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Mr. Michael Carey
Senior Legal Advisor, Media Issues
Office of Chairman Martin, Room: 8-B201
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

SUNSHINE PERIOD

Dear Mr. Carey:

I have been told that you are the best person to send the enclosed material concerning the FCC's Public Hearing on Media Ownership held September 20, 2007 at the Operation Push National Headquarters in Chicago.

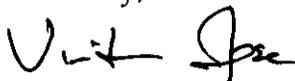
I was slated to make a public comment representing the position of independent free community papers but was unable to do so, which I regret, especially since I arose at 4:00 a.m. that day, drove to Indianapolis for a flight that took five hours to get to Chicago in time for the hearing, and in effect, took two days time in total, spending something over \$500. By 9:30 p.m. on the 20th the Hearing was running two hours late and my 2-minute slot would have occurred about midnight, I decided I could not stay. Therefore, I would appreciate it if you would make available my short statement, enclosed, to Chairman Martin.

Also enclosed is a copy of my book, *The Free Paper in America – Struggle for Survival*, which may be of interest to you and Chairman Martin, especially the chapter on the Cross-Ownership Rule. Since the book (as far as I know, the only book extant on this subject) was published in 2000, some portions may be dated, but I believe it brings forth some facts and opinions not found elsewhere.

I did enjoy the variety of positions given the light of publicity at the Hearing and commend you and Chairman Martin on your part in exploring this little-known but extremely important issue still fomenting the U.S. media landscape.

Thank you for your consideration in giving a fair review to our position.

Sincerely,



Victor Jose

Mr. Kevin J. Martin, Chairman
Federal Communications Commission

My name is Victor Jose. I live in Richmond, Indiana, where I published an independent free paper for 40 years, from 1953 to 1993. I bring you no current research; in fact, our industry has always been at a disadvantage in explaining our position to counter the massive and heavily subsidized research of the paid newspaper industry. So I can offer only personal experience and an appeal to common sense, which anyone in our free newspaper business can and will confirm.

As briefly as possible, I hope to touch on some highlights of the cross-ownership ban's history, so we can have a sense of where we've come from to where we are now. This is more fully recorded in my book, *The Free Paper in America – Struggle for Survival*, which is, as far as I know, the only current book on this subject. With due respect, I submit that the evidence in the record raises the question: Why, after all these years, are we still debating the worth of the cross-ownership ban -- one of our country's most enlightened public policies in defending the principles of competition and diversity?

In discussing the cross-ownership ban, we usually start with the year 1975 – a 32 year history. Actually, it has a 73 year history, dating from the enactment of the Communications Act of 1934. It is not generally known that President Roosevelt advocated a cross-ownership ban in that act but had to back off when daily newspaper publishers descended on Washington in protest, because they wanted – and got – radio franchises in their home towns. (See my book, pages 211-12). Later, during the administrations of Nixon, Ford, Carter and Reagan, the issue rose again, with most of those in government and public interest groups always in favor of its continuance.

Fast forward to 1970. By now the power of co-owned newspapers and television stations had become evident, and in that year, 1970, the U.S. Department of Justice recommended a cross-ownership ban and the complete divestiture of all such combinations. However, it wasn't until five years later, with nearly all licenses now granted, including nearly 500 newspaper-radio and newspaper-TV combinations, that the FCC belatedly issued the ban on future co-ownerships. As we know, the paid newspaper industry fought the ruling, which was upheld by the Appeals court, which added the directive of complete divestiture of all such licenses, and then to the Supreme Court, which unanimously approved the Appeals court ruling, although removing complete

divestiture. Answering the newspaper industry's assertion that their First Amendment rights were violated, Justice Marshall declared that "this court has held that application of the antitrust laws to newspapers is not only consistent with but is actually supportive of the values underlying the First Amendment."

In recent years, opposition from the Newspaper Association of America has been unwavering, shifting only from the First Amendment stance to what might be called the "Everything Has Changed" position. It is also essential to keep in mind an important distinction, as pointed out by FCC Chairman William Kennard in 1998 that competition and diversity are separate issues in the total equation, and also in a Commission Order in 1996 that "any waiver that might be acceptable in terms of its impact upon diversity might create such market power in a single entity that it would not be tolerable in terms of competition."

That is also the point at which concerns of independent free papers meet the argument that "Everything Has Changed" and become an issue of survival. Yes, there is more cable TV now, but it is a minor player in the local market, and there is the Internet, which has undermined the daily newspapers' ability to make monopoly profits but not their dominance. We cannot forget – nor should we – that daily newspapers are monopolies in 99% of American cities and remain the overwhelming advertising power. Add to this the fact – as surely we all know – that virtually all daily newspapers now own their own Internet site to continue their unrelenting efforts, as Al Neuharth used to say, "to protect the franchise."

No, as long as daily newspapers dominate all but 1% of our cities, none but those persons who are paid to defend Denial can argue against experience and common sense. Ask any independent free paper or hometown weekly paper who their competition is and they will tell you it is the daily newspaper and the radio and TV stations. In all cases, the independent free paper is the competitor, offering a choice in advertising and often an independent outlet for news and opinions. Even though we can argue endlessly on how dominant the daily newspaper is in any given community, do we want to increase that dominance to the disadvantage of competition? Do we want to narrow the free marketplace of competition and ideas? No, dissolution or weakening of the cross-ownership ban cannot be justified on the basis of either business necessity or public interest.

Victor Jose

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1 Book