the U.S. Court of Appeals for the District of Columbia Circuit, in *Tribune Co. v. FCC*, pronounced that if the FCC were faced with a rulemaking petition, the agency would be "arbitrary and capricious if it refused to reconsider [the NBCO Rule] in light of persuasive evidence that the scarcity rationale is no longer tenable."[6] Although the Commission has received two such petitions since that time,[7] the Commission has not conducted any meaningful analysis of the rule.

The Commission's failure to act not only is contrary to the directive of the *Tribune* court, it also violates Section 202(h) of the 1996 Telecommunications Act. Earlier this year, in *Fox Television Stations, Inc. v. FCC*,[8] the D.C. Circuit made very clear, in unmistakable terms, that Section 202(h) permits the Commission to retain its broadcast ownership restrictions only if it can demonstrate a continuing public interest need for those regulations. In particular, Section 202(h) represents an explicit instruction to the Commission "to continue the process of deregulation" begun by that legislation.[9] Indeed, the *Fox* panel stated that "Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules." The *Fox* panel also recognized the urgency with which Congress intended the FCC to take these deregulatory actions, rejecting what it perceived to be the Commission's 'wait-and-see approach' as inconsistent with its mandate under Section 202(h).[10]

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5 *See generally,* Comments of Media General, Inc., MM Docket No. 01-235, filed on December 3, 2001.

6 *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998).

7 Newspaper Association of America, *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 Apr. 27, 1997; Newspaper Association of America, *Emergency Petition for Relief in MM Docket Nos. 98-35 and 96-197*, filed Aug. 23, 1999.

8 *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002).

9 *Id*, 280 F.3d at 1033.

10 *Id* at 1042, 1044. ("The mandate of § 202(h) might better be likened to Farragut's order at the battle of Mobile Bay ("Damn the torpedoes! Full speed ahead!") than to the wait-and-see attitude of the Commission . . . . ").

In the last seven years, the Commission has launched an inquiry into its waiver policy under the NBCO Rule, a 1998 Biennial Review, a 2000 Biennial Review, and a 2001 rulemaking focused on the NBCO Rule itself. It also has had occasion to review and litigate requests for permanent and temporary waivers of the NBCO Rule. Nevertheless, the Commission has not completed a single meaningful review of the effect and need for the NBCO Rule. Meanwhile, the clock keeps ticking. By now, twenty-seven years have passed since the Commission adopted the NBCO Rule, almost seven years have passed since Congress enacted the 1996 Telecommunications Act, and more than five and one-half years have passed since the Commission received the first petition for rule making invited by the *Tribune* court.

The time for completing a meaningful review of the anachronistic NBCO Rule is long overdue, and any further delay would harm the public interest and further exacerbate the Commission's failure to honor its statutory obligations. Accordingly, the delay in the comment process in this proceeding sought by Petitioners cannot be justified.

II. The Commission Should Adhere to its Policy and Case Law by Denying the Motion.

The Commission is well aware that the public interest and its own statutory obligations compel the prompt completion of a meaningful review of the NBCO Rule. Since 1995, the Commission has received extensive comments on the NBCO Rule through numerous proceedings, and those comments overwhelming demonstrate, many through empirical evidence, that the NBCO Rule now serves to thwart the delivery of more and better news in markets of all sizes. In addition, Congress and the United States Court of Appeals for the District of Columbia Circuit have instructed the Commission to act without delay in reforming its broadcast ownership rules, including the NBCO Rule. Mindful of the obligations imposed by these developments, the Commission has pledged to

conclude the 2002 Biennial Review, and all other proceedings rolled into this proceeding, no later than spring of 2003.[11]

Section 1.46(a) provides that "extensions of time shall not be routinely granted."[12] When the Commission intends to resolve a proceeding within a specific timeframe, it does not permit departures from this policy, because extensions of comment deadlines in such cases deprive the Commission of the ability to provide "adequate time to review the record"[13] as well as "full consideration of all the public comments."[14]

Although the Commission has expressed that it might consider "extraordinary circumstances" to justify an extension of comment deadlines, it has set a high bar for such relief.[15] For example, the Commission recently concluded that a mere seven day extension was not warranted when a petitioner noted "significant legal issues that will require counsel to have more than seven days to address the issues thoroughly," especially considering that "integral employees . . . and lead counsel are unavailable until after the comment deadline due to the Labor Day holiday."[16] Nor did the Commission find sufficient extraordinary circumstances to justify an extension of filing deadlines when a petitioner claimed that a Section 271 applicant had submitted "substantial amounts of new testimony and data" and that "new developments" had occurred recently.[17] In that case, the

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11 *See, e.g.*, "Comm Daily Notebook," communications daily, Sept. 25, 2002 (Commissioner Copps "said FCC would vote in spring on media ownership rules"); "FCC Plans 'Omnibus Blockbuster' Report on TV-Radio Ownership, WARREN'S CABLE REGULATION MONITOR, June 24, 2002 (citing Media Bureau Chief Kenneth Ferree).

12 47 C.F.R. Section 1.46(a).

13 *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 6359, ¶ 2 (rel. April 8, 2002).

14 *Spectrum Policy Task Force Seeks Public Comment on Issues Related to Commission's Spectrum Policies*, DA 02-1311, ¶ 2 (rel. July 02, 2002), and DA 02-1456, ¶ 2 (rel. June 21, 2002).

15 *Intelsat LLC*, 16 FCC Rcd 16304, ¶ 4 (2001) (denying motion for extension of time).

16 ***Id.***

17 *Application by Verizon New Jersey Inc.*, 17 FCC Rcd 6116, ¶ 4 (2002) (denying motion for extension of time and for leave to expand issues).

Commission concluded that interested parties had ample time to review and assess much of the information at issue because it had been submitted in a prior proceeding.[18]

The instant proceeding incorporates the record of several prior rule making proceedings. With regard to the NBCO Rule, the Commission just last year received extensive comments, including numerous empirical studies. In June 2002, the Commission announced that it would be consolidating that proceeding with the 2002 Biennial Review and other ownership proceedings this fall.[19] It adopted the Notice in this proceeding more than five weeks ago and released the media studies three weeks ago. Consequently, notwithstanding the Petitioners' arguments to the contrary, interested parties have had and will have ample time to review, contemplate, and assess most of the issues raised in the instant proceeding.[20]

Petitioners could have concentrated their efforts at any time over the past year on preparing comments for the 2002 Biennial Review. Petitioners have not justified the delay in submitting their Motion, nor have they demonstrated circumstances that are any more "extraordinary" than those previously rejected by the Commission in similar cases within the last several months. As such, no basis exists upon which to depart from the Commission's policy of disallowing extensions or upon which to delay further the completion of the Commission's very first inquiry into the NBCO Rule.

Any further delay in the conclusion of this proceeding would be unwarranted and unjustifiable, for such delay would serve only to further preclude the public from receiving the benefits that flow from convergence among local broadcast and newspaper media. The Motion should be denied to the extent that it seeks new dates for the filing of comments and reply comments

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18 *Id.* at ¶ 3.

19 *See, e.g.,* "FCC Plans 'Omnibus Blockbuster' Report on TV-Radio Ownership, WARREN'S CABLE REGULATION MONITOR, June 24, 2002.

20 It should be noted that the Petitioners have organized a November 6, 2002 meeting of interested parties to discuss commenting in this proceeding.

and the instant proceeding completed as promptly as possible. The Commission's statutory obligations to serve the public interest and to comply with the mandates of Congress and the federal courts require nothing less.

Respectfully submitted,

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