



Consumer Federation of America

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

December 18, 2007

Re: Notice of Ex Parte Presentation: 2006 Biennial Ownership Review et al.
MB Dkt. Nos. 06-121, 02-277, 04-228; MM Dkt Nos. 01-235, 01-317, 00-244
Localism Inquiry, MB Dkt. No. 04-233

Dear Ms. Dortch,

This letter is to advise you that at the request of Chairman Kevin Martin, Ben Scott of Free Press, Chris Murray and Gene Kimmelman of Consumers Union, and Mark Cooper of Consumer Federation of America met with the Chairman and his staff on December 17, 2007. In the meeting, we discussed the Chairman's proposed rule on newspaper-broadcast cross-ownership. The focus of the discussion was to identify ways in which the loopholes in the rule might be tightened if not eliminated. Some level of agreement was reached on some points regarding the need to make sure that the bar for achieving a merger outside of the presumptions in the top twenty markets is a high bar. At the request of the staff, we present in this ex parte a representation of draft language that would characterize the position that we laid out. It was not clear to what extent the Chairman was amenable to this proposal. Further, it is not a position that we believe justifies further media consolidation. However, it is a method to close loopholes if the Commission is determined to relax the rules. It specifies that the only way to achieve a merger outside the top 20 markets and outside the top 4 stations would be to present clear evidence that the firm being acquired was financially failing or that the broadcast station being acquired would become a news producing station where before it had not been. These conditions would be substituted for the vague standard for waivers with which we have taken issue in our previous comments.

Most sincerely,

Ben Scott
Free Press

Proposed Change

§ 73.3555 Multiple Ownership.

(d) Daily newspaper cross-ownership rule.

(1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(ii) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(iii) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(2) Paragraph (1) shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1).

(3) In making a finding under paragraph (2), there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1), provided that, with respect to a combination including a commercial TV station, the station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.

(4) In making a finding under paragraph (2), there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (1) in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (3).

(5) The Commission shall not make a finding under paragraph (2) and similarly shall not find that the presumption listed in paragraph (4) has been rebutted unless the Commission finds by

clear and convincing evidence introduced by the applicant that the merger will promote a greater diversity of news voices in the market and increase competition among local news providers such that:

(i) either, both of the following conditions apply:

(a) that the acquired station has not done news for the entire period of its most recent license and the licensee commits to offering originally produced news comparable in quantity to other stations in the market for the entire period of its new license; and

(b) that each affected media outlet in the combination will exercise its own independent news judgment through separate editorial staffs;

(ii) or, that the financial condition of the newspaper or the broadcast station the applicant wishes to acquire is a failed station or a failed paper, defined as three consecutive years of financial loss, and the applicant is the only viable buyer, as determined by an independent third party auditor.

(6) If a license is granted under (5), then the Commission shall place the license on a probationary basis for the first 8 year cycle, with annual verification by the Commission that the applicant has delivered on its condition (i) and (ii). The first two violations within a license term shall be subject to fines, and the third shall be subject to divestiture through an independent divestiture trust.