Dow Lohnes pllc
ATTORNEYS AT LAW

M. ANNE SWANSON
DIRECT DIAL (202) 776-2534
aswanson@dowlohnes.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

one ravinia drive suite 1600
atlanta, georgia 30346-2108
telephone 770-901-8800
facsimile 770-901-8874

May 2, 2006

VIA ELECTRONIC FILING

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

Re: Notification of Ex Parte Communication
MB Docket Nos. 02-277 and 03-130
MM Docket Nos. 01-235, 96-197, 01-317, and 00-244

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on March 23, 2006, George Mahoney, Vice President, General Counsel and Secretary of Media General, Inc. ("Media General"), and I met with Jessica Rosenworcel, Senior Legal Advisor to Commissioner Michael J. Copps, to provide background on and review the positions Media General has previously taken in the above-referenced dockets. At the meeting, Media General provided the enclosed handout.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for each above-referenced docket.

Very truly yours,

M. Anne Swanson

Enclosure
cc w/encl. (by email):
Jessica Rosenworcel, Esquire

EXECUTIVE SUMMARY

Newspaper/Broadcast Cross-Ownership Restrictions Must Be Significantly Lessened, If Not Eliminated

- Adopted in 1975, the FCC's newspaper/broadcast cross-ownership rule is the only FCC media ownership rule that has been in effect in its original form for over three decades despite vast changes in the media marketplace.

- In its July 2003 decision revising its media ownership rules, the FCC relaxed the newspaper/broadcast cross-ownership rule somewhat, permitting newspaper/broadcast cross-ownership in television markets with nine or more stations.

  For markets with four to eight television stations, the FCC decided to allow only limited cross-ownership. There, the FCC said that one party could own a daily newspaper and television, but only 50 percent of the radio stations allowed under the local radio ownership rule. Alternatively, newspaper publishers could own up to 100 percent of the allowable radio limit, provided they did not own a television station. In markets with fewer than four television stations, the FCC retained the wholesale ban on newspaper/broadcast cross-ownership.

  On September 3, 2003, the United States Court of Appeals for the Third Circuit stayed the FCC's new rules, and the 1975 ban still remains in effect, following the Third Circuit's reversal and remand of the FCC's decision in June 2004 and the Supreme Court's refusal in June 2005 to grant *certiorari* petitions seeking review.

- Even if the FCC's new rules had gone into effect, cross-ownership would have been restricted in more than half of the nation's 210 television markets. Over thirty markets have fewer than four television stations, and over 100 markets fall into the "four to eight television station" tier.

- Media General's experience demonstrates that significant relaxation, if not elimination, of the rule will improve and enhance the delivery of local news in communities of all sizes and will not harm competition in local advertising markets. Small market relief is critical.

- The 1996 Telecommunications Act, the extensive record the FCC has amassed in various proceedings over the last ten years, and recent D.C. Circuit decisions compel significant relaxation, if not elimination, of the newspaper/broadcast cross-ownership rule.

- Any restriction on newspaper/broadcast cross-ownership cannot withstand First Amendment analysis because the Supreme Court has observed that changing market conditions have undermined the scarcity rationale, and the FCC itself has acknowledged that the theory of spectrum scarcity is no longer valid.

- The Equal Protection Clause requires a rational basis for differing treatment of similar groups, and any restriction that treats newspaper publishers differently from all other media cannot be shown to have such a rational basis.

- Not only is any restriction on newspaper/broadcast cross-ownership not "necessary in the public interest," it actually stifles innovation; the public interest in fact requires the complete elimination of such restrictions.

Daily Newspapers Owned by Media General, Inc. (2005)

DMA No.	DMA Name	Daily Newspaper
8	Washington, DC (Hagerstown, MD)	*Culpeper Star-Exponent* *Manassas Journal Messenger* *(Woodbridge) Potomac News*
12	*Tampa-St. Petersburg (Sarasota), FL	*The Tampa Tribune* *Highlands Today (Sebring)* *Hernando Today (Brooksville)*
27	Charlotte, NC	*Hickory Daily Record* *The Concord & Kannapolis Independent Tribune* *Statesville Record & Landmark* *The (Morgantown) News Herald*
35	Greenville-Spartanburg, SC-Asheville-Anderson, NC	*The (Marion) McDowell News*
47	Greensboro-High Point-Winston Salem, NC	*The Winston-Salem Journal* *The (Eden) Daily News* *The Reidsville Review*
60	Richmond-Petersburg, VA	*The Richmond Times-Dispatch*
68	*Roanoke-Lynchburg, VA	*The (Lynchburg) News & Advance* *Danville Register & Bee*
91	*Tri-Cities, TN-VA	*Bristol Herald Courier*
107	*Myrtle Beach-Florence, SC	*The (Florence) Morning News*
127	*Columbus, GA	*Opelika-Auburn News*
157	*Panama City, FL	*Jackson County Floridian*
172	Dothan, AL	*The Dothan Eagle* *Enterprise Ledger*
181	Harrisonburg, VA	*The (Waynesboro) News Virginian*
186	Charlottesville, VA	*The Daily Progress*

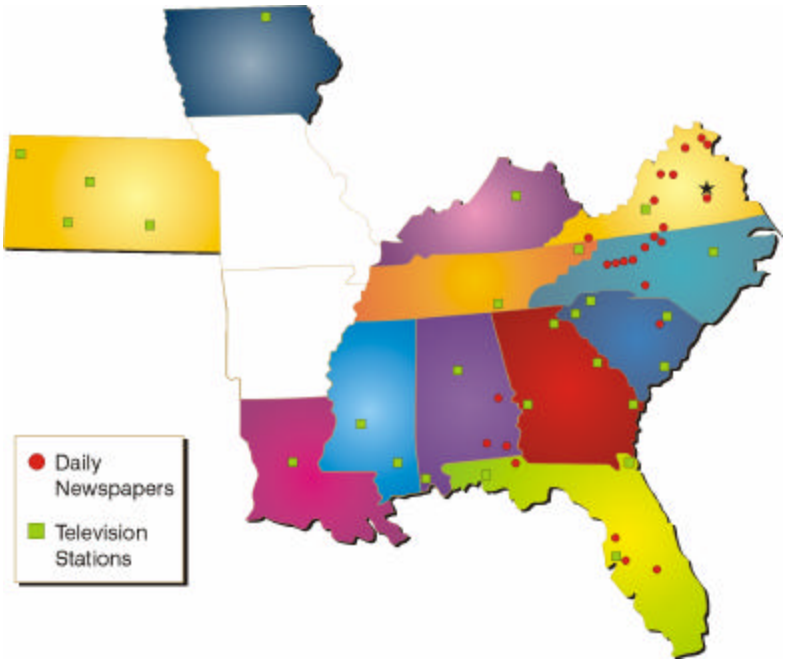
* Media General convergence underway

Television Stations Owned by Media General, Inc. (2005)

DMA No.	DMA Name	Station	Network	Daily Newspaper
12	*Tampa-St. Petersburg, FL	WFLA-TV	NBC	*The Tampa Tribune* *Highlands Today (Sebring)* *Hernando Today (Brooksville)*
35	Greenville-Spartanburg, SC-Asheville-Anderson, NC	WSPA-TV WASV-TV WNEG-TV***	CBS UPN CBS	*The (Marion) McDowell News*
40	Birmingham (Anniston, Tuscaloosa), AL	WIAT(TV)	CBS	
52	Jacksonville, FL	WJWB(TV)	WB	
62	Mobile, AL-Pensacola (Ft. Walton), FL	WKRG-TV	CBS	
63	Lexington, KY	WTVQ-TV	ABC	
67	Wichita-Hutchinson Plus, KS	KWCH-TV KBSH-TV*** KBSD-TV*** KBSL-TV***	CBS	
68	*Roanoke-Lynchburg, VA	WSLS-TV	NBC	*The (Lynchburg) News & Advance* *Danville Register & Bee* *The Reidsville Review* *The (Eden) Daily News*
86	Chattanooga, TN	WDEF-TV	CBS	
89	Jackson, MS	WJTV(TV)	CBS	
91	*Tri-Cities, TN-VA	WJHL-TV	CBS	*Bristol Herald Courier*
97	Savannah, GA	WSAV-TV	NBC	
101	Charleston, SC	WCBD-TV	NBC	
105	Greenville-New Bern-Washington, NC	WNCT-TV	CBS	
107	*Myrtle Beach-Florence, SC	WBTW(TV)	CBS	*The (Florence) Morning News*
115	Augusta, GA	WJBF-TV	ABC	
127	*Columbus, GA	WRBL(TV)	CBS	*Opelika-Auburn News*
152	Rochester, MN-Mason City, IA-Austin, MN	KIMT(TV)	CBS	
157	*Panama City, FL	WMBB(TV)	ABC	*Jackson County Floridan*
167	Hattiesburg-Laurel, MS	WHLT(TV)***	CBS	
176	Alexandria, LA	KALB-TV	NBC	

* Media General convergence underway
*** Satellite Station

Media General



Media General is an independent, publicly owned communications company situated primarily in the Southeast with interests in newspapers, television stations, interactive media, and diversified information services. Its corporate mission is to be a leading provider of high-quality news, information and entertainment in the Southeast by continually building its position of strength in strategically located markets.

Media General is one of the media industry's leading practitioners of "convergence," the melding of newspaper, television and on-line resources in the gathering and dissemination of local news. Its Tampa News Center is the most advanced convergence laboratory in the nation, and the only one where a newspaper, a television station, and an on-line division are located together under one roof. Further convergence efforts currently are underway in five additional Media General markets, and other collaborative efforts are being initiated in all Media General markets.

Media General's publishing assets have grown from three daily newspapers as recently as 1995 to 25 today; they include *The Tampa Tribune*, the *Richmond Times-Dispatch*, the *Winston-Salem Journal*, and 22 other daily newspapers in Virginia, North Carolina, Florida, Alabama and South Carolina, as well as nearly 100 weeklies and other periodicals. From a base of three television stations at the beginning of 1997, Media General's 26 network-affiliated television stations today reach more than 30 percent of the television households in the Southeast, and nearly 8 percent of those in the United States. (The juxtaposition of Media General's mostly small- and mid-market television stations and many of its daily newspapers can be found on the preceding page.) Media General's Interactive Media Division also provides online content that includes news, information, and entertainment services at virtually every one of the company's operating locations.

RESTRICTIONS ON NEWSPAPER/BROADCAST CROSS-OWNERSHIP STIFLE CONVERGENCE AND INNOVATION; THEY CANNOT BE JUSTIFIED LEGALLY, AND THEY HARM THE PUBLIC INTEREST

- **Adopted in 1975, the FCC's newspaper/broadcast cross-ownership rule is the only FCC media ownership rule that has been in effect in its original form for over three decades.**

  - The media marketplace today is vastly different than in 1975. There has been an absolutely explosive growth in media outlets -- and in diversity. Television and radio outlets have more than doubled in this period. Cable and DBS are now the primary sources of video delivery to the home. Satellite radio services have begun to show significant gains in market share. Low power television and radio, weekly newspapers, and the Internet have become viable competitors. Only daily newspapers have decreased in number and circulation.

  - In the same period, Congress, the FCC, and the courts have eliminated the national cap on radio ownership, liberalized the national television cap, allowed ownership of television duopolies and multiple radio stations per market, and completely removed the ban on television/cable cross-ownership.

  - The newspaper/broadcast cross-ownership rule is the only FCC ownership restriction that directly affects the actions of and valuations in an industry that is not within the FCC's statutory jurisdiction, the newspaper industry.

- **Media General's experience demonstrates that significant relaxation, if not elimination, of the rule will improve and enhance the delivery of local news to communities, large and small, across America.**

  - Convergence melds all the advantages of print, broadcast, and on-line operations to provide multiple channels and streams of useful information when, where, and how consumers want it.

  - Convergence enhances the coverage and dissemination of local news, sports, and other events by newspapers and broadcast stations, which, as a result of common ownership, are best able to pool their resources for news gathering and production in ways that Media General's experience in Tampa and five other markets is demonstrating. In short, convergence allows Media General and other media owners to deliver better, faster, and deeper local news.

  - Better coverage of local news generally leads to larger audiences and, therefore, strengthened demand for local broadcast stations and newspapers. More effective competition will help reverse the decline in newspaper circulation and slow the steady loss of television viewers.

  - Local news is extremely expensive to produce, and network compensation to stations is being reduced dramatically -- and even eliminated in many cases. The impact of these facts is greatest in smaller markets. In the last few years, over

fifty local TV newscasts have been cancelled or curtailed. (*See* Attachment 1.) Elimination of newspaper/broadcast cross-ownership restrictions will allow newspapers to strengthen and reinvigorate local TV news operations and improve the quality and breadth of local news.

- In the end, convergence strengthens local media outlets vis-à-vis larger media conglomerates which deliver a national and undifferentiated news product across all markets.

➢ **The 1996 Telecommunications Act, the extensive rulemaking record the FCC has amassed, and recent D.C. Circuit decisions compel significant relaxation, if not total repeal, of the newspaper/broadcast cross-ownership rule.**

- Congressional intent, as expressed in Section 202(h) of the 1996 Telecommunications Act, is clear:

> "The Commission *shall* review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and *shall* determine whether any of such rules are necessary in the public interest as a result of competition. The Commission *shall* repeal or modify any regulation that it determines to be no longer in the public interest."

- The United States Court of Appeals for the District of Columbia Circuit has ruled that Section 202(h) establishes a presumption in favor of prompt repeal.

  -- *Fox*: "The Commission's wait-and-see approach cannot be squared with its statutory mandate promptly . . . to 'repeal or modify' any rule that is not 'necessary in the public interest.'" (*Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042 (D.C. Cir. 2002)).

  -- *Sinclair:* "In applying the statute, we have squarely considered and rejected the kind of cautionary approach employed by the FCC. . . ." (*Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 171 (D.C. Cir. 2002) (Sentelle, J, partially dissenting).

  -- These decisions compel the FCC to act on the extensive record it has accumulated -- and significantly relax, if not repeal, the rule.

- The FCC has accumulated a thorough and complete record on the newspaper/broadcast cross-ownership rule over the last ten years. This record fully supports the prompt and complete elimination of the rule. The rule has come before the agency in the following seven instances:

-- *1996 NOI.* The FCC's October 1996 *Notice of Inquiry* sought initial and reply comments on adopting a less restrictive policy for waivers of the newspaper/broadcast cross-ownership rule as it applies to radio stations. Despite a record that strongly favored adoption of a liberalized policy, the FCC never acted on the *Notice*.

-- *First NAA Petition.* On April 27, 1997, the National Newspaper Association ("NAA") filed a "Petition for Rulemaking," urging the FCC to commence a proceeding to eliminate all restrictions on common ownership of radio and television stations. The FCC did nothing in response to this filing.

-- *Second NAA Petition.* On August 23, 1999, NAA submitted an "Emergency Petition for Relief," urging repeal particularly in light of the FCC's significant liberalization earlier that month of the television duopoly rule. The FCC did nothing in response to this filing.

-- *1998 Biennial Review.* As required by Section 202(h), the FCC in 1998 commenced a biennial review of its media ownership rules. In the course of this docket, which treated the two NAA petitions as comments, the FCC received overwhelming support for the repeal or modification of the rule. In the report issued at the conclusion of the proceeding in June 2000, the FCC said it would soon initiate a notice of proposed rulemaking seeking comment on repeal of the newspaper/broadcast cross-ownership rule because the rule might not be necessary to achieve its intended public interest benefits in all instances.

-- *2000 Biennial Review.* In the report concluding its 2000 Biennial Review proceeding, which was issued in January 2001, the FCC again said it would be issuing a notice of proposed rulemaking on the newspaper/broadcast cross-ownership rule.

-- *2001-2002 Newspaper/Broadcast NPRM.* In September 2001, the FCC finally released a notice of proposed rulemaking, seeking comment on elimination of the newspaper/broadcast cross-ownership rule. In response, the FCC received virtually unanimous industry support for repealing the rule, and numerous economic and programming studies demonstrated such repeal would be in the public interest. Out of the scores of substantive comments, only a handful opposed repeal. Despite compilation of an extensive record, the FCC, concerned over recent appellate court losses criticizing its approach to rulemaking, chose to defer action for yet another rulemaking.

-- *2002 Omnibus NPRM.* In September 2002, the FCC released a notice of proposed rulemaking seeking comment on all its media ownership rules. In the course of the proceeding, the agency released 12 studies it had commissioned. The six studies that bear some tangential relationship to this rule document that its repeal would enhance the public interest. In

both the 2001-02 and 2002 proceedings, consumer and labor groups opposing repeal failed to support their opinions about the need for the rule's retention with any substantive, empirical studies that meet Section 202(h)'s burden for sustaining the rule.

- **Broadcast "spectrum scarcity" no longer exists and cannot justify a cross-ownership rule.**

  - The FCC's retention of newspaper/broadcast cross-ownership restrictions is no longer constitutionally justified. In 1975, the FCC adopted the newspaper/broadcast cross-ownership rule to obtain a "hoped for" increase in local diversity by preventing further common ownership of daily newspapers and broadcast outlets.[1] Even in 1975, the justification for the prohibition was tenuous at best.

    -- In adopting the ownership ban, the FCC cited *no* evidence of harm from common ownership. Indeed, one FCC staff study in the record showed that newspaper-owned television stations delivered greater quantities of public interest programming than other stations. 1975 2d R&O at 1078 n.26. In that proceeding, the FCC incorrectly focused on "diversity" as an issue only for viewers and listeners rather than on the First Amendment rights of speakers -- that is, newspaper publishers and television station owners.

    -- In affirming the ownership ban in 1978, the U.S. Supreme Court relied upon two cases from the early days of broadcasting, *NBC v. United States*, 319 U.S. 190 (1943), and *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). From these decisions, the Court concluded that broadcast spectrum remained sufficiently scarce to justify a less rigorous First Amendment analysis of the ownership ban: "The physical limitations of the broadcast spectrum are well known. . . . In light of this physical scarcity, Government allocation and regulation of broadcast frequencies are essential. . . ."[2]

  - Regardless of the legitimacy of the spectrum scarcity rationale in 1943, or even 1975, it is clear today that, due to increased competition and technological advances, the scarcity doctrine has become an anachronistic relic.

    -- In 1969, the year of the *Red Lion* decision, there were 6,647 radio stations and 857 television stations. As of December 31, 2005, there were 13,660 radio stations, 1,750 television stations, 2,737 Class A and low power

[1] *Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 FCC 2d 1046, 1074-75 (1975) ("1975 2d R&O"), *recon.*, 53 FCC 2d 589 (1975), *aff'd sub nom., FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). Ninety-six of the 112 then-existing daily newspaper/ broadcast combinations were grandfathered because the Commission found that "stability and continuity of ownership do serve important public purposes." *Id.* at 1078.

[2] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. at 799.

television stations, and 675 low power FM stations, not to mention over 8,500 television and radio translators and boosters.

-- Comparable -- and equally dramatic -- increases in cable television service have taken place since 1969. Today, over 85 percent of America's households receive video programming on a subscription basis, either from cable or from entirely new competitive industries such as DBS, OVS, and MMDS (now BRS).

-- The number of programming options has also increased. In 1969, programming was launched by the three television networks -- ABC, CBS, and NBC. Today, consumers have access to at least nine (soon to be eight) television networks and a variety of sources of news and entertainment that could not have been imagined in 1969; hundreds of cable programming networks; VCRs, DVDs, and personal video recorders; wireless PDAs and cell phones; streaming media; iPod downloads; and, of course, the Internet.

-- The following comparison of the media markets in 1943, 1969, 1978, and 2001 dispositively shows the demise of scarcity and, with it, the demise of the premise for the Commission's cross-ownership ban.

Growth in the Media Marketplace				
	1943	**1969**	**1978**	**2001**
Daily Newspapers	1,772	1,748	1,745	1,482
AM Radio Stations	931	4,254	4,538	4,727
FM Radio Stations	59	2,393	4,069	8,285
Full Power TV Stations	6	857	988	1,686
Low Power TV Stations	0	0	0	2,212
Cable Subscribers	14,000	3 million	13.7 million	69.0 million
DBS Subscribers	0	0	0	16.1 million
OVS, SMATV, HSD, MMDS (now BRS) Subscribers	0	0	0	3.3 million
Internet Access	0	0	0	72.3%
Broadcast Networks	3	3	3	7 English, 2 Spanish
Cable Networks	0	0	28	231
54+ Channel Cable Systems	0	0	0	2,365

-- In each of Media General's television markets, there are numerous competing media voices. Attachment 2 details the media in each of Media General's television markets.

➢ **Courts and constitutional scholars no longer accept the scarcity doctrine.**

- Constitutional analysis is not a static enterprise. The justification of First Amendment burdens must be re-evaluated in light of the sweeping technological and market changes that have occurred since 1943, 1969, and 1978. As the Supreme Court cautioned over thirty years ago, "[b]ecause the broadcast industry is dynamic in terms of technological change, solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence."[3]

- More particularly, the Supreme Court has confirmed that changing competitive market conditions could undermine the scarcity rationale, thus requiring a critical review of the *Red Lion* decision. In 1984, the Supreme Court noted:

> "The prevailing rationale for broadcast regulation based upon spectrum scarcity has come under increasing criticism in recent years . . . . We are not prepared, however, to reconsider our longstanding approach without some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required."[4]

- Congress has provided clear signals that the competitive landscape has changed so dramatically from 1969 that the scarcity rationale for broadcast regulation no longer is viable. The FCC, at various times, has echoed these signals.

  -- Congress has ordered the FCC to grant initial broadcast construction permits through competitive bidding, thus stripping the FCC of the need to evaluate the comparative merits of would-be licensees.

  -- In a 1987 review of the fairness doctrine, the FCC concluded, "[t]he scarcity rationale developed in the *Red Lion* decision and successive cases no longer justifies a different standard of First Amendment review for the electronic press."[5]

  -- As two FCC Commissioners have observed, "The long and short of it is this: as matters now stand, the Commission has unequivocally repudiated spectrum scarcity as a factual matter."[6]

- The United States Court of Appeals for the District of Columbia Circuit also noted the infirmity of the scarcity rationale in its 1998 remand of *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998). More importantly, the court indicated

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[3] *See CBS v. Democratic Nat'l Comm'n*, 412 U.S. 94, 102 (1973).
[4] *FCC v. League of Women Voters of Calif.*, 468 U.S. 364, 376-77 n.11 (1984).
[5] *Syracuse Peace Council*, 2 FCC Rcd 5043, 5053 (1987).
[6] Joint Statement of Commissioners Furchtgott-Roth and Powell, *Personal Attack and Political Editorial Rules*, FCC Gen. Docket No. 83-484, 13 FCC Rcd 21929, 21940 (1998).

that, if the FCC were to receive a rulemaking petition calling for the elimination of the newspaper/broadcast rule, the agency would be "arbitrary and capricious if it refused to consider [the rule] in light of persuasive evidence that the scarcity rationale is no longer tenable." As noted above, the FCC received such petitions from the NAA in 1997 and 1999, but the agency did not commence a rulemaking proceeding until the fall of 2001. The FCC then refused to act on the record it compiled on the rule and instead initiated an omnibus rulemaking on all media ownership rules, seeking comment yet again on the newspaper/broadcast cross-ownership rule.

- The United States Court of Appeals for the District of Columbia Circuit in both *Fox* and *Sinclair* again implicitly invited the FCC to decide the spectrum scarcity issue once and for all:

  -- *Fox*: "[T]his court is not in a position to reject the scarcity rationale even if we agree that it no longer makes sense." (*Fox Television Stations, Inc. v. FCC*, 280 F.3d at 1246.)

  -- *Sinclair:* "Sinclair fails to acknowledge that the scarcity rationale adopted by the Supreme Court in *National Broadcasting Co. v. FCC*, . . . *Red Lion Broadcasting Co. v. FCC*, . . . is both at issue in television broadcasting and binding on this court . . . . In *FCC v. League of Women Voters*, . . . the Supreme Court stated: 'We are not prepared . . . to reconsider our long-standing [scarcity rationale] without some signal from Congress or the [Commission] that technological developments have advanced so far that some revision of the system of broadcast regulation may be required.' Absent such signals, the Court has refused to abandon the scarcity rationale." (*Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d at 161-62 (citations omitted).)

- In another context, a member of the same court has questioned the scarcity rationale: "In short, neither technological nor economic scarcity distinguish broadcast from other media." *Action for Children's Television v. FCC*, 58 F.3d 654, 676 (D.C. Cir. 1995) (Edwards, C.J., dissenting), *cert. denied*, 516 U.S. 1043 (1996).

- In a lengthy and thorough report released as an FCC "Media Bureau Staff Research Paper" in March 2005, an FCC staff attorney has concluded that the scarcity rationale is no longer valid as a tool of broadcast regulation. *See* John W. Berresford, "The Scarcity Rationale for Regulating Traditional Broadcasting: An Idea Whose Time Has Passed," *FCC Media Bureau Staff Research Paper, 2005-2*, March 2005.

- An acknowledgement from the Commission that market forces and technological advances have overtaken the scarcity doctrine is long overdue.

A Judicial Timeline		
1943	*NBC v. United States*	The "unique characteristic" of radio justifies federal regulation of broadcast industry
1969	*Red Lion Broadcasting Co. v. FCC*	Spectrum scarcity justifies less rigorous First Amendment scrutiny of broadcast regulations
1978	*FCC v. National Citizens Committee for Broadcasting*	Spectrum scarcity and similar multiple ownership restrictions on broadcasters justify newspaper/broadcast cross-ownership rule
1984	*FCC v. League of Women Voters of Calif.*	Changing competitive market conditions could undermine the scarcity rationale, thus requiring a critical review of *Red Lion*
1987	*Syracuse Peace Council*	FCC abandons scarcity rationale
1998	*Tribune Co. v. FCC*	Court of Appeals suggests that FCC is obligated to reconsider scarcity rationale
2002	*Fox Television Stations, Inc. v. FCC; Sinclair Broadcast Group, Inc. v. FCC*	Court of Appeals implicitly invites FCC to repudiate scarcity rationale

➢ **Equal Protection Considerations Also Require Significant Relaxation, If Not Repeal, of the Cross-Ownership Rule.**

- The Equal Protection Clause of the U.S. Constitution requires a rational basis for the differing treatment of substantially similar groups.[7] In this case, however, there is simply no rational basis to single out broadcasters among the many players in the media industry and deny them the opportunity to own in-market daily newspapers or to single out newspaper publishers and deny them the opportunity to own in-market broadcast stations.

  -- Broadcasters no longer are the sole or even the dominant providers of video programming. Other well established players in the video services market, such as cable, DBS, and telephone companies, may own in-market newspapers. Moreover, broadcast television stations are viewed by the public no differently than the providers of other video channels. With the advent of streaming media and new wireless delivery modes, both television and radio face a new competitive threat from ubiquitous Internet sites and programmers transmitting over cellular telephones.

  -- Daily newspaper publishers no longer are the sole providers of local news. Virtually every consumer in the country has access -- for little or no cost -- to weekly newspapers, national newspapers, ethnic and other specialty newspapers, national magazines, numerous 24-hour cable news networks, and countless other media via the Internet. All of these competitors may own local broadcast stations.

[7] *See, e.g., Police Department of the City of Chicago v. Mosley*, 408 U.S. 92 (1972).

-- The Commission repeatedly has recognized the public interest benefits of joint ownership of local media outlets, and it correctly has concluded that these benefits "can outweigh any cost to diversity and competition. . . ."[8] For these reasons, the Commission has relaxed its rules to permit television duopolies as well as same-market radio/television combinations.

-- In addition, the United States Court of Appeals for the District of Columbia Circuit vacated the FCC's cable/television cross-ownership rule, *Fox Television Stations, Inc. v. FCC*, 280 F.3d at 1052-53, and the FCC chose not to reinstate it.

-- The Commission has recognized local daily newspapers as independent "media voices" equivalent to local broadcast stations for purposes of its radio/ television cross-ownership rule, while refusing to recognize local newspapers as equivalent to broadcast stations with respect to cross-ownership.

- The sweeping changes that have occurred since the Supreme Court's 1978 consideration of the equal protection implications of the cross-ownership rule undermine the factual basis for the Court's affirmation of the rule, thus requiring significant relaxation, if not total repeal, of the rule on equal protection grounds.

  -- When the Supreme Court looked at the equal protection issue in 1978, it found that the ownership ban "treated newspaper owners in essentially the same fashion as other owners of the major media of mass communications . . . under the Commission's multiple-ownership rules."[9] Finding that owners of radio stations and television stations were similarly limited in their ability to acquire additional in-market broadcast outlets, the Court denied newspaper owners' equal protection claims.

  -- In the almost 28 years since the Court's decision, however, the FCC's other cross-ownership rules have been eliminated or loosened substantially. Today, daily newspapers and broadcast station owners are completely alone among major information providers in facing an absolute bar to common ownership. Meanwhile, the evidentiary basis for rejecting the prior equal protection challenge to the rule has been eliminated.

- The Commission has recognized the unique -- "special" -- role that television stations play in their local markets, while also permitting combinations of these special voices with other same-market television and radio stations. It is therefore indefensible and illogical to permit combinations of television stations while refusing to allow some form of newspaper/broadcast combinations.

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[8] *Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd 12903, 12930 (1999), *recon.*, 16 FCC Rcd 1067 (2001).
[9] *National Citizens Committee for Broadcasting*, 436 U.S. at 801.

- **Not only is a restriction on newspaper/broadcast cross-ownership not "necessary in the public interest," it actually stifles innovation; the public interest in fact requires significant relaxation, if not the complete elimination, of such restrictions.**

  - It is clear from the foregoing that a ban on newspaper/broadcast cross-ownership cannot be justified as "necessary in the public interest." It therefore must be completely repealed in accordance with the mandate of the 1996 Telecommunications Act.

  - Because the cross-ownership ban threatens convergence, it stifles innovation and inhibits the delivery of quality local television news to communities, large and small, across the nation. For this reason, significant relaxation, if not elimination, of the restriction on newspaper/broadcast cross-ownership is required in the public interest.

  - Such reform will allow companies like Media General to expand their convergence efforts. As Media General's experience has shown, convergence allows more resources to be put into local news coverage, production, and delivery. The result is greater quantities and higher quality of local news and public affairs programming, increases in news staff, and more locally produced non-news programming. Such changes clearly advance the public interest.

ATTACHMENT 1

SELECTED PRESS ACCOUNTS OF CURTAILMENTS IN LOCAL TELEVISION NEWSCASTS NOVEMBER 1998 THROUGH JANUARY 2003

Market	Station	Decision	Source
Anchorage, AK	KTVA (CBS)	Announced in April 2000 that it would eliminate noon newscasts.	11
Austin, TX	KEYE-TV (CBS)	Cancelled noon newscast in December 2002 and replaced it with game show.	36
Binghamton, NY	WIVT (ABC)	Cancelled locally produced morning news show in June 2002, and replaced it with regionally produced morning news show.	34
Boston, MA	WSBK (UPN)	Cancelled early evening newscasts in 1998, leaving only a 10 p.m. newscast, which is rebroadcast from WBZ-TV (CBS).	2
Boston, MA	WMUR-TV (ABC)	Cancelled 9 a.m. and 4 p.m. newscasts in May 2001.	19
Charlotte, NC	WBTV (CBS)	Cancelled 6:30 p.m. newscast in September 2001.	22
Chattanooga, TN	WDSI (Fox)	Cancelled morning and noon newscasts and added 4 p.m. newscast in January 2001.	15
Chattanooga, TN	WTVC-TV (ABC)	Cancelled weekend morning newscasts in February 2001.	16
Chicago, IL	WBBM-TV (CBS)	Cancelled one hour 6 p.m. newscast in early 1999. Replaced it with a half hour 4:30 p.m. newscast, which thereafter was cancelled in July 2000. Cancelled Saturday morning newscasts in December 1998.	3, 8
Cleveland, OH	WUAB (IND)	Cancelled 11:30 a.m. newscast in January 1999.	4
Cleveland, OH	WEWS (ABC)	Cancelled 5 a.m. newscast in June 1999.	6
Detroit, MI	WKBD (UPN)	Cancelled local 10 p.m. newscast in November 2002 and replaced with one produced by other station in market.	35
Detroit, MI	WWJ-TV (CBS)	Cancelled 11 p.m. half hour local newscast in November 2002.	35
Duluth, MN	KDLH (CBS)	Cancelled noon newscast in November 1998.	1
Evansville, IN	WEVV (CBS)	Cancelled local newscasts in late 2001	29
Green Bay, WI	WLUK-TV (Fox)	Cancelled 10 p.m. newscast in March 2001.	17
Greensboro, NC	WXLV-TV	Cancelled morning and weekend	13

Market	Station	Decision	Source
		newscasts in late 2000.	
Greensboro/ Winston/Salem, NC	WXLV-TV (ABC)	Cancelled local newscasts in January 2002	27
Hattiesburg, MS	WHLT-TV (CBS)	Cancelled all newscasts and eliminated news department in May 2001.	18
Jacksonville, FL	WJXX (ABC)	Cancelled all locally produced newscasts in January 2000; now re-broadcasts newscasts from WTLV-TV (NBC).	10
Kingsport, TN	WKPT (ABC)	Announced in February 2002 that it would cancel locally produced weekday newscasts and brief updates and replace them with re-broadcast newscasts from WJHL-TV (CBS), Johnson City, TN.	28
Los Angeles, CA	KCBS (CBS)	Cancelled 4 p.m. newscast in 2001.	21
Los Angeles, CA	KCOP (UPN)	Announced in July 1999 that it would cancel 7:30 p.m. newscast.	7
Marquette, MI	WBUP WBKP (ABC)	Cancelled local newscast in March 2002	31
Miami, FL	WAMI-TV (IND)	Cancelled only newscast and eliminated news department in December 2000.	14
Miami, FL	WTVJ (NBC)	In February 2002, cancelled midmorning newscast and added 4:00 p.m. newscast, which was subsequently cancelled.	26
Minneapolis. MN	KSTC-TV (IND)	Cancelled both weekday morning and 6:30 p.m. newscasts in October 2001.	23
Minneapolis, MN	KSTP (ABC)	Cancelled morning weekend newscasts in October 2001.	23
New York, NY	WCBS-TV	Cancelled 4:00 p.m. newscast in January 2002	25
Odessa/ Midland, TX	KOSA-TV (CBS)	Cancelled morning newscasts in November 1998.	1
Orlando, FL	WESH (NBC)	Eliminated 4:30 p.m. newscast in April 2000.	9
Phoenix, AZ	KPHO-TV	Announced in December 2000 it would cancel 4:30 a.m. newscast.	37
Raleigh/ Durham, NC	WKFT (IND)	Cancelled hourly local news briefs in December 2002.	32
Sacramento, CA	KMAX-TV (UPN)	Cancelled evening newscast in 1998.	2
San Antonio, TX	KVDA-TV (Telemundo)	Cancelled morning and 5 p.m. newscasts in July 2001.	20
Seattle, WA	KSTW(TV) (UPN)	Cancelled all newscasts and eliminated news department in December 1998.	2
St. Louis, MO	KDNL-TV	Cancelled all newscasts and eliminated	24

Market	Station	Decision	Source
	(ABC)	news department in September 2001.	
Tallahassee, FL	WTWC (NBC)	Cancelled all newscasts and eliminated news department in November 2000.	24
Tampa, FL	WTOG (UPN)	Cancelled 10 p.m. newscast and eliminated news department in 1998.	5
Topeka, KS	KTKA-TV (ABC)	Cancelled all four local newscasts in April 2002.	33
Twin Falls, ID	KMVT (CBS)	Announced in February 2002 that it would cancel 5:00 p.m. newscast	30
Utica, NY	WUTR(TV) (ABC)	Cancelled locally produced morning news show in June 2002, and replaced it with regionally produced morning news show.	34
Washington, DC	WUSA (CBS)	Cancelled 90 minutes of evening newscasts, added 9 a.m. newscast, in September 2000.	12
Watertown, NY	WWTI(TV) (IND)	Cancelled locally produced morning news show in June 2002, and replaced it with regionally produced morning news show.	34

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4	Roger Brown, "Poor Ratings Sink Channel 43 Midday Newscast," *The Plain Dealer*, Dec. 22, 1998 at 4E.
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20	"News roundup," *San Antonio Express-News*, July 4, 2001 at 2B.
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Attachment 2: Independent Voices in Media General Television Markets

Nielsen Designated Market Area		Media General Television Station	Media in Market					
			Independent Owners Per 47 C.F.R. § 73.3555(c)(3)			Penetration/Use Rates		
			TV[1]	Radio[2]	Newspaper[3]	Total Cable[4]	Total ADS[4]	Internet[5]
13	*Tampa, FL	WFLA-TV	14	24	4	75.9	12.2	57.70
35	Greenville-Spartanburg, SC/ Asheville-Anderson, NC	WSPA-TV WNEG-TV** WASV-TV	8	24	3	58.0	25.2	55.10-NC 52.40-SC 56.25-GA
40	Birmingham, AL	WIAT(TV)	11	29	2	66.9	19.8	53.15
52	Jacksonville, FL	WJWB(TV)	10	17	1	71.1	15.5	57.70
63	Mobile, AL – Pensacola, FL	WKRG-TV	12	15	3	73.9	14.5	53.15-AL 57.70-FL
64	Lexington, KY	WTVQ-TV	7	15	2	63.7	24.3	56.60
66	Wichita-Hutchinson, KS	KWCH-TV KBSH-TV** KBSD-TV** KBSL-TV**	6	14	2	69.2	15.6	63.75-KS 64.75-NE
67	*Roanoke-Lynchburg, VA	WSLS-TV	7	22	2	61.9	24.5	63.60-VA 51.50-WV
86	Chattanooga, TN	WDEF-TV	8	25	2	66.3	22.8	55.80-TN 56.25-GA
89	*Tri-Cities, TN-VA	WJHL-TV	6	26	4	72.7	18.1	63.60-VA 55.80-TN
91	Jackson, MS	WJTV(TV)	6	16	1	58.9	27.4	42.60
98	Savannah, GA	WSAV-TV	7	9	2	69.7	19.9	56.25-GA 52.40-SC
101	Charleston, SC	WCBD-TV	5	16	1	69.1	14.2	52.40
105	Greenville-*et al.*, NC	WNCT-TV	6	23	1	63.9	19.7	55.10
108	*Myrtle Beach-Florence, SC	WBTW(TV)	6	8	3	71.3	17.5	52.40-SC 55.10-NC
115	Augusta, GA	WJBF-TV	6	16	2	70.1	15.9	56.25-GA 52.40-SC
125	*Columbus, GA	WRBL(TV)	7	9	2	75.4	13.9	56.25-GA 53.15-AL
153	Rochester, MN-Mason City, IA-Austin, MN	KIMT(TV)	6	6	3	66.6	17.1	63.50-IA 68.95-MN
160	*Panama City, FL	WMBB(TV)	6	7	1	66.8	22.9	57.70
168	Hattiesburg-Laurel, MS	WHLT(TV)**	2	9	2	49.5	32.7	42.60
176	Alexandria, LA	KALB-TV	3	15	1	68.6	21.0	49.95

* Convergence Markets (The data for TV, Radio and Newspaper owners for the Media General six convergence markets are reported as of 2002. The data for the other Media General markets are as of 2000.)
** Satellite Station

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