

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

In the Matter of	)	
	)	
2006 Quadrennial 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. 06-121
	)	
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

**COMMENTS OF COX ENTERPRISES, INC.**

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## SUMMARY

“[R]easoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership [is] no longer in the public interest.” *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 398 (3d Cir. 2004).

Newspaper/broadcast cross-ownership benefits readers, viewers and listeners. The newspaper and broadcasting industries have provided ample evidence that co-owned properties provide their local communities with more, and better, local news and programming. Cox’s co-owned, award winning media in Atlanta and Dayton illustrate these benefits by providing more news and local programming, including family-friendly programming, than do in-market competitors. Cox’s WSB-TV this year won the Associated Press Award for the Atlanta Market’s Best Newscast, and the Society of Professional Journalism has named WHIO-TV the “Best TV News Operation in Ohio” for six of the past eight years. Cox’s Atlanta and Dayton newspapers also are recognized widely for their high-quality news. Among other awards, they have won numerous Pulitzer Prizes, National Headliner Awards and Associated Press Awards.

Given the demonstrated benefits of cross-ownership, the Commission had no alternative in 2003 but to abolish the blanket cross-ownership rule. Under the Commission’s three regulatory goals of competition, localism and diversity, it found that the newspaper/broadcast cross-ownership rule “cannot be sustained on competitive grounds” and “is not necessary to promote localism (and may in fact harm localism).” Further, the Commission found that “most media markets are diverse, obviating a blanket prophylactic ban on newspaper-broadcast combinations in all markets.” Notably, the federal courts upheld these findings. The record developed in this additional rulemaking will support the very same findings today.

However, the record this time will also show that the use of the Internet as an additional and independent source of local news, information and entertainment has exploded. As a result,

the Internet alone ensures that diversity will always be well served regardless of in-market newspaper/broadcast combinations.

This phenomenon is beyond debate. When the Commission last looked at its ownership rules in 2003, 58 percent of American adults had access to the Internet. Internet penetration for American adults has now reached 73 percent and continues to grow rapidly. Broadband Internet service is now available from one or more high capacity networks in 99 percent of all the zip codes in the United States. And, by December 2005, broadband access had been deployed to reach over 96 percent of rural Americans – a figure that has surely increased in the last 10 months.

By statute, media ownership rules that are not in the public interest must be abolished. As the records showed in 2003, 2001 and 1998, and will show now in 2006, the newspaper/broadcast cross-ownership rule does not promote competition, harms localism, and is unnecessary to protect diversity. The Commission can best promote the public interest, therefore, by severing the rule from the rest of its media ownership proceeding and eliminating the rule without delay.

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**COMMENTS OF COX ENTERPRISES, INC.**

Cox Enterprises, Inc. (“Cox”), by its attorneys, hereby submits these comments in response to the *Notice* in the above-captioned rulemaking proceeding.<sup>1</sup> In the *Notice*, as it did in the *2002 Biennial Review*, the Commission seeks comment on its media ownership rules in a

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<sup>1</sup> *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834, FCC No. 06-93 (rel. Jul. 24, 2006) (“*Notice*”).

unified rulemaking.<sup>2</sup> The *Prometheus* decision found, however, that the Commission already has a substantial record on one media ownership rule, the newspaper/broadcast cross-ownership rule, which shows that the rule is not “necessary in the public interest” to further two of the three relevant government interests – competition and localism – under the statutory standard of Section 202(h) of the Telecommunications Act of 1996 (“1996 Act”).<sup>3</sup> As Cox explains below, diversity, the remaining public interest concern, is equally unserved by the rule given the continuing explosion of opinions and viewpoints now available to American consumers in media markets large and small. Since the newspaper/broadcast cross-ownership rule does not promote competition, localism or diversity, the Commission should seize the opportunity, take the last step of the journey it began over eight years ago, and move swiftly to eliminate the newspaper/broadcast cross-ownership rule.

### **BACKGROUND**

Cox is one of the nation’s leading media companies, as well as a family owned business, and has been committed to competition, localism and diversity since its earliest years. Starting

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<sup>2</sup> See 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, Notice of Proposed Rulemaking, 17 FCC Rcd 18503 (2002) (“2002 Biennial Review”).

<sup>3</sup> *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 398 (3d Cir. 2004) (“*Prometheus*”), stay modified on rehearing, No. 03-3388 (3d Cir. Sept. 3, 2004), cert. denied, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177). Under the Telecommunications Act of 1996, as amended in 2004, the Commission must review its media ownership rules every four years under the Section 202(h) standard. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h) Title II, 110 Stat. 56, 111 (“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

with a single newspaper in Dayton, Ohio over 100 years ago, Cox now serves local communities as a television broadcaster; radio broadcaster; cable, telephony and broadband service provider; newspaper publisher; and local website creator. Cox's corporate business priority is centered on localism: each media entity operates as a local business with local management empowered to make important decisions at the local level. Cox recognizes that its business customers and its consumers in its local markets are best served when Cox focuses on meeting their particular needs and interests. Accordingly, all of Cox's media outlets enjoy considerable autonomy to make decisions for their local businesses under this time tested priority.

As a television broadcaster, Cox operates fifteen stations in eleven markets. Two of the Cox television stations, WHIO-TV, Dayton, Ohio, and WSB-TV, Atlanta, Georgia, are owned jointly with in-market newspapers, the *Dayton Daily News* and *The Atlanta Journal-Constitution*, respectively.<sup>4</sup> Cox also owns radio stations in Atlanta and Dayton, as well as in fourteen other markets. And, Cox owns forty-one other newspapers across the country, seventeen dailies and twenty-six weeklies in total. Finally, Cox owns cable systems in 18 states, many of which offer local, cable-only news channels. Each of these Cox media outlets is free to editorialize and produces news and public interest stories without interference from any centralized corporate entity.

Given its position as a grandfathered holder of newspapers, radio stations and television stations in Atlanta and Dayton, Cox has participated in the Commission's three recent reviews

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the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.”).

<sup>4</sup> The Cox television markets are Atlanta, Georgia; Charlotte, North Carolina; Dayton and Steubenville, Ohio; El Paso, Texas; Johnstown and Pittsburgh, Pennsylvania; Orlando, Florida; Reno, Nevada; San Francisco – Oakland – San Jose, California; and Seattle, Washington.

of the newspaper/broadcast cross-ownership rule.<sup>5</sup> In its first review, begun in 1998, the Commission evaluated the submissions of newspaper and broadcast companies, including Cox, and recognized that the rule might not always be necessary “to achieve its intended public interest benefits.”<sup>6</sup> It therefore pledged to “initiate a rulemaking proceeding to consider tailoring the rule accordingly.”<sup>7</sup>

That rulemaking began in 2001.<sup>8</sup> Once again, Cox and other broadcasters and newspaper owners demonstrated that the newspaper/broadcast cross-ownership rule was no longer “necessary in the public interest.”<sup>9</sup> However, rather than eliminating the newspaper/broadcast cross-ownership rule at that time, the Commission combined its 2001 review of the rule into its *2002 Biennial Review* rulemaking, stating that because the rule is intended to foster competition and diversity in a local market, it should properly be considered during the biennial review along with the other local media ownership rules.<sup>10</sup>

As they had done before in 2001 and 1998, the newspaper and broadcasting industries responded to the Commission’s 2002 questions, producing additional evidence showing that the

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<sup>5</sup> In addition, the Commission also reviewed the newspaper/radio cross-ownership rule separately. *See, e.g., Cross Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17283 (2001).

<sup>6</sup> *1998 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*, Biennial Review Report, 15 FCC Rcd 11058, 11105, ¶ 88 (2000).

<sup>7</sup> *Id.*

<sup>8</sup> *Cross Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, Order and Notice of Proposed Rulemaking, 16 FCC Rcd 17283 (2001).

<sup>9</sup> *See, e.g.,* Comments of Cox Enterprises, Inc. in MM Docket Nos. 01-235, 96-197, at 10, filed Dec. 3, 2001; Comments of Media General, Inc. in MM Docket Nos. 01-235, 96-197, at 80, filed Dec. 3, 2001; Comments of Hearst Corporation in MM Docket Nos. 01-235, 96-197, at 18, filed Dec. 3, 2001.

<sup>10</sup> *2002 Biennial Review* at 18506-07, ¶ 8.

newspaper/broadcast cross-ownership rule does not promote competition, localism or diversity.<sup>11</sup> While the Commission agreed that the rule does not promote competition or localism, it hesitated on diversity, concluding that the rule might be needed in some (but not all) markets to ensure a multiplicity of viewpoints.<sup>12</sup> Accordingly, the newspaper and broadcasting industries are back again, in 2006, showing for a fourth time why the newspaper/broadcast cross-ownership rule should finally be abolished.

**I. A FAIR APPLICATION OF SECTION 202(H) REQUIRES ELIMINATION OF THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE.**

Section 202(h) of the 1996 Act requires the Commission to review its media ownership rules periodically to determine “whether any of such rules are necessary in the public interest as a result of competition” and to “repeal or modify any regulation it determines to be no longer in the public interest.”<sup>13</sup> With its general wording and brief legislative history, the meaning of Section 202(h), specifically the meaning of the word “necessary,” has been debated during prior media ownership reviews.<sup>14</sup> The *Prometheus* court embraced a Commission determination that

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<sup>11</sup> See, e.g., Comments of Cox Enterprises, Inc. in MM Docket Nos. 02-277, 01-235, 01-317, 00-0244, filed Jan. 2, 2003; Comments of Media General, Inc. in MM Docket Nos. 02-277, 01-235, 01-317, 00-0244, filed Jan. 2, 2003; Comments of the National Association of Broadcasters in MM Docket Nos. 02-277, 01-235, 01-317, 00-0244, filed Jan. 2, 2003.

<sup>12</sup> 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in Arbitron Survey Area, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13748, ¶ 330 (2003) (“2002 Biennial Review Order”).

<sup>13</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996).

<sup>14</sup> See, e.g., Comments of Media General, Inc. in MM Docket Nos. 02-277, 01-235, 01-317, 00-0244, at 36-37, filed Jan. 2, 2003; Comments of Consumer Federation of America, Consumers Union, Center for Digital Democracy, and Media Access Project in MM Docket Nos. 02-277, 01-235, 01-317, 00-0244, at 13-16, filed Jan. 2, 2003. Cox and others argued that, under *Fox* and *Sinclair*, the First Amendment and Section 202(h) require the Commission to provide a

“necessary” should mean “useful,” “convenient” or “appropriate” rather than “required” or “indispensable.”<sup>15</sup> The *Notice* in this proceeding makes no mention of whether the Commission intends to construe “necessary” under Section 202(h) as requiring the high standard of eliminating any rule that is not “indispensable,” a lower standard of keeping any rule that is merely “useful,” or something in between. But the facts in this and previous proceedings show that regardless of the standard of review used, the newspaper/broadcast cross-ownership rule cannot stand.

The facts from previous proceedings demonstrated, to both the Commission’s and the court’s satisfaction, that the rule is not “required” or “indispensable” to promote competition or localism. To the extent the Commission has lingering doubts about the impact of the rule on diversity in some instances, those concerns will be assuaged by the additional evidence submitted by Cox and other parties commenting in this proceeding.

Moreover, since the Commission has already determined – and the *Prometheus* court agreed – that the blanket rule should be abolished, proponents of the rule’s retention should have the burden of showing why it should be kept. But those parties have been unable to produce *any* competent evidence to date that the rule should be retained, relying instead on unsupported speculation showing nothing more than a bias against media organizations. Often the “facts” cited by cross-ownership proponents are not just speculative, they are demonstrably

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“rational basis” for its broadcast ownership regulations. Reply Comments of Cox Enterprises, Inc. in MM Docket Nos. 02-277, 01-235, 01-317, 00-0244, at 4-5, filed Feb. 3, 2003 (discussing *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) (“*Fox*”) and *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) (“*Sinclair*”).

<sup>15</sup> *Prometheus*, 373 F.3d at 394 (the Commission should use its proposed “plain public interest” standard, under which a rule can be retained under Section 202(h) if it is “convenient,” “useful” or “helpful”); see *2002 Biennial Regulatory Review*, Report, 18 FCC Rcd 4726, 4730, ¶ 14 (2003) (“*2002 Biennial Review Report*”).

incorrect, as Cox showed in 2003.<sup>16</sup> Since the refreshed and supplemental record here will remove any doubts on diversity, the Commission must eliminate the newspaper/broadcast cross-ownership rule without delay.

**II. THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE DOES NOT PROTECT COMPETITION, PROMOTE LOCALISM OR PRESERVE DIVERSITY.**

As discussed above, the Commission stated in 2003 that the newspaper/broadcast cross-ownership rule “cannot be sustained on competitive grounds” and “is not necessary to promote localism (and may in fact harm localism).”<sup>17</sup> The Commission also stated that “most media markets are diverse, obviating a blanket prophylactic ban on newspaper-broadcast combinations in all markets.”<sup>18</sup> The *Prometheus* court upheld the Commission’s findings, stating that “reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.”<sup>19</sup>

Accordingly, the Commission need not, and should not, revisit its findings that competition is not promoted and that localism actually is undermined by the newspaper/broadcast cross-ownership rule. However, to the extent the Commission feels it necessary to update the record, Cox is providing current data on competition and localism sufficient for the Commission to find that its 2003 conclusions on competition and localism should remain the same.

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<sup>16</sup> See, e.g., Reply Comments of Cox Enterprises, Inc. in MM Docket Nos. 02-277, 01-235, 01-317, 00-244, at 28, n.74, filed Feb. 3, 2003.

<sup>17</sup> 2002 Biennial Review Order at 13748, ¶ 330.

<sup>18</sup> *Id.*

<sup>19</sup> *Prometheus*, 373 F.3d at 398.

Similarly, on diversity, the Commission found, and the court agreed, that “commonly owned newspapers and broadcast stations do not necessarily speak with a single, monolithic voice”<sup>20</sup> and that, in any event, “diverse viewpoints from other media sources in local markets (such as cable and the Internet) compensate for viewpoints lost to newspaper/broadcast consolidations.”<sup>21</sup> The Commission hesitated, however, and did not eliminate the rule completely, instead trying to craft a single set of cross media limits.<sup>22</sup> The court took exception to the Commission’s approach, finding that the cross-media limits “employ several irrational assumptions and inconsistencies” that compromised their suitability as measures of diversity.<sup>23</sup>

As with competition and localism, Cox herein provides current data demonstrating that diversity is served by the abundant new media sources that reach every market, even the smallest, with local news, information and opinion. With this last obstacle thus overcome, the Commission should not hesitate again – it should take swift action to eliminate the newspaper/broadcast cross-ownership rule completely.

**A. The Rule Does Not Protect Competition.**

The Commission, the Department of Justice, and several federal courts have all concluded that advertisers do not view newspapers as close substitutes for television and radio stations.<sup>24</sup> Print and broadcast advertising are complementary, not competitive, and advertisers use each media to accomplish different goals. Newspapers, for example, provide a comparatively inexpensive outlet for delivering detailed information to consumers that may

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<sup>20</sup> 2002 Biennial Review Order at 13762-63, ¶ 361.

<sup>21</sup> *Prometheus*, 373 F.3d at 400 (quoting 2002 Biennial Review Order at 13766, ¶ 366).

<sup>22</sup> See, e.g., 2002 Biennial Review Order at 13622-23, ¶ 2.

<sup>23</sup> *Prometheus*, 373 F.3d at 402-03.

<sup>24</sup> 2002 Biennial Review Order at 13749, 51, ¶¶ 332, 335-36 (citing additional empirical studies); see also, *Prometheus*, 373 F.3d at 398.

well change on a daily basis, such as photos of multiple products, current sale lists and pricing. Even putting the costs of production aside, this information cannot readily be provided in a short radio or television commercial. By contrast, radio and television stations offer advertisers an outlet for enhancing their brands, piquing consumer interest and/or providing consumer reminders.

Recognizing these differences, in 2003 the Commission found that newspaper/broadcast combinations are not horizontal or vertical mergers and “cannot adversely affect competition in any product market.”<sup>25</sup> Three years later, there is no reason to dispute that conclusion.

First, experience confirms that grandfathered cross-owned markets do not drive advertising rates above comparable markets’ rates. This phenomenon would be expected if newspapers and broadcast stations competed with each other in the advertising market, since a cross-owned combination could exercise market power and increase ad rates to supra-competitive levels. As Cox demonstrated in 2001, however, television and newspaper advertising rates in cross-owned markets like Atlanta and Dayton were no higher than rates in other comparable markets.<sup>26</sup> Five years later, advertising rates confirm that competition in grandfathered markets remains strong.

For example, when 2006 rates for quarter-page Sunday newspaper advertisements are examined, prices in Atlanta and Dayton on a cost per thousand (“CPM”) basis are consistent with, or even lower than, prices in similar sized, non-grandfathered markets.<sup>27</sup> Similarly,

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<sup>25</sup> *2002 Biennial Review Order* at 13749, ¶ 332.

<sup>26</sup> Comments of Cox Enterprises, Inc. in MM Docket Nos. 01-235, 96-197, at 19-20, filed Dec. 3, 2001.

<sup>27</sup> The CPM cost of a quarter page ad in the Sunday newspaper is \$38.79 in Atlanta, the 9<sup>th</sup> largest market; \$39.25 in Houston, the 10<sup>th</sup> largest market; \$38.60 in Philadelphia, the 4<sup>th</sup> largest market; and \$35.61 in Washington, D.C., the 8<sup>th</sup> largest market. *Newspapers First, 2006*

Atlanta is the ninth largest television market on a household basis and has the ninth highest advertising cost per point, and Dayton is the fifty-ninth largest market on a household basis but has the sixty-fourth highest advertising cost per point.<sup>28</sup> This contrasts with prices in other markets, such as San Diego, the twenty-sixth largest market and twelfth highest cost per point, where advertising prices are higher than would be expected, given market size.<sup>29</sup> Accordingly, current advertising rates from markets with cross-owned combinations continue to support the Commission's previous determinations that newspapers and broadcasters do not compete with each other in the advertising market.

Second, although broadcasters do not directly compete with newspapers, they do face increasing competition from cable and, to a lesser degree, the Internet. These competitive forces make it even less likely that today's broadcasters can exercise market power in the advertising market, whether or not they are co-owned with a same market newspaper. For example, as reported widely since 2002, cable continues to gain audience share, along with corresponding advertising revenue, at the expense of broadcasters.<sup>30</sup> Indeed, ad-supported

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*1/4 and Full Page CPMs* (2006) (on file with Cox). These prices are consistent with pricing five years ago: 27 cents per copy distributed in *Philadelphia (Philadelphia Inquirer/Philadelphia Daily News)*; 24 cents per copy distributed in Washington, D.C. (*Washington Post*); 26 cents per copy distributed in Atlanta (*Atlanta Journal-Constitution*); and 28 cents per copy distributed in Houston (*Houston Chronicle*). Comments of Cox Enterprises, Inc. in MM Docket Nos. 01-235, 96-197, at 20, filed Dec. 3, 2001. Citing *Newspapers First, Five Market Comparisons* (2001) (unpublished chart comparing circulation and publishing costs in several markets). For Dayton, the 59<sup>th</sup> largest market, the Sunday quarter page price is \$31.22 which is less expensive than Little Rock, the 57<sup>th</sup> market at \$35.95; Fresno, the 56<sup>th</sup> market at 38.44; and Austin, the 54<sup>th</sup> market at \$58.49. *Newspapers First, 2006 1/4 and Full Page CPMs* (2006) (on file with Cox).

<sup>28</sup> SQAD, *Spot TV CPP for Adults 18-54*, (4th quarter 2005), (proprietary data report on file with Cox).

<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., Cable Television Advertising Bureau, *Week 51 of the 2002/03 Season* (9/8-9/14/03), [http://www.onetvworld.org/?module=displaystory&story\\_id=671&format=print](http://www.onetvworld.org/?module=displaystory&story_id=671&format=print)

cable's total U.S. household viewing share has increased 72 percent in the past 10 years (growing from 28.0 during the 1994-95 television season to 48.3 during the 2004-05 television season) while broadcast television's share has fallen 37 percent over the same time period (declining from 63.4 in 1994-95 to 39.4 in 2004-05).<sup>31</sup> This shift in viewers has resulted in a shift in advertising dollars, as advertisers move their money from broadcast television to cable.<sup>32</sup>

The Internet also competes with broadcasters for advertisers, and broadcasters are beginning to lose advertising revenue to Internet websites, even from long-term clients. Anheuser-Busch, for example, plans to reallocate ten percent of its massive television advertising budget to reach younger consumers through the Internet.<sup>33</sup> And just last month, the Australian brewer Fosters abandoned television altogether to advertise exclusively on the Internet.<sup>34</sup> Local advertisers are also moving their money from broadcast stations to the

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(noting cable's "second broadcast season in a row" of outperforming broadcast television); Jack Myers, *Cable News Audience Share Surpasses Broadcast Nets, Says CNN*, JACK MYERS REPORT, May 28, 2002, <http://www.mediavillage.com/pdf/05-28-02.pdf#search=%22broadcasting%20and%20cable%20broadcast%20ratings%20or%20share%202002%20cable%22> ("2001 vs. 2000 news audience shifts represent the quickest acceleration of broadcast erosion and cable gains in any single year . . . [f]undamentally, broadcast networks are ceding the news business to cable, and the same patterns are in place today as occurred in the [children's cartoon segment].").

<sup>31</sup> CABLE ADVERTISING BUREAU, 2006 TV FACTS BOOK (2006).

<sup>32</sup> In 2005, cable revenues were up 11.4 percent over 2004, a percentage gain second only to the Internet, while local television revenues were down 9.5 percent over 2004, the largest decline of the media outlets reviewed. Nat Ives, *TNS Final Reckoning of 2006 U.S. Ad Spending*, ADVERTISING AGE, Feb. 28, 2006.

<sup>33</sup> *Trying to Reach 20-Something Beer Drinkers*, COMMUNICATIONS DAILY, Sept. 7, 2006, at 13.

<sup>34</sup> *Fosters Shifts TV Ad Spend to Online*, MEDIA BUYER PLANNER, Aug. 16, 2006, [http://www.mediabuyerplanner.com/2006/08/04/fosters\\_shifts\\_tv\\_ad\\_spend\\_to\\_o/](http://www.mediabuyerplanner.com/2006/08/04/fosters_shifts_tv_ad_spend_to_o/).

Internet: Borrell Associates, an Internet advertising consulting firm, projects that local online advertising, which serves neighborhood businesses, will grow by almost thirty-two percent in 2006 to \$7.7 billion in 2007 while at the same time search engines are taking ad dollars from local media.<sup>35</sup> Further, Internet ad spending by auto manufacturers, a traditionally strong local television advertising group, increased by 52 percent in the first seven months of 2006.<sup>36</sup>

In sum, the competition that broadcasters now face from a variety of other media sources strongly suggests that broadcasters would not be able to increase their advertising rates above market levels. Adding a co-owned newspaper does not change this result since newspapers and broadcasters are not viewed as substitutes by advertisers. Accordingly, the Commission properly found in 2003, and should find again, that the newspaper/broadcast cross-ownership rule does not protect or advance competition.

**B. The Rule Does Not Promote Localism.**

Newspaper/broadcast combinations promote localism, as the record has shown every time the Commission has examined the rule. Specifically, newspaper/broadcast combinations support the Commission's measure of localism, "the selection of programming responsive to local needs and interests, and local news quantity and quality."<sup>37</sup> As broadcasters demonstrated during the *2002 Biennial Review*, broadcasters who either partner with a newspaper or who are part of a common newspaper/broadcast family produce more local news than stand-alone

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<sup>35</sup> Borrell Associates, Inc., *Outlook for 2007: Pac-Man Pace for Local Online Advertising* (Sept. 2006); *Local Advertisers Plow \$1 Billion Into Search* (Mar. 2006); <http://www.borrellassociates.com/report.cfm>.

<sup>36</sup> eMarketer.com, *US Online Ad Spending: Peak or Plateau?*, (Oct. 2, 2006), [http://www.eMarketer.com/Reports/All/Em\\_ad\\_spend\\_oct06.aspx](http://www.eMarketer.com/Reports/All/Em_ad_spend_oct06.aspx).

<sup>37</sup> *2002 Biennial Review Order* at 13644, ¶ 78.

television stations.<sup>38</sup> The rule's restriction of newspaper/broadcast combinations therefore denies viewers the benefits of superior local news and programming.

Cox, a grandfathered holder of television stations, radio stations, and newspapers in Atlanta, Georgia and Dayton, Ohio, provides a good example of the localism benefits that cross-owned media companies can provide. As WSB-TV's and WHIO-TV's long histories of market leadership demonstrate, the stations' independent programming selections respond to their local communities' needs. Both WSB-TV in Atlanta and WHIO-TV in Dayton air substantial quantities of locally-produced programming that serve each station's community, as demonstrated by the programs' long lives and commercial success with advertisers.

For example, WSB-TV has produced Atlanta's only local public affairs program, *People 2 People* (a weekly 30-minute series dedicated to discussing the needs and problems of Atlanta's diverse community) since 1983. WSB-TV has also produced the *Family 2 Family Project* since 1986, making this on-air campaign of WSB-produced primetime specials, periodic news series, quarterly image campaigns, and public service announcements the longest-running locally produced, comprehensive public service effort in Georgia. WSB-TV also has produced numerous programs of interest to families and children, including:

- *The Prejudice Awareness Summit.* Sponsored by The Atlanta Junior League and others, WSB-TV produced a 30-minute documentary about this interactive program aimed at combating prejudice with high school students from both public and private schools in Atlanta.
- *The Real Deal.* A 30-minute documentary videotaped at a local high school about a WSB-TV videographer with a Masters degree in Education who volunteers to speak to high school students about "the real deal" when it comes to life.
- *Sex & Violence: A Teen Town Hall Meeting.* WSB-TV, along with state and local government and private agencies, hosted a Town Hall discussion focused on the issue "when No means No" regarding potential sexual encounters. Vignettes featuring

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<sup>38</sup> *Id.* at 13753-54, ¶¶ 342-43.

high school student actors provided discussion points. Trained facilitators guided the discussion while WSB-TV anchors hosted the 30-minute program. The audience included middle and high school students.

- *Beat the Odds.* For more than 5 years, WSB-TV has produced a 30-minute special *Beat the Odds*, profiling seven Fulton County students who have overcome economic, emotional, or physical hardships to excel academically. The vignettes were first shown at an awards banquet. The Fulton County Board of Commissioners developed the program.
- *Children's Healthcare of Atlanta.* WSB-TV also airs the Children's Healthcare of Atlanta Christmas Parade & Festival of Trees. The 90-minute live parade broadcast, 30-minute pre-parade show, and subsequent sponsorship of the 10-day festival is the major fundraising effort for Georgia's largest children's hospital. The Festival of Trees has contributed more than \$15 million for much needed equipment and services for the sick and injured children at Children's Healthcare of Atlanta.

In Dayton, WHIO-TV continues its 40-year tradition of producing *WHIO Reports*, a weekly 30-minute public affairs program that invites newsmakers, government officials, and leaders of community organizations to discuss issues that impact viewers in the community.

*WHIO Reports* also has aired numerous programs of interest to families, including:

- *Family Adventure Trips.* This program featured Family Adventure Trips, an initiative designed to help parents get involved in their children's education.
- *Kids Voting.* This program introduced Kids Voting, a non-profit, non-partisan organization designed to educate young people about the importance of being informed citizens and lifelong voters.
- *Home Based Arts.* This program featured Home Based Arts, a company that makes coloring books that educate children about Dayton.
- *Children's Hunger Alliance.* This program presented the Children's Hunger Alliance, an initiative started in 1968 to feed poor children in the Miami Valley.
- *K-12/Family Unity.* This program highlighted the K-12 Gallery for Young People, an organization that enriches Miami Valley school children through the arts.

WHIO-TV has also produced more than 400 episodes during 14 seasons of *High Q*, a scholastic competition for local high school teams and Dayton's only locally-produced game show.

*Touchdown*, WHIO-TV's weekly 20-minute local high school football program, is in its fifteenth season.

The two stations are also market news leaders, producing greater quantities of local news than their local broadcast competitors. In Atlanta, WSB-TV produces 35 hours of weekly local news – the nearest competitor in its market airs 31 hours of local news. Furthermore, WSB-TV is the only Atlanta station that airs editorials regularly in its Sunday 6 p.m. newscasts. In Dayton, WHIO-TV produces 34.5 hours of local news plus an additional hour of other local programming each week, whereas its closest competitor airs 29.5 hours of local news.

In addition to news quantity, the two stations also lead their markets in news quality. So far this year, WSB-TV has won five Emmy Awards and the Associated Press Award for the Atlanta Market's Best Newscast, as well as the Edward R. Murrow Regional Award for continuous coverage of the Fulton County Courthouse shootings. WHIO-TV also won the following awards in 2006: two Edward R. Murrow Regional Awards for Best Investigative Reporting and Best Writing; eight awards from the Ohio Associated Press for Best Spot News, Best Weather Operation, Best Documentary, Best Investigative Reporting (two awards), Best Enterprise Reporting (two awards), and Best Reporter; three Communicator Awards; and a Telly Award for Best Documentary. The Society of Professional Journalism has also named WHIO-TV as the "Best TV News Operation in Ohio" for six of the past eight years. Furthermore, *Broadcasting & Cable* reported recently that WHIO-TV is "a national standout in news," whose market-leading 6 p.m. newscast often has twice as many viewers as Dayton's number two 6 p.m. newscast.<sup>39</sup> In response, competing Dayton television stations,

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<sup>39</sup> Allison Romano, *Indomitable vs. Undaunted[:] Trailing Stations Take on Behemoth*, BROADCASTING & CABLE, May 8, 2006, at 15.

WDTN(TV), WKEF(TV) and WRGT-TV, are investing in local news operations, even creating new programming, to grow their own news shares.<sup>40</sup> Cox's Atlanta and Dayton newspapers are also recognized widely for their high-quality news, winning numerous Pulitzer Prizes, National Headliner Awards, Scripps-Howard Foundation Awards, Investigative Reporters & Editors Awards and Associated Press Awards, among others.

Industry reports of newspaper/broadcast combinations in other markets demonstrate that Cox's success in promoting localism in Atlanta and Dayton is not unique. For example, a recent trade press article shows how a co-owned broadcast station and newspaper have helped revive the once-stagnant Spokane, Washington news market, where five television stations now produce more local news than is provided in other comparable markets.<sup>41</sup> One Spokane station manager explains the resurgence of this smaller media market by saying, "Spokane's local news benefits from station owners' other assets in the region."<sup>42</sup> Spokane NBC affiliate KHQ-TV produces news in cooperation with its co-owned newspaper, *The Spokesman-Review*, and is the market leader for its 6 p.m. and 11 p.m. local newscasts.<sup>43</sup>

All of the examples cited above confirm that the findings in the Commission's 2003 Media Ownership Working Group studies are still true today: "television broadcast stations affiliated with a major television network that are 'co-owned with newspapers experience

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<sup>40</sup> *Id.*

<sup>41</sup> Allison Romano, *Out of the Doldrums[:] Tri-State Market Bounces Back on News*, BROADCASTING & CABLE, June 5, 2006, at 14.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

noticeably greater success in terms of quality and quantity of local news programming than other network affiliates.’’<sup>44</sup>

Even if cross-ownership by itself did not beneficially impact the localism efforts of the co-owned broadcast station, the changing media environment continues to spur broadcasters to invest in local content when the investment can be made cost effectively. In particular, competition from newer media provides market incentives for broadcasters to produce local news that serves community needs because failing to do so will cost them market share and advertising revenue. For example, cable and broadcast television networks are offering new Internet- and broadband-based weather services that produce local weather information for all areas of the country from combined satellite and radar data, topographical maps, and ground measurements.<sup>45</sup> An increasing number of cable systems are also offering cable-only news channels. For example, Cox systems carry news channels in ten different markets. Cable operators also are creating on-demand programming slots for political candidates and others to offer local viewers tailored, targeted news and information.<sup>46</sup> Further, CBS and Sprint have joined forces in 10 markets to deliver local news, sports, and weather content directly through cellular phones for a monthly fee,<sup>47</sup> and Sprint recently announced its own made-for-mobile

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<sup>44</sup> 2002 Biennial Review Order at 13754, ¶ 343.

<sup>45</sup> Glen Dickson, *Coverage Goes Hyper-Local*, BROADCASTING & CABLE, May 22, 2006, at 22.

<sup>46</sup> See generally, Stewart Schley, *Politics On-Demand*, BROADCASTING & CABLE, May 1, 2006, <http://www.broadcastingcable.com/article/CA6329696.html?display=Special+Report> (describing cable systems' new political video-on-demand advertisements which "offer an increasingly jaded public an alternative to 30-second political spots").

<sup>47</sup> *CBS Broadens Mobile Video Push*, BROADCASTING & CABLE, June 26, 2006, at 35.

video network with original programming made for mobile phones.<sup>48</sup> These examples show that viewers want local news that responds to community needs. If a television station's programming does not meet viewers' needs, they will change the channel or turn to new media for their local news.

Cox's Atlanta and Dayton success in producing high-quality local news validates the Commission's approach of promoting localism in broadcast markets through economic competition.<sup>49</sup> Competition from other broadcasters and new media induces broadcasters to increase and improve local news programming. Moreover, where broadcasters join forces with co-owned newspapers, they produce more local news and are rewarded by higher audience shares, which in turn help generate the revenues necessary to support extensive news operations. The Commission should therefore act swiftly to remove the co-ownership restrictions on broadcasters and newspaper publishers so that they, too, may provide viewers with more high-quality news produced in response to community interests.

**C. The Rule Does Not Preserve Diversity.**

As the Commission noted in the *Report and Order*, “[t]he Commission adopted the newspaper/broadcast cross-ownership rule because it believed that diversification of ownership would promote diversification of viewpoint.”<sup>50</sup> When analyzing viewpoint diversity, the

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<sup>48</sup> Laura Petrecca, *Sprint Phones Will Soon Pipe In Video News Clips*, Sept. 12, 2006, USA TODAY, [http://www.usatoday.com/tech/products/services/2006-09-11-sprint-network\\_x.htm?POE=TECISVA](http://www.usatoday.com/tech/products/services/2006-09-11-sprint-network_x.htm?POE=TECISVA).

<sup>49</sup> See 2002 *Biennial Review Order* at 13644, ¶ 77 (explaining the Commission's goal of promoting localism through market structures that capitalize on media companies' market incentives).

<sup>50</sup> *Id.* at 13760, ¶ 355 (citing Amendment of Sections 73.74, 73.240 & 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM & Television Broadcast Stations, 50 F.C.C.2d 1046, 1079-80 (1975)).

Commission determined that “[n]ews and public affairs programming is the clearest example of programming that can provide viewpoint diversity . . . [and] the appropriate geographic market for viewpoint diversity is local.”<sup>51</sup> Today, with over 30 years of evidence to review, the Commission must now acknowledge that the newspaper/broadcast cross-ownership rule is not needed to protect viewpoint diversity.

**1. Co-Owned Media Entities Do Not Speak With One Voice.**

A primary concern cited by proponents of cross-ownership restrictions is that co-owned properties speak with one voice. Cox has shown repeatedly over the years that this concern is unfounded. For example, as was discussed extensively in the comments and reply comments filed in 2001 and 2002, the record establishes that newspaper/broadcast cross-ownership does not harm viewpoint diversity. In those proceedings, the record showed that co-owned media properties often express *different* viewpoints, even when they have been under common ownership for many years.<sup>52</sup>

Diversity of viewpoint among co-owned entities was confirmed in 2003. For example, consistent with its corporate policy of local autonomy in the gathering and dissemination of news and information, Cox submitted numerous illustrations of how its media outlets criticize

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<sup>51</sup> *Prometheus*, 373 F.3d at 405 (citing 2002 Biennial Review Order at 13776-77, ¶ 394).

<sup>52</sup> See, e.g., Reply Comments of Cox Enterprises, Inc. in MM Docket Nos. 01-235, 96-197, at 8-10, filed Feb. 15, 2002, Reply Comments of Media General in MM Docket Nos. 01-235, 96-197, at 5-8, filed Feb. 15, 2002; Reply Comments of Newspaper Association of America in MM Docket Nos. 01-235, 96-197, at 16-26, filed Feb. 15, 2002. This was further shown by one of the Commission’s own media ownership studies. See David Pritchard, *Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign*, Federal Communications Commission Media Ownership Working Group, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-226838A7.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A7.txt) (last visited Sept. 10, 2006).

each other in the Cox grandfathered markets.<sup>53</sup> This practice continues today. Included at Attachment A are some examples of news stories published in *The Atlanta Journal-Constitution* since 2003 that are critical of, or report unflattering information about, other Cox-owned properties. Also included in Attachment A are examples of one of Cox's top radio personalities, Neal Boortz, criticizing *The Atlanta Journal-Constitution* and its editorial page editor, Cynthia Tucker. As these examples show, common ownership does *not* translate performance into a monotone media voice (a core but flawed assumption underlying the use of diversity to support a "reformed" but retained newspaper/broadcast cross-ownership rule).

## **2. Diverse Viewpoints Are Available From a Multitude of Media Sources.**

Based on data from 2002, the *Prometheus* court disagreed with the Commission's decision to count the Internet as a source of viewpoint diversity, finding that the Internet does not contribute to viewpoint diversity because it was not a widely available source of independent local news.<sup>54</sup> The court also found that few websites function as "media outlets," saying that media outlets "provide an aggregator function (bringing news/information to one place) as well as a distillation function (making a judgment as to what is interesting, important, entertaining, etc.)."<sup>55</sup>

Today, in 2006, much has changed. Indeed, with the explosion of new media currently taking place, it would be arbitrary and capricious if the Commission failed to acknowledge that

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<sup>53</sup> Reply Comments of Cox Enterprises, Inc. in MM Docket Nos. 02-277, 01-235, 01-317, 00-244, at 28, Appendix A, filed Feb. 3, 2003.

<sup>54</sup> *Prometheus*, 373 F.3d at 405-08.

<sup>55</sup> *Id.* at 407 (citation omitted).

diverse viewpoints, including many sources of independent local news, are available from a multitude of media sources to media consumers in all markets. The facts in the record will thus eliminate any concern that viewpoint diversity might be harmed by a newspaper/broadcast combination.

The primary source of new media outlets is the continuing growth of the Internet, now available at home, at school, in the office, and even on mobile phones. Whereas Internet penetration for adult Americans was only 58 percent when the Commission last looked at diversity in 2003,<sup>56</sup> Internet penetration has now reached 73 percent of American adults.<sup>57</sup> Moreover, the number of Americans with broadband access at home leapt from 20 million in March 2002 to 74 million by December 2005,<sup>58</sup> growing by forty percent in the one year prior to March 2006.<sup>59</sup> Significantly, growth in broadband access has been very strong in middle-income households, and particularly fast for African Americans and those with lower levels of education on average.<sup>60</sup>

The Commission's own analysis shows the significant growth in the availability of broadband Internet access even in rural areas over the last few years: Today high-speed access is available from one or more providers in 99 percent of all the zip codes in the United States.<sup>61</sup>

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<sup>56</sup> John B. Horrigan, Pew Internet & American Life Project, *Online News*, at 2 (2006). The Commission cited Internet penetration as 72 percent in 2002, a figure that represents "all Americans" rather than "adult Americans." *2002 Biennial Review Order* at 13765, ¶ 365.

<sup>57</sup> Data Memorandum by Mary Madden, Pew Internet & American Life Project Research Specialist, *Internet Penetration and Impact* (April 2006).

<sup>58</sup> John B. Horrigan, Pew Internet & American Life Project, *Online News*, at 2 (2006).

<sup>59</sup> John B. Horrigan, Pew Internet & American Life Project, *Home Broadband Adoption 2006* (2006).

<sup>60</sup> *Id.*

<sup>61</sup> *High-Speed Services for Internet Access: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, July, 2006, Table 18.

In fact, the availability of high speed Internet in zip codes with population densities of six people or less per square mile increased from 74.8 percent to 88.3 percent from 2004 to 2005.<sup>62</sup> However, when population in rural zip codes is considered, over a five-year period the availability in these extremely rural zip codes nearly doubled, from 49.9 percent in December 2000 to 96.2 percent in December 2005.<sup>63</sup> And, overall, high speed Internet access is currently available to more than 99 percent of the nation's population.<sup>64</sup>

Paralleling the growth in on-line access and usage in general is the growth of on-line news consumption. Recent Pew research shows that some 50 million Americans obtain news from the Internet on a typical day.<sup>65</sup> While many of them get news from the website of a local daily newspaper or television station, a growing number report getting news from news blogs, alternative news organizations and online list serves.<sup>66</sup> Indeed, independent, local, on-line news sources provide the aggregator and distillation functions cited as key aspects of "media outlets" by the *Prometheus* court.<sup>67</sup> For example, WestportNow.com, founded in March 2003 by a veteran journalist, provides daily local news and information to the town of Westport, Connecticut in an on-line version of a traditional, local daily newspaper.<sup>68</sup> Furthermore, the

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 4.

<sup>65</sup> John B. Horrigan, Pew Internet & American Life Project, *Online News* (2006).

<sup>66</sup> *Id.* at 10.

<sup>67</sup> *Prometheus*, 373 F.3d at 407.

<sup>68</sup> WestportNow.com, <http://westportnow.com/>. See also the Independent Media Center websites found at <http://www.indymedia.org> as cited by *Prometheus*, 373 F.3d at 406-07, n.36.

Internet is also changing how traditional newsrooms operate as they adapt to a 24/7 news cycle where stories are subject to aggressive and on-going critical review by Internet bloggers.<sup>69</sup>

However, it is in the non-traditional formats where Internet growth is highest. With the soaring popularity of personal web pages and social networking sites like “MySpace” and others, any person with access to a computer has the ability to function as a “media outlet” under the *Prometheus* court’s definition. While many of these sites are used for entertainment, such as movie or music reviews, local news and politics are the focus of many others. For example, speakers from all sides of the political spectrum use the Internet as a forum to distill and aggregate local news and information. These forums range from “LeftyBlogs.com” which aims to build “the one place you can go to stay on top of all the latest action alerts, news, gossip, and important info that every progressive activist needs” in each of the fifty states, to Cybercast News Service which was launched “as a news source for individuals, news organizations and broadcasters who put a higher premium on balance than spin and seek news that’s ignored or under-reported as a result of media bias by omission.”<sup>70</sup> While these news sources are far from traditional, they nevertheless provide alternative, independent channels of local news. The Internet is, therefore, an “independent” and “local” source of news, consistent with the requirements of the *Prometheus* decision.<sup>71</sup>

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<sup>69</sup> Washington Post editor Len Downie recently spoke about how critical blogs are a good thing because they “keep the paper honest” and pique interest in the Post’s news stories. David S. Hirshman, “Wash. Post” Editor Downie: *Everyone in Our Newsroom Want to Be a Blogger*, Editor & Publisher, Oct. 16, 2006, at [http://www.editorandpublisher.com/eandp/news/article\\_display.jsp?vnu\\_content\\_id=1003221716](http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1003221716).

<sup>70</sup> LeftyBlogs.com, <http://leftyblogs.com/>; Cybercast News Service, <http://www.cnsnews.com/>.

<sup>71</sup> See, e.g., *Prometheus*, 373 F.3d at 405-07.

### **III. FOX AND SINCLAIR REQUIRE CONSISTENCY ACROSS THE COMMISSION'S MEDIA OWNERSHIP RULES.**

While the logical focus of the Commission's 2006 media ownership review is on the remand from the *Prometheus* court, the Commission must not lose sight of the fact that any decision issuing from this proceeding must conform with prior precedent as well. Specifically, even though the *Prometheus* court found that *Fox* and *Sinclair* were not dispositive on some issues, such as the definition of "necessary" under Section 202(h),<sup>72</sup> their holdings remain controlling precedent on others.

In particular, the *Fox* and *Sinclair* decisions confirm that the Commission must provide a rational basis for its broadcast ownership regulations. In both cases, the D.C. Circuit focused specifically on the requirement that the Commission must provide a reasoned explanation of any inconsistencies in its approach.<sup>73</sup> The *Fox* and *Sinclair* decisions made clear that Section 202(h) requires the Commission (1) to conduct a reasoned analysis of any changes in the market and (2) to explain its decision to retain, modify or eliminate the broadcast ownership regulation in question in light of analogous Commission proceedings.

In *Fox*, the court vacated the cable/broadcast cross-ownership rule because the Commission had not considered the expansion of media outlets in local markets and had failed to reconcile its retention of this local cross-ownership rule with its television duopoly rule.<sup>74</sup> Similarly, *Sinclair* remanded the duopoly rule because counting fewer types of "voices" under the duopoly rule than under the one-to-a-market rule had no rational basis.<sup>75</sup> Pursuant to the

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<sup>72</sup> *Prometheus*, 373 F.3d at 392.

<sup>73</sup> *Fox*, 280 F.3d at 1044-45, 1050-52; *Sinclair*, 284 F.3d at 162-65.

<sup>74</sup> *Fox*, 280 F.3d at 1050-52.

<sup>75</sup> *Sinclair*, 284 F.3d at 160, 162-65.

court's directives, therefore, the Commission must ensure that its approach to the newspaper/broadcast cross-ownership restriction is consistent with its relaxation of the duopoly and one-to-a-market rules, as well as the court's elimination of the cable/broadcast and cable/newspaper cross-ownership prohibitions. This will be a tall task for the Commission to accomplish, should it desire to retain even part of the newspaper/broadcast cross-ownership rule in the name of diversity.

Today, non-broadcast video providers, such as cable operators and DBS providers, can own in-market newspapers, as well as in-market broadcast stations. Parties can also own multiple broadcast stations within the same market in every market, even the smallest.<sup>76</sup> Accordingly, because the Commission already has found that competition, localism and diversity are not harmed if a broadcaster owns multiple in-market media properties, the Commission cannot, with any consistency, conclude that a local newspaper-broadcast combination should be disallowed. The Commission has no rational basis for being more concerned with competition, localism, and diversity when evaluating combinations involving a newspaper and a broadcaster than when evaluating combinations involving broadcasters alone. Under *Fox* and *Sinclair*, therefore, the newspaper/broadcast cross-ownership rule cannot stand.

In 1978, the Supreme Court upheld the daily newspaper/broadcast cross-ownership prohibition because it found that the rule "treat[s] newspaper owners in essentially the same fashion as other owners of the major media of mass communications [*i.e.* television and radio

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<sup>76</sup> Under the current ownership rules, one party can own one AM and one FM station in any market. 47 C.F.R. § 73.3555(a). For television, multiple ownership is permitted when eight independently-owned, full-power commercial and non-commercial stations will remain in a market. 47 C.F.R. § 73.3555(b).

station owners] . . . under the Commission’s multiple-ownership rules.”<sup>77</sup> Today, in a media market that includes television duopolies and the multiple ownership of local radio stations, the Supreme Court could not make the same statement because newspaper owners are, in fact, treated differently from other media owners. As no rational basis supports this differing treatment, the Commission must recognize that consistency across its media ownership rules, under *Fox* and *Sinclair*, demands repeal of the daily newspaper/broadcast cross-ownership rule.

**IV. PROMPT ACTION IS NEEDED TO ELIMINATE THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE.**

As discussed above, this rulemaking marks the fourth time in eight years that the Commission has reviewed the public interest basis for the newspaper/broadcast cross-ownership rule. Each time the Commission reviews the rule it edges closer to the rule’s complete elimination, in 2003 going as far as finding that the rule does not promote competition, harms localism, and is not necessary to protect diversity in most markets. Accordingly, the narrow issue before the Commission in this proceeding is whether the rule is needed to protect diversity in any media market and if so, how those markets can be identified.

This specific question should be answered quickly: diverse, new media sources are available everywhere and more are cropping up every day. No public interest rationale

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<sup>77</sup> *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 801 (1978). Further, parties today should keep in mind that the rule was not adopted based on existing facts or evidence of harm from cross-ownership, but rather was based solely on the theoretical policy assumption that more owners would provide more viewpoints. Accordingly, the Supreme Court found the rule was based on policy, rather than factual grounds. *Id.* at 785-86 (“In the Commission’s view, the conflicting studies submitted by the parties concerning the effects of newspaper ownership on competition and station performance were inconclusive, and no pattern of specific abuses by existing cross-owners was demonstrated. The prospective rules were justified, instead, by reference to the Commission’s policy of promoting diversification of ownership: Increases in diversification of ownership would possibly result in enhanced diversity of viewpoints, and, given the absence of persuasive countervailing considerations, ‘even a small gain in diversity’ was ‘worth pursuing.’”) (citations omitted).

therefore remains for the Commission to attempt to develop a new cross-ownership rule. Indeed, since the newspaper/broadcast cross-ownership rule prevents broadcasters from joining forces with entities with whom they could produce more and better local news and public affairs programming, the Commission should not, and need not, wait to issue a decision regarding the rule. The record is well established and the issues are clear. Cox therefore urges the Commission to focus first on the repeal of the newspaper/broadcast cross-ownership rule, eliminate the rule swiftly, and then turn to the rest of the ownership rules examined in the *Notice*. Time is of the essence if the promotion and advancement of local news and programming are in the public interest.

Respectfully submitted,

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**SECTION:** Features; Pg. 9E**LENGTH:** 463 words**HEADLINE:** Cameron outranks radio rival**BYLINE:** RODNEY HO**SOURCE:** AJC**BODY:**

Radio listeners this summer went Hot and Cool and beat it from the Beat and V-103.

It was a topsy-turvy three months for many Atlanta radio stations, based on ratings from tracking firm Arbitron.

Ryan Cameron of hip-hop station Hot 107.9 (WHTA-FM) was the most popular morning host among 18-to-34-year-olds during the period June through September, the first time he has outranked V-103's Frank Ski in the five-year rivalry between the intensely competitive jocks. (Ski remained at No. 2 behind news/talk WSB-AM among 25-to-54-year-olds, where Cameron came in sixth.)

"Everybody said this could never happen, and we finally made it!" said Cameron, whose station has a weaker signal than V-103 (WVEE-FM). "It's a tighter show, a tight-running ship. The Ferrari's on cruise!"

Ski said he thinks it was an aberration and is confident that his ratings will bounce back in the fall.

Eight-month-old Cool 105.7 (WLCL-FM), which replaced now defunct Fox 97.1 as the area's "oldies" station, has picked up all of Fox's audience and then some. Cool, owned by Clear Channel, hired Fox's Randy & Spiff morning show in the spring, and the pair rewarded Cool with their best ratings in several years.

"We're all giddy," said Randy Cook of Randy & Spiff. When he was at Fox 97 (WFOX-FM), a Cox Radio station that became hip-hop station Jamz in February, Cook felt that the playlist was too tight and that the team wasn't marketed well. At Cool, the pair are being promoted on billboards, and the station is playing a broader mix of music including songs from the 1980s. Surging stations Hot 107.9, R&B oldies Kiss 104.1 (WALR-FM) and Jamz took potential listeners away from V-103, which remained No. 1 among 25-to-54-year-olds but lost listeners across the board.

Jamz has been hammering V-103 for the past six weeks with an advertising campaign on its own airwaves (and more recently on television) boasting that V-103 airs more ads and DJ talk than Jamz --- which has no DJs yet.

Four-year-old Cox station 95.5/The Beat (WBTS-FM), which plays a more current Top 40 hip-hop mix than Jamz, wilted under the competition, recording some of its worst numbers ever. It fell to sixth place among 18-to-34-year-olds and 22nd place with 25-to-54 year olds.

Among shows that have debuted in the past year, Star 94 afternoon team Cindy & Ray, morning hosts Bandy & Bailey of country station Kicks 101.5 (WKHX-FM), Gene & Julie at soft-rock Lite 94.9 (WLTN-FM), and Dick & Justice at 96rock (WKLS-FM) all showed progress. New morning hosts Mara & Dunham at classic-rock Z93 (WZGC-FM) picked up younger listeners but shed older ones.

Cameron outranks radio rival The Atlanta Journal-Constitution October 2

(WSB-AM, the Beat, Jamz and Kiss are part of Cox Radio, a subsidiary of Cox Enterprises, the owner of The Atlanta Journal-Constitution.)

**GRAPHIC:** Graphic: LEADERS OF THE PACK

Top 5 stations based on discrete listeners per week

1. WSB-AM (750), news/talk, 807,400
2. V-103, R&B/hip-hop, 669,000
3. Star 94, Top 40, 514,000
4. Kicks 101.5, country, 469,800
5. 95.5/The Beat, hip-hop Top 40, 463,800

Top 5 morning shows, ages 25-54

1. Scott Slade/Neal Boortz, WSB-AM (750), news/talk
2. Frank Ski, V-103, R&B/hip-hop
3. Tom Joyner, Kiss 104.1, R&B
4. Steve & Vikki, Star 94, Top 40
5. Melissa Summers, Praise 97.5, gospel

Top 5 morning shows, ages 18-34

1. Ryan Cameron, Hot 107.9, hip-hop
2. Frank Ski, V-103, R&B/hip-hop
3. The Regular Guys, 96rock, rock
4. Barnes, Leslie & Jimmy, 99X, rock
5. Bert Show, Q100, Top 40

Source: Arbitron

**LOAD-DATE:** October 20, 2003

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May 15, 2004 Saturday Home Edition

**SECTION:** Business; Pg. 3F

**LENGTH:** 260 words

**HEADLINE:** WSB reporter sues station, claims retaliation for illness

**BYLINE:** CAROLINE WILBERT

**SOURCE:** AJC

**BODY:**

Lynn Harasin, a longtime television reporter at WSB Channel 2, is suing the station, claiming she was treated unfairly after being diagnosed with a chronic pain disease.

Greg Stone, general manager of WSB, declined to comment on "personnel matters," citing company policy.

The station has yet to file a response to the lawsuit.

The suit, filed Wednesday in U.S. District Court in Atlanta, alleges the following: Harasin, a reporter at WSB since 1974, was diagnosed in 1997 with fibromyalgia, a chronic pain condition. The disease requires Harasin to take unanticipated short absences to recover.

WSB was originally cooperative but began to retaliate in 2002 while Jennifer Rigby was news director, according to the suit. It says Harasin was shifted to a 3 a.m. shift and given new procedures that applied only to her. One was a requirement that she ask a dispatcher permission for restroom breaks while working out in the field, the suit says.

The suit claims that the way Harasin was treated violates the Family and Medical Leave Act and breaches Harasin's employment contract.

Harasin is now on medical leave with cancer, which she claims in the suit was caused in part by "the extraordinarily high level of stress and anxiety" to which WSB-TV subjected her.

Harasin's suit seeks back pay and damages. Both WSB and Rigby are named as defendants.

WSB is the top-performing television station in Atlanta and this area's ABC affiliate. It is owned by Cox Enterprises, which also is the parent company of The Atlanta Journal-Constitution.

**LOAD-DATE:** May 15, 2004

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February 10, 2006 Friday  
Main Edition

**SECTION:** METRO NEWS; Pg. 1D

**LENGTH:** 678 words

**HEADLINE:** Anchor's affair no secret to co-workers

**BYLINE:** BILL TORPY

**BODY:**

In the summer of 1997, former state Attorney General Mike Bowers' high-flying gubernatorial campaign crashed when a longtime extramarital affair came to light.

Soon afterward, several TV newsrooms, including WSB-TV's, received an anonymous fax about another brewing sex scandal — this time involving one of their own.

"The fax said, 'How dare Marion Brooks sit there holier than thou when she is having a long-term affair with the married mayor?' " recalled Lynn Harasin, who at the time was a WSB reporter.

Brooks was a young reporter and noon anchor, a rising star apparently being groomed for bigger things.

But the fax started rumors swirling in the station, causing some co-workers to steer clear of Brooks when they were working on stories about City Hall for fear of Brooks tipping off Mayor Bill Campbell, Harasin recalled.

Brooks left Atlanta in December 1997 to go to WMAQ-TV in Chicago. She returned to Atlanta on Wednesday to testify in Campbell's federal corruption trial.

Now 39 and married, Brooks told the jury how she and Campbell traveled frequently during a four-year affair that started in 1996 and continued after she left town.

She testified Campbell lavished her with trips and gifts, including paintings and jewelry, and that he lent her \$16,000 in cash for a down payment on a condo when she moved to Chicago.

WSB News Director Jennifer Rigsby wouldn't comment on Brooks' relationship with the former mayor.

"We don't have any comment regarding Marion Brooks," Rigsby said. WSB General Manager Greg Stone did not return calls. WSB is owned by Cox Enterprises, which also owns The Atlanta Journal-Constitution.

In 1997, the affair was "the secret everybody knew and nobody wanted to talk about," said one former WSB news employee who did not want to be identified. The issue is still uncomfortable at the station.

Several current and former WSB employees would not go on the record when talking about Brooks, although everyone says the affair was well known.

Al Blinke, a former WSB-TV news director, recalled hearing of the rumors but thinking little of them.

"You hear rumors flying all the time; nothing was substantiated," said Blinke, now general manager of WNEM-TV in Flint, Mich.

Asked if he ever asked Brooks about the rumors, Blinke said, "I don't think so."

Harasin and others said they were wary of news tips Brooks shared, considering her limited street-reporting experience.

## Anchor's affair no secret to co-workers The Atlanta Journal-Constit

"She broke a couple crime beat stories, and we were surprised," said Harasin, who worked at the station for 30 years and is now suing WSB. Harasin claims she was treated unfairly after being diagnosed with a chronic-pain disease.

The affair between Brooks and Campbell raises ethical questions about the news media's responsibility in covering public officials and potential conflicts of interest when those lines are blurred.

News outlets typically maintain ethics codes that discourage reporters from becoming personally involved with people they cover to maintain objectivity.

Kelly McBride, ethics group leader at the Poynter Institute, a journalism education center, said "it's reasonable to conclude [the affair] could cloud your judgment. It's very hard to do critical reporting on someone you're sleeping with.

"The public was best served by skeptical watchdog journalism. As an anchor, you've got a pretty big role in the newsroom. You have a lot of influence over what gets covered, how it gets covered, where it appears in newscasts."

McBride said WSB owes the public an explanation.

"Did they know? If they did, how were they dealing with it? What did they do to minimize any role in influencing stories? And what is their policy on relationships with sources?"

"It's an issue for the station in Atlanta," McBride said, "because your audience will have no faith in your ability to be a watchdog on the mayor if it knows that your anchor is having a relationship with the mayor."

WMAQ in Chicago, where is an news anchor, said in a brief statement that it is aware of the affair and values Brooks as an employee.

Ty Tagami and Jill Vejnaska contributed to this article.

**GRAPHIC:** Photo: Colleagues of Marion Brooks at WSB-TV say they knew of her affair with Bill Campbell.

**LOAD-DATE:** February 10, 2006

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The Atlanta Journal-Constitution

August 19, 2006 Saturday

Main Edition

**SECTION:** GWINNETT NEWS; Pg. 1J

**LENGTH:** 260 words

**HEADLINE:** Ex-Atlanta news anchor arrested near Norcross;  
Savage charged with marijuana possession

**BYLINE:** KEN SUGIURA; Staff

**BODY:**

Former local news anchor Warren Savage was arrested on charges of marijuana possession and giving police a false name or information, police said.

According to Gwinnett County police spokesman Cpl. Darren Moloney, police made the arrest just after 8 p.m. Thursday in response to a domestic disturbance call at the Best Western Peachtree Corners in the Norcross area. Savage was charged with marijuana possession of less than 1 ounce.

According to the Gwinnett County Sheriff's Department Web site, bond was set at \$1,755. As of Friday evening, the jail said that Savage, 42, had yet to make bail.

Savage worked at WSB for 10 years, but abruptly left his job as the morning co-anchor last September. The morning of Sept. 13, Savage failed to show up rather than give the station advance notice to find a replacement.

Later in the day, according to a previous report in AJC staffer Rodney Ho's radio blog, he came to collect his belongings and sent a farewell e-mail to staff in which he wrote, "A rapper once said, 'Before I sell out, I get the hell out.' Since I'm more a musician than a rapper, I prefer to take a cue from the late, great Miles Davis, 'If you don't feel it, don't play it.' "

In a later interview with The Atlanta Journal-Constitution, Savage said he was having difficulty waking up at 2:30 a.m. to do the show.

"It got to the point my heart wasn't in it," he said. "I was just going through the motions."

WSB news director Marian Pittman declined to comment Friday.

WSB-TV is owned by Cox Enterprises, which also owns The Atlanta Journal-Constitution.

**GRAPHIC:** Photo: Former WSB news anchor Warren Savage had not made bail as of Friday evening. He's being held on \$1,755 bond.

**LOAD-DATE:** August 19, 2006



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## Nealz Nuze

Today's Nuze: May 31, 2004

# BOORTZ

**Memorial Day 2004  
Monday, May 31, 2004**

### THANK A VET TODAY

As we all settle into our patio chairs for a sumptuous barbecue feast, or as we cancel tee times here in Atlanta because of the weather it's a good time to take stock of our current situation. First of all, if you know any veterans, you should thank them. Were it not for their service, the world today might be ruled by communism or the Nazis. Not to mention the fascist Islamic terrorist fanatics like Al-Qaeda that want to turn every country in the world into a theocracy. Just something to think about.

Now .. having said that about veterans. This is Memorial Day. We have lost over 800 men and women in Afghanistan and Iraq in our war against Islamic terrorism. If you know family members or friends of any of these men or women ... they're owed a special thanks today for the sacrifice they have made.

I used to think this saying was a bit trite. "Freedom is not free." I know better now. I know better because I've seen and read of the sacrifices being made in the Middle East, and I talked to servicemen who, once they've spent a few weeks at home with their families, are eager to head right back over there to finish the job. Right now there are troops all over the world fighting the war on terror. In a weekend where the World War II Memorial was dedicated to the greatest generation, let's not forget about these soldiers fighting World War IV. Like it or not, the world is governed by the overwhelming use of force, and we wouldn't enjoy the freedom we have today if we didn't have a military that was ready to defend it.

So if you know a family member or friend of someone who has given their all in service to their country, try to thank them for their sacrifice. And if are such a family member, my thanks to you.

Happy Memorial Day.

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New York Congressman Charles Rangel is at it again about this draft business, and he's as full of it as ever. "This is fighting a war with someone else's children," howls Rangel. As if that weren't bad enough, he has the audacity to make this claim: "Why should I put my kids in jeopardy when they want to do it?" Huh? The answer to that Congressman, is that they make their own decisions. They're adults, they decide whether or not they want to join the armed forces, not you.

It also seems that Atlanta Journal-Constitution editorial page editor Cynthia Tucker got her Rangel memo over the weekend too. She has also chimed in with a column saying that the poor are fighting this war for the rich.

No, what this is really about is class warfare. Rangel has his panties in a knot because enough rich people aren't fighting the war. How dare poor people sign up and fight and die in the war, just so the evil rich can sit at home. In Rangel's world, that can't be so. It must mean that the poor people joining the military have to do it...because there are no jobs. Sorry, not true. The job market is booming in this country, though you wouldn't know it reading the mainstream liberal press.

This all-volunteer armed force has proven to be one of the most effective in our history. Maybe that's what's bothering the left. History has taught us that a conscripted armed force doesn't do as well on the battlefield as does one made up of volunteers. Rangel and Tucker know that, and they know that if we had draftees and other possible malcontents serving in Iraq and Afghanistan, instead of professionals who chose to be there, the casualty rates might be higher. With higher casualty rates the left can scream their appeasement line even louder. Is that it Cynthia? Is that it Charles? Are you really upset that more men and women aren't dying so that you can shout for surrender even louder?

Well ... it's an election year, and class warfare means votes for Democrats.

One might suspect that Rangel and Tucker are playing the wealth card because there is another card they can't play. You know, the race card. The demographic data shows no racial disparity in the numbers of blacks and white serving and in those who are sadly killed.

At the bottom of this is their leftist hatred for individualism. How dare individuals volunteer for military duty? What do they think they're doing? Exercising individual rights? Don't they know that the military should be known by its group dynamics, not by individuals who volunteer to serve?

There is nothing unfair about that which people do voluntarily.

#### **HE'S NOT EVEN BEING CHARGED**

This is a travesty. Remember the SOB that stood on an I-75 overpass last week threatening to jump and holding up traffic -- more than 10,000 vehicles -- in both directions of one of the nation's busiest interstate highways? Yeah...that moron...well guess what?

Police say that Gregory Lane Light, the 26-year-old loser from Powder Springs, Georgia, likely won't be charged in the incident. Proving once again that God has mercy on the stupid, this idiot fell 30 feet from the overpass and lived. In fact, his injuries weren't even life-threatening. That's too bad, because when he gets out of the hospital, he might try it again.

This guy stepped out on the railing with his 6-year-old son standing three feet away from him on the sidewalk...upset about a domestic dispute. How's that for a



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## Nealz Nuze

### Today's Nuze: August 29, 2005

# BOORTZ

Monday -- August 29, 2005



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### NEW ORLEANS

Well, I must say that the crunch portion of The FairTax Book tour ended with somewhat of a bang. I thought it would be a good idea to bring Royal, Belinda and Ken down to New Orleans for a little partying over the weekend to coincide with my signing at the Borders in Metairie and my Saturday morning brunch with some 690 WTIX contest winners. We were all originally going to leave on Sunday afternoon .. but plans are always subject to change.

Virtually as soon as we got to New Orleans on Friday we started making arrangements to get out on Saturday, as soon as the WTIX Brunch with Boortz at the Ritz was over. Belinda and Royal did just fine. They had reservations at 2:45. The bride and I had AirTran reservations at 7:45 Saturday evening. The evacuation of New Orleans started at 1:00 on Saturday afternoon ... so we decided to plan for some crushing traffic and left for the airport at 2:00. What is normally a 20 minute trip turned into 90 ... and we felt lucky with that time!

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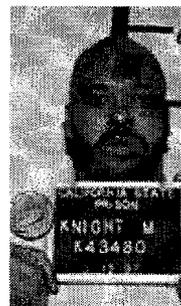


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## THE AMAZING AND FABULOUS HIP HOP CULTURE

Well .. it happened again. More gunshots at some Hip Hop party .. this one in Miami. Hip Hot Big Shot Suge Knight was shot in the leg and is to undergo surgery today. Feeling sorry for Suge? Well, not exactly. It's not like he's lived some sort of a squeaky clean life up to now. Let's see ... there was the 1992 conviction for assault and weapons violation. Then he was jailed in 1996 for violating probation after a video camera caught him and some Hip Hop pals beating the crap out of a gang rival. Some have even suggested that Suge Knight was involved in the killing of Notorious B.I.G, although he's never been named as a suspect.



Are your children into this Hip Hop crap? Well ... just know that your kids are fawning over a culture of anger, resentment, predatory sex, disrespect for women and general violence. But, then, you don't have any control over your kids anyway, do you? Maybe all you can do is hope for the best.

## THANKS, ATLANTA JOURNAL-CONSTITUTION

Now just how hard is it for a newspaper to print the correct New York Times Bestseller's list? It really shouldn't be that much of a challenge, but yesterday's Sunday edition of The Atlanta Journal-Constitution printed a NYT list from three weeks ago. If you just happened to pay \$5 for a New York Times yesterday instead of \$2 for the AJC you will have seen that The FairTax Book is, for the second week in a row, Number 1! Now ... will the Atlanta Journal-Constitution print the corrected list? You go ahead and hold your breath. I'm enjoying life right now.

## JESSE STICKS UP FOR TYRANT

The Sloganmaster has weighed in on Pat Robertson's call to assassinate Venezuelan President and communist dictator Hugo Chavez. Jesse Jackson called Robertson's statements criminal and said that the US government should take action. Oh really?



This points out the hypocrisy of the Democratic left in this country. First of all, they're all for freedom of speech...until you say something they don't agree with. Then it should be banned. Second, it's no surprise that Jesse is right there taking up for a corrupt tinhorn dictator who, despite what Jimmy Carter says, was not fairly elected in Venezuela. In addition, the preeminent race warlord said that the Federal Censorship Commission should take action against Pat Robertson. By the way, Jesse made these comments while he was actually in Venezuela, addressing the National Assembly down there. Americans criticizing the United States when they are on foreign soil is a specialty of the Democratic party, you know.