

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
Ways to Further Section 257 Mandate and To Build on Earlier Studies	) )	MB Docket No. 04-228

**REPLY COMMENTS OF CONSUMERS UNION,  
CONSUMER FEDERATION OF AMERICA AND FREE PRESS**

Gene Kimmelman  
Vice President for Federal and  
International  
Policy  
Consumers Union  
1101 17th Street, NW Suite 500  
Washington, DC 20036  
202-462-6262

Mark Cooper  
Director of Research  
Consumer Federation of America  
1424 16th Street, N.W. Suite 310  
Washington, D.C. 20036  
301-384-2204

Ben Scott  
Policy Director  
Free Press  
501 Third Street, NW, Suite 875  
Washington, DC 20001  
202-265-1490

October 16, 2007

Consumers Union, Consumer Federation of America and Free Press (collectively, “CU et al.”), respectfully submit these Joint Reply Comments in response to the Second Further Notice of Proposed Rulemaking (“2<sup>nd</sup> FNPRM” or “Further Notice”), released August 1, 2007 by the Federal Communications Commission (“FCC” or Commission”).

In our initial comments in this Further Notice<sup>1</sup> we demonstrated that the Commission lacks the basic understanding of the true level of female and minority broadcast ownership. Without even this most basic knowledge, the Commission is unable to conduct meaningful policy analysis into the past and potential future effects of its broadcast ownership rules on female and minority owners. Thus we strongly urged the Commission to not move forward with any rule changes until this issue is given the attention it rightly deserves.

We also offered in our comments detailed evidence that there is a strong and negative relationship between media market concentration and the level of female and minority ownership. This evidence is grounded in theory and supported by empirical data. Simply stated, the record demonstrates that the policy goal of increasing female and minority broadcast ownership runs directly counter to the goals of increasing media market consolidation. If the Commission intends to carry out its mandate under Sections 257 and 309(j), then it must not make *any* rule changes that lead to more concentrated local markets. This is true in isolation, and is also true in the presence of “offset” policies -- those that grant waivers in exchange for some action that may or may not lead to new female- or minority-owned stations.

---

<sup>1</sup> Comments of Consumers Union, Consumer Federation of America, and Free Press in 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 et al.*, October 1 2007 (“Consumer Groups FNPRM Comments”).

In these brief reply comments we urge the Commission to reject the definition of “Socially and Economically Disadvantaged Business” (“SDB”) offered by Clear Channel in their initial comments.<sup>2</sup> The Commission cannot adopt a definition of SDBs without noticing a proposed definition, and if it does, it should reject the absurd definition proposed by Clear Channel.

Clear Channel’s definition of SDB is not targeted to helping minorities—or even small businesses. Clear Channel’s definition would include, and provide “special” benefits to, the vast majority of incumbent broadcasters. Under Clear Channel’s definition, an SDB would be an entity that: (1) Does not hold an attributable interest in more than fifty radio stations nationally and does not hold an attributable interest in any radio station in the local market where the transaction would take place; and (2) Does not hold an attributable interest in more than six television stations nationally and does not hold an attributable interest in any television station in the local market where the transaction would take place.

Despite Clear Channel’s claim that this definition would promote broadcast ownership among individuals and entities lacking a substantial presence in the broadcasting industry, Clear Channel is mistaken. This definition is so broad that it would include not only the smaller or entering broadcasters, but also the vast majority of current broadcasters. Indeed, **99.4% of unique radio owning companies** (2,829 of the 2,845) **and 81.9% of unique TV owning companies** (221 out of the 270) **would be considered a “Socially and Economically Disadvantaged Business” under Clear**

---

<sup>2</sup> Comments of Clear Channel Communications in *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 et al., October 1 2007 (“Clear Channel FNPRM Comments”).

**Channel's proposed definition.** In other words, only 16 unique radio-owning companies would *not* be SDBs; only 49 unique TV owning companies would *not* be considered a SDB.

If the Commission chooses to move forward and craft policies that are designed to specifically impact SDBs, then it needs to undertake meticulous economic and legal study in order to define SDB in a meaningful way. While we certainly agree with other commenters that the Commission should make specific findings in crafting a constitutionally sustainable SDB definition, we remind the Commission that particular evidence exists regarding minority and female broadcast ownership. The inequality of ownership by race and gender deviates starkly from ownership figures in other economic sectors. There is strong evidence to suggest women and people of color face increased barriers of entry due to the pressures of media market consolidation and discrimination in access to capital and deals.

The Commission can enact -- as the 1996 Act directs them -- policies that lower barriers to entry for women, minorities and other socially disadvantaged and small businesses. But it can only do so if it rejects SDB definitions such as that offered by Clear Channel, which seem only designed to benefit the largest companies wishing to sell stations to other established and well-financed companies.

Respectfully submitted,

CONSUMER FEDERATION OF AMERICA  
CONSUMERS UNION  
FREE PRESS

By: \_\_\_\_\_  
S. Derek Turner  
501 Third Street NW,  
Suite 875  
Washington, DC 20001  
202-265-1490  
dturner@freepress.net

Dated: October 16, 2007