Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

To: Marlene H. Dortch, FCC, Office of the Secretary
Attention: The Commission

REPLY COMMENTS OF UNITED COMMUNICATIONS CORPORATION

United Communications Corporation ("UCC"), by counsel, hereby submits its Reply to the comments received by the Commission pursuant to the *Further Notice of Proposed Rulemaking* in the above-captioned matter.[1] Among thousands of comments submitted in this proceeding, very few addressed the particular need of smaller

[1] *Cross Ownership of Broadcast Stations and Newspapers,* Further Notice of Proposed Rulemaking, FCC 06-93 (July 24, 2006).

communities for a regulatory regime that allows for common ownership of a local newspaper and a television station.[2] Yet, this is an important aspect of the FCC's opportunity in this Docket to conform its ownership rules to modern reality.

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The ultimate objective should not be to minimize cross ownership, *per se*, but to maximize service to the public. As an operator of small town newspapers[3] and smaller market television stations,[4] UCC has displayed a commitment to local service that has been recognized, among many others, by the New York State Broadcasters Association and the Syracuse Press Club. UCC is also well informed on both the market pressures on media operators in small communities, and on the resources needed in order to support quality local service. Informed by this experience, we emphasize that the prohibition on cross ownership of a television station and a local newspaper should be eliminated *most especially in smaller markets*. There, the ban stands as an obstacle to preserving local daily newspaper service, and inhibits maximum service by local television stations.

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[2] *See* (in addition to the Comments of UCC) for the rare exception, Comments of Media General, Inc., 94-97, and Shamrock Communications, Inc. and the Scranton Times, L.P., 6-7, both of which were submitted in the above-captioned matter as of October 23, 2006.

[3] UCC operates the *Kenosha News* in Kenosha, Wisconsin; *The Public Opinion* in Watertown, South Dakota, and *The Sun-Chronicle* in Attleboro, Massachusetts.

[4] UCC is the licensee of KEYC-TV, Mankato, Minnesota and WWNY-TV, Carthage, New York, as well as low power television stations WNYF-CA, Watertown, New York; WNYF-LP, Massena, New York; and K19CA, St. James, Minnesota.

UCC's Comments were hardly alone in pointing out that the cross ownership ban serves no useful purpose.[5] Meanwhile, significant opponents of eliminating the ban focused on a supposed link between cross ownership and threats to competition,[6] diversity[7] and localism.[8] We fear that, in the face of such widely disparate viewpoints, the Commission may be tempted to indulge in un-Solomonic "baby-splitting."[9] Specifically, a go-slow approach to relaxing the cross ownership rule -- *i.e.*, retaining a ban in smaller markets only -- would hurt smaller communities where independent local newspapers are less and less economically viable. Elimination of the ban is especially necessary in smaller markets, where the cost of cross ownership to viewpoint diversity is illusory and where the benefits to localism are real.

[5] *See* Comments of Belo Corp., 5-17, Block Communications, Inc., 6-8, Bonneville International Corporation, 5-13, Cox Enterprises, Inc., 5-27, Gannett Co., Inc., 6-30, Hearst-Argyle Television, Inc., 47-51, Media General, Inc., 5-56, Morris Communications Company, Inc., 4-20, the National Association of Broadcasters, 110-123, Newspaper Association of America, 3-94, and Shamrock Communications, Inc. and the Scranton Times, L.P., 2-4, all of which were submitted in the above-captioned matter as of October 23, 2006.

[6] *See* Comments of Diversity and Competition Supporters, 1-8, and Douglas Gomery, 3-18, both of which were submitted in the above-captioned matter as of October 23, 2006.

[7] *See* Comments of American Federation of Labor and Congress of Industrial Organizations, 52-55, American Federation of Television and Radio Artists, 20-22, Communications Workers of America, 8-12, 54-57, Consumers Union, et. al., 10-12, 20-23, Diversity and Competition Supporters, 1-8, Douglas Gomery, 3-18, David E. Griffith, 11-13, and the Office of Communications of United Church of Christ, Inc., et. al., 60-65, all of which were submitted in the above-captioned matter as of October 23, 2006.

[8] *See* Comments of Communications Workers of America, 17-29, 54-57, Consumers Union, et. al., 10-12, 20-23, Donald McGannon Communications Research Center, 1-12, all of which were submitted in the above-captioned matter as of October 23, 2006.

[9] Solomon split no babies. He only *pretended* that he was willing to do so, as a means to maximize the welfare of the child.

I. The costs of allowing cross ownership are illusory.

Opponents of eliminating the ban on cross ownership argue that common ownership of a local newspaper and a television station threatens competition[10] and diversity,[11] and undermines localism.[12] Yet, concrete evidence to this effect is lacking. Rather, eliminating the cross ownership ban would have virtually no effect on competition or diversity, and would in fact bolster localism, in smaller markets.

The Commission has already established that competition will not suffer from cross-ownership of a television station and a newspaper because advertising in one does not easily substitute for advertising in the other.[13] At any rate, the anti-competitive premise is false.[14] For example, it proceeds from the assumptions (a) that each television broadcaster is a prosperous predator intent on draining ever more advertising revenue away from the local daily, and (b) that the newspaper publisher can otherwise continue to publish a quality product.

In fact, with the secular decline in the size of the audiences reached by both network-affiliated stations and independents, many small market television broadcasters find their

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[10] *Supra* Note 6.

[11] *Supra* Note 7

[12] *Supra* Note 8.

[13] *2002 Biennial Regulatory Review*, 18 FCC Rcd, 13620, 13747, ¶332 (2003) (the "*2002 Biennial Review Order*").

[14] *See* Adam Thierer of the Progress & Freedom Foundation, 47-69, submitted in the above-captioned matter as of October 23, 2006.

financial status increasingly precarious.[15] In that regard, some of the comments advocated more permissive approaches to television duopolies as a way to bolster *struggling* television broadcasters in smaller markets.[16] Such stations are struggling not because of revenue lost to newspapers, but because of the proliferation of other content providers, *i.e*., Internet, cable, satellite, etc. These same arguments also support elimination of the cross ownership ban to permit common ownership of a television station and a newspaper in smaller markets. Thus, rather than harm competition, allowing cross ownership will aid local television broadcasters who are struggling in smaller markets through the sharing of resources with a local publisher. This in turn will preserve multiple advertising options for print and television advertisers.

With respect to diversity, the peculiar market position of small market television stations and newspapers makes diversity of ownership highly improbable. Thus, the FCC has expressly rejected a diversity rationale as supporting the cross ownership ban.[17] In fact, the cultural and market forces that threaten viewpoint diversity will continue to undermine small-market daily newspaper operations regardless whether the Commission maintains a television-newspaper cross ownership ban.

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[15] *See* Comments of National Association of Broadcasters at exhibit entitled "The Declining Financial Position of Television Stations in Medium and Small Markets," submitted in the above-captioned matter as of October 23, 2006.

[16] *See, e.g.*, Comments of Block Communications, Inc., 2-6, Granite Broadcasting Corporation, 3-7, Hoak Media, LLC, 3-6, the National Association of Broadcasters, 87-109, and Small Market Television Stations, 6-13, all of which were submitted in the above-captioned matter as of October 23, 2006.

[17] *See Further Notice* at ¶24, citing *2002 Biennial Review Order* at 13760-62, ¶¶355-59. The *Prometheus* court upheld that determination, as well. *Prometheus Radio Project, et. al. v. FCC*, 373 F.3d 372, 399-400 (2004) ("*Prometheus*").

Increasingly in smaller markets, fostering two independent voices simply is not an option. For example, in the Watertown-Carthage, New York market where UCC operates WWNY-TV and a low-power television station, the local ABC affiliate found that it could no longer sustain a local news operation. Requiring separate operation of the two full power stations has crippled the service on one of the stations, whereas both stations could be offering news under common ownership. Likewise, the cross ownership ban threatens to force smaller markets into a box that can hold *either* a television station *or* a newspaper, but not both. The best that can be accomplished is to permit an environment in which a single owner is allowed to use multiple forms of media serve the public rather than forcing of an outlet to fall on the sword of illusory competition. UCC therefore urges the Commission to allow cross ownership as a means of promoting the preservation of service by *both* a local television station *and* a local newspaper.

II. The benefits of allowing cross ownership are real.

As suggested above, cross ownership of print and television media fosters and preserves localism.[18] The economies of scale, efficiencies of operation, and journalistic synergies that can benefit cross owned stations and newspapers have been set forth in

[18] The FCC, in its prior deliberations, has already concluded that localism actually can be fostered by eliminating the ban on cross ownership of a newspaper and television station in the same market. *See Further Notice* at ¶24, citing *2002 Biennial Review Order* at 13747, ¶328, Note 717. The U.S. Court of Appeals for the District of Columbia Circuit has upheld that conclusion. *See Further Notice* at ¶28, citing *Prometheus* at 398-400.

UCC's Comments and in other comments,[19] as well as by the FCC in its *Biennial Review Order*.[20]

Since the FCC is not empowered to regulate newspaper publishing as it does broadcasting, UCC is concerned that the Commission may ignore its opportunity to assist in preserving service by local daily newspapers in smaller communities. However, surely the public interest in promoting multiple forms of local media should compel the FCC to consider the effects of its cross ownership ban on local newspaper publishing in smaller communities. Because the current plight of newspapers in smaller markets was well documented in UCC's Comments, as well as in other comments[21] and in the FCC's own *Biennial Review Order*,[22] the FCC has an adequate record to support a complete elimination of the cross ownership ban.

III. The need for cross ownership is *greatest* in smaller markets.

The concept of promoting some service where there is none is of course not new to the FCC. It essentially mirrors the "fair distribution" policies expressed in Section 307(b) of the Communications Act, as amended, promoting new service in communities that are inadequately served. Although Section 307(b) does not reach non-broadcast media like newspapers, the principle that some service is better than no service is

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[19] *See* Comments of Newspaper Association of America, submitted in the above-captioned matter as of October 23, 2006.

[20] *2002 Biennial Review Order* at 13753-59, ¶¶342-54.

[21] *Supra* Note 19.

[22] *Supra* Note 20.

fundamental to the FCC. In this context, the FCC has an opportunity to promote much more service in smaller markets where, absent the journalistic synergies occasioned by common ownership, either a local television station or a local newspaper, or even both, are increasingly unlikely to survive.

The current rule that allows cross ownership where a local television licensee starts a new newspaper is of extremely limited value. The ability to own and operate two existing assets is simply much more attractive than the gamble that beginning a new venture in a small market will bear fruit in any near term. It is naive to expect media businesses to take such risks in a climate in which small market broadcasting and newspaper publishing are already considered eligible for the endangered species list.

The recent rise of independent outlets, like U-Tube, that are neither newspapers nor broadcasters regulated by the FCC, demonstrates that no local cable broadcaster could succeed in imposing “mind control” on a community even if the broadcaster also owned a local newspaper. Furthermore, the ban rests on the unwarranted assumption that the cross owner would necessarily impose the same viewpoint on both a newspaper operation and its television broadcast sibling. However, many publishers, UCC included, give wide editorial discretion to the manager or editor of each media operation. Common ownership does not necessarily mean that common viewpoints will be espoused across the board.

Cross ownership at least holds the promise of sustaining local newspaper operations that would otherwise fail. The continued ban on such cross ownership in smaller local markets could well eliminate one of the last options for saving the daily newspaper in such markets before it dies altogether. Thus, even though this may at first seem counter-intuitive, eliminating the ban on television-newspaper combinations in small markets is critical to strengthening localism. UCC supports the FCC's previous findings that local service can be enhanced by cross ownership.

Conclusion

In view of the foregoing, a ban on cross ownership in smaller communities threatens to deprive such communities of service by either local television or local newspaper. Allowing cross ownership, meanwhile, permits efficiencies of operation and the synergies that most businesses seek in today's markets. Cross ownership is therefore essential in smaller markets if service by local television stations and local newspapers is to remain viable. Accordingly, UCC urges the Commission to eliminate the ban on cross ownership of a television station and a local daily newspaper in all markets. If the Commission should fear to make the change universal, then it should at least be made in smaller markets where common ownership of print and television media will help preserve ongoing service by both forms of media.

Respectfully submitted

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