

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review –)	
Review of the Commission’s Broadcast)	MB Dkt No. 06-121
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review)	MB Dkt No. 02-277
)	
Cross-Ownership of Broadcast Stations and)	MM Dkt No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Dkt. No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Dkt. No. 00-244
)	
Ways to Further Section 257 Mandate and)	
To Build on Earlier Studies)	MB Dkt. No. 04-228

SECOND COMPLAINT UNDER DATA QUALITY ACT

AND

MOTION FOR EXTENSION OF TIME

OF

**FREE PRESS
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION**

Free Press, Consumers Union, and the Consumer Federation of America file this Complaint and Motion for Extension in response to recent actions continuing the FCC’s practice of rushing this proceeding, despite the need for solid evidence and public input

required by the Data Quality Act and the Administrative Procedure Act. Specifically, the FCC has continued to adopt questionable peer review methods for FCC-commissioned studies and third-party studies deemed “influential scientific information.”

This proceeding has suffered from procedural irregularities prompting repeated complaints from consumer groups and FCC Commissioners.¹ This Complaint is the second filed by Free Press et al. On September 11, 2007, these parties filed a Complaint Under the Data Quality Act and a Motion for Extension of Time. The Complaint explained how the Commission had violated the DQA by, among other things, engaging in a “peer review” process that did not follow the DQA or usual scientific practices.² Rather than engage in peer review *before* publication, let alone early in the process to establish research design and methodology, the Commission asked for short comments following publication, and referred to these comments, wrongly, as “peer review” comments. The associated Motion for Extension asked the Commission to restart the peer review process and follow appropriate procedures³. The Commission granted a short extension and then claimed it would address the DQA complaint in the course of

¹ See, e.g., *Commissioner Michael J. Copps Comments on the Fcc’s Media Ownership Studies*, MB Dkt. No. 06-121 et al., Nov. 22, 2006, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-268611A1.doc; *Joint Statement by Commissioners Copps and Adelstein on Seattle Media Ownership Hearing*; MB Dkt. No. 06-121 et al., Nov. 2, 2007, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277869A1.pdf. See also Further Comments of Consumers Union, Consumer Federation of America, and Free Press, MB Dkt. No. 06-121 et al., Oct. 22, 2007, at 17-67.

² Complaint Under Data Quality of Consumers Union, Consumer Federation of America, and Free Press, MB Dkt. No. 06-121 et al., Sept. 11, 2007.

³ Motion for Extension of Time of Consumers Union, Consumer Federation of America, and Free Press, MB Dkt. No. 06-121 et al., Sept. 11, 2007.

the proceeding.⁴ The Comment period ended October 22, 2007, and the Reply Comment period ended November 1, 2007.

The Commission continues to disregard its obligation under the Data Quality Act regarding peer review and is failing to provide adequate opportunity for public comment, as required by the Administrative Procedure Act. According to news reports, the Commission is rushing to an apparently preordained judgment,⁵ but this rush is creating an administrative nightmare for the public.

First, the Commission has published several more “peer review” reports of the FCC-commissioned studies—not only after publication, but after the Commission’s comment period. For example, on November 1, 2007, the Commission posted new peer reviews by Napoli (for Studies 3 and 4.1); Goldstein, Hale, and Kaplan (for Studies 4.1 and 6); and Baynes (for Study 7). Moreover, many of these reviews call into question the validity of several of the FCC studies. For example, a peer review of Study 4.1 conducted by Goldstein, Hale, and Kaplan states that, because of “a number of methodological issues, the study “does not provide anywhere near the adequate level of confidence necessary to inform policy decisions.”⁶ The public should have an opportunity to incorporate these peer reviews into public comments, but the public has been denied this opportunity. Finally, and oddly, these peer reviews were released on the same day the reply comment period elapsed. The Commission has not explained why it failed to release these peer reviews earlier so that the public could consider the reviews

⁴ *Media Bureau Extends Filing Deadlines for Comments on Media Ownership Studies*, MB Docket No. 06-121 et al., Sept. 28, 2007, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-4097A1.doc.

⁵ John Dunbar, *FCC Considering New Media Rules*, Associated Press, Nov. 7, 2007, available at <http://www.chicagotribune.com/business/sns-ap-media-ownership,0,7871485.story?track=rss>; Stephen Labaton, *Plan Would Ease Limits on Media Owners*, N.Y. Times, Oct. 18, 2007, available at http://www.nytimes.com/2007/10/18/business/media/18broadcast.html?_r=1&oref=slogin.

⁶ Kenneth Goldstein et al., *Invited Peer Review of FCC Media Ownership Study 4 Section I*, Oct. 30, 2007.

during the comment cycle. Rather, the Commission decided to provide the public with no time to comment on these peer reviews.

Second, the Commission posted new, revised studies. For example, Study 4.1, by Shiman, had been published July 31, but the author replaced that published version with a new version on November 1, 2007. The same is true of Studies 4.2, 4.3, and 4.4 (and Study 6, which was revised weeks earlier, on September 20th). The FCC has provided the public no time to comment on these new studies.

Third, recently, and for the first time in this proceeding, the Commission posted peer-reviews of third-party studies. These studies were categorized, in the FCC letters seeking peer review, as “influential scientific information,” and therefore requiring peer review under the DQA.⁷ These peer-reviewed studies include several of those submitted in October 2006 by researchers at Free Press and Consumer Federation of America.⁸ The Commission should have posted an agenda notifying the public that these studies would be peer reviewed, but the Commission did not. Even though peer review is usually used to inform researchers who can then revise or respond to the review, the FCC did not even *notify* our researchers about these peer review reports, let alone ask them to reply to the peer reviews. Researchers for studies commissioned by the FCC had up to 60 days to respond to peer reviews. For example, Daniel Shiman, author of Study 4.1 and an employee of the Commission, posted a new version of his study 60 days after the release of a peer review report on his Study. But the Commission has not provided the third-party researchers any time (or even notice) to respond to these “peer review” reports. It has also not provided the public any time to reply to these peer review reports.

⁷ See Complaint Under Data Quality Act, at 12-14.

⁸ See Comments of Consumers Union, Consumer Federation of America, and Free Press, MB Dkt. No. 06-121 et al., Oct. 23, 2006, *available at* http://stopbigmedia.com/=coalition_comments.

The Commission also has provided no explanation for why it chose these third-party studies, and not other third-party studies, or why it waited a year for peer review. For example, the Commission only sought peer review of seven of our studies, all filed in the initial comment period in October 2006 (in which we filed 39 studies). It failed to seek peer review of dozens of our studies filed with during that same period, including 15 separate studies conducted on the level of media market concentration in dozens of individual media markets (as published in Studies 24-39 of our October 2006 comments). The Commission also failed to seek peer review of our studies submitted in January, 2007, during the reply comment period on the notice, including “Internet Media Usage and Substitutability”, “Independent Local News Web Sites Lack Original Content And Do Not Significantly Contribute to Source or Viewpoint Diversity”, and “Misleading Industry Market Analyses”. The failure to review our reply comment studies is curious given the fact that the Commission had a non-empirical reply comment, drafted by Jerry Hausman and offered by NAA, peer reviewed. Moreover, the FCC did not explain why it waited almost a full year to seek peer review of the studies filed last October.

These actions do not conform to the directions of the DQA and its implementing guidelines, which require meaningful peer review and meaningful public input into the peer review process. The actions also provide an inadequate foundation for reasoned decision-making.

The Commission should grant the public, including third-party researchers, a forty-five-day comment window to address these new peer reviews and newly posted studies. This record cannot be considered complete unless the public has an opportunity to respond, so the Commission cannot address this Complaint at some later date.

Respectfully submitted,

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