

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
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)	MB Docket No. 02-277
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)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

To: The Commission

**COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION**

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SUMMARY

When the Commission adopted the Newspaper Rule in 1975, it examined how broadcasting had evolved from its early days and observed, “[t]he Commission is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was.” The same principle should apply with equal force today.

It is undeniable that the media marketplace is evolving and expanding at breakneck speed, with an explosion of emerging platforms, new outlets, and revolutionary technologies – allowing for an endless array of voices and viewpoints. Today’s media market includes more local television stations, hundreds of video channels offered by cable, DBS, and IPTV providers, nearly double the number of local radio stations, the advent of satellite radio, and of course, the Internet and all its varied sources of news and information, making any cross-ownership restrictions involving newspapers truly an anachronism.

Notably, the impact of the Internet could not be more profound – the Internet of today has expanded viewpoint diversity in ways unimaginable just three years ago (let alone in comparison with the market as it existed in 1975). For example, the terms “blog,” “tagging,” “RSS,” “podcast,” and “user-generated” did not appear in the *2002 Media Ownership Biennial Review Order*. Media has now evolved beyond point-to-multipoint distribution to an interactive medium that enables user choice and user-generated content and feedback. In today’s media marketplace, newspaper/broadcast restrictions in the name of diversity cannot be justified.

Further, any restriction on newspaper/broadcast cross-ownership cannot survive constitutional review. The Supreme Court’s decision upholding the Newspaper Rule more than 25 years ago was based on the factual premise that a scarcity of broadcast outlets existed and that newspaper owners were not treated dissimilarly than other owners of major mass communications media. These underpinnings no longer exist, and the constitutional restrictions can no longer be justified.

In addition, the ban on newspaper/radio cross-ownership is particularly objectionable and must be eliminated. While the Commission has expressed keen interest in promoting news and public affairs programming for radio stations, the rule precludes cross-ownership with newspapers – entities in prime position to deliver this type of programming. The rule restricts local newspapers from extending their local news reporting onto the radio platform. Moreover, permitting newspaper/radio cross-ownership creates viable opportunities for minority-owned newspapers to acquire affordable broadcast properties.

Finally, Bonneville urges the Commission to act quickly to eliminate any limits on newspaper/broadcast cross-ownership – even if that means acting on the Newspaper Rule before addressing the other media ownership limits. The Newspaper Rule is the only Commission media ownership rule that has not been modified in any way over the course of the last thirty years, and it has now been a decade since the Commission first suggested that the rule be modified in light of the media marketplace. And, perhaps most importantly, the *Prometheus* court expressly affirmed the Commission’s finding that eliminating the blanket ban was justified and in the public interest – yet repeal of the ban was stayed. Thus, the Newspaper Rule is in a different procedural posture than the other rules subject to this proceeding, and should be acted on quickly.

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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
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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

To: The Commission

**COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION**

Bonneville International Corporation (“Bonneville”)¹ respectfully submits the following comments in the above-captioned *Further Notice of Proposed Rulemaking*,² issued in response to

¹ Bonneville operates 28 radio stations and a television station in markets located throughout the country, including stations ultimately commonly owned with a newspaper in Salt Lake City, Utah.

² *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 et al.*, Further Notice of Proposed Rulemaking, FCC 06-93 (rel. July 24, 2006) (“*Further Notice*”).

the Third Circuit’s remand decision in *Prometheus v. FCC*³ and the statutory requirement that the Commission review its media ownership rules on a quadrennial basis.⁴ The newspaper/broadcast cross-ownership rule (“Newspaper Rule”)⁵ should be eliminated without delay in light of (i) the extensive record that exists already demonstrating the Newspaper Rule cannot be justified; (ii) the Commission’s 2003 decision that a blanket ban should be repealed – *a finding upheld by the Third Circuit*, and (iii) today’s dynamic media marketplace – which has evolved significantly since the Commission’s 2003 decision. Further, the Commission should ensure that no ownership restrictions involve newspapers.

I. INTRODUCTION

After numerous proceedings over the past decade, the Commission finally eliminated the blanket ban on newspaper/broadcast combinations in the *2002 Media Ownership Biennial Review Order*, finding ample evidence that stations in newspaper/broadcast combinations provide more and better news programming and that the diversity in today’s media marketplace obviates the need for the newspaper/broadcast ban.⁶ The Commission instead adopted a Cross-Media Limit framework that allowed for common ownership in many but not all markets. On review, the Third Circuit upheld the Commission’s finding that repeal of the Newspaper Rule

³ *Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (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).

⁴ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996) (“1996 Act”); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Sections 202(c) and 202(h) of the 1996 Act).

⁵ 47 C.F.R. § 73.3555(c) (2005) (prohibiting common ownership of a daily newspaper and a broadcast station in the same market).

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*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13711-47 (2003) (“*2002 Media Ownership Biennial Review Order*”), *aff’d in part and remanded in part, Prometheus*, 373 F.3d at 372.

was justified and supported by record evidence – but remanded the Cross-Media Limits and stayed the elimination of the Newspaper Rule. Thus, the blanket ban of newspaper/broadcast combinations remains in effect, continues to discriminate against broadcasters and newspaper publishers, and impedes the public interest.

On several occasions, Chairman Martin has recognized the Newspaper Rule for the barrier that it is and has called for prompt action to revise or repeal the restriction on newspaper/broadcast combinations.⁷ Earlier this year, he observed:

[T]he rule prohibiting a newspaper from owning a broadcast property in the same market has not changed since it was put in place in 1975.... Despite the three previous Chairmen – two Democrats and one Republican – publicly committing to revise our newspaper rule, and despite a court approving the elimination of the cross-ownership prohibition, a newspaper today cannot buy even a radio station in its market because the old rule still applies. After more than a decade of promises to revise the rule and significant changes in the marketplace, nothing has changed. The Commission needs once again to try to update our rules to account for the dramatically changed media landscape.⁸

⁷ See, e.g., Opening Remarks by Commissioner Kevin J. Martin, Forum on Media Ownership, at 2 (Jan. 16, 2003), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-230399A1.pdf (“One rule in particular has not been reviewed since these changes have taken place: the prohibition against owning a newspaper and broadcast station in the same market. Today, newspapers are treated differently from all other forms of business that disperse information – they alone are *prohibited* from ownership of a broadcast station, even in the largest markets.” (emphasis in original)); Opening Remarks by Commissioner Kevin J. Martin, FCC Hearing on Media Ownership, at 2 (Feb. 27, 2003), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-233244A1.pdf (“Given all of the developments in the media landscape, one rule in particular is in need of review. The rule which prohibits a company from owning a newspaper and broadcast station in the same market has not been reviewed in almost thirty years.”); *Separate Statement of Commissioner Martin, 2002 Media Ownership Biennial Review Order*, 18 FCC Rcd at 13949 (“newspaper/broadcast combinations may result in a significant increase in the production of local news and current affairs, as well as an improvement in the quality of programming provided to their communities.”).

⁸ Remarks of Chairman Kevin J. Martin, Newspaper Association of America 2006 Annual Convention, at 2-3 (April 4, 2006) (“*Martin NAA Speech*”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-264774A1.pdf.

Bonneville agrees wholeheartedly and urges the Commission to act quickly to eliminate the Newspaper Rule. Further, in light of today's marketplace, the Commission should ensure that no cross-ownership limitations involve newspapers.

II. THE *PROMETHEUS* COURT FOUND THAT REPEAL OF THE NEWSPAPER RULE WAS JUSTIFIED AND SUPPORTED BY RECORD EVIDENCE

As part of the *2002 Media Ownership Biennial Review Order*, the Commission concluded that a blanket ban on newspaper/broadcast combinations could not be justified in today's media marketplace. The Commission found that the Newspaper Rule "cannot be sustained on competitive grounds,"⁹ that it "may in fact harm localism" by preventing efficient combinations that would allow for the production of more high-quality news,¹⁰ and that the ban cannot be justified as necessary to achieve or protect diversity given the growth "in the number, breadth, and scope of informational and entertainment media."¹¹ The Commission repealed the Newspaper Rule and adopted a framework of Cross-Media Limits instead, allowing for common ownership of broadcast stations and a newspaper in most but not all markets.

On appeal, the *Prometheus* court affirmed the Commission's finding that "the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."¹² In just five paragraphs, it dismissed the claims that repeal of the Newspaper Rule would undermine localism and diversity.¹³ The court confirmed that newspaper/broadcast combinations can promote

⁹ *2002 Media Ownership Biennial Review Order*, 18 FCC Rcd at 13748.

¹⁰ *Id.*

¹¹ *Id.* at 13670.

¹² *Prometheus*, 373 F.3d at 398.

¹³ *See id.* Petitioners did not challenge the Commission's finding that the Newspaper Rule is no longer necessary in the public interest to promote competition.

localism, citing to evidence that grandfathered newspaper-owned stations produce local news in higher quantity with better quality than other stations.¹⁴ The court also affirmed “that cable and the Internet supplement the viewpoint diversity provided by broadcast and newspaper outlets in local markets,” and that the blanket ban was not necessary to protect diversity.¹⁵ As a result, the court concluded that the Commission’s decision not to retain a ban on newspaper/broadcast cross-ownership “is justified under section 202(h) and is supported by record evidence.”¹⁶ The court went on to observe that repeal of the blanket ban “does not compel the conclusion that no regulation is necessary”¹⁷ – but today’s media marketplace is so dynamic and diverse that *any* restriction on newspaper/broadcast combinations cannot be justified.

III. IN LIGHT OF TODAY’S MEDIA MARKETPLACE, NO RESTRICTION ON NEWSPAPER/BROADCAST CROSS-OWNERSHIP CAN BE JUSTIFIED IN THE PUBLIC INTEREST

When the Commission adopted the Newspaper Rule in 1975, it considered how broadcasting had evolved from its early days and weighed issues of viewpoint diversity and competition. In doing so, it observed, “[t]he Commission is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was.”¹⁸ The same principle should apply with equal force today.

¹⁴ *Id.* at 398-99 (citing Thomas C. Spavins *et al.*, *The Measurement of Local Television News and Public Affairs Programs* (MOWG Study No. 7), at app. A (Sept. 2002)).

¹⁵ *Id.* at 400.

¹⁶ *Id.* at 398.

¹⁷ *Id.* at 400.

¹⁸ *Amendment of Sections 73.34, 73.240, And 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Second Report and Order, 50 F.C.C.2d 1046, 1075 (1975) (“1975 Order”).

It is undeniable that the media marketplace is evolving and expanding at breakneck speed, with an explosion of emerging platforms, new outlets, and revolutionary technologies – allowing for an endless array of voices and viewpoints. As the Commission has rightfully concluded, “the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans.”¹⁹

Notably, media has evolved beyond point-to-multipoint distribution to an interactive medium that enables user choice and user-generated content and feedback. In today’s media marketplace, newspaper/broadcast restrictions in the name of diversity cannot be justified as necessary in the public interest.

A. The Explosion in Media Outlets and Platforms Since the Newspaper Rule Was Adopted is Well-Documented

Since the Newspaper Rule was adopted in 1975, the media landscape has evolved exponentially. Indeed, as Chairman Martin recently observed, “[o]ver the last 30 years, we have seen an explosion in media outlets and other sources of news and information.”²⁰ He went on to quantify the magnitude of this change:

The rule that is in place today was based on a market structure that bears little resemblance to the current environment. That rule was adopted in an era with little cable penetration, no local cable news channels, fewer broadcast stations, and no Internet. In 1975, cable television served fewer than 15% of television households. And satellite TV did not even exist. Today, by contrast, fewer than 15% of homes do not subscribe to cable or satellite. Similarly, there were only about 7,500 radio stations in 1975, but by the end of 2005, there were almost 14,000. In 1975 there were only 952 television stations. Today, the number of TV stations has almost

¹⁹ 2002 *Media Ownership Biennial Review Order*, 18 FCC Rcd at 13766.

²⁰ *Martin NAA Speech* at 2.

doubled to more than 1,750 TV stations. Finally, the Internet as we know it today did not even exist in 1975, whereas more than 180 million Americans last year turned to the Internet for their news and information.²¹

The implications are clear: “With all of these changes has come a huge increase in the diversity of the provision of news and information to the American home.”²² Any limits on newspaper/broadcast cross-ownership are truly an anachronism given these changes – more local television stations, hundreds of video channels offered by cable, DBS, and IPTV providers, nearly double the number of local radio stations, the advent of satellite radio, digital television and radio multicasting, and of course, the Internet and all its varied sources of news and information.

B. The Proliferation of New Media Makes Any Concern Regarding Newspaper/Broadcast Combinations and Viewpoint Diversity a Relic of a Bygone Media Marketplace

The *Further Notice* seeks comment on “the impact of new technologies ... on media consumption and ownership.”²³ The impact of the Internet could not be more profound – the Internet of today has expanded viewpoint diversity in ways unimaginable just three years ago (let alone in comparison with the market as it existed in 1975). For example, the terms “blog,” “tagging,” “RSS,” “podcast,” and “user-generated” did not appear in the *2002 Media Ownership Biennial Review Order*. Internet applications – websites, blogs, audio and video streaming and webcasting, podcasts etc. – have redefined the media landscape to the point where any limit on newspaper/broadcast combinations cannot be justified.

²¹ *Id.*

²² John F. Sturm, Time for a Change on Media Cross-Ownership Regulation 57 FED. COMM. L.J. 201, 203 (2005).

²³ *Further Notice* at ¶ 10.

The Pew Internet & American Life Project recently reported that some 50 million American adults turn to the Internet for news on a typical day.²⁴ Viewers, listeners, and readers – and not traditional media – now determine what news and information they take in, when and where they do so, and over what platform. Technology has enabled the introduction of countless voices and provides users with the tools to identify and pull news stories and information on topics of greatest interest to them. Further, the Internet is now a highly participatory medium, where user-generated content is soaring and user feedback and rejoinders flourish. Never has viewpoint diversity been so robust and dynamic.

Of particular note is the impact of blogging. The blogosphere has grown exponentially since 2003. As of January 2006, there were 60 times more blogs than existed three years earlier, and as of February 2006 there were 1.2 million new blog posts every day.²⁵ Blog readership, moreover, is increasingly on the rise. As of January 2006, 57 million American adults were blog readers.²⁶ Blogspot, a developer-hosted blogging service, has more visitors than NYTimes.com, WashingtonPost.com, or USAToday.com – clear evidence that non-traditional media is drawing an audience on par with mainstream media sources.²⁷

With access to a computer and free software, any individual or group can develop a blog and report on events in the community or provide commentary on issues across the globe. While

²⁴ John B. Horrigan, Pew Internet & American Life Project, Online News, at 1 (Mar. 2006), *available at* http://www.pewinternet.org/pdfs/PIP_News.and.Broadband.pdf.

²⁵ Technorati, State of the Blogosphere, February 2006 Part 1: On Blogosphere Growth, *available at* <http://technorati.com/weblog/2006/02/81.html>.

²⁶ Amanda Lenhart & Susannah Fox, Pew Internet & American Life Project, Bloggers, at 2 (July 2006), *available at* <http://www.pewinternet.org/pdfs/PIP%20Bloggers%20Report%20July%2019%202006.pdf>.

²⁷ Comscore Networks, Behaviors of the Blogosphere: Understanding the Scale, Composition, and Activities of Weblog Audiences, at 5 (Aug. 2005), *available at* <http://www.comscore.com/blogreport/comScoreBlogReport.pdf>.

blogs vary in content, news commentary is a key area. An August 2005 report on blog audiences indicates that news/politics blogs drew 43 percent of the stand-alone blog audience.²⁸ Nine of the top 20 blogs ranked by visits as of the first quarter 2005 were blogs that aggregate or comment on news daily or even hourly.²⁹

Blogging, moreover, is serving an important role in local news reporting and local content – and the examples below are replicated across the nation. In St. Louis, where Bonneville operates stations, bloggers have established several sites dedicated to local news reporting, politics, and culture. The *St. Louis Independent Media Center* blog is a forum for the local community to post news stories of what is happening in and around St. Louis. Another site, the *STL Syndicate*, is a loose affiliation of blogs covering news, politics, and culture that pulls headlines from the individual sites, providing one place to go for the latest St. Louis news. Pittsburgh also has a thriving blog community. For example, *Pittsburgh Dish* is a blog devoted to local issues and is edited by former writers of a local alternative weekly publication, and *Pittsblog* analyzes the economic development of the city. In New Orleans, in the aftermath of Hurricane Katrina, the news blog of NOLA.com, the online counterpart to the New Orleans Times-Picayune, became *the news source* on hurricane damage and recovery efforts conveyed to a community in diaspora.³⁰

News and public affairs blogging enriches the local media landscape not only in large metropolitan areas, but also in less densely populated cities and municipalities. Regions that are

²⁸ *Id.* at 7. Stand-alone blogs are produced without the use of a developer-owned blog hosting service such as Blogs.com or TypePad. *See id.* at 5-7.

²⁹ *Id.* at 6.

³⁰ Mark Glaser, NOLA.com Blogs and Forums Help Save Lives After Katrina, Online Journalism Review, available at <http://www.ojr.org/ojr/stories/050913glaser/print.htm>.

among the smallest of the 298 U.S. radio markets by Metro Survey Area (“MSA”) as measured by Arbitron have become incubators for locally-originated, locally-focused online journalism. In Asheville, North Carolina, an area ranked 161st among Arbitron MSAs with a population of 255,000, bloggers scrupulously analyze local news, elections, and cultural events on sites like *Ashvegas* and *Blog Asheville*. The Billings, Montana area, ranked 261st among Arbitron MSAs with a population of 115,800, also has a vibrant blogging community. In fora such as *Billings Blog* and *Mtpolitics.net*, Billings-area residents discuss and analyze state, local and national political developments. *Thoughts from the Middle of Nowhere* does the same, albeit from a perspective of particular local relevance: that of a Billings-area cattle rancher. Blogging is a nationwide phenomenon at the *local level*.

Further, technology has developed that enables users to sift through the Internet space for the material of most relevance to their interests. Tagging and social bookmarking sites, for example, allow users to classify, rank and share lists of Internet resources by topic.³¹ RSS (“really simple syndication”) feeds allow users to have news on specific topics constantly fed to them instead of searching for it.³² In addition, websites like digg.com allow the community to submit content which can be judged by viewership, while offering users an opportunity to comment on the stories as well. This wholly new participatory media places news and information in the hands of the community, offering an independent assessment of worthy content and the opportunity to respond in one’s own voice.

³¹ Wikipedia, Social Bookmarking, *available at* http://en.wikipedia.org/wiki/Social_bookmarking.

³² Wikipedia, RSS (file format), *available at* [http://en.wikipedia.org/wiki/RSS_\(file_format\)](http://en.wikipedia.org/wiki/RSS_(file_format)).

Simply put, with new technologies and greater penetration, today's Internet has expanded viewpoint diversity, civil discourse, and self-expression like never before.

C. The Reality of Today's Media Marketplace Renders Any Restriction on Newspaper/Broadcast Cross-Ownership Unconstitutional

A restriction on newspaper/broadcast cross-ownership cannot survive constitutional review, especially in light of the growth in traditional media outlets and the proliferation of new media. Limits on newspaper/broadcast combinations violate the First Amendment by denying parties the right to the broadcast form of speech because of a commonly owned newspaper. Any newspaper cross-ownership limit should be subject to heightened scrutiny because it affects newspapers – entities that enjoy the highest First Amendment protections.³³ Any such limit, however, does not even withstand scrutiny under the lesser standard ("intermediate scrutiny") applied to cable television and other non-broadcast media.³⁴ For example, courts previously have found the statutory prohibition on cross-ownership of a telephone and a cable company as violative of the First Amendment.³⁵

³³ See *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987) (holding that government must show that a content based regulation of a print publication "is necessary to serve a compelling state interest and is narrowly drawn to achieve that end.").

³⁴ Under the intermediate scrutiny standard, the court examines whether a restriction "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." *Turner Broadcasting System, Inc., et al. v. FCC*, 520 U.S. 180, 189 (1997).

³⁵ The Ninth Circuit Court of Appeals held that the ban was unconstitutional where the evidence to demonstrate that the ban would foster competition in the cable industry or promote diversity in programming was insufficient and where less restrictive means of achieving diversity are available. *US West, Inc. v. U.S.*, 48 F.3d 1092, 1101-06 (9th Cir. 1995), *vacated and remanded for mootness sub nom. U.S. v. US West*, 516 U.S. 1155 (1996), *dismissed sub nom. Pacific Telesis Group v. U.S.*, 84 F.2d 1153 (9th Cir. 1996). The Fourth Circuit reached a similar conclusion. *Chesapeake and Potomac Telephone Co. of Virginia v. U.S.*, 42 F.3d 181,201-02 (4th Cir. 1994), *vacated and remanded for mootness sub nom. U.S. v. Chesapeake & Potomac Telephone Co. of Virginia*, 516 U.S. 415 (1996).

Although the U.S. Supreme Court previously upheld the newspaper cross-ownership rule more than 25 years ago, the deferential standard of review applied in that case was based on the factual premise that there existed a scarcity of outlets in the broadcast media and because newspaper owners were not treated dissimilarly than other owners of major media of mass communications.³⁶ The Commission and the courts have recognized that subsequent technological developments have eroded the factual underpinnings of the scarcity rationale.³⁷ Today's media marketplace renders the scarcity rationale untenable. Moreover, the broadcast ownership restrictions on owners of other major media outlets have been liberalized in the ensuing decades and there is no ban on newspaper/cable or DBS, or newspaper/satellite radio cross-ownership – but the Newspaper Rule remains.³⁸ The First Amendment restriction on broadcasters and newspaper publishers no longer can be justified. Further, the Newspaper Rule

³⁶ *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 798-802 (1978).

³⁷ The Supreme Court has indicated that the scarcity rationale could be revisited upon “some signal from Congress or the FCC that technological developments have advanced so far that some revision of the system of broadcast regulation may be required.” *FCC v. League of Women Voters of California*, 468 U.S. 364, 376-77 n.11 (1984). As far back as 1987, the FCC concluded that “the scarcity rationale developed in the *Red Lion* decision and successive cases no longer justifies a different standard of First Amendment review for the electronic press.” *Syracuse Peace Council*, Order, 2 FCC Rcd 5043, 5053 (1987), *aff'd*, *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989).

³⁸ *See, e.g.*, 1996 Act, § 202(a)-(g) (unclassified) (eliminating national ownership limits on radio, expanding limit on local ownership of AM and FM stations, eliminating numerical cap on television station ownership and increasing national audience reach cap to 35%, extending waiver policy for radio/television cross-ownership to the top 50 markets, modifying the dual network rule to enable the top four networks to own emerging networks, and eliminating the network/cable cross-ownership rule). *See also*, *Syracuse Peace Council*, 2 FCC Rcd at 5048 n.106, 5051 (repealing fairness doctrine); *Amendment of Section 73.3555 of the Commission's Broadcast Multiple Ownership Rules*, Second Report and Order, 4 FCC Rcd 1741 (1989), *recon. granted in part*, 4 FCC Rcd 6489 (1989) (relaxing policy for waivers permitting radio/television cross-ownership); *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755 (1992) (relaxing limit on local ownership of AM and FM stations and raising national radio cap); *Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules*, Report and Order, 11 FCC Rcd 546 (1995) (repealing rule intended to limit power of networks over local stations); *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903 (1999), *remanded*, *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. (continued on next page)

violates the Fifth Amendment’s equal protection clause by continuing to single out newspaper publishers for more stringent treatment than other media of mass communications.

D. The Ban on Newspaper/Radio Cross-Ownership is Particularly Objectionable and Must Be Eliminated

In adopting the Newspaper Rule back in 1975, the Commission recognized that radio is a different medium – “[r]ealistically, a radio station cannot be considered the equal of either the paper or the television station in any sense, least of all in terms of being a source for news or for being the medium turned to for discussion of matters of local concern.”³⁹ Yet three decades later, the blanket ban on newspaper/broadcast cross-ownership continues to prohibit a newspaper from being co-owned with radio stations in any market.

As discussed above, the Newspaper Rule makes no sense in today’s media marketplace – and it is even more absurd when considered in the context of radio. The Commission has always expressed keen interest in promoting news and public affairs programming for radio stations, yet the rule precludes cross-ownership with newspapers – entities in prime position to deliver this type of programming. The Commission has also expressed concern about localism – but the rule restricts local newspapers from extending their local news reporting onto the radio platform. In strongly-worded comments submitted in the *2002 Media Ownership Biennial Review* proceeding, the Diversity and Competition Supporters questioned whether diversity is promoted when a radio station is purchased and programmed with a music format, “where the alternative would have been the local newspaper buying the radio station and putting newspaper reporters

2002) (relaxing local television rule and radio/television cross-ownership rule to allow ownership of up to two television stations and six radio stations in certain local markets).

³⁹ *1975 Order*, 50 F.C.C.2d at 1083.

on the air.”⁴⁰ There is simply no cogent argument for imposing restrictions on newspaper/radio cross-ownership.

In addition, the *Further Notice* seeks comment on ways to advance media ownership by minorities.⁴¹ Permitting newspaper/radio cross-ownership creates viable opportunities for minority-owned newspapers to acquire affordable broadcast properties, or minority-owned broadcasters to acquire or start up a newspaper. On numerous occasions, advocates of minority media ownership have identified capital requirements as a major barrier to acquiring media outlets. Whereas some television properties may be prohibitively expensive, minority newspaper publishers may find radio a more reasonable alternative. Any restriction on newspaper/radio combinations is not only unjustified, but it affirmatively impedes the public interest.

IV. WASHINGTON POST RADIO DOES NOT ELIMINATE THE NEED TO REPEAL THE NEWSPAPER RULE

Earlier this year, Bonneville and The Washington Post launched a new newsradio station into the Washington, DC market, *Washington Post Radio*. Bonneville continues to own, operate and control the two stations involved, WTWP-AM/FM, while The Washington Post provides news, reporters, and columnists for on-air interviews and discussion.

Combining the resources of a newspaper and a broadcaster adds a new source of local news and public affairs reporting to the airwaves. In September 2006, for example, on Primary Election Day in Maryland and the District of Columbia, the station heard from listeners about problems occurring at the polls. By working with Washington Post reporters in the field, it was

⁴⁰ Initial Comments of Diversity and Competition Supporters, MB Docket 02-77, at 42 (filed Jan. 2, 2003).

⁴¹ *Further Notice* at ¶¶ 4-6.

soon able to report problems in the District and Prince George's County – and the significant problems in Montgomery County – that prevented hundreds, perhaps thousands of people from voting. During the day, Washington Post reporters were able to pinpoint the problems and suggest alternative ways of voting and announce the extension of polling hours for an hour.

A combined newspaper/broadcast approach brings stories and reporters from the newspaper to people who otherwise may not have access. These include workers with long commutes who may have little or no time to read the newspaper but who can listen to the station as they commute, as well as office workers who can access the station via audio streaming on-line. They also include those who are sight-impaired and cannot read the newspaper, and those with literacy issues who cannot read or do not read well.

At the same time, the transaction costs involved in an arrangement like *Washington Post Radio* are typically very high and would be prohibitive for many parties interested in moving newspaper to the broadcast platform. Further, there are material advantages to single ownership with respect to operational practices and economic considerations. A single owner, moreover, would enjoy greater efficiencies. The significant potential of newspaper/broadcast combinations is currently restricted by the outdated prohibition; *Washington Post Radio* should not be taken as evidence there is no need to revise the Newspaper Rule.

V. THE COMMISSION SHOULD ACT QUICKLY ON THE NEWSPAPER RULE, EVEN IF IT MUST ACT ON IT BEFORE OTHER RULES

Finally, Bonneville urges the Commission to act quickly to eliminate any limits on newspaper/broadcast cross-ownership – even if that means acting on the Newspaper Rule before addressing the other media ownership limits. By way of background, it is important to note that the Newspaper Rule is the only Commission media ownership rule that has not been modified in any way over the course of the last thirty years. Further, it has now been a decade since the

Commission first suggested that the rule be modified in light of the media marketplace.⁴² And, perhaps most importantly, the *Prometheus* court expressly affirmed the Commission's finding that eliminating the blanket ban was justified and in the public interest – yet repeal of the ban was stayed. Thus, the Newspaper Rule is in a different procedural posture than the other rules subject to this proceeding, and should be acted on quickly.

Four years ago when the Commission initiated the *2002 Media Ownership Biennial Review* proceeding, then-Commissioner Martin expressed the following: “We now have a full record on the extent to which the newspaper/broadcast rule should be retained, modified or eliminated, and we have had almost a year to review the record. Regardless of what the Commission concludes is the appropriate action to take, the affected parties deserved to be spared further delay in knowing that answer.”⁴³ Bonneville agrees and urges the Commission to act quickly.

⁴² *Newspaper/Radio Cross-Ownership Waiver Policy*, Notice of Inquiry, 11 FCC Rcd 13003 (1996).

⁴³ Remarks of Commissioner Kevin J. Martin to the Texas Association of Broadcasters, at 4 (Aug. 22, 2002), available at <http://www.fcc.gov/Speeches/Martin/2002/spkjm211.txt>.

VI. CONCLUSION

As discussed above, the fundamental underpinnings of the media marketplace have changed – and so too must the FCC’s rules. New media offers users the ability to access the information they want, when and how. The advent of user-generated content changes the nature of public discourse. In this new environment, the Newspaper Rule is an impediment that does not serve the public interest. The Commission should repeal it immediately and ensure that no cross-ownership restrictions involve newspapers.

Respectfully submitted,

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