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 BLOCK COMMUNICATIONS, INC.

Block Communications, Inc. ("Block"), by its attorneys and in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding,[1] hereby submits its comments urging relaxation of the Commission's local television ownership rules and the long-overdue repeal of

[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, *Further Notice of Proposed Rule Making*, 21 FCC Rcd 8834 (2006). On September 18, 2006, the Media Bureau extended the filing deadlines for comments to October 23, 2006 and reply comments to December 21, 2006. *See* 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, *Order*, DA 06-1663 (rel. Sept. 18, 2006).

the Commission's newspaper/broadcast cross-ownership rule. Block owns or has an attributable interest in five television broadcast stations in small and middle-market communities across the country; it also owns two daily newspapers, the *Pittsburgh Post-Gazette* and *The Blade*, which serves Toledo, Ohio.

Local television stations, particularly in smaller markets, are struggling in today's extremely competitive media environment. Audiences are migrating away from free, over-the-air local broadcast stations and toward subscription content delivered on cable, satellite, the Internet, cell phones, and other platforms. Only fifteen percent of households today fail to subscribe to paid video services.[2] Advertising revenues, in turn, have followed.[3] Streaming video, which was irrelevant a few years ago, today is a formidable new competitor threatening to reshape the video marketplace.[4] All told, in today's fragmented media marketplace, fewer viewers are watching local newscasts, and broadcasters can no longer count on steady or

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2 Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, *Twelfth Annual Report*, 21 FCC Rcd 2503, ¶ 8 (2006). This statistic fully rebuts any argument that further deregulation tips the balance between broadcasters and cable. Even if broadcasters were somehow able to extract further monetary concessions from cable operators in carriage negotiations, it is highly unlikely that anyone but cable subscribers would absorb that increase.

3 *Id.* at ¶ 94 (noting that advertising revenues for cable networks have grown at a significantly higher rate than for broadcast stations).

4 *See* Brooks Barnes, *Big TV's Broadband Blitz: Networks Are Launching a Slew of Web Channels for All Tastes; College Sports and Quilting Tips*, WALL ST. J., Aug. 1, 2006, at B1; John M. Higgins, *Online Education: Cable Operators Find a Lesson in ABC's Web Deal*, BROADCASTING & CABLE, Apr. 17, 2006, at 9. Websites such as YouTube, for example, have also had a profound effect on the 2006 elections. Senator George Allen's "macaca" statement first appeared on YouTube before it became national news. Ryan Lizza, *Candidly Speaking; The YouTube Election*, N.Y. TIMES, Aug. 20, 2006, § 4, at 1

increasing revenue from local news, which in the past has been a proven money maker.[5] In fact, many broadcasters now are finding that the dwindling revenues from local news no longer justify its costs. They either are abandoning or curtailing local news operations or are outsourcing them completely to local competitors.[6] In small and mid-sized markets, the problems are particularly acute. Broadcasters in smaller markets do not have the luxury of a large advertising base to help them withstand these new competitive threats. Yet, the Commission's past attempts at ownership relief have focused on large markets. As a result, the relief has missed the small and mid-sized markets that need it most. Without prompt relief—particularly in small and mid-sized markets—profitability will continue to decline, and local news and other locally produced non-entertainment programming likely will disappear.[7]

I. Relaxation of the Television Duopoly Rule Is Essential for Broadcasters in Small and Mid-Sized Markets.

The Commission must relax its duopoly restrictions because they are especially harsh on broadcasters in small and mid-sized markets. Competition, particularly from cable, DBS, and the Internet, is just as strong as in large markets, but a station's ability to absorb the accompanying revenue declines is much less. Likewise, the cost of constructing DTV facilities has been roughly equal regardless of market size, but small and mid-sized stations have been less

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5 Allison Romano, *Why Local News Is in a Sharing Mood: With Budgets Tight, More Stations Are Outsourcing Their News To Market Rivals*, BROADCASTING & CABLE, Aug. 7, 2006, at 10.

6 *Id.*

7 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, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13,620, ¶ 353 (2003) ("Impair the ability of media outlets to profit and you choke off the capital to which their tap roots reach; strangle the press and the balance of our familiar rights and privileges wither and fall.") ("*2002 Biennial Review*").

able to absorb these costs and maintain their long-term financial viability. Consequently, to survive, small and mid-market broadcasters must seek other efficiencies, but in many such markets the Commission's duopoly restrictions prohibit the most natural and effective efficiency—combining operations with another local television station.

Television duopolies enable broadcasters to attain the economies of scale that are essential for continued provision of high-quality local news and other programming. With joint operations, a broadcaster can eliminate redundant back-office personnel and overhead and reinvest those savings into improving both stations' local content, particularly local newscasts that can be delivered over two platforms at a lower combined cost. The current television duopoly rule, however, prevents television broadcasters in smaller markets from reaping these benefits. As a result, local news and other local programming suffer. Indeed, in the *2002 Biennial Review*, the Commission concluded that the duopoly rule "poses a potential threat to local programming."[8] The Third Circuit upheld this conclusion.[9]

The Commission must act now to create regulations responsive to today's highly competitive video environment. The media landscape continues to become more competitive, and the Commission must not assume that because large numbers of stations are not going dark, the local broadcast industry is healthy. Collapse can come quickly, and myriad examples from other industries—from the failure of passenger rail service in the 1960s to the bankruptcies faced by today's airlines—show the dangers of regulating one step behind the times. By failing to see the difficulties faced by broadcasters in small and mid-sized markets today, the Commission

8 *See id.*, at ¶ 156.

9 *Prometheus Radio Project v. FCC*, 373 F.3d 372, 415 (3rd Cir. 2004), *cert. denied*, 125 S. Ct. 2903 (2005).

tomorrow could be explaining to Congress why these markets no longer have over-the-air television stations or why local television news has suffered or been eliminated in those markets. Instead, the Commission must act now to repeal its duopoly restrictions and allow broadcasters in all markets to enjoy the benefits of joint operations.

The Commission also must acknowledge that in the digital era, the discussion of diversity becomes more complicated, but, in the end, irrelevant. A single digital television station will now have the capability to offer several multicast programming streams. In small markets, this exacerbates the conditions that could make local television broadcasting a natural monopoly. The local advertising base in small markets already is too small to support multiple separately-owned, network-affiliated television stations. Now, however, when one television station affiliates with a second major broadcast network it eliminates any prospect of financial viability for another local television station. In many small markets, one television station could, in fact, affiliate with all four major broadcast networks and completely eliminate the need for other local television stations or, at the very least the economic base for such stations. Similar monopolies are common in other industries in small markets. For example, a single car dealership in a small market often affiliates with multiple manufacturers to serve the entire community. Opening a second competing car dealership in such a market is economic suicide.

In fact, in these small, monopoly-prone markets, duopoly relief is essential because it will provide tangible benefits to the public. When one television station is affiliated with all broadcast networks in a market, it is quite likely that only one network can be broadcast in high definition. Thus, the other networks may be deprived of full HD pass through to the consumer. Allowing duopolies in these smaller markets will allow for more efficient and public interest use of the digital spectrum and increase the number of over-the-air high definition signals that are available to the public.

The Commission's old analog model in which one television station equaled one voice no longer fits and must be adjusted to reflect today's digital world. When multicast streams affiliate with different networks, they target different audiences. As a result, multicast streams from the same television station may espouse different views to better serve these different audiences. Moreover, if the Commission insists on counting the "voices" in a market, it must include the voices from webcasting. Hundreds of local voices are available in every market, and for diversity purposes, the availability of a voice is what matters. Those who are interested in a particular local issue can seek out diverse voices or create new voices themselves.

II. The Newspaper/Broadcast Cross-Ownership Rule Is a Relic of a Bygone Era and Must Be Repealed.

A brief review of the tortured history of the newspaper/broadcast cross-ownership rule shows that the Commission has all the evidence it needs to repeal this anachronistic rule. When the Commission first adopted this rule over thirty years ago in 1975, the Commission provided no hard evidence to support the blanket ban. At best, the Commission provided "a mere hoped for gain in diversity."[10] Nevertheless, unlike the Commission's other media ownership rules, the newspaper/broadcast cross-ownership rule has remained frozen in its original form ever since. Ten years ago, the Commission initiated a proceeding to determine whether it should consider relaxing the blanket newspaper/broadcast cross-ownership ban.[11] Since then, the Commission has received mountains of evidence, including numerous agency-commissioned studies and

10 *See FCC v. Nat'l Citizens Comm. For Broad.*, 436 U.S. 775, 786 (1978).

11 *See* Newspaper/Radio Cross-Ownership Waiver Policy, *Notice of Inquiry*, 11 FCC Rcd 13003 (1996).

hundreds of substantive comments from broadcasters and newspaper publishers, all of which forcefully point to the same conclusion: the newspaper/broadcast cross-ownership rule "is no longer necessary in the public interest."[12]

Indeed, in the *2002 Biennial Review* the Commission determined that (1) the rule is not necessary to promote competition,[13] (2) the rule hinders the Commission's localism goals,[14] and (3) the rule is not necessary protect or achieve diversity.[15] The Third Circuit upheld each of these conclusions and praised the Commission's decision to repeal the rule as embodying "reasoned analysis."[16]

Continuing to regulate today's hypercompetitive and diverse media landscape with a rule designed for the media market of the 1970s is logically preposterous and legally infirm. Parties need not waste more effort proving what the Commission itself has acknowledged time and again—today's media marketplace is far different from that of 1975.[17] In fact, when compared to the media marketplace in existence just three years ago when the FCC released its *2002 Biennial Review*, today's media landscape is even more competitive. As discussed above, local broadcasters face even greater pressures to survive. Local newspapers too are threatened, and many once-dominant local newspapers may not survive.[18] Meanwhile, consumers have even

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12 *2002 Biennial Review*, at ¶ 369.

13 *See id.* at ¶ 341.

14 *See id.* at ¶ 354.

15 *See id.* at ¶ 355.

16 *Prometheus Radio Project*, 373 F.3d at 398.

17 *See, e.g.*, *2002 Biennial Review*, ¶ 87 (discussing the technological explosion that dramatically changed the media marketplace from 1993 to 2003); Review of the Commission's Regulations Governing Television Broadcasting, *Report and Order*, 14 FCC Rcd 12,903, ¶ 29 (1999) (discussing the considerable increase in media outlets since 1970).

18 *See The Future of Newspapers: Who Killed the Newspaper*, ECONOMIST, AUG. 26, 2006.

III. Conclusion

The Commission must not hesitate any longer. The television duopoly restrictions actively harm local broadcasters. At the same time, the newspaper/broadcast cross-ownership rule is a relic of a bygone era. Both rules unnecessarily handicap local broadcasters who face unprecedented and increasing competitive threats. The Commission must act now before further correction becomes too late and action is pointless.

Respectfully Submitted,

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