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 Stations in Local Markets	MM Docket No. 01-317
Definition of Radio Markets	MM Docket No. 00-244

COMMENTS OF MORRIS COMMUNICATIONS COMPANY, LLC

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COMMENTS OF MORRIS COMMUNICATIONS COMPANY, LLC

I. INTRODUCTION AND SUMMARY

Morris Communications Company, LLC ("Morris"), hereby submits its comments in response to the Commission's July 24, 2006 *Further Notice of Proposed Rulemaking* in the above-captioned proceedings (the "*FNPRM*").[1] Morris is one of the country's strongest mid-size, privately held media companies, with diversified holdings including, among other assets,

[1] *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, FCC 06-93, MB Docket Nos. 06-121, 02-277, MM Docket Nos. 01-235, 01-317, 00-244 (rel. July 24, 2006) ("*FNPRM*").

newspaper publishing and radio broadcasting.[2] Currently, Morris operates 33 United States radio stations and 27 daily newspapers, including, *inter* alia, co-located radio/newspaper combinations in Topeka, Kansas and Amarillo, Texas. Specifically, MCC Radio, LLC, a Morris subsidiary, is the licensee of WIBW(AM) and WIBW-FM in Topeka, where Morris owns and operates the *Topeka Capital-Journal*. MCC Radio, LLC is also the licensee of KGNC(AM) and KGNC-FM in Amarillo, where Morris owns and operates the *Amarillo Globe-News*.[3] In both markets, the radio stations and newspapers are separately staffed and operated. Nonetheless, Morris is well aware of the potential economic and other benefits that can result from joint ownership, including the benefits to the public flowing from the combined resources and enhanced newsgathering capabilities of co-owned print and broadcast outlets.

Morris submits these comments in support of the comments filed concurrently in these proceedings by the Newspaper Association of America (the "*NAA Comments*"). Consistent with Morris' past submissions to the FCC,[4] its comments encourage the Commission to eliminate, or at the very minimum substantially relax, the long-outdated absolute prohibition against common

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[2] *See* http://morriscomm.com/overview/index.shtml.

[3] *See In re Application of Stauffer Amarillo Radio Trust*, 11 FCC Rcd 1486, 14868 (1996) ("*Stauffer*") (granting 12 month waiver of newspaper/broadcast cross-ownership rule to permit common ownership of the Morris Amarillo Stations and the *Amarillo Globe News*); *Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (MMB Aug. 11, 1997) ("*Aug. 11, 1997 Letter*")(extending waiver until six months after the effective date of the Commission's action in MM Docket 96-197); *Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd 17283, 17268 n.16) (2001) (further extending waiver).

[4] *See, e.g., Comments of Morris Communications Corporation*, MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, 00-244 (filed Jan. 2, 2003) ("*Morris 2003 Comments*"); *Reply Comments of Morris Communications Corporation*, MM Docket Nos. 01-235, 96-197 (filed Feb. 15, 2002) ("*Morris 2002 Reply Comments*"); *Comments of Morris Communications Corporation*, MM Docket Nos. 01-235, 96-197 (filed Dec. 3, 2001) ("*Morris 2001 Comments*"); *Reply Comments of Morris Communications Corporation and Stauffer Communications, Inc.* in MM Docket No. 96-197 (filed Mar. 21, 1997) ("*Morris 1996 Reply Comments*"). Morris hereby incorporates these filings by reference.

ownership of same-market newspaper and broadcast properties.[5] During its decade-long examination of the newspaper/broadcast cross-ownership rule, the Commission has compiled a massive record of comments, studies, and other evidence to support elimination of the outdated ban. In particular, the record shows that any restriction on newspaper/*radio* cross-ownership is wholly unnecessary and serves only to handicap these two specific market participants among the vast panoply of competing voices now available to American consumers.

Based on this record, in its *2002 Biennial Review Order*, the Commission correctly determined that the 30-year-old prohibition of newspaper/broadcast cross-ownership did not serve the public interest,[6] a conclusion what was upheld by the Third Circuit.[7] Developments in the media marketplace since the *2002 Biennial Review Order* only serve to strengthen this conclusion. Further, Morris' own experiences as a newspaper publisher and a broadcaster in Amarillo, Topeka, and elsewhere show the significant *benefits* that can result when broadcast stations are operated by a company with a newspaper focus and heritage. Accordingly, Morris submits that the Commission should move forward promptly to eliminate, or at the very least to significantly relax, the newspaper/broadcast cross-ownership restriction.

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[5] 47 C.F.R. § 73.3555(d).

[6] *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*, 18 FCC Rcd 13620, 13747 (2003) ("*2002 Biennial Review Order*"), *aff'd in part and remanded in part*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus*"), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (S. Ct. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).

[7] *See Prometheus*, 373 F.3d at 398.

II. THE HISTORY OF THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP BAN, AS WELL AS THE RECORD COMPILED DURING AGENCY AND JUDICIAL EXAMINATION OF THE RULE, PROVIDE COMPELLING EVIDENCE FOR REPEALING THE OUTDATED PROHIBITION

When the newspaper/broadcast cross-ownership rule is considered in light of its beginnings and history, as well as the record compiled during examination of the rule by the Commission and the Third Circuit, it is clear that the rule must be repealed or, at the very minimum, substantially relaxed. The rule was based upon speculative premises even when it was enacted in 1975. Specifically, the Commission concluded at the time that newspaper-affiliated broadcast stations provided superior local service,[8] but justified enactment of a newspaper/broadcast cross-ownership restriction based on a *hoped for* gain in diversity.[9] Notwithstanding these beginnings, however, the newspaper/broadcast cross-ownership restriction remains in force today in its original form, unlike all of the Commission's other media ownership restrictions, which have been eliminated or relaxed in the interim.[10]

In 1996, the Commission committed to commence, and quickly complete, a proceeding addressing newspaper/broadcast cross-ownership.[11] Chairman Reed Hundt expressed concern at the time that that the newspaper/broadcast cross-ownership rule might be harming the newspaper

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[8] *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM & Television Broadcast Stations*, 50 F.C.C. 2d 1046, 1074, 1078-81 (1975).

[9] *Id.* at 1078.

[10] *See, e.g., Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999) (relaxing local television ownership and television radio cross-ownership restrictions); *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387 (1992) (relaxing restrictions on local radio ownership); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, §202(b) (mandating further relaxation of local radio ownership rule) ("1996 Act"); 1996 Act, §202(f) (repealing statutory cable/broadcast cross-ownership ban).

[11] *In re Applications of Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5888 (1996) ("*ABC/Disney*").

industry.[12] In fact, the Commission subsequently launched a far more limited inquiry, focusing only on the existing waiver policy for newspaper/radio cross-ownership.[13] In March 1998, while that proceeding was still pending, the Commission began the first Biennial Review proceeding[14] under a Congressional directive to repeal or modify any broadcast ownership restrictions that did not "remain necessary in the public interest as the result of competition."[15] As part of that proceeding, the Commission pledged to take action in the newspaper/radio waiver proceedings in 1998.[16]

When the *1998 Biennial Review Report* finally was issued in June 2000, however, the Commission merely recognized that there might be circumstances in which the newspaper/broadcast cross-ownership rule may not be necessary to accomplish the Commission's public interest objectives and committed to initiate a rulemaking proceeding to consider tailoring the rule.[17] The relevant NPRM was finally issued more than a year later, seeking broad input concerning the continued need for the cross-ownership rule.[18] A wide range

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[12] *Id.* at 5906 ("there is reason to believe that . . . the newspaper-broadcast cross-ownership rule is right now impairing the future prospects of an important national source of education and information: the newspaper industry").

[13] *See In re Newspaper/Radio Cross Ownership Waiver Policy*, 11 FCC Rcd 13003, 13004 (1996).

[14] *In re 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*, 13 FCC Rcd 11276 (1998) ("*1998 Biennial Review*").

[15] 1996 Act, § 202(h).

[16] *1998 Biennial Review*, 13 FCC Rcd at 11279-80.

[17] *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*, 15 FCC Rcd 11058, 11102 (2000), *vacated on other grounds by Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048, *reh'g granted in part*, 293 F.3d 537 (D.C. Cir. 2002).

[18] *In re Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd 17283 (2001) (*2001 NPRM*).

of interested parties and citizens filed extensive comments.[19] The 2001 proceeding was ultimately rolled into the *2002 Omnibus Rulemaking* addressing the Commission's media ownership rules.[20]

The *2002 Omnibus Rulemaking* responded to several D.C. Circuit decisions that took issue with prior FCC decisions to retain certain broadcast ownership restrictions.[21] In light of those decisions, the FCC took special care to ensure that the *2002 Omnibus Rulemaking* was comprehensive.[22] The Commission again received extensive comments from interested parties, advocacy groups, and ordinary citizens, and established a Media Ownership Working Group ("MOWG"), which, in turn, commissioned a dozen independent studies concerning the Commission's media ownership rules – including several focused on newspaper/broadcast cross-ownership.[23] After analyzing the record, the agency issued the *2002 Biennial Review Order* in

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[19] *See 2002 Biennial Review Order*, 18 FCC Rcd 13620, App. A (listing commenters in response to the *2001 NPRM*).

[20] *2002 Biennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 17 FCC Rcd 18503 (2002).

[21] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048, *reh'g granted in part*, 293 F.3d 537 (D.C. Cir. 2002) (remanding the FCC's national television station ownership rule and vacating its television/cable cross-ownership restriction); *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002) (remanding the local television ownership rule to the Commission for further consideration).

[22] *FCC Sets Limits on Media Concentration; Unprecedented Public Record Results in Enforceable and Balanced Broadcast Ownership Rules*, FCC News Release, (June 2, 2003), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-235047A1.pdf (last visited Oct. 22, 2006) (FCC decision "represents the most comprehensive review of media ownership regulation in the agency's history").

[23] *See, e.g.*, Thomas C. Spavins, Loretta Denison, Scott Roberts, and Jane Frenette, *The Measurement of Local Television News and Public Affairs Programs*, released in MB Docket No. 02-277 ("*MOWG Study #7*") *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A12.pdf (last visited Oct. 22, 2006); David Pritchard, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Election Campaign*, released in MB Docket No. 02-277, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A7.pdf (last visited Oct. 22, 2006).

July 2003, eliminating the outdated newspaper/broadcast cross-ownership ban and replacing it with more flexible cross-media limits that allowed newspaper/broadcast cross-ownership combinations in most markets.[24] In that decision, the Commission did not merely conclude that the prohibition was unnecessary. Rather, the agency correctly recognized that eliminating the ban would in fact *promote* the FCC's public interest goals of competition, localism, and diversity.[25]

In particular, the FCC determined that advertisers do not view newspapers and broadcast properties as close substitutes and, therefore, that elimination of the newspaper/broadcast cross-ownership ban would not have a negative impact on competition.[26] The agency also determined that the newspaper/broadcast cross-ownership ban was not necessary to promote local news and information programming and, in fact, that the prohibition inhibits the development of such programming.[27] This conclusion was supported by extensive evidence from actual newspaper/broadcast combinations, which demonstrated that combining a newspaper's local news-gathering resources with a broadcast platform, generating economic efficiencies that arise from common ownership, and exploiting journalistic experience associated with local daily newspapers can work together to improve local news and information programming.[28] The FCC also found substantial support in the MOWG studies, including in particular one which showed

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[24] *2002 Biennial Review Order*, 18 FCC Rcd at 13747-67; *FNPRM* ¶ 23.

[25] *2002 Biennial Review Order*, 18 FCC Rcd at 13747-48, 13767; *FNPRM* ¶ 24.

[26] *2002 Biennial Review Order*, 18 FCC Rcd at 13713-14, 13749; *FNPRM* ¶ 24.

[27] *2002 Biennial Review Order*, 18 FCC Rcd at 13753-60, 13767; *FNPRM* ¶ 24.

[28] *2002 Biennial Review Order*, 18 FCC Rcd at 13756-57; *FNPRM* ¶ 24.

that newspaper-owned stations provide more and better local news and public affairs programming than other stations.[29]

Finally, the FCC concluded that the absolute ban on newspaper/broadcast cross-ownership could not be justified by the agency's diversity goals.[30] To reach this conclusion, the agency cited economic efficiencies and synergies arising from common ownership, and noted that – in contrast to the situation when the newspaper/broadcast cross-ownership rule was initially adopted – Americans now have access to an abundant and diverse menu of media choices. [31]

The Third Circuit agreed that the absolute prohibition against common ownership of same-market newspaper and broadcast properties undermined localism by preventing combinations that would create more and better news and other local information programming.[32] The court also agreed that the cross-ownership ban should be repealed in order to promote competition.[33] Finally, the Third Circuit affirmed the agency's conclusion that the rule was not necessary to achieve the Commission's diversity goals, noting the lack of evidence that commonly owned media outlets spoke with a single voice as well as the viewpoint diversity provided by cable, the Internet, and other media voices.[34] Simply put, the Court agreed with all of the critical findings supporting the Commission's decision to eliminate the absolute

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29 *2002 Biennial Review Order*, 18 FCC Rcd at 13754-55 (citing *MOWG Study #7*).

30 *Id.* at 13760-62, 13767; *FNPRM*, ¶ 24.

31 *2002 Biennial Review Order*, 18 FCC Rcd at 13647-67; *FNPRM*, ¶ 24. Indeed, as detailed in Sections III.A and III.B of the *NAA Comments* and in Section III of these Comments, consumers' menu of media choices continues to expand at an astounding rate.

32 *Prometheus*, 373 F.3d at 398-99; *FNPRM*, ¶ 28.

33 *Prometheus*, 373 F.3d at 400-01; *FNPRM*, ¶ 28.

34 *Prometheus*, 373 F.3d at 399-401; *FNPRM*, ¶ 28.

prohibition on newspaper/broadcast cross-ownership, and remanded the *2002 Media Ownership Order* to the Commission only to address certain perceived faults with the FCC's new cross-media limits.[35]

In short, the Commission has already completed much of the work necessary to satisfy the statutory deregulatory mandate of the 1996 Act. Doing so will level the playing field for newspaper publishers and broadcasters long handicapped by discriminatory ownership restrictions not applicable to their competitors in the information marketplace. The agency already has a comprehensive record concerning newspaper/broadcast cross-ownership and, based on a thorough analysis of that record, correctly concluded that the public interest demands repeal of the outdated ownership ban. Moreover, the Third Circuit expressly affirmed the key Commission determinations underlying this conclusion. Accordingly, the Commission can – and should – act quickly to complete the task before it and eliminate the counterproductive and archaic ban.[36]

III. CHANGES IN THE MEDIA MARKETPLACE SINCE THE *2002 BIENNIAL REVIEW ORDER* CONFIRM THE URGENT NEED TO ELIMINATE THE CURRENT NEWSPAPER/BROADCAST CROSS-OWNERSHIP PROHIBITION

Based on the foregoing, even if the growth in the media marketplace had halted after release of the *2002 Biennial Review Order*, the Commission would still be compelled to

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[35] *Prometheus*, 373 F.3d at 402-03; *FNPRM*, ¶ 29.

[36] This is particularly true in light of the Commission's obligations under Section 202(h) to repeal or modify regulations that are no longer necessary and to modify its regulations to address competitive marketplace changes. *See, e.g.*, *2002 Biennial Review Order*, 18 FCC Rcd at 13624; *Prometheus*, 373 F.3d at 391, 394-95. Further, the rule must be eliminated or substantially relaxed in light of the attendant Constitutional concerns (*see, e.g.*, *2002 Biennial Review Order*, 18 FCC Rcd at 13626-27) and, as discussed herein, the utter disconnect between the current rule and its supposed competition, localism, and diversity justifications.

eliminate or substantially relax the newspaper/broadcast cross-ownership rule in this proceeding. As discussed in detail in the *NAA Comments*, however, the marketplace continues to expand and evolve at a dizzying and ever-accelerating pace, providing American consumers with additional and more varied sources of news, information, and entertainment content with each passing day. Moreover, these sources continue to take audience away from "traditional" media outlets, such as newspapers and broadcast stations. These developments render any claims that the newspaper/broadcast ban is necessary to promote localism, competition, or diversity untenable, and further illustrate the urgent need to eliminate the current prohibition against same-market newspaper/broadcast cross-ownership.[37]

The numbers of television and radio stations in the United States have increased only slightly since 2003, while both the number and circulation of daily and weekly newspapers has declined. The same time period has seen a staggering increase, however, in the number of web pages and other sources of information on the Internet and the number of Americans that use the Internet. Satellite radio, which provides an alternative to traditional radio stations, continues to experience explosive subscriber growth. Similarly, the audience for Internet radio sites continues to expand, and developments such as podcasting give an ever-growing number of consumers a more flexible way to get news, information, and entertainment content. The growth in non-broadcast television networks, both national and regional, also adds to consumers' already enormous menu of media options.

Significantly, major local exchange carriers have entered the market for delivering multichannel video content to consumers, and, since 2003, consumers are increasingly making use of technologically-new video delivery methods, such as live online television programming

[37] The content of this Section is developed more completely, with discussion of and citation to copious examples and authorities, in Sections III.A and III.B of the *NAA Comments*.

and video content that is downloaded or streamed over the Internet or delivered to wireless telephones. In short, while traditional media outlets face increasing challenges, consumers have an extraordinarily broad array of media choices available to them – and the explosive growth of these alternative sources of news, information, and entertainment content shows no signs of slowing down.

Growth of the Internet has been a particularly important catalyst for the expansion in news, information, and entertainment sources available to consumers. High-speed Internet connections are available almost everywhere, and nearly three quarters of Americans have a home Internet connection. Consumers can also access the Internet in other ways, such as at local libraries or, increasingly, via free or low cost wireless service provided by local governments. Consistent with the foregoing, Americans increasingly turn to the Internet for news and information; indeed, more than half of people aged 14-22 identify the Internet as their *primary* source of news. And many Internet news sites now allow users to select and aggregate news and information based on their own interests or even the suggestions of others. Simply put, the Internet is rapidly becoming a ubiquitous presence with limitless capacity to assemble and deliver content, allowing any individual to access virtually any recorded information at any time of the day or night.

The Internet has of course been used extensively by existing media outlets to deliver more and different content to broader audiences. Just as importantly, however, the Internet has become the home for numerous *independent* news sources. The Internet allows users to contribute their own opinions on matters of public importance. An important example is the growth of blogs, which allow any Internet user to post news, information, and other content on

the Internet for anyone to access. Recent election campaigns in the United States illustrate dramatically just how powerful blogs have become.

The Internet also has become a home for content that traditional media may not disseminate, such as graphic war photos or issues that are highly local or otherwise too narrow to be covered for the mainstream audience. Indeed, although the Internet is *international* in scope, it is a particularly useful tool for the creation and dissemination of *local* news and information. A wide variety of websites – some owned or co-owned by traditional media services and some owned and operated by independent entities and individuals – provide more and different local news and information that goes far beyond what is produced and disseminated by traditional broadcast and print outlets in any given local market.

It is not surprising, then, that consumers now get their news, information, and entertainment from a mix of sources tailored to their needs, interests, and schedules. Because high-speed networks are ubiquitous, consumers have a wide variety of media choices at their fingertips. Moreover, in the digital age, both media professionals and ordinary citizens can generate content, and consumers can download, store, and reassemble that content as they see fit. And consumers rarely rely on one traditional source for news and information programming; instead, the average consumer relies on a mix of local and regional newspapers and magazines, cable news channels, radio and television broadcast stations and networks, websites, blogs, and any number of other media.

Predictably, all of these changes have increased competitive pressures on newspapers and broadcast media. Daily newspaper circulation and advertising revenues are declining, and some newspapers have been forced to decrease content and/or newsgathering resources to cut costs. Similarly, the audience for traditional broadcast television networks – and their nightly

newscasts – are declining, while the audience for cable and satellite networks has increased. Radio's audience figures have remained fairly steady, but radio news operations are rarely profitable. These downward trends for traditional media – which are particularly strong among young people – can only be expected to continue into the near future. Not surprisingly, these competitive challenges have taken a toll on investors' willingness to make capital available to newspapers and the traditional broadcast media.

Simply put, the record at the time of the *2002 Biennial Review Order* supported, elimination or, at the very least, substantial relaxation of the 30-year-old prohibition of same market newspaper/broadcast cross-ownership. The marketplace has grown at a remarkable pace since that time. Users can access an ever-increasing array of national and local news, information, and entertainment content in a growing number of ways and from a diverse set of viewpoints. Traditional broadcasters and newspapers face increasing competition from non-traditional media and content sources and mechanisms. Accordingly, in 2006, it is even clearer than it was three years ago that the Commission must eliminate the archaic newspaper/broadcast cross-ownership ban without delay.

IV. MORRIS' EXPERIENCES AS A NEWSPAPER PUBLISHER AND A BROADCASTER DEMONSTRATE THE SUBSTANTIAL BENEFITS THAT CAN RESULT WHEN BROADCAST STATIONS ARE OPERATED BY COMPANIES WITH A NEWSPAPER FOCUS AND HERITAGE

In prior comments to the Commission, Morris has demonstrated the high quality of service provided by Morris' Topeka and Amarillo and radio stations, as well as by the *Topeka Capital-Journal* and the *Amarillo Globe-News*.[38] While these properties have excellent records of public service, Morris currently is unable to realize fully the economic and public interest

[38] *See, e.g., Morris 2003 Comments* at 5-6; *Morris 2001 Comments* at 7-12.

benefits that would undoubtedly result from combining some of the resources of Morris' same-market print and broadcast properties in these markets and elsewhere. The continuing tradition of excellence at Morris' Topeka and Amarillo properties, however, further underscores the benefits that can arise when radio stations are operated by newspaper companies and strongly suggests that the newspaper/broadcast cross-ownership rule should be eliminated.

WIBW(AM) broadcasts a news/talk format with heavy emphasis on local issues and is the highest-rated AM radio station in the Topeka market. WIBW-FM, in turn, airs country music programming and is the highest-rated Topeka radio station. Both stations supplement their large over-the-air reach by streaming their signals over the Internet (at www.580wibw.com and www.94country.com), allowing the stations to be heard by an even broader audience both in and outside of Topeka.

Because agriculture is Kansas' top economic engine, WIBW(AM) employs three agriculture broadcasters – two full-time and one part-time – and airs locally produced programming dealing with agriculture and agriculture-related issues between 5:00 AM and 7:00 AM, Monday through Friday. In addition, four full-time news employees cover local stories and issues for WIBW(AM). From 7:00 AM to 8:00 AM and from 11:00 AM to Noon every Monday through Friday, the station airs locally-produced news, weather, sports and traffic programming. WIBW(AM) also provides live news updates throughout the day Monday through Saturday. The station's full-time meteorologist breaks into programming when weather alerts affect the area, and the station serves as a collection point for school closures when bad weather hits.

From Noon to 3:00 PM Monday through Friday, WIBW(AM) airs a local talk show with two full-time hosts, addressing issues that affect the city, county and state, as well as community and charitable events, such as the Thanksgiving Dinner to feed the homeless or a fund drive for

hurricane victims from the Gulf Coast. The station also airs local sports talk shows Monday-Friday from 3:00 PM to 7:00 PM, discussing local teams and sporting events, as well as local high school and college football and basketball games. The station continues its local presence on the weekends with locally produced shows addressing gardening, real estate, and racing.

WIBW(AM) has won numerous awards for its outstanding news and information programming. This year, the station has already won 13 awards from the Kansas Association of Broadcasters ("KAB"). The station won the Award for Journalistic Excellence for Best Newscast from the Associated Press ("AP") in 2003, 2004, and 2005. During the same time period, the station won the AP Story of the Month Award five times. In 2005, WIBW(AM) won a First Place Enterprise Award from the AP as well as First Place KAB Awards for Complete Newscast and In-Depth Reporting. During the previous year, the station won First and Second Place Awards for Story of the Year from the AP, as well as a Second Place AP Enterprise Award and a Second Place KAB Complete Newscast Award. 2004 saw WIBW(AM) winning both a Second Place Enterprise Award and a Second Place Spot News Award from the AP, as well as a KAB Second Place Editorial Commentary Award. These honors are testament to the outstanding local news and information programming provided by WIBW(AM).

WIBW-FM is locally programmed from 5:00 AM until 10:00 PM Monday through Friday, from 9:00 AM to 10:00 PM on Saturday, and from 6:00 AM to 6:00 PM on Sunday. In addition to the station's music entertainment programming, WIBW-FM emphasizes locally produced news, weather and sports segments in the morning, as well as news and weather updates throughout the day. The station's full-time meteorologist interrupts regular programming any time severe weather visits the area, and the news department updates listeners concerning school closings and event cancellations as appropriate.

The Topeka stations believe it is important to supplement their broadcasting activities with charitable and community involvement. Members of the WIBW(AM)'s News Department regularly speak at local functions and for local organizations. The stations also sponsor local events that have tremendous impact on the community, such as the "Sertoma Great Topeka Duck Race," which benefits the local Big Brothers and Big Sisters program; the "Huff 'N Puff Balloon Rally," which helps the local Ronald McDonald House; and "Festival of Trees" – a holiday season event that raises money for Sheltered Living.

In May 2006, WIBW(AM) hosted a golf tournament to raise money for the wife and children of an area coach who died suddenly. WIBW(AM) also raised funds and needed items for Katrina victims and provided $20,000 in support for Katrina victims who were moved to the Topeka area shortly after the hurricane. WIBW-FM recently completed an event titled "Filling the Bus," which collected school supplies for underprivileged Topeka children. And, each year, WIBW(AM) and WIBW-FM partner with the local Salvation Army to raise money for Topeka's less fortunate. The stations place a 25-foot lighted Christmas tree on the roof of the studio building to remind members of the Topeka community of those in need. In addition, over the past 18 months, the stations have been involved in events to benefit the Arthritis Foundation, The Boys and Girls Club, TARC (a local organization that aims to assist persons with developmental and related disabilities and their families), St. Jude's Hospital, the Capper Foundation (a local organization that serves children with disabilities), Junior Achievement, and the National Transplant Fund. WIBW-FM also uses its website to publicize local charitable events and activities. The stations have received recognition for community involvement from a number of organizations, including the Keep America Beautiful Campaign, the Topeka Rescue Mission, the American Cancer Society, and the American Heart Association.

Simply put, the stations serve the people of the Topeka area – both as broadcasters and community citizens – in an exemplary manner. It is no surprise, then, that WIBW(AM) was named the Kansas Association of Broadcasters Station of the Year four of the last five years, with WIBW-FM winning the award for the other year.

Although operated separately from WIBW(AM) and WIBW-FM, the *Topeka Capital-Journal* shares the stations' commitment to serving Topeka and has experienced similar success. Approximately three quarters of Topeka's adults read the *Capital-Journal*. The newspaper has won the Sweepstakes Award from the Kansas Press Association numerous times. Moreover, the *Capital-Journal*'s news, sports, photo, advertising and creative staff have won numerous awards. For example, *Capital-Journal* photographers have won the Pulitzer Prize and the Robert F. Kennedy Award for Photojournalism. In 2006, the *Capital-Journal* won numerous Heart of America Awards from the Society of Professional Journalists, including Gold Awards for investigative reporting about a group home operated in Newton, Kansas, general reporting coverage of the evolution debate, and photojournalism; Silver Awards for sports photography and for a special newspaper section entitled "State of Our Schools"; Bronze Awards for sports photography, sports writing, profile writing, and feature writing; and honorable mentions for profile writing; sports writing; entertainment writing, feature writing, and beat reporting. The newspaper's "State of our Schools" report also won the 2006 Victor Murdock Award from the Kansas Press Association.

In 2005, the *Capital-Journal* won the William Allen White Foundation's Burton W. Marvin Kansas News Enterprise Award, which recognizes outstanding reporting by Kansas newspapers. During the previous year the newspaper's website (www.cjonline.com) won an EPpy award from *Editor & Publisher* for Best Internet News Service, under 1 million monthly

visitors. Also in 2004, RockKansas.com and TopekaHomeFinder.com, local information websites run by the *Capital-Journal*, were finalists for the Newspaper Association of America's Edgie Awards, and the newspaper won the Kansas Newspaper Association Award of Excellence, the Kansas Reading Association Literacy Award, and an Exemplary Service Award from the International Reading Association and the Topeka Council. The newspaper's website has been named best newspaper website in the Midwest twice by the Kansas City Press Club and by the Society of Professional Journalists.

Like Morris' Topeka radio stations, the *Capital-Journal* is heavily involved in community and charity events and programs. The newspaper works with the United Way, "Fiesta Mexicana" (the largest Mexican Fiesta in the Midwest), the "Sertoma Great Topeka Duck Race," and "Newspaper in Education" – an international program established to enhance curriculum, literacy and learning. The newspaper makes in-kind charitable donations, and has a program to match dollar-for-dollar the amount that various events and organizations spend on newspaper advertising.

Morris' Amarillo properties serve their community with equal dedication and success. KGNC(AM), which broadcasts a news/talk format, is the top rated AM station in the Amarillo market. KGNC-FM carries country music programming and is Amarillo's top rated radio station overall.

KGNC(AM) employs four full-time news employees and provides hourly news reports from 5:00 AM to 10:00 PM and locally produced, information-oriented programming Monday through Saturday from 5:00 AM to 11:00 AM. Station staff members are available to provide live coverage of life-threatening weather and other events at any time. For example, this past Spring, the station provided live, on-site coverage of the devastating wildfires that wreaked

havoc around the Texas panhandle. KGNC(AM) employs the only full-time agribusiness reporter in the area and provides live agribusiness programming Monday through Friday from 5:00 AM to 6:00 AM, as well as live, hourly market reports from 5:00 AM to 2:00 PM. KGNC(AM)'s agribusiness director received the County Extension Service's "Friend of Extension Award" in 2006. KGNC(AM) is also the flagship station for West Texas A&M sports and the Panhandle Sports network, providing extensive coverage of local high school sports. The station employs the only full-time sports reporter in Amarillo radio. Although KGNC-FM is primarily a country music station, it also provides live local news, weather, and sports Monday through Saturday from 5:00 AM to 9:00 AM, and a news report at 12:00 Noon.

Like their sister stations in Topeka, KGNC(AM) and KGNC-FM supplement their broadcasting activities with community and charitable involvement. The stations' general manager received the Chamber of Commerce "Volunteer of the Year" award in 2001 and the Texas Panhandle Broadcaster's "Founder's Award in 2003, and has served as Chairman of the Board for the Amarillo Chamber of Commerce in 2005 and 2006. Both radio stations air numerous community-oriented Public Service Announcements daily, and air between two and four live interviews weekly for community events and fund raising activities.

KGNC(AM) and KGNC-FM regularly contribute time, people, promotion, ad support, and funds to local and charitable events. The station websites (kgncam.com and kgncfm.com) also are used to publicize local charitable events and activities. In partnership with the *Amarillo Globe-News* and other local merchants, KGNC-FM aired the "ones to Watch" program, featuring and publicizing the public service, community involvement, and academic success of youth in the Panhandle. In both 2005 and 2006, this program included numerous cash scholarships for youth in the region. And, in October 2006, KGNC-FM will conduct its thirteenth annual

radiothon for the St. Jude Children's Hospital. Since its inception, this event has raised over $600,000.

The *Amarillo Globe-News*, recipient of the Pulitzer Prize in 1961, has a long tradition of superior public service and coverage of national, regional and local news to the people in Texas Panhandle. Amarillo Globe-News writers are consistently recognized for quality writing and reporting. For example, a *Globe-News* Sports Editor won two First Place awards, in sports column writing and in sports features, at the 2006 Texas Associated Press Managing Editors annual conference. The sports feature concerned a man running across the country to promote positive attitudes and goal-setting. At the same conference, a *Globe-News* reporter won First Place awards in both specialty reporting and community service for her work on a report on the struggles faced by families with special needs children entitled "Forever Parent Forever Child." The tradition of excellence also has carried over to the newspaper's website (amarillo.com), which won an *Editor & Publisher*'s 2004 EPpy award for best overall design in Internet service, under 1 million monthly visitors.

In short, the Morris newspaper and broadcast properties in Amarillo and Topeka have exemplary records of service in the public interest. Unfortunately, the Commission's outdated newspaper/broadcast cross-ownership prohibition prevents Morris from fully realizing the public interest benefits that would result from joint ownership of same-market newspaper and broadcast properties. Because the cross-ownership ban does not further, and, indeed, works against, the Commission's public interest objectives, it should be eliminated immediately.

The current prohibition against same-market newspaper/broadcast cross/ownership-inflicts particular competitive harm against radio licensees with newspaper holdings. Under the Commission's current media ownership rules, which may well be liberalized in the current

proceeding, one party can own as many as two television stations and up to six radio stations, or one television station and up to seven radio stations, in a local market.[39] However, if a licensee owns *one* daily newspaper in a market, it is prohibited from owning *any* broadcast stations in the market – including even a single radio station.[40] This disparity is simply absurd in the current marketplace.

As a related matter, the newspaper/broadcast cross-ownership ban prohibits parties to newspaper/broadcast combinations currently in existence (either pursuant to grandfathering or waiver) from adding additional broadcast properties, while their competitors often own a full complement of radio stations or a combination of radio and television properties. In the end, the archaic newspaper/broadcast cross-ownership ban works to keep good operators with extensive news related-resources at a disadvantage in the radio sector vis-à-vis companies that do not have newspaper holdings – a result that assuredly is not in the public interest.

V. CONCLUSION

The Commission's work is nearly done. The agency has already developed an extensive record to fully support elimination or, at minimum, substantial relaxation of the outdated newspaper/broadcast cross-ownership ban. The *2002 Biennial Review Order* correctly concluded that a complete prohibition of same-market newspaper/broadcast cross-ownership does not serve the public interest, and the Third Circuit agreed. The media marketplace continues to evolve and grow at an astonishing pace, making more news, information, and entertainment content available to consumers in new ways every day. This growth further

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[39] 47 C.F.R. § 73.3555(c)(2)(i).

[40] *Id.* § 73.3555(d).

renders the newspaper/broadcast cross-ownership restriction wholly unnecessary. And, while utterly failing to further the Commission's localism, competition, and diversity objectives, the newspaper/broadcast cross-ownership ban prohibits same-market broadcast and newspaper outlets like those operated by Morris in Topeka and Amarillo from fully realizing the public interest benefits that would assuredly result from common ownership. Accordingly, Morris urges the Commission to complete these proceedings forthwith and eliminate, or at the very least substantially relax, the outdated, discriminatory, and counterproductive newspaper/ broadcast cross-ownership ban.

Respectfully submitted,

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Dated: October 23, 2006

DECLARATION OF CRAIG S. MITCHELL

I, Craig S. Mitchell, hereby declare and state as follows:

1. I am Senior Vice President-Finance of Morris Communications Company, LLC.

2. I have reviewed the accompanying "Comments of Morris Communications Company, LLC." The facts set forth therein are accurate to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Craig S. Mitchell

Dated: October 23, 2006