

May 6, 2003

**BY ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 ("Caribbean") submits this written *ex parte* presentation for inclusion in the above-referenced docketed proceedings.

This written presentation consists of three components (plus relevant exhibits):

- A response to requests for additional information made by various members of the Commission staff during the course of *ex parte* meetings between Caribbean and the Commission on March 31, 2003 and April 1, 2003.<sup>1</sup>
- An analysis of the manner in which the top three daily newspapers in Puerto Rico recently reported two issues of local importance to Puerto Rico newspaper readers.
- A proposal for a new definition of "daily newspapers" to conclusively establish that the Commission has always considered Puerto Rico's Spanish-language daily newspaper for purposes of cross-ownership.

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<sup>1</sup> On March 31, 2003, Jim Crowder of Caribbean, along with Caribbean's 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 meetings with the following persons: (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 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. These meetings were noticed in an *ex parte* letter that Caribbean timely filed with the Commission on April 1, 2003.

Marlene H. Dortch

May 6, 2003

Page 2

## 1. Caribbean's Proposed Rule Would Have Broad Applicability

As the Commission is aware, Caribbean has proposed that the Commission eliminate the absolute prohibition on newspaper/broadcast cross-ownership and replace it with a rule narrowly-tailored to meet the Commission's statutory public interest mandates. Caribbean's proposal would provide for a "safe harbor" under which an entity may own or control a daily newspaper and a radio station or television station in the same local market unless the entity holds/controls approximately 70% or more of the advertising revenue for its media market sector (daily newspaper, radio, or television).

In recent *ex parte* meetings, several members of the Commission staff asked how Caribbean's proposed rule would affect media markets across the United States. Specifically, staff questioned what percentage of U.S. markets are "one newspaper towns," where percentage of advertising revenue would always be 100% of the market sector. Caribbean has not been able to locate any publicly available source that provides advertising revenues for daily newspapers in each media market across the United States. Caribbean has, however, used publicly available documentary sources<sup>2</sup> to determine the number of daily newspapers in a random sample of DMAs. That analysis demonstrates that in all of the sampled DMAs – even small sized DMAs – more than one daily newspaper competes for newspaper advertising revenues. The chart immediately below illustrates the results of Caribbean's informal sampling:

DMA Number	DMA Name	Number of Daily Newspapers
37	San Antonio, TX	5
47	Buffalo, NY	12
86	Chattanooga, TN	4
97	Evansville, IN	6
118	Monterey-Salinas, CA	4
123	Eugene, OR	4
149	Bluefield-Beckley-Oak Hill, WV	4
162	Abilene-Sweetwater, TX	4
175	Rapid City, SD	3
177	Marquette, MI	4
179	Alexandria, LA	2
191	Lima, OH	4

<sup>2</sup> Caribbean primarily gathered its data using Editor and Publisher, *International Yearbook* (2002). Caribbean used DMA information contained in *Broadcasting & Cable Yearbook 2002-2003*.

Marlene H. Dortch  
May 6, 2003  
Page 3

For the Commission's further information, Caribbean also attaches maps for each state, prepared by Editor and Publisher, International Yearbook (2002), depicting the presence and location of each major daily newspaper within a state (*see Exhibit 1*). These maps illustrate that in most DMAs throughout the United States, more than one daily newspaper competes for newspaper advertising revenue.

## 2. Commonly-Owned Daily Newspapers in Puerto Rico Share the Same Editorial Viewpoint

In its comments and reply comments, as well as in its meetings with the Commission, Caribbean emphasized the importance that the public interest in viewpoint diversity can only be served through independent and competing sources of news and information. Caribbean further argued that commonly owned and controlled entities are more likely to provide similar coverage of issues that are of local public importance.

In support of that conclusion, Caribbean randomly chose two recent issues of local public importance in Puerto Rico and performed a comparative analysis of the three largest daily newspapers' coverage of such events. As is clear from the discussion below, the analysis reveals an editorial slant and priority given to coverage that is shared by the commonly-owned newspapers – *El Nuevo Día* and *Primera Hora* – and which differs from the slant of the independently-owned newspaper, *El Vocero de Puerto Rico*. This editorial slant is reflected both in the placement of articles within the respective newspapers, the amount of coverage the issues received and the viewpoints of the news articles themselves.

The first local news topic concerns the return to Puerto Rico of former Governor Pedro Rosselló as a candidate in the 2004 gubernatorial race (*see Exhibit 2 and corresponding English translations at Exhibit 4*). These newspaper articles, published principally on March 17, 2003, reveal that the commonly-owned newspapers in Puerto Rico reported about Rosselló's return in a negative manner when measured against the tone used by the non-commonly-owned newspaper. For example, the commonly-owned newspapers, *El Nuevo Día* and *Primera Hora*, crafted article titles and reported facts in a way that painted Rosselló in an almost exclusively unfavorable light, highlighting lingering issues of corruption and incompetence during his prior administration. The commonly-owned newspapers did not address his current political platform and downplayed his prior popularity among the electorate. By contrast, the independently-owned newspaper, *El Vocero de Puerto Rico*, reported relevant events in a light more friendly to Rosselló, spending considerable time discussing in positive tones his triumphant return to Puerto Rico, where he was greeted by throngs of supporters. Moreover, *El Vocero de Puerto Rico* trumpeted Rosselló's return with a massive front page headline and published a total of seven pertinent articles (with comparatively pro-Rosselló titles), thereby covering a wide range of news related to Rosselló.

Marlene H. Dortch

May 6, 2003

Page 4

By contrast, the commonly-owned newspapers lacked big headlines regarding Rosselló and published only four articles and three articles, respectively.

The second local news topic that Caribbean examined regards accusations against former Puerto Rico electoral commissioner Juan Melecio, who recently was appointed the campaign manager of Rosselló's gubernatorial campaign (*see* Exhibit 3 and corresponding English translations at Exhibit 5). This local news was reported in several stories that appeared on March 25, 2003. Reports by the commonly-owned newspapers contain several references to Melecio's past wrongdoings, paint him in an unflattering manner, and make few acknowledgements of his prior successes. By contrast, non-commonly-owned *El Vocero de Puerto Rico*'s articles paint a more sympathetic picture – not only discussing Melecio's past misdeeds but also discussing his former popularity and commitment as a public servant (at one point using the word “hero” to describe him). In covering this story, commonly-owned *El Nuevo Día* placed its reports on pages thirty-five and thirty-six, and its sister newspaper *Primera Hora* placed its reports on page thirty. By contrast, *El Vocero de Puerto Rico* published its three stories in a more prominent location – on page sixteen.

3. The Definition of “Daily Newspaper” Should be Clarified to Apply Explicitly to Spanish-Language Newspapers in Puerto Rico

Caribbean has consistently taken the position that if the Commission deregulates the newspaper/broadcast cross-ownership rule, the Commission should clarify that it always intended the definition of “daily newspaper” to include Puerto Rico's Spanish-language daily newspapers. *See* Section 73.355 n.6 of the Commission's Rules (providing definition of “daily newspaper”). Beginning in 1975, the Commission clearly has stated its intent to apply the definition to Spanish-language daily newspapers in Puerto Rico. *See* 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 ¶ 123 (1975). For example, the Commission routinely has included Puerto Rico's Spanish-language daily newspapers in its diversity analyses. *See, e.g.*, Application of Pegasus Broadband & Chancellor Media, *Memorandum Opinion and Order*, 14 FCC Rcd. 13767 (1999). The newspaper/broadcast cross-ownership rule would be rendered meaningless if the definition excluded Spanish-language newspapers in Puerto Rico, where Spanish is an official language of Puerto Rico, only 25% of Puerto Ricans speak English, public schools are taught in Spanish, and Puerto Rico's three most highly circulated daily newspapers are published only in Spanish. No commenters in this proceeding challenged this interpretation of the rule's definition.

In light of the foregoing, Caribbean suggests to the Commission the following revision to note 6 of Section 73.3555 of the Commission's Rules (with new language italicized): “For the purposes of this section a daily newspaper is one which is published four or more days per week

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# ARNOLD & PORTER

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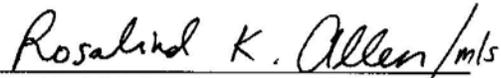
Marlene H. Dortch  
May 6, 2003  
Page 5

*in an official language of the relevant state, territory or Commonwealth, and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.”*

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

Please do not hesitate to contact the undersigned at 202-942-5418 with any questions concerning this ex parte presentation.

Respectfully submitted,



Rosalind K. Allen  
Counsel for Caribbean International  
News Corporation

Enclosures

cc: Kenneth Ferree  
Paul Gallant  
Royce Dickens Sherlock