

**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
	)	

---

**COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC. ON PROPOSED REVISION TO THE NEWSPAPER/BROADCAST RULE**

Andrew W. Levin  
Executive Vice President, Chief Legal Officer, and Secretary  
Clear Channel Communications, Inc.  
200 East Basse Road  
San Antonio, Texas 75201  
(210) 822-2828

Dated: December 11, 2007

**TABLE OF CONTENTS**

I. INTRODUCTION AND SUMMARY ..... 1

II. THE FCC IS NOT AT LIBERTY TO IGNORE THE LOCAL RADIO OWNERSHIP RULE  
IN THIS PROCEEDING. .... 2

III. THE AM/FM SUBCAPS MUST BE ELIMINATED. .... 5

IV. THE FCC MUST INCREASE PERMISSIBLE LEVELS OF COMMON OWNERSHIP IN  
THE NATION’S LARGEST MARKETS. .... 9

V. CONCLUSION ..... 12

**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
	)	

---

**COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC. ON PROPOSED REVISION TO THE NEWSPAPER/BROADCAST RULE**

**I. INTRODUCTION AND SUMMARY**

Clear Channel Communications, Inc. (“Clear Channel”) hereby submits this filing in response to the News Release issued by Chairman Martin on November 17, 2007, seeking comment in this proceeding on a proposed revision to the newspaper/broadcast cross-ownership rule.<sup>1</sup> While Clear Channel takes no specific position on the proposed revision of that rule outlined in the News

---

<sup>1</sup> News Release, *Chairman Kevin J. Martin Proposes Changes to the Newspaper/Broadcast Cross-Ownership Rule* (rel. Nov. 17, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-278113A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278113A1.pdf) (“*News Release*”); see Kevin J. Martin, *The Daily Show*, N.Y. Times, Sept. 13, 2007 (“*Martin Op-Ed*”); see also Written Statement of The Honorable Kevin J. Martin before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives (Dec. 5, 2007) (“*Martin 12/5/07 Statement*”).

Release, Clear Channel strenuously objects to the suggestion that “no changes” should be made to the local radio ownership rule.<sup>2</sup> To the contrary, and as explained further below, the Commission is under an affirmative obligation – imposed on it by Congress and reiterated by the Third Circuit – to modify the local radio ownership rule to reflect competitive developments. Indeed, the very same types of concerns that appear to be animating the Chairman’s proposal to relax the newspaper/broadcast cross-ownership rule compel at least analogous action as to radio.

Simply put, the record in this proceeding simply does not allow for a decision that the existing local radio ownership rule should be retained intact. The FCC is thus under a *Congressional and judicial mandate* to take action now to afford radio station owners at least targeted, modest, deregulation in order to allow them to remain vibrant competitors in the increasingly dynamic and ever-expanding audio programming marketplace.

## **II. THE FCC IS NOT AT LIBERTY TO IGNORE THE LOCAL RADIO OWNERSHIP RULE IN THIS PROCEEDING.**

As explained fully in the earlier filings of Clear Channel and many others in this docket, the FCC has an affirmative statutory obligation to repeal or relax its media ownership rules as competition develops.<sup>3</sup> As Clear Channel has already shown, the biennial review requirement, as interpreted by the FCC in 2003 and affirmed by the Third Circuit, coupled with the dramatic increase in competition and diversity in the media marketplace, warrants, at the very least, relaxation of the local radio ownership rule.<sup>4</sup>

---

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *See, e.g.,* Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, *et al.*, at 2-6 (filed Oct. 23, 2006) (“*Clear Channel Media Ownership Comments*”); Reply Comments of Clear Channel Communications, Inc., MB Docket No. 06-121, *et al.*, at 6-13 (filed Jan. 16, 2007) (“*Clear Channel Media Ownership Reply Comments*”).

<sup>4</sup> *See generally* *Clear Channel Media Ownership Comments*; *Clear Channel Media Ownership Reply Comments*.

As the FCC has previously explained, and as the Third Circuit agreed, “[t]he text and legislative history of the 1996 Act indicate that Congress intended periodic reviews to operate as an ‘ongoing mechanism to ensure that the Commission’s regulatory framework would keep pace with the competitive changes in the marketplace’ resulting from that Act’s relaxation of the Commission’s regulations, including the broadcast media ownership regulations.”<sup>5</sup> Thus, the Third Circuit held that Section 202(h) “requires the Commission to take a fresh look at its regulations periodically in order to ensure that they remain ‘necessary in the public interest.’”<sup>6</sup> Put another way, the FCC must “periodically . . . justify its existing regulations,” “an obligation” that the Third Circuit held the Commission “would not otherwise have.”<sup>7</sup> If the Commission cannot show that its rules remain necessary based on current competitive market conditions, the Third Circuit made clear that the regulation “must be vacated or modified.”<sup>8</sup> This mandate, by its terms, applies to *all* of the media ownership rules adopted pursuant to section 202, including the local radio ownership rule. In the face of the plain text of 202(h) and the Third Circuit’s clear instructions as to the meaning of the statute, it is clear that the Commission cannot leave radio “off the table” in this proceeding, and that it is not at liberty to ignore the changes in the audio programming marketplace that are borne out by the record.<sup>9</sup>

---

<sup>5</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004) (quoting *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726, 4732 (¶¶ 16, 17) (2003) (“*2002 Biennial Review Report*”), *cert. denied*, 545 U.S. 1123 (2005); see *2002 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules*, 18 FCC Rcd 13620, 13624-25 (¶¶ 10-12) (2003) (“*2003 Order*”).

<sup>6</sup> *Prometheus*, 373 F.3d at 391.

<sup>7</sup> *Id.* at 395.

<sup>8</sup> *Id.* at 394-95; see *id.* at 395 (rules that are determined to no longer be necessary in the public interest “must be repealed or modified”).

<sup>9</sup> Nor could the Commission do so under ordinary principles of administrative law. See, e.g., *Clear Channel Media Ownership Comments*, at 4-5; *Clear Channel Media Ownership Reply Comments*,

In addition, and with respect to the local radio ownership rule in particular, the Third Circuit found that the FCC had not supported its decision to retain either the AM/FM “subcaps,” which limit the number of AM or FM stations an entity may own in a local market, or the specific numerical local radio ownership caps, and expressly remanded both issues for further consideration. As to the subcaps, the Court unambiguously directed the Commission to either supply a reasoned justification for this aspect of the rule, or to eliminate the subcaps on remand. Specifically, the Court stated that:

The Deregulatory Petitioners challenge the Commission’s decision to retain the AM/FM subcaps, which the Commission justified on the grounds that FM stations have technological and economic advantages over AM stations. . . . But the Deregulatory Petitioners point out, and we agree, that this does not explain why it is necessary to impose an AM subcap at all. The Commission does not respond in its brief to this particular criticism. *Thus it should do so, or modify its approach, on remand.*<sup>10</sup>

Similarly, the Third Circuit found the Commission’s reasoning for maintaining the local radio ownership caps at their current level to be legally insufficient, stating that:

[T]he numerical limits are not supported by the Commission’s theory that they ensure five equal-sized competitors in most markets. While, as discussed above, substantial evidence supports the Commission’s decision to retain the numerical limits structure of its local radio ownership rule, we also agree with the Petitioners that *the Order lacks a reasoned analysis for retaining these specific numerical limits. We thus remand for the Commission’s additional justification.*<sup>11</sup>

Accordingly, the text of the Third Circuit’s decision makes crystal clear that the FCC is under an affirmative, mandatory obligation to address the local radio ownership limits in this proceeding.

---

(Continued . . .)  
at 12-13.

<sup>10</sup> *Prometheus*, 373 F.3d at 434-35 (emphasis added).

<sup>11</sup> *Id.* at 432 (emphasis added).

### **III. THE AM/FM SUBCAPS MUST BE ELIMINATED.**

As demonstrated in Clear Channel’s previous filings, the AM/FM subcaps cannot rationally be maintained.<sup>12</sup> The subcaps are based on subjective – and factually unfounded – FCC value judgments regarding the supposed “inferiority” of, and content purportedly most likely to be aired on, AM stations.<sup>13</sup>

In this proceeding in which more than 166,000 comments have been filed, *only one* commenter has argued in favor of retaining the subcaps.<sup>14</sup> That party, as Clear Channel has explained before, failed to do anything more than echo the arguments in support of the subcaps that were advanced by the Commission in the *2003 Order*.<sup>15</sup> Those arguments, of course, are the very same ones that the Third Circuit found legally insufficient, and that Clear Channel and others have shown lack any factual or record basis.<sup>16</sup> Further, to the extent that UCC, despite the substantial evidence to the contrary, claims that the transition to digital audio broadcasting will not assist AM stations, it is flatly wrong.<sup>17</sup> As a matter of fact, the rules authorizing digital broadcasting, including multicasting, apply equally to all “radio stations” without a distinction between AM and

---

<sup>12</sup> *Clear Channel Media Ownership Comments*, at 66-73; *Clear Channel Media Ownership Reply Comments*, at 49-52.

<sup>13</sup> *Clear Channel Media Ownership Comments*, at 66-73; *Clear Channel Media Ownership Reply Comments*, at 49-52.

<sup>14</sup> See Comments of the Office of Comm’ns of the United Church of Christ, Inc. et al., MB Docket No. 06-121, *et al.*, at 84-85 (Oct. 23, 2006) (“*UCC Media Ownership Comments*”).

<sup>15</sup> Compare *id.*, with *2003 Order*, 18 FCC Rcd at 13733-34 (¶ 294); see *Clear Channel Media Ownership Reply Comments*, at 49-52.

<sup>16</sup> *Clear Channel Media Ownership Reply Comments*, at 49-52; see *Prometheus*, 373 F.3d at 434-35; *Clear Channel Media Ownership Comments*, at 66-73; Comments of Multicultural Radio Broadcasting, Inc., MB Docket No. 06-121, *et al.*, at 2-3 (Oct. 23, 2006) (“*Multicultural Media Ownership Comments*”).

<sup>17</sup> See *UCC Media Ownership Comments*, at 84.

FM.<sup>18</sup> It is also now technologically feasible for AM stations operating in the hybrid (digital/analog) mode to multicast.<sup>19</sup> Finally, UCC's additional argument that new entrants would be harmed if the subcaps were eliminated is equally off-base.<sup>20</sup> Rather than large companies "bid[ding] up the price[s] of AM stations," as UCC claims would occur,<sup>21</sup> a lifting of the subcaps would be likely to spur market activity in which more affordable properties – be they AM or FM – would be put up for sale. Any bidding competition for those properties would most likely be among smaller owners and new entrants.

As a result, the record in this proceeding is entirely devoid of any evidence on which the Commission could lawfully rely to support the subcaps' underlying rationale that "technical and marketplace differences" between the two services warrant separate limits on the number of AM and FM stations that a party may own. Moreover, it is in fact the case that AM stations are not "inferior," as the numerous top-rated AM stations across the country demonstrate.<sup>22</sup> Indeed, many AM stations have daytime coverage contours that substantially exceed those of FM stations in their markets, and some AM stations can be heard *across much of the country* at night. And, the promise of digital audio broadcasting technology, which AM stations may now employ, ensures that stations in both services – AM and FM – can deliver signals of comparable, and considerably enhanced,

---

<sup>18</sup> See *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, 22 FCC Rcd 10344, 10356 (¶ 33) (2007); *id.* at App. B (47 C.F.R. §§ 73.403, 73.404, pertaining to "[b]roadcast radio stations" and "AM or FM station[s]").

<sup>19</sup> iBiquity has indicated that the software necessary to allow AM multicasting could be developed in very short order.

<sup>20</sup> See *UCC Media Ownership Comments*, at 85.

<sup>21</sup> *Id.*

<sup>22</sup> See *Clear Channel Media Ownership Comments*, at 66-69; *Clear Channel Media Ownership Reply Comments*, at 51.

quality.<sup>23</sup> Simply put, a distinction between AM and FM stations can not be supported as either a record or factual matter.

In addition, Clear Channel notes that removing the subcaps – as the record clearly requires – would not allow a party to own any additional stations in any market, and would not allow for any increase in consolidation. Instead, their elimination would simply permit ownership of a *different complement* of stations under the relevant local radio ownership cap (*i.e.*, 6 FMs and 2 AMs, rather than 5 FMs and 3 AMs). In this sense, it is not “deregulatory” at all. As a result, absent evidence – which Clear Channel has already shown there is none – to support a distinction between stations in the two services, the subcaps cannot be retained based on purported concerns regarding competition.<sup>24</sup> Nor, of course, could the Commission rely on the formats that are supposedly more prevalent on AM stations to justify the distinction, even if there were evidence – which again there is not – that AM stations are more likely to air some formats than others, because doing so would clearly raise First Amendment concerns.<sup>25</sup>

Furthermore, Clear Channel notes that eliminating the subcaps is likely to increase opportunities for women and minorities to enter or expand their presence in radio broadcasting.<sup>26</sup> A

---

<sup>23</sup> See *Clear Channel Media Ownership Comments*, at 70-71; *Clear Channel Media Ownership Reply Comments*, at 51.

<sup>24</sup> See *2003 Order*, 18 FCC Rcd at 13734 (¶ 294) (relying on supposed technical and marketplace differences to conclude that the subcaps should be retained based on the Commission’s “interest in protecting competition in local radio market”).

<sup>25</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994) (“regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content” or “compel speakers to utter or distribute speech bearing a particular message” – are subject to strict scrutiny); *Carey v. Brown*, 447 U.S. 455, 462 n.6 (1980) (“The First Amendment’s hostility to content-based regulation extends not only to restrictions on [or preferences for] particular viewpoints, but also to prohibition of public discussion of an entire topic.”) (quoting *Consol. Edison Co. v. Public Serv. Comm’n*, 447 U.S. 530, 537 (1980)).

<sup>26</sup> See *Clear Channel Media Ownership Comments*, at 72.

lifting of the subcaps will trigger acquisition activity, as broadcasters seek to realign their local market clusters by acquiring certain in-market stations while divesting others.<sup>27</sup> And the divested properties will in many cases provide opportunities for affordable purchases by modestly capitalized and entry-level owners, including minorities, women and small businesses.<sup>28</sup> Indeed, as Multicultural, the nation's largest Asian-American owned radio and television company, has explained, the ease with which entities that are new to broadcasting and that seek to serve previously underserved audiences can access AM properties, as opposed to their FM counterparts, provides an additional, powerful, reason to eliminate the subcaps in their entirety.<sup>29</sup>

Finally, even if the Commission determines that a complete repeal of the subcaps is not appropriate, Clear Channel urges the FCC to at least remove them in the nation's largest media markets. It is beyond doubt that the very largest markets are marked by substantial competition and diversity, both within the radio service and from other broadcast and non-broadcast media, and that in those markets there could be no *conceivable* harm that would result from this very modest change. For this precise reason, the Chairman has proposed to modify the newspaper/broadcast cross-ownership rule to allow for enhanced cross-ownership opportunities in large markets.<sup>30</sup> Elimination of the subcaps in the same or similar set of markets (for instance, the top twenty Arbitron metro markets ranked by number of stations, or any Arbitron metro market located within any of the top twenty Nielsen DMAs) is necessary to ensure consistency and rationality across the

---

<sup>27</sup> *See id.*

<sup>28</sup> *See id.*

<sup>29</sup> *Clear Channel Media Ownership Comments*, at 72-73; *see Multicultural Media Ownership Comments*, at 2-3 (noting that AM stations are “ideal targets for entry-level acquisitions”).

<sup>30</sup> *See generally News Release* (stating that “competition and numerous voices” exist in the largest markets); *Martin Op-Ed* (stating that “there are many voices and sufficient competition” in the largest markets); *see also Martin 12/5/07 Statement*.

Commission's various media ownership rules.<sup>31</sup>

#### **IV. THE FCC MUST INCREASE PERMISSIBLE LEVELS OF COMMON OWNERSHIP IN THE NATION'S LARGEST MARKETS.**

Nor, as Clear Channel has already shown, can the Commission rationally retain the existing local radio ownership caps intact. Instead, market realities and the record evidence require the Commission to increase the number of radio stations that can be owned, at least in the very largest markets.<sup>32</sup> As explained previously, the record establishes that the higher levels of common ownership permitted by the 1996 Act have created efficiencies and synergies that have delivered public interest benefits in the form of more diverse programming and increased local service and

---

<sup>31</sup> See *Prometheus*, 373 F.3d at 408-09 (criticizing inconsistencies in the Diversity Index); see also, e.g., *Natural Resources Defense Council v. EPA*, 790 F.2d 289, 302 (3rd Cir. 1986) (agency decision arbitrary and capricious where it was “blatantly contradicted by a wealth of evidence in the record, including repeated statements by [the agency] itself”); *Airline Pilots Ass’n v. FAA*, 3 F.3d 449, 450 (D.C. Cir. 1993) (striking down agency decision as “internally inconsistent and therefore unreasonable and impermissible under Chevron”); *General Chemical Corp. v. United States*, 817 F.2d 844, 855 (D.C. Cir. 1986) (finding agency decision arbitrary and capricious because it was “internally inconsistent and inadequately explained”). Clear Channel notes that the Chairman’s proposed rule revision as set forth in the *News Release* would apply to the top twenty Designated Market Areas (“DMAs”) as defined by Nielsen. Radio markets, on the other hand, are currently subject to an Arbitron/BIA measure, or an interim contour overlap measure in areas not included in any Arbitron metro market, for purposes of the local radio ownership rule. It is therefore somewhat unclear how the proposed rule would apply to newspaper/radio combinations. As adopted, the cross-ownership rule might therefore apply to the top twenty Arbitron markets (as measured, for example, by the number of stations assigned to the market by BIA, consistent with the local radio ownership rule), or to any Arbitron metro market located within one of the top twenty Nielsen DMAs. Regardless, the measure should be the same across both the cross-ownership rule and the AM/FM subcap component of the local radio ownership rule.

<sup>32</sup> See *Clear Channel Media Ownership Comments*, at 50-59; *Clear Channel Media Ownership Reply Comments*, at 42-47; Richard T. Kaplar and Patrick D. Maines, *Media Consolidation, Regulation, and the Road Ahead*, at 8 (Feb. 2006), available at [http://www.mediainstitute.org/issue\\_papers/](http://www.mediainstitute.org/issue_papers/) (“*Media Consolidation, Regulation, and the Road Ahead*”) (attached to Comments of The Media Institute, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006)); see also Comments of the National Association of Broadcasters, MB Docket Nos. 06-121, *et al.*, at 84-87 (Oct. 23, 2006) (“*NAB Media Ownership Comments*”) (urging the Commission to relax the local radio ownership rules).

community involvement, with no countervailing competitive harms.<sup>33</sup> Accordingly, the FCC should at the very least raise the number of stations that a single entity can own in markets with between sixty and seventy-four stations from eight to at least ten, and should raise the number of stations that a single entity can own in markets with seventy-five or more stations from eight to at least twelve.<sup>34</sup>

As Clear Channel and others have explained, radio owners currently face abundant and growing competition within local terrestrial radio markets,<sup>35</sup> and the radio industry is the least consolidated of all communications industries and less consolidated than many other domestic commercial industries as well.<sup>36</sup> In addition, free radio now competes with multiple new platforms – including satellite radio; MP3 players; Internet radio stations; subscription-based music services available on cable, DBS, and through IPTV providers; and Wi-Max – none of which are subject to ownership limitations analogous to those that are currently crippling free, over-the-air radio.<sup>37</sup> As a result of this substantial competition, the radio industry, as Clear Channel and others have shown, is “struggling to compete.”<sup>38</sup> Radio advertising revenues and stock prices have declined dramatically in recent years, due to the competitive challenges that radio broadcasters face, as the record already

---

<sup>33</sup> See *Clear Channel Media Ownership Comments*, at 17-50; *Clear Channel Media Ownership Reply Comments*, at 13-38.

<sup>34</sup> See *Clear Channel Media Ownership Comments*, at 50-59; *Clear Channel Media Ownership Reply Comments*, at 42-47.

<sup>35</sup> See *Clear Channel Media Ownership Comments*, at 7-8, 50-51; see also *Clear Channel Media Ownership Reply Comments*, at 2-3 (citing additional comments).

<sup>36</sup> See *Clear Channel Media Ownership Comments*, at 8; *Clear Channel Media Ownership Reply Comments*, at 3-4 (citing additional comments).

<sup>37</sup> See *Clear Channel Media Ownership Comments*, 10-17, 50-51; see also *Clear Channel Media Ownership Reply Comments*, at 4-6 (citing additional comments).

<sup>38</sup> *Media Consolidation, Regulation, and the Road Ahead*, at 5.

reflects.<sup>39</sup>

These competitive difficulties are only amplified by the existence of artificial and arbitrary ownership rules that apply solely to free radio, as Clear Channel and others have fully explained before.<sup>40</sup> Indeed, while terrestrial broadcasters are suffering, their largely unregulated rivals are flourishing. Most significantly, U.S. Internet advertising spending is now predicted to *completely eclipse* radio advertising in 2007.<sup>41</sup> And, in just the first three months of 2007, Internet advertising set new records by taking in \$4.9 billion, a dramatic 26% increase over the previous year.<sup>42</sup> It is beyond dispute that much of the dollars being spent online would previously have been spent on traditional media advertising, such as radio.<sup>43</sup> Simply put, free radio is at risk, and modest, targeted, deregulatory change – which the record shows will cause no public interest harm but instead produce affirmative *benefits* for American radio listeners – is desperately needed in order to allow the industry to continue to compete with its unregulated counterparts in the contemporary audio programming marketplace.

Furthermore, Clear Channel notes that it is precisely the same sort of competitive developments, coupled with concerns regarding the ability of important traditional media to remain

---

<sup>39</sup> *Id.* at 7; see *Clear Channel Media Ownership Comments*, at 10-17, 50-52; see also *Clear Channel Media Ownership Reply Comments*, at 8-9 (citing additional comments); *Media Consolidation, Regulation, and the Road Ahead*, at 7 (“Radio captures about 8[%] of advertising dollars, a figure that hasn’t changed since 1980. The chances of radio maintaining its 8[%] share are in doubt, moreover, because radio has been losing listeners to other media – and fewer listeners mean fewer dollars from advertisers.”).

<sup>40</sup> See, e.g., *Clear Channel Media Ownership Comments*, at 17; *Clear Channel Media Ownership Reply Comments*, at 44.

<sup>41</sup> Louis Hau, *Web Ad Spending To Eclipse Radio In '07*, forbes.com, Aug. 29, 2007.

<sup>42</sup> *Internet ads hit another milestone*, Chicago Tribune, June 7, 2007.

<sup>43</sup> See, e.g., *NAB Media Ownership Comments*, at 32-35; Comments of the Newspaper Association of America, MB Docket Nos. 06-121, et al., at 42-43 (Oct. 23, 2006).

viable, that appear to be animating the desire to relax the newspaper/broadcast cross-ownership rule. Chairman Martin, indeed, has remarked on both in support of his rule change proposal, noting the “considerabl[e]” changes that have recently occurred in the media marketplace, the fact that newspapers “are struggling,” and the reality that their financial condition has declined “while online advertising has increased greatly.”<sup>44</sup> But, as the record clearly reflects, the same is true for radio, and there is simply no rational reason why these types of changes warrant relaxation of one set of rules but not any other.<sup>45</sup> Finally, it is worth noting that this proposal is exceedingly modest – in fact, Congressman Fred Upton has aptly referred to it as “embarrassingly” so<sup>46</sup> – and at least 39 members of Congress from both sides of the political spectrum have written to the Commission supporting it.<sup>47</sup> It would apply only to the country’s seventeen largest radio markets, and is, for this reason, also entirely in keeping with – and, in fact, even more limited than – the relief that is being proposed under the newspaper/broadcast cross-ownership rule.

## V. CONCLUSION

For all of these reasons, the Commission may not leave the local radio ownership rule in

---

<sup>44</sup> *Martin Op-Ed; see News Release; Martin 12/5/07 Statement.*

<sup>45</sup> *See supra* n.31. Further, although the newspaper/broadcast cross-ownership rule has not been modified since its inception over thirty years ago, *see News Release; Martin Op-Ed*, the local radio ownership caps have now been on the books in their current form for more than a decade. Both periods of time are the equivalent of light years when one looks at the dramatic pace of change that has occurred in the media marketplace.

<sup>46</sup> Remarks of Rep. Fred Upton Before the Media Institute, Feb. 16, 2006, at 10.

<sup>47</sup> *See, e.g.*, Letter from Rep. Fred Upton to the Hon. Kevin J. Martin (Feb. 9, 2006); Letter from Reps. Paul E. Gillmor, Gene Green, Edolphus Towns, Cliff Stearns, Eliot L. Engel, Ed Whitfield, Charles A. Gonzalez, Barbara Cubin, Mike Ross, John Shimkus, Vito Fossella, Steve Buyer, George Radanovich, Mary Bono, Greg Walden, Lee Terry, Mike Ferguson, C.L. “Butch” Otter, Sue W. Myrick, Charles W. “Chip” Pickering, Ralph M. Hall, Michael C. Burgess, and John B. Shadegg to the Hon. Kevin J. Martin (June 30, 2006); Letter from Sens. Jim DeMint, John E. Sununu, Thad Cochran, James M. Inhofe, John Ensign, Sam Brownback, Larry E. Craig, Tom Coburn, Pat Roberts, Richard Burr, John Cornyn, Saxby Chambliss, Robert F. Bennett, Mel Martinez, and Orrin G. Hatch to the Hon. Kevin J. Martin (Oct. 24, 2007).

place in its current form. Instead, the AM/FM subcaps must be eliminated – if not in all markets than in the nation’s largest markets – and the local radio ownership caps at least modified to allow for ownership of ten stations in markets with between sixty and seventy-four stations and twelve stations in markets with seventy-five or more stations.

Respectfully submitted,



By: \_\_\_\_\_

Andrew W. Levin  
Executive Vice President, Chief Legal  
Officer, and Secretary  
Clear Channel Communications, Inc.  
200 East Basse Road  
San Antonio, Texas 75201  
(210) 822-2828

Dated: December 11, 2007