

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<i>In the Matter of</i>	)	
	)	
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 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket 01-317
	)	
Definition of Radio Markets	)	MM Docket 00-244
	)	
Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area	)	MB Docket 03-130
	)	

**MOTION FOR STAY**

Capitol Broadcasting Company, Communications Workers of America, Consumers Union, Parents Television Council and the United States Conference of Catholic Bishops [hereinafter “Movants”] respectfully move for a stay of the effectiveness of the Commission’s June 2, 2003 actions as set forth in its *2002 Biennial Review Order*, 18 FCCRcd 13620 (2003). Absent grant of this motion, the 2002 Biennial Review Order will become effective on September 4, 2003. Movants ask that the Commission delay the effectiveness of all rules and policies modified in the *2002 Biennial Review* until 60 days after adjournment of the First Session of the 108<sup>th</sup> Congress *sine die*.

This stay is requested in light of the pendency of legislation which would suspend enforcement, or overturn, part or all of the *2002 Biennial Review Order*,<sup>1</sup> and because of the interdependence of the Commission’s local and national broadcast ownership rules. Prudence and respect for the legislative process require that the Commission stay its decision.

---

<sup>1</sup>On July 23, 2003, by a vote of 400-21, the House of Representatives adopted HR 2799, which would preclude the Commission from enforcing the modified 45% national TV ownership cap for the next fiscal year. As of August 18, 2003, there were 176 co-sponsors of HR 2052, and 44 co-sponsors of S. 1046, bills which would permanently reinstate the 35% national TV ownership cap. S. 1046 has been passed by the Senate Commerce Committee, which amended it to reinstate the Commission’s newspaper/broadcast cross-ownership rules. In addition, there were 20 co-sponsors of S.J. Res 17, which would rescind the *2002 Biennial Ownership Order* in its entirety. Senator Dorgan has posted a discharge petition for S.J. Res 17, which has been signed by 35 Senators.

The above-listed Movants are not necessarily in agreement among themselves as to the merits of each particular issue decided in the *2002 Biennial Review Order*. They do, however, share the belief that the Commission's acts and omissions have undermined localism, the defining characteristic of the licensing scheme set forth in Title III of the Communications Act. For this reason, and because the interrelated nature of the Commission's ownership policies make it impossible to effectuate the new decision in part without exacerbating the harm arising from it, Movants ask that all aspects of the Commission's *Biennial Review Order* be stayed.

There are two fundamental reasons why the new rules should be stayed.

**First:** While there are powerful legal and factual arguments in support of granting the requested stay, Movants emphasize that the most important reason for granting the stay is the pendency of legislative action.<sup>2</sup> Simply stated, the Commission should demonstrate its respect for the large number of members of both Houses of Congress who have unambiguously demonstrated their disapproval of all or part of the *2002 Biennial Review Order*.

**Second:** Comity aside, absent a stay, chaos will be the order of the day. As soon as the new rules become effective, the Commission will surely receive applications, probably many applications, for permission to transfer broadcast properties.<sup>3</sup> Movants urge the Commission to consider the consequences:

- ! Scarce Commission staff time and resources will have to be devoted to considering matters which may well be moot. Citizens, such as those on whose behalf Movants are

---

<sup>2</sup>It is not necessary to review here the merits of the Commission's decision to meet the legal requirements for a stay. Given the substantial Congressional opposition to the FCC's June 2, 2003 decision, and the extraordinary speed with which it has been manifested by legislative action, there is a very high likelihood that Congress will pass at least one measure modifying the *2002 Biennial Review Order*, and a significant possibility that Congress will rescind the action in its entirety. This is effectively equivalent to the "likelihood of success on the merits" of the kind which the Commission has ordinarily recognized in considering stay motions. See, e.g., *Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 14 FCCRcd 9305, 9307 (1999) (applying *Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921 (D.C. Cir. 1958)).

<sup>3</sup>Every major liberalization of the FCC's ownership rules since 1984 has presaged a wave of transfer applications. Because, in many instances, the new rules offer limited opportunities for consolidation in a particular market, applicants will have strong incentives to be the first to file.

acting, will be put to the effort and expense of preparing challenges which may never have to be filed.

- ! It will be impossible for the Commission to make reasoned decisions on proposed station transfers so long as legislative action to overrule the Commission remains pending. Given the interdependence of the ownership rules, the Commission cannot assess the merits of any proposed transaction without knowing which rules, if any, will be overturned by Congress.
- ! It is virtually inevitable that, if Congress does, indeed, overturn all or part of the Commission's *Biennial Review Order*, the Commission will have to reexamine all of its interdependent rules in light of the Congressional action. It might even become necessary for the Commission to consider whether broadcasters would have to divest properties obtained prior to the enactment of such legislation.

### **Conclusion**

WHEREFORE, in light of these compelling circumstances, Movants respectfully ask that the Commission grant this Motion, and issue a stay of enforcement of all rules and policies modified in the *2002 Biennial Review* until 60 days after adjournment of the First Session of the 108<sup>th</sup> Congress *sine die*.

Respectfully submitted,

/s/

Andrew Jay Schwartzman  
Media Access Project  
Suite 1118  
1625 K Street, NW  
Washington, DC 20006  
(202) 232-4300

August 18, 2003