

**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	)	MB Docket No. 01-235
	)	
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MB Docket No. 01-317
	)	
	)	
Definition of Radio Markets	)	MB Docket No. 00-244

**COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA  
ON KEVIN J. MARTIN’S PROPOSED REVISION TO THE  
NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE**

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**I. INTRODUCTION AND SUMMARY**

The Newspaper Association of America (“NAA”) hereby submits comments in response to Chairman Kevin J. Martin’s November 13, 2007 proposed revision to the newspaper/broadcast cross-ownership ban.<sup>1</sup> This absolute restriction now has been in a state of flux for more than a decade. Because of the FCC’s continuing paralysis on this issue, the newspaper publishing and broadcast industries as well as the audiences they

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<sup>1</sup> See *Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule*, News Release, MB Docket No. 06-121 (rel. Nov. 13, 2007) (“*Chairman’s Proposal*”).

serve have been the victims of an inordinately long period of regulatory uncertainty. At the same time, few issues under the Commission's jurisdiction have been subject to more exhaustive scrutiny in recent years. The result of this intense examination is a clear verdict that the newspaper/broadcast cross-ownership restriction no longer serves, and in fact is inimical to, the FCC's public interest goals. Thus, the time for the FCC to act on this long-unresolved issue is now egregiously overdue.

NAA long has been a strong advocate of complete elimination of the 32 year-old cross-ownership ban, and it supports any Commission action that finally will move the agency in that direction. However, while it is to be commended as a positive step, the Chairman's recent proposal will provide only a modicum of the regulatory relief that is fully justified in this proceeding. The limited changes to the rule that have been suggested by Chairman Martin would create very few certain opportunities for new newspaper/broadcast combinations, could disrupt existing combinations providing excellent public service, and would leave substantial obstacles to orderly transaction planning.

In fact, the proposed cross-ownership rule would remain considerably more limited than *any* of the other existing local broadcast ownership rules. NAA submits that there is no public interest rationale for creating this disparity between daily newspapers and other media outlets with respect to the prospects for broadcast ownership. To the contrary, because daily newspapers are better able and more likely to increase the local news offerings on broadcast outlets than virtually any other media, subjecting daily newspapers to such a substantial regulatory disadvantage is directly contrary to the public interest. Short of repealing the rule in its entirety, NAA believes that any revised rule affirmatively should recognize situations in which a daily newspaper commits either to

provide a threshold amount of newly created local news programming or to substantially increase the news or public affairs programming on a cross-owned station.

Furthermore, NAA is particularly concerned that the proposed revisions to the ban provide almost no assurance of relief with respect to newspaper/radio cross-ownership, despite the unequivocal record evidence that newspaper-owned radio stations serve the public interest and the lack of opposition in the record to allowing greater levels of newspaper/radio cross-ownership. Equally troubling is that the suggested changes would provide no assurance of relief in medium-sized and smaller markets, where it is needed the most.

Beyond addressing each of these shortcomings, NAA submits that both the case-by-case approach and the negative and positive “presumptions” built into the current proposal should be removed or modified. The existence of these presumptions would add a considerable degree of uncertainty and administrative burden into all cross-ownership efforts. At a minimum, if a potential cross-owner seeks a waiver based on the criteria laid out in the Chairman’s proposal, such a waiver request should be given a fighting chance and be viewed neutrally by agency decision-makers. Further, in light of the fact that each of the agency’s other local broadcast ownership rules definitively permits certain types of combinations, the Chairman’s presumption in favor of cross-ownership in specified situations likewise should be converted into an affirmative rule.

**II. FCC ACTION TO REPEAL THE DECADES-OLD NEWSPAPER/  
BROADCAST CROSS-OWNERSHIP BAN IS EGREGIOUSLY OVERDUE  
AND IS SUPPORTED BY A VOLUMINOUS AND COMPREHENSIVE  
EVIDENTIARY RECORD.**

NAA strongly believes that the time for the FCC to take action in this proceeding already is woefully overdue. As NAA has laid out in detail in its prior comments in this proceeding, the media ownership proceeding currently underway at the Commission represents the *sixth* that the agency has conducted in the past 11 years to consider the continuing validity of the 1975 rule.<sup>2</sup> Each of these proceedings has contributed to what is now a mammoth evidentiary record demonstrating that newspaper/broadcast cross-ownership substantially enhances the agency’s localism goals without harming viewpoint diversity or competition.

None of these proceedings, however, yet has resulted in any actual changes to the absolute ban. In fact, most of these proceedings were not completed at all. Instead, they were rolled into subsequent rulemakings, creating a seemingly endless cycle of regulatory uncertainty for the affected newspaper and broadcast industries. Thus, although the Commission repeatedly has recognized that the flat cross-ownership restriction no longer is needed and in reality is inimical to some of the agency’s central public interest goals,<sup>3</sup> the rule has remained stubbornly in place.

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<sup>2</sup> Comments of the Newspaper Association of America, MB Docket Nos. 06-121, *et al.*, at 4-10 (filed Oct. 23, 2006) (“NAA 2006 Comments”).

<sup>3</sup> *See, e.g., Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5906 (1996) (Separate Statement of Chairman Reed Hundt) (noting that “there is reason to believe that . . . the newspaper-broadcast cross-ownership rule is right now impairing the future prospects of an important national source of education and information: the newspaper industry”); *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, 13747 (¶ 327) (2003), *rev’d and remanded, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (finding that the “nation-wide prohibition on common ownership of daily newspapers and broadcast outlets in the same market . . . is [not] necessary in the public interest”); *see also id.* at 13767 (¶ 368).

Even putting aside the extensive and one-sided record on newspaper/broadcast cross-ownership that the FCC has accumulated in its prior proceedings on this issue, the evidence that has been gathered in the instant proceeding is far more than sufficient for the agency to move forward and, indeed, to repeal the ban in its entirety. The Commission launched this rulemaking more than 18 months ago.<sup>4</sup> Since that time, it has requested comments or reply comments from interested parties on seven different occasions.<sup>5</sup> Consequently, the agency now has a record before it that includes many thousands of pages from a wide variety of industry representatives, consumer interest groups, and individual consumers. To date, more than 160,000 comments have been filed in the docket of this rulemaking.<sup>6</sup> Furthermore, the FCC has commissioned and released for public consideration ten empirical studies from academics and other economic experts.<sup>7</sup> Each of these studies has been subject to independent peer review.<sup>8</sup> In addition, the studies have been exhaustively scrutinized, and in some cases re-conducted, by interested third parties. To build on this gigantic record even further, the

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<sup>4</sup> See *2006 Quadrennial Regulatory Review—Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006) (“2006 Further Notice”).

<sup>5</sup> See *2006 Further Notice* (requesting Comments and Reply Comments on media ownership rules); *2006 Quadrennial Regulatory Review—Review of the Comm’n’s Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 14215 (2007) (requesting Comments and Reply Comments on minority ownership issues); *FCC Seeks Comment on Research Studies on Media Ownership*, Public Notice, 22 FCC Rcd 14313 (2007) (“*Media Ownership Studies Public Notice*”) (requesting Comments and Reply Comments on July 2007 empirical studies); *Chairman’s Proposal* (requesting Comments on proposed revision of newspaper/broadcast cross-ownership rule).

<sup>6</sup> See FCC Electronic Comment Filing System, MB Docket No. 06-121, available at [http://fjallfoss.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch\\_v2.hts](http://fjallfoss.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts) (last visited Dec. 9, 2007) (listing 167,106 filings in docket).

<sup>7</sup> *Media Ownership Studies Public Notice*, 22 FCC Rcd 14313.

<sup>8</sup> See FCC Media Bureau, Peer Review Webpage, available at [http://www.fcc.gov/mb/peer\\_review/peerreview.html](http://www.fcc.gov/mb/peer_review/peerreview.html) (last visited Dec. 9, 2007).

Commission also has held six field hearings on media ownership and two hearings on broadcast localism during the past year.<sup>9</sup> Overall, the agency took testimony from more than 100 expert witnesses at these hearings as well as the statements of multitudes of concerned citizens.

NAA submits that few, if any, issues have been examined more thoroughly by the FCC in recent history than newspaper/broadcast cross-ownership. While the gathering of additional public input and other information will remain a theoretical possibility far into the indefinite future, the Commission must move forward at some point to finally bring these proceedings to a close. By any reasonable measure, the agency now has before it far more than enough evidence to eliminate or, at the very least, substantially relax the outdated ban. Further, nearly three and one-half years have passed since the U.S. Court of Appeals for the Third Circuit remanded the FCC's most recent cross-ownership decision,<sup>10</sup> a delay that already has imposed significant regulatory costs on the affected industries during a period that any realistic observer would describe as a challenging time

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<sup>9</sup> See *FCC Announces Public Hearing on Media Ownership in Seattle, Washington*, Public Notice (Nov. 2, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-277867A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277867A1.pdf) (last visited Dec. 10, 2007); *FCC Localism Hearing to be Held in Washington, DC, on October 31<sup>st</sup>*, News Release (Oct. 24, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-277560A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-277560A1.pdf) (last visited Dec. 10, 2007); *FCC Announces Details for Public Hearing on Media Ownership in Chicago, IL*, News Release (Sept. 4, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-276412A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-276412A1.pdf) (last visited Dec. 10, 2007); *FCC Announces Details for Localism Hearing in Portland, Maine on June 28*, News Release (June 12, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-273965A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-273965A1.pdf) (last visited Dec. 10, 2007); *FCC Announces Details for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida*, News Release (Apr. 13, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-272326A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-272326A1.pdf) (last visited Dec. 10, 2007); *FCC Announces Details for Public Hearing on Media Ownership in Harrisburg, Pennsylvania*, Public Notice (Feb. 16, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-270612A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270612A1.pdf) (last visited Dec. 10, 2007); *FCC Announces Details for Public Hearing on Media Ownership in Nashville, Tennessee*, News Release (Dec. 1, 2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-268785A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-268785A1.pdf) (last visited Dec. 10, 2007); *FCC Announces Details for Public Hearing on Media Ownership in Los Angeles, CA*, Public Notice (Sept. 26, 2006), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-267624A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267624A1.pdf) (last visited Dec. 10, 2007).

<sup>10</sup> See *Prometheus*, 373 F.3d 372 (filed June 24, 2004).

to be in the newspaper or broadcast business. In light of these considerations, the FCC Chairman's proposal to issue a decision in this proceeding in the near future is entirely reasonable. If nothing else, this action finally may bring a small measure of regulatory certainty to newspaper publishers and broadcasters, many of whom now have been waiting for more than a decade for the fate of this rule to be resolved.

**III. WHILE ANY RELAXATION OF THE BLANKET BAN IS A STEP IN THE RIGHT DIRECTION, THE CHAIRMAN'S PROPOSAL DOES NOT PROVIDE THE LEVEL OF REGULATORY RELIEF THAT UNQUESTIONABLY IS CALLED FOR IN THIS PROCEEDING.**

Although it supports any action that would loosen the absolute prohibition on newspaper/broadcast cross-ownership, NAA respectfully submits that the rule changes that recently have been presented for comment by Chairman Martin are unduly narrow in scope and would provide insufficient regulatory relief to the newspaper publishing and broadcast industries. NAA and many other parties have demonstrated throughout this and prior proceedings—and it remains the case—that complete elimination of cross-ownership restrictions is fully justified and would serve the public interest.<sup>11</sup> If the current proposal is adopted by the agency, the revised rule would continue to place newspaper publishers at a considerable competitive disadvantage and unnecessarily impede their ability to enhance the caliber of local news available in many local communities.

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<sup>11</sup> See, e.g., Comments of Belo Corp., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006); Comments of Bonneville International Corporation, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006); Comments of Cox Enterprises, Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006); Comments of Gannett Co., Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006); Comments of Media General, Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006) (“Media General 2006 Comments”); Comments of Morris Communications Company, LLC, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006) (“Morris 2006 Comments”); Comments of Tribune Company, MB Docket Nos. 06-121, *et al.* (filed Oct 23, 2006).

Given that the FCC is subject to a statutory and judicial mandate to relax the newspaper/broadcast ban in this proceeding, the current proposal is about as limited as reasonably could be envisioned. Even in directing the agency to reconsider the specific cross-media limits the Commission sought to adopt in its last media ownership review, the Third Circuit expressly found that “*reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.*”<sup>12</sup> As part of the periodic review mandate imposed on the Commission with respect to its broadcast ownership rules in the Telecommunications Act of 1996, Congress directed the agency to “repeal or modify any regulation that it determines to be no longer in the public interest.”<sup>13</sup> Because the Third Circuit has confirmed that the blanket cross-ownership ban falls into this category, the FCC is under an express directive to abandon the restriction in order to satisfy the demands of the 1996 Act.

Yet, the limited changes to the rule suggested by Chairman Martin would create relatively few and exceedingly modest clear-cut opportunities for new newspaper/broadcast combinations. Out of the 210 Designated Market Areas (“DMAs”) that exist in this country, the Chairman’s current proposal presumptively would permit cross-ownership only in the 20 largest<sup>14</sup>—or fewer than 10 percent. Even in these markets, the “presumption” in favor of cross-ownership incorporated in the current proposal would give opponents an opportunity to make the case that a given combination should be precluded. To qualify for such a presumption, moreover, newspaper publishers

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<sup>12</sup> *Prometheus*, 373 F.3d at 398 (emphasis added).

<sup>13</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996).

<sup>14</sup> Chairman’s Proposal (proposed rule 73.3555(d)(4)).

could own, at most, only one TV station *or* one radio station—but not both.<sup>15</sup> What is more, the positive presumption would not apply to newspaper ownership of a same-market TV station that is ranked among the Top Four in its market based on audience share. While the proposal includes a waiver standard for combinations that do not satisfy all of these strict criteria, any such combinations automatically would be subject to a “negative” presumption.<sup>16</sup>

The proposed rule would be considerably more limited than *any* of the other existing local broadcast ownership rules. For example, the current TV/radio cross-ownership rule permits a single entity to own up to two full-power TV stations and as many as six or seven radio stations within the same market.<sup>17</sup> Likewise, the existing local radio ownership caps allow common ownership of as many as eight radio stations within an Arbitron Metro Market.<sup>18</sup> By contrast, the suggested revision to the cross-ownership ban presumptively would preclude a daily newspaper from owning any radio stations in the vast majority of media markets and from owning more than one radio station, even in the nation’s largest markets.

The Chairman’s proposal also would be more limited than the existing local television ownership rule, which authorizes co-ownership of two full-power commercial TV stations in any market so long as eight independent television “voices” will remain post-transaction and neither station is ranked among the Top Four in its market based on

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (proposed rule 73.3555(d)(5)).

<sup>17</sup> *See* 47 C.F.R. 73.3555(c).

<sup>18</sup> *See* 47 C.F.R. 73.3555(a).

audience share.<sup>19</sup> While appearing to track certain aspects of this rule, the modified version of the newspaper rule that has been suggested by the Chairman would apply only to the Top 20 TV DMAs. The proposal thus could dramatically curtail the prospects for regulatory relief in numerous other markets in which the remaining criteria for a positive presumption would be met. Moreover, presumptively restricting cross-ownership relief to TV stations ranked below the Top Four in any market unduly would limit the ability of newspaper publishers to bring the benefits of common ownership to those stations that are most capable of sustaining full-scale news operations.

There is no compelling public interest rationale for creating this disparity between daily newspapers and other media outlets with respect to potential ownership of a broadcast outlet. In fact, given that daily newspapers are better able and more likely to increase the local news offerings on broadcast outlets than virtually any other media, NAA submits that subjecting daily newspapers to such a substantial regulatory disadvantage is directly contrary to the Commission's public interest goals.

Short of repealing the rule in its entirety, NAA believes that any revised rule affirmatively should recognize situations in which a daily newspaper commits to provide a threshold amount of newly created local news programming on a cross-owned station or to substantially increase the news or other public affairs offered by such a station. Of course, given the substantial newsgathering resources that daily newspapers bring to the table, enhancing local broadcast news would be the natural inclination and indeed one of the primary incentives that virtually any daily would have for acquiring a local broadcast outlet in the first place.

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<sup>19</sup> See 47 C.F.R. 73.3555(b).

Further, NAA is particularly concerned that the proposed revisions to the ban provide almost no assurance of relief with respect to newspaper/radio cross-ownership, despite the unequivocal record evidence that newspaper-owned radio stations serve the public interest and the lack of opposition in the record to allowing greater levels of newspaper/radio cross-ownership.<sup>20</sup> The new rule suggested by the Chairman would allow a daily newspaper to own far fewer radio stations than either a TV station or a pure-play radio broadcaster. Again, given the many examples of existing newspaper/radio combinations that include all-news/information radio stations<sup>21</sup> (a relatively scarce commodity in today's radio world), this aspect of the Chairman's proposal falls short of achieving the public interest benefits potentially available.

Equally disappointing is that the suggested liberalization of the cross-ownership ban would provide no assurance of relief in medium-sized and smaller markets. Indeed, in 190 of the nation's 210 DMAs, all newspaper/broadcast cross-ownership would have to overcome a "negative presumption" in order to be permissible. In many of these markets, broadcast news is becoming a scarcer commodity as the cost of producing news

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<sup>20</sup> See, e.g., NAA 2006 Comments at 66-79.

<sup>21</sup> See, e.g., Morris 2006 Comments at 14-15, 18-19 (describing the news and informational programming provided by Morris' AM radio stations in Topeka, Kansas (WIBW(AM), co-owned with the *Topeka Capital-Journal* and WIBW-FM) and Amarillo, Texas (KGNC(AM), co-owned with the *Amarillo Globe-News* and KGNC-FM)); NAA 2006 Comments at 68-69, 77 (noting all-news/information stations WDWS(AM) (co-owned with *The News-Gazette* and WHMS(FM) in Champaign, Illinois) and WGN(AM) (co-owned with the *Chicago Tribune* and WGN-TV in Chicago, Illinois)). In addition, Cox Enterprises owns and operates news/talk station WHIO(AM) along with the *Dayton Daily News* in Dayton, Ohio and news/talk station WSB(AM) along with *The Atlanta Journal-Constitution* in Atlanta. See *Broadcasting & Cable Yearbook 2008* at D-152, D-416. Similarly, Bonneville International Corp. owns and operates news/talk station KSL(AM) along with the *Deseret Daily News* in Salt Lake City, while Bliss Communications owns both WCLO(AM) and *The Janesville Gazette* in Janesville, Wisconsin. See *id.* at D-548, D-590.

escalates, media choices increase, and over-the-air audiences get smaller.<sup>22</sup> Thus, the proposed rule fails to ensure that newspapers will be given the opportunity to enhance the quantity or quality of local news on television and radio in precisely the markets that need help the most. In addition, the proposed rule could lead to the divestiture of existing co-owned properties in a number of these markets—a result that is clearly unwarranted and will result in less local news, not more, for the public.<sup>23</sup>

Beyond addressing each of these shortcomings, NAA believes that the negative and positive “presumptions” built into the current proposal should be modified in any cross-ownership rule that ultimately is adopted by the Commission in this proceeding. Most importantly, the negative presumption reflected in the current waiver standard would create enormous and unneeded obstacles to cross-ownership in the vast majority of media markets. If a party does not meet the strict criteria for a black-letter exception or positive presumption and must apply for a waiver, the waiver showing should be viewed neutrally by the Commission and should not be presumed to be contrary to the public interest.<sup>24</sup>

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<sup>22</sup> See, e.g., Media General 2006 Comments at 63-66; Comments of the National Association of Broadcasters, MB Docket Nos. 06-121, *et al.*, at 23-34, 94-98 (filed Oct. 23, 2006); Comments of Smaller Market Television Stations, MB Docket Nos. 06-121, *et al.*, at 6-10; Reply Comments of the Newspaper Association of America, MB Docket Nos. 06-121, *et al.*, at 8-13 (filed Jan. 16, 2007).

<sup>23</sup> NAA supports proposals that would grant permanent waivers or grandfathered status to existing newspaper/broadcast combinations that were created pursuant to “footnote 25” of the 1975 decision adopting the ban or have been granted temporary or conditional waivers of the restriction during the extensive period during which the cross-ownership restriction has been under consideration at the Commission.

<sup>24</sup> Further, the inclusion of a negative presumption in the proposed waiver standard may raise problems under the Administrative Procedure Act. The Supreme Court has “called attention to the necessity for flexibility” in the FCC’s administration of its rules to grant a waiver in appropriate circumstances. *United States v. Storer Broad. Co.*, 351 U.S. 192, 204-05 (1956) (citing *National Broad. Co. v. U.S.*, 319 U.S. 190, 207, 225 (1943)). Building on this flexibility requirement, the D.C. Circuit has explained emphatically that the FCC’s “discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *P & R Temmer v. FCC*, 743 F.2d 918, 929 (D.C. Cir. 1984) (quoting *WAIT Radio v. FCC*,

Similarly, the use of a presumption in favor of cross-ownership in lieu of a black-letter standard would create unnecessary regulatory uncertainty for and impose substantial administrative burdens on potential cross-owners. NAA submits that the suggested case-by-case approach is overly restrictive and inequitable, given that all of the other broadcast ownership regulations affirmatively permit certain types of combinations. It appears, moreover, that a significant showing would be required even to qualify for such a presumption. Thus, any party with an interest in creating or transferring a newspaper/broadcast combination inevitably will incur substantial legal fees to defend cross-ownership that clearly poses no public threat. Because of the inherent regulatory uncertainty that is built into this presumption, maintaining this aspect of the rule would create a needless and counterproductive deterrent to all cross-ownership.

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418 F.2d 1153, 1157 (D.C. Cir. 1969)). Moreover, the D.C. Circuit makes clear that “[t]he FCC has an obligation to seek out the ‘public interest’ in *particular* matters and *individualized* situations” and, therefore, “applications for a waiver of the Commission’s rules must be given a ‘hard look.’” *Id.* (citing *WAIT Radio*, 418 F.2d at 1157) (emphasis in original). Both the D.C. Circuit and the Sixth Circuit also have recognized that such a failure to include an “[e]ffective waiver mechanism” could give rise to a violation of due process under the Fifth Amendment of the U.S. Constitution. *Southwest Pa. Cable TV, Inc. v. FCC*, 514 F.2d 1343, 1347 (D.C. Cir. 1975); *see also Community Service, Inc. v. U.S.*, 418 F.2d 709, 711-12 (6th Cir. 1969).

Setting out specific criteria that would limit the range of permitted showings or give rise to a presumption against granting a waiver would be inconsistent with the individualized inquiry the Commission is obligated to undertake. As the D.C. Circuit has explained, “[w]here any administrative rule, although considered generally to be in the public interest, is not in the public interest as applied to particular facts, an agency should waive application of the rule.” *Id.* at 930 (citing *Storer Broad. Co.*, 351 U.S. at 205 and *National Broad. Co.*, 319 U.S. at 225). A presumption against a waiver under set circumstances would rig the burden of proof against particular situations where waiver would be in the public interest.

**IV. CONCLUSION**

NAA continues to believe that, based on the extensive and convincing record in this proceeding, complete repeal of the Commission's ban on newspaper/broadcast cross-ownership is unequivocally justified and long overdue. Short of such action, NAA respectfully submits that any revised restrictions adopted by the Commission must provide the nation's newspaper publishers and broadcasters with significantly greater regulatory relief than that reflected in the Chairman's current proposal in order for cross-ownership to reach anywhere near its full public interest potential.

Respectfully submitted,

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