

April 1, 2003

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Notice – MM Docket Nos. 02-277, 01-235**

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, Caribbean International News Corporation submits this notice of ex parte presentation. On March 31, 2003, Jim Crowder of Caribbean International News Corporation along with its counsel Robert Pitofsky, Werner Kronstein, Rosalind Allen, and Maureen Jeffreys, met with Stacy Robinson of Commissioner Abernathy's office. On April 1, 2003, the same representative and counsel from Caribbean attended the following meetings:

1. Jane Mago, Kathleen O'Brien Ham and Jonathan Levy of the Office of Strategic Planning and Policy Analysis;
2. Commissioner Kevin Martin and his Media Legal Advisor Catherine Crutcher Bohigian;
3. Marsha McBride, FCC's Chief of Staff, and Susan Eid, Chairman Powell's Media Legal Advisor;
4. Commissioner Jonathan Adelstein and his Media Legal Advisor Johanna Mikes; and
5. Commissioner Michael Copps and his Senior Legal Advisor Jordan Goldstein.

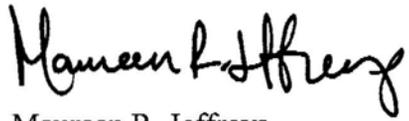
The discussions focused on Caribbean's comments in the newspaper/broadcast cross-ownership rulemaking proceeding. Specifically, the parties discussed the issues in the exhibit attached to this letter.

Pursuant to Sections 1.49(f) and 1.1206 of the Commission's Rules, Caribbean files this notice of ex parte meeting – as well as the above-referenced exhibits – electronically with the Commission in each of the above-referenced dockets.

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Please do not hesitate to contact me with any questions concerning this meeting or this notice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maureen R. Jeffreys". The signature is written in a cursive, flowing style.

Maureen R. Jeffreys
Counsel for Caribbean International
News Corporation

Enclosure

Ex Parte Presentation of
CARIBBEAN INTERNATIONAL NEWS CORPORATION

**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**

**In the Matter of Cross-Ownership of Broadcast Stations and Newspapers,
MM Docket Nos. 01-235**

Presentation by:
Jim Crowder, Vice President for Circulation
of
Caribbean International News Corporation
&
Robert Pitofsky
Werner Kronstein
Rosalind Allen
Maureen Jeffreys
of
ARNOLD & PORTER
555 12th Street, NW
Washington, DC 20004

March 31/April 1, 2003

ARGUMENTS SUPPORTING DEREGULATORY APPROACH TO CROSS-OWNERSHIP

- **NPRM's stated objective for this proceeding: diversity, competition and localism should continue to guide Commission as it considers changes to rule.**
- **Diversity is the presence of competing sources of local news and information.**
- **Share of advertising revenue within media market sector (daily newspaper, radio, television) = Reliable surrogate for measuring outlet's diversity impact.**
- **Relevant economic market should be defined by advertising revenue in local media market sectors. Record strongly supports this approach.**
- **In most instances, radio, television, and newspaper advertising are not substitutable. However, in each local market, there is a limited pool of overall available advertising revenues.**
- **Current antitrust laws likely would not prevent the common ownership of a daily newspaper and a broadcast outlet. However, Congress requires Commission (unlike DOJ or FTC) to determine whether public interest is served by grant of new license and by assignment/transfer of existing license.**
- **"New media" have achieved insignificant levels of penetration in local markets such as Puerto Rico, and thus should not be given undue weight in assessing competition or diversity. At this time, "new media" primarily provide additional sources of national/international news and information, or retransmit/repackage local broadcast and print content.**

PROPOSAL

ELIMINATE ABSOLUTE PROHIBITION ON NEWSPAPER/BROADCAST CROSS-OWNERSHIP AND REPLACE IT WITH A RULE NARROWLY-TAILORED TO MEET COMMISSION'S STATUTORY PUBLIC INTEREST MANDATES UNDER SECTIONS 1, 307, 309, and 310 OF COMMUNICATIONS ACT.

- **“Safe harbor” under which entity may own or control a daily newspaper and a radio station or television station in the same local market *unless*:**
 - **entity holds/controls approximately 70% or more of advertising revenue for its media market sector. (Generally accepted definition of a monopolist).**
 - **media market sector = sources of local news/information realistically available to *entire* local market (daily newspapers and free, over-the-air broadcasting).**
- **FCC would routinely grant mergers within safe harbor. Mergers above 70% threshold would be prohibited, unless applicants demonstrated a basis for a waiver, *e.g.*, a failing firm.**

SECTION 202(H)

- **Analysis: Whether absolute prohibition on daily newspaper ownership of local broadcast station remains necessary in the public interest as a result of competition.**
 - **If not, modify or repeal the current rule.**
 - **Changes in number of diverse broadcast outlets since 1975 render absolute prohibition no longer meaningful.**
 - **Record supports modification rather than repeal of rule.**
- **In local markets with highly concentrated media ownership, data in record allows predictive judgment that narrowly-targeted modification necessary to preserve localism and competing views on local news and information.**

MEDIA OWNERSHIP STUDIES

- **On Substitutability of Local Newspaper, Radio, and Television Advertising in Local Business Sales**
 - **Study concluded weak substitutability between local media in sales activities of local businesses.**
 - **Study supports Caribbean and other commenters arguments that newspaper, radio and television markets are distinct product markets within a limited pool of local advertising dollars.**
- **Viewpoint Diversity in Cross-Owned Newspapers and Television Stations**
 - **Study concluded 50% of cross-owned combinations adopted same editorial viewpoint; 50% adopted different editorial viewpoint.**
 - **Diversity implicates whether a media outlet will report on issue of local concern *at all*, not merely slant of news that is covered.**
 - **Conclusion that no evidence of ownership manipulation of news among cross-owned media outlets is not supported by findings.**

FIRST AMENDMENT CONSIDERATIONS TO PROPOSAL

- **Caribbean's proposal would be subject to rational basis review by D.C. Circuit:**
 - **The proposed rule is content neutral regulation of speech based upon structural limitations of the industry rather than the message of the speaker.**
 - **Regulation of scarce public airwaves is subject to the scarcity doctrine. Despite its critics, the Supreme Court and D.C. Circuit have declined to abolish the scarcity doctrine.**
- **Caribbean's proposal would pass rational basis review because it is rationally connected to the Commission's long-established goals of diversity of ideas and speech and the preservation of competition in the local media marketplace.**
 - **The proposed rule would permit cross-ownership in all but the most concentrated media markets.**
 - **70% threshold is based on long-established antitrust principles relating to the preservation of a competitive marketplace.**

SPANISH-LANGUAGE “DAILY NEWSPAPERS” IN PUERTO RICO

- **Commission should clarify that “daily newspapers” applies to Spanish-language newspapers in Puerto Rico.**
- **Commission expressly intended to apply the rule to Puerto Rico. (*See* Newspaper/Broadcast Second Report & Order, 50 FCC 2d 1046 ¶ 123 (1975)). Commission routinely has included Puerto Rico’s Spanish-language daily newspapers in its diversity analyses. (*See, e.g.,* Application of Pegasus Broadband & Chancellor Media, 14 FCC Rcd. 13767 (1999)).**
- **Rule would be rendered meaningless if the definition of “daily newspaper” excluded Spanish-language newspapers in Puerto Rico:**
 - **Spanish is an official language of Puerto Rico.**
 - **Only 25% of Puerto Ricans speak English and only 10% of Puerto Rican high-school graduates speak English.**
 - **Since 1949, public school classes in Puerto Rico have been taught in Spanish.**
 - **Three highest-circulated daily newspapers in Puerto Rico are published only in Spanish.**

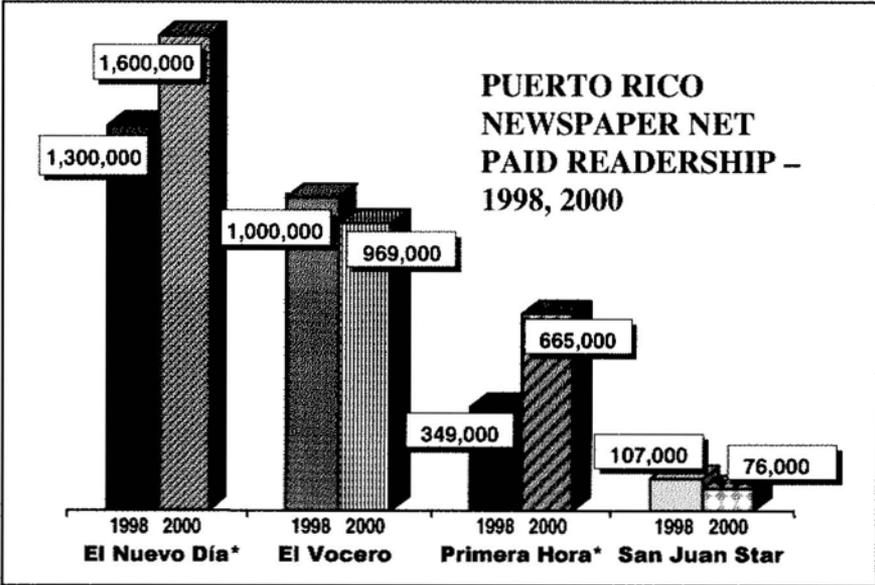
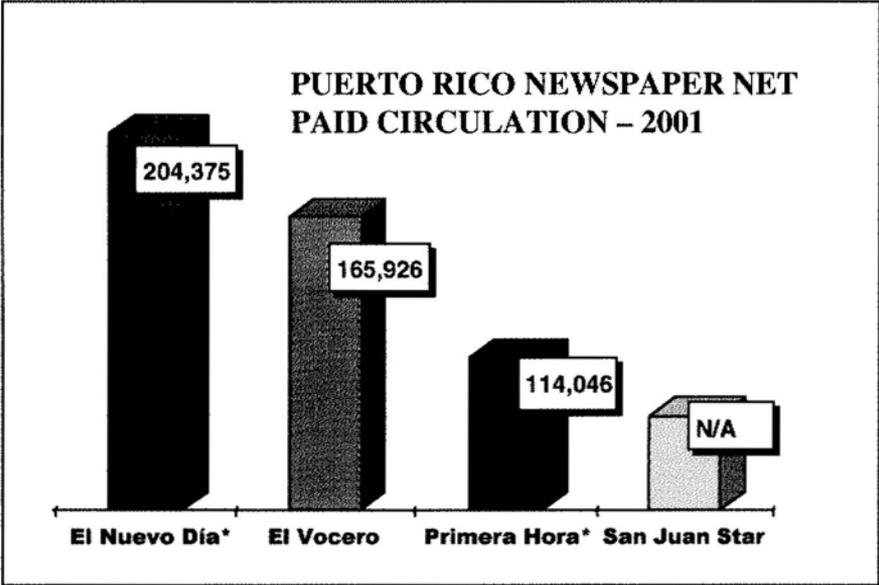
No commenters in this proceeding challenged this interpretation of the rule.

Comparison of Puerto Rico Media Market with Other Local Media Markets¹

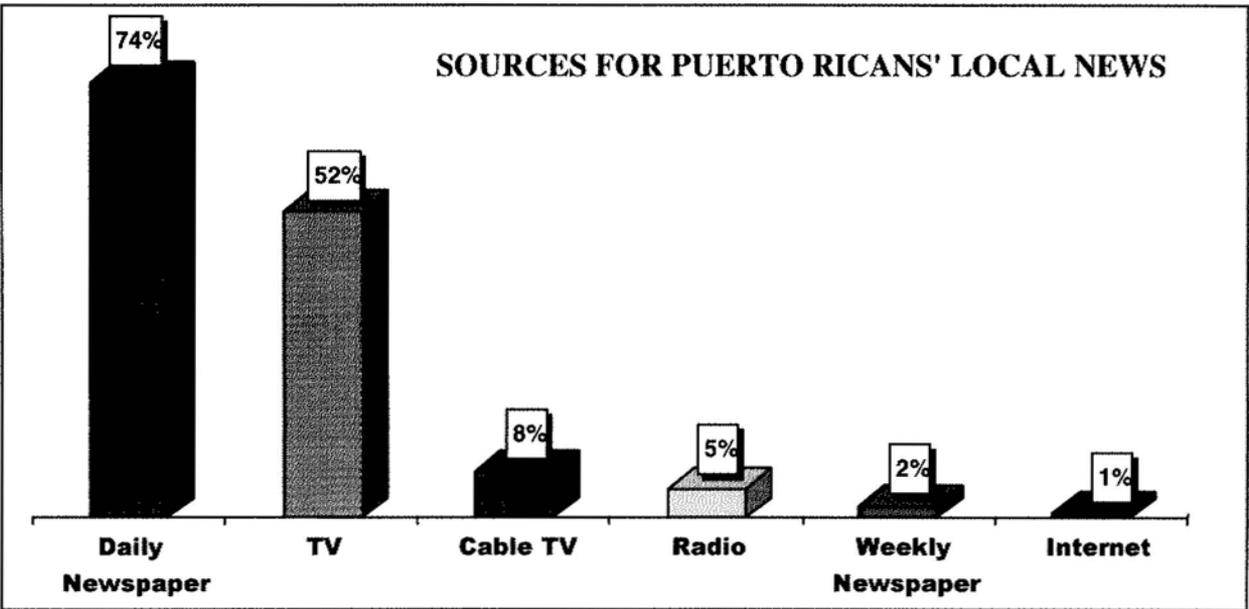
	Puerto Rico	Seattle-Tacoma	Miami-Fort Lauderdale	Portland	Baltimore
Population	3.95 million	3.6 million	3.8 million	2.8 million	2.7 million
Percentage Below the Poverty Line	58.9%	8%	14.2%	9.4%	10%
Per Capita Income	\$9,058	\$24,415	\$17,685	\$19,501	\$20,018
Average Household Income	\$33,679	\$62,263	\$45,932	\$50,214	\$53,332
TV Advertising Revenues	\$114,900,000	\$369,300,000	\$485,700,000	\$195,400,000	\$231,000,000
Radio Advertising Revenues	\$172,000,000	\$254,300,000	\$265,800,000	\$128,200,000	\$134,500,000
Radio Stations	89	52	45	43	31
Radio Owners	56	23	21	22	17
TV Stations	31	24	21	16	12
TV Households	1,021,000	1,647,230	1,549,680	1,069,260	1,023,530
Daily Newspapers	4	14	3	9	6
Internet Penetration	2.8%	69.6%	36.9%	69.7%	57%
Cable Systems	6 (island-wide)	3	3	2	2
Basic Cable Subscribers	364,014	652,533	903,854	543,285	606,080
Cable Households Passed	772,062	1,168,010	1,085,100	635,860	698,990
Cable Penetration	76%	73%	74%	62%	68%

¹ Sources: BIA Financial Network, Inc., *BIAfn's Radio Yearbook* (2002); BIA Research, Inc., *Investing in Radio 2001*; BIA Research, Inc., *Investing in Television 2001*; U.S. Census Data, 1990; FCC, *Review of Radio Industry, 2001*; Broadcasting & Cable Yearbook 2002; Bacon's Newspaper Directory: Daily Newspapers and News Services and Syndicates, 51st edition, 2003; Nielsen/Net Ratings Year-Over-Year Internet Household Penetration in Top Local Markets (March 2002); Nielsen/Net Ratings Top Internet Markets Based on Internet Penetration (February 2000); TV & Cable Factbook 2002; <http://quickfacts.census.gov>.

Puerto Rico Media Market Data

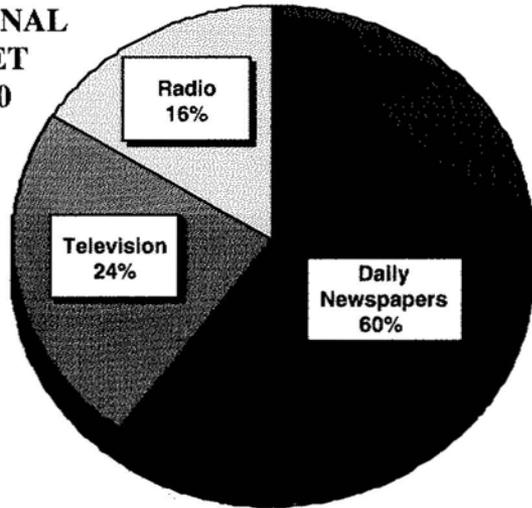


* Commonly owned by one entity, Ferré.

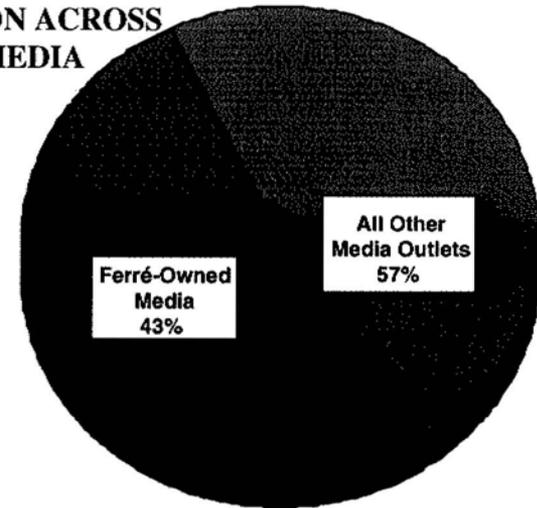


Puerto Rico Media Market Data

PUERTO RICO TOTAL ADVERTISING REVENUE PER TRADITIONAL MEDIA MARKET SECTORS - 2000



PUERTO RICO TOTAL ADVERTISING REVENUE CONCENTRATION ACROSS TRADITIONAL MEDIA SECTORS - 2000



PUERTO RICO DAILY NEWSPAPER ADVERTISING REVENUE - 2000

