

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	)	MB Docket No. 06-121
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
2002 Biennial Regulatory Review – Review	)	
of the Commission’s Broadcast Ownership	)	MB Docket No. 02-277
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

**MOTION FOR ISSUANCE OF A FURTHER NOTICE, OR IN THE ALTERNATIVE,  
AN EXTENSION OF TIME TO COMMENT ON STUDIES**

The Office of Communication of the United Church of Christ, Inc. (“UCC”), the National Organization for Women (“NOW”), Common Cause, and the Benton Foundation, by their attorneys, the Institute for Public Representation (“IPR”), respectfully request that the FCC issue a Further Notice detailing any proposed changes to the media ownership rules and explaining how the studies, which the FCC released on July 31, 2007, relate to those proposals. In the

alternative, we request an extension of time for filing comments in response to the Public Notice seeking comment on research studies on media ownership.<sup>1</sup>

On July 31, 2007 the Commission announced the release of ten research studies on media ownership. The Public Notice states that the studies “are intended to inform the Commission’s comprehensive review of its broadcast ownership policies undertaken in its rulemaking proceeding in MB Docket No. 06-121 involving the issues raised by the opinion of the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC* and its quadrennial review of its broadcast ownership rules and certain other rules.”<sup>2</sup> The Public Notice further states that “[t]he Commission intends to use the data collected in the studies, as well as the comments, to inform its decisions in the ownership proceeding.”<sup>3</sup> While the Public Notice provides a few sentences describing each study, it nowhere identifies how it intends to use the studies, what rule changes it believes are supported by the studies, or how it thinks the studies might be relevant.

The studies are long—almost 700 pages in all. One, study #4, is actually four different studies by four different authors. Yet, the Public Notice provided only 60 days (until October 1, 2007) to comment and only an additional 15 days (until October 16, 2007) for reply comments.

Although the Public Notice stated that the studies would be peer-reviewed, the reports of the peer reviewers were not made available to the public until September 4, 2007. Shortly thereafter, Commission made available some of the underlying data on its website and announced that other data could only be accessed by entering into a protective order.<sup>4</sup>

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<sup>1</sup> Public Notice, FCC Seeks Comment on Research Studies on Media Ownership, DA 07-3470 (rel. July 31, 2007).

<sup>2</sup> *Id.* at 1 (citations omitted).

<sup>3</sup> *Id.*

<sup>4</sup> Protective Order, DA 07-3741, rel. Sept. 5, 2007.

Several other parties have already raised serious questions about the adequacy of the peer review process and the insufficient time provided for public input on these important issues. For example, members of Congress have raised a series of questions regarding the appropriate level of peer review, the way reviewers were selected, and the timing of the peer review process. They have asked the FCC to provide additional peer reviews and re-open the public comment period for at least 90 days after that process is completed.<sup>5</sup> Free Press, Consumer Federation of America and Consumers Union have also asked the FCC to issue a notice seeking comment on a peer review plan, followed by the peer review, and then public comment, or at a minimum, to provide at least 90 days for public comment after access is afforded to the underlying data.

UCC, NOW, Media Alliance, Common Cause and the Benton Foundation support these requests. We strongly agree that more time is needed for the public to provide meaningful comment on the studies for several reasons.

As we argued in our Reply Comments, the Further Notice released in July 2006 ignored the exhortation of the *Prometheus* court to provide better notice on remand. It neither proposed any specific rules, nor even set forth a range of options. As such, we argued that the Further Notice did not constitute adequate public notice under the Administrative Procedure Act, but even if it did, seeking another round of comments on specific proposals would improve the quality of decision-making by the Commission and would increase the likelihood of adopting rules that would serve the public interest and withstand judicial review.

The FCC has now compounded this problem by seeking public comment on ten studies without identifying how it intends to use them. The FCC still has not proposed any specific rule changes and thus does not explain how the studies might (or might not) support its proposals.

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<sup>5</sup> Letter to Chairman Martin from Representatives Hinchey, Stupak, Baldwin, Slaughter and Price, Sept. 14, 2007.

Because the FCC does not state whether or how it intends to rely on these studies, it is very difficult for the public to know where to focus limited resources to make their comments most relevant. Consequently, we renew our request that the FCC issue a new Further Notice that reasonably identifies any changes to the rules that the FCC is considering and explain how the studies relate to those proposals.

While issuing a new Further Notice would seem to be the best way to comply with the *Prometheus* court's mandate to "provide better notice on remand,"<sup>6</sup> at a minimum, the FCC should afford more time for comment. Although sixty days is a reasonable comment period in many instances, that is not the case here where there are so many different rules—the local TV limits, the local radio limits, the newspaper-broadcast cross-ownership rule, the radio-television cross-ownership rule, and the UHF discount—under review. In addition, this proceeding involves a number of important and complex issues such as how to ensure ownership opportunities for minorities and women, how to take account of the internet and other new technologies, and whether certain proposals are consistent with the Constitution. Two months is an insufficient amount of time to properly and thoroughly review and analyze data of this size and complexity – particularly when it concerns a rulemaking as important and with as far-reaching consequences as the media ownership proceeding.

Moreover, with the release of the studies on July 31, the available time for reviewing the studies is actually shorter because August is the traditional time for many in the Washington, DC area to schedule vacations. In addition, at IPR, a public interest law firm where the legal research and drafting is done by Georgetown Law students under faculty supervision, we did not have students available to analyze the studies until after school began on September 4.

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<sup>6</sup> *Prometheus Radio Project v. FCC*, 373 F.2d 372, 411 (3d Cir. 2004).

At the same time, IPR has also been working on a number of other important FCC proceedings on behalf of these and other public interest organizations. For example, IPR is drafting comments in response to the Further Notice in the ownership proceeding seeking comments on MMTC's proposals. These comments and replies are due on the same dates—October 1 and 16. IPR also drafted comments in response to the Commission's Public Notice regarding compliance with the Children's Television Act that were due September 4, 2007, with replies due October 1. IPR also drafted a Petition for Reconsideration in Digital Audio Broadcasting, which was due September 14, 2007. With so many important and complicated proceedings going on at the same time, it is not possible for IPR to give all of them the attention they deserve.

In sum, we request that the Commission issue a Further Notice seeking comments on specific proposals. However, in the event that the Commission declines this request, we urge that the Commission at a minimum grant an additional period for public comment after the peer review process is properly conducted and all of the relevant information is made available to the public.

Respectfully Submitted,

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Dated: September 18, 2007