afforded ample time to review and comment on the studies after completion of the peer reviews.

149. Furthermore, the record clearly indicates that the public had ample notice of our peer review plans, although Free Press attempts to make much of the fact that the peer review plans were not filed on a separate web page.[477] Beginning with the initial Public Notice announcing the commissioning of the 10 studies on November 22, 2006, the Commission continuously informed the public of its peer review process through periodic Public Notices and updates to its Media Ownership website. The Commission posted on its website the study topics (November 22, 2006); the completed studies (July 31, 2007); the peer review charge letters (August 28, 2007); and the completed peer review reports (September 4, 2007). The Commission's July 31, 2007 Public Notice established a pleading cycle for public comment on the studies. The peer review charge letters and peer review reports were made available to the public on the Commission's website well before the end of the comment period. In addition, charge letters were posted to the web site in advance of the posting of the actual peer review reports. Accordingly, the public was adequately informed of the peer review process being conducted, and has had adequate opportunity to comment on the elements of the FCC's peer review process in this proceeding.

150. Free Press's complaint does not raise concerns about the validity of the Commission's peer review process, and there is no basis for any. The OMB Bulletin expressly provides that agencies have "broad discretion" to use particular peer review mechanisms suitable to a particular information product.[478] The Commission has exercised its discretion in a reasonable manner in the course of this proceeding. All of the studies that the Commission requested to be conducted were peer reviewed by unaffiliated experts, and four of them were peer reviewed by multiple reviewers.[479] One study was revised as a result of the peer review, and the authors of another study submitted new calculations with their responses to the peer reviews.[480] Twenty-two quantitative studies submitted by third parties in the docket were peer reviewed, and the results were posted for further public comment. The Commission's peer review process has improved the quality of the studies submitted to the Commission for its information in this proceeding.[481] Although Free Press would have preferred a far more elaborate and time-consuming peer review process,[482] this process was not required under the OMB Bulletin nor would it have improved appreciably upon the Commission's robust, extended process for independent review and public comment.[483]

XI. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Analysis

151. As required by the Regulatory Flexibility Act of 1980 ("RFA"),[484] the Commission has

[477] *See, e.g.*, Free Press Complaint at 16-17.

[478] *Id.* at 70 Fed. Reg., introduction at 2665. *See also* Reply Comments on Media Ownership Studies at 8-9.

[479] *See* http://www.fcc.gov/ownership/studies.html.

[480] *See* http://www.fcc.gov/ownership/studies.html, Media Ownership Study 4 and Media Ownership Study 6.

[481] For these reasons, Free Press's claim that the Commission deviated from peer review and other data quality guidelines in gathering evidence for the record, including the 10 studies requested by the FCC, so that the record evidence cannot be considered "substantial" under the Administrative Procedures Act, is completely without merit. *See* Free Press Nov. 14 Ex Parte at 39.

[482] *See, e.g.*, First Complaint at 17-19; Second Complaint at 5.

[483] *See also* NAA Reply to Media Ownership Studies at 4.

[484] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this *Report and Order*. The FRFA is set forth in Appendix B.

B. Final Paperwork Reduction Act Analysis

152. This *Report and Order* contains both new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we have considered how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We find that the modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Order.

C. Congressional Review Act

153. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.[485]

D. Additional Information

154. For additional information on this proceeding, please contact Royce Sherlock, Industry Analysis Division, Media Bureau, at (202) 418-2330, or Mania Baghdadi, Industry Analysis Division, Media Bureau, at (202) 418-2330.

XII. ORDERING CLAUSES

155. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2(a), 4(i,), 303, 307, 309 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309 and 310, and Section 202(h) of the Telecommunications Act of 1996, this *Report and Order and Order on Reconsideration* and the rule modifications attached hereto as Appendix A ARE ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval. It is our intention in adopting these rule changes that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law. Thus, for example, if one of the ownership rules is held to be unlawful, the other ownership rules shall remain in effect to the fullest extent permitted by law, each being severable from the others.

156. IT IS FURTHER ORDERED, that the Petition for Reconsideration filed by Office of Communication of the United Church of Christ, Inc., Black Citizens for a Fair Media, Philadelphia Lesbian and Gay Task Force, and Women's Institute for Freedom of the Press; and the Petition for Reconsideration filed by Minority Media and Telecommunications Council, Counsel for Diversity and Competition Supporters filed in MB Docket No. 02-277 ARE GRANTED to the extent set forth in this Order, and otherwise ARE DENIED. The Petitions for Reconsideration filed in MB Docket No. 02-277 by National Association of Black Owned Broadcasters, Inc. and The Rainbow/PUSH Coalition, Inc.; WTCM Radio, Inc.; WJZD, Inc.; Cumulus Media, Inc.; Galaxy Communications, L.P.; Mt. Wilson FM

[485] 5 U.S.C. § 801(a)(1)(A).

Broadcasters; Entercom Communications Corp.; Great Scott Broadcasting; Treasure and Space Coast Radio; Saga Communications, Inc.; Future of Music Coalition; National Organization for Women; Mid-West Family Broadcasting; Monterey Licenses, LLC; LIN Television Corporation and Raycom Media Inc.; Duff, Ackerman & Goodrich, LLC; Center for the Creative Community and Association of Independent Video and Filmmakers; Robert W. McChesney and Josh Silver of Free Press; Nexstar Broadcasting Group, LLC; Saga Communications, Inc.; Consumers Federation of America and Consumers Union; Capitol Broadcasting Company, Inc.; Bennco, Inc.; The Amherst Alliance and the Virginia Center for the Public Press are DISMISSED or DENIED as discussed in this Order.

157. IT IS FURTHER ORDERED, that as enumerated in paragraph 76 of the *Report and Order and Order on Reconsideration*, the grandfathering or waivers granted in the 1975 newspaper/broadcast cross-ownership decision, *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, Docket No. 18110, 50 FCC 2d 1046 (1975), are continued, and all permanent waivers for the prior newspaper/broadcast cross-ownership rule that have previously been granted are continued.

158. IT IS FURTHER ORDERED, that as enumerated in paragraph 77 of the *Report and Order and Order on Reconsideration*, waivers are granted to Gannett Co. Inc.'s combination in Phoenix (The Arizona Republic and KPNX-TV), Media General Inc.'s combination in Myrtle Beach-Florence, South Carolina (WBTW(TV) and the Morning News), Media General, Inc.'s combination in Columbus, Georgia (WRBL(TV) and the Opelika-Auburn News), Media General, Inc.'s combination in Panama City, Florida (WMBB(TV) and the Jackson County Floridan), and Media General's combination in the Tri-Cities, Tennessee/Virginia DMA (WJHL-TV and the Bristol (Virginia Tennessee) Herald Courier.

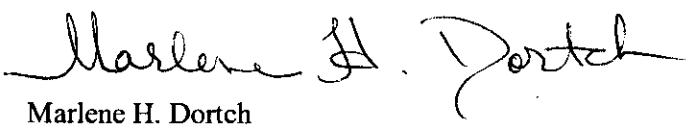
159. IT IS FURTHER ORDERED, that as enumerated in paragraph 78 of the *Report and Order and Order on Reconsideration*, licensees with a pending waiver request that involves an existing station combination consisting of more than one newspaper and/or more than one broadcast station will have 90 days after the effective date of the *Report and Order and Order on Reconsideration* to either amend their renewal or waiver requests or file a request for a permanent waiver.

160. IT IS FURTHER ORDERED, that as enumerated in paragraph 78 of the *Report and Order and Order on Reconsideration*, entities that have been granted a temporary waiver of the newspaper/broadcast cross-ownership rule pending the completion of this rulemaking will have 90 days after the effective date of the Report and Order to either amend their renewal or waiver requests or file a request for a permanent waiver.

161. IT IS FURTHER ORDERED, that the proceedings in MB Docket No. 06-121, MB Docket No. 02-277, MM Docket No. 01-235, MM Docket No. 01-317, MM Docket No. 00-244, and MM Docket No. 99-360 ARE TERMINATED.

162. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Order on Reconsideration*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Rule Changes

For the reasons described in the preamble, Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73--RADIO BROADCAST SERVICES

1. The authority citations for Part 73 continue to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334, and 336.

2. Section 73.3555 is amended to read as follows:

§ 73.3555 Multiple ownership.

(a)(1) Local radio ownership rule. A person or single entity (or entities under common control) may have a cognizable interest in licenses for AM or FM radio broadcast stations in accordance with the following limits:

(i) In a radio market with 45 or more full-power, commercial and noncommercial radio stations, not more than 8 commercial radio stations in total and not more than 5 commercial stations in the same service (AM or FM);

(ii) In a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations, not more than 7 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM);

(iii) In a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations, not more than 6 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM); and

(iv) In a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, not more than 5 commercial radio stations in total and not more than 3 commercial stations in the same service (AM or FM); provided, however, that no person or single entity (or entities under common control) may have a cognizable interest in more than 50% of the full-power, commercial and noncommercial radio stations in such market unless the combination of stations comprises not more than one AM and one FM station.

(2) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(b) Local television multiple ownership rule.
An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) only under one or more of the following conditions:

(1) The Grade B contours of the stations (as determined by § 73.684 of this part) do not overlap; or

(1)(i) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9:00 a.m.-

midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. Count only those stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combination. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market. Count only those TV stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combination.

(c) Radio-television cross-ownership rule.

(1) This rule is triggered when:

(i) The predicted or measured 1 mV/m contour of an existing or proposed FM station (computed in accordance with § 73.313 of this part) encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompasses the entire community of license of the FM station; or

(ii) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station (computed in accordance with § 73.183 or § 73.386), encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompass(es) the entire community of license of the AM station.

(2) An entity may directly or indirectly own, operate, or control up to two commercial TV stations (if permitted by paragraph (b) of this section, the local television multiple ownership rule) and 1 commercial radio station situated as described above in paragraph (1) of this section. An entity may not exceed these numbers, except as follows:

(i) If at least 20 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to:

(A) Two commercial TV and six commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule); or

(B) One commercial TV and seven commercial radio stations (to the extent that an entity would be permitted to own two commercial TV and six commercial radio stations under paragraph (c)(2)(i)(A) of this section, and to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(ii) If at least 10 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to two commercial TV and four commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(3) To determine how many media voices would remain in the market, count the following:

(i) TV stations: independently owned and operating full-power broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license that have Grade B signal contours that overlap with the Grade B signal contour(s) of the TV station(s) at issue;

(ii) Radio stations:

(A)(1) Independently owned operating primary broadcast radio stations that are in the radio metro market (as defined by Arbitron or another nationally recognized audience rating service) of:

(i) The TV station's (or stations') community (or communities) of license; or

(ii) The radio station's (or stations') community (or communities) of license; and

(2) Independently owned out-of-market broadcast radio stations with a minimum share as reported by Arbitron or another nationally recognized audience rating service.

(B) When a proposed combination involves stations in different radio markets, the voice requirement must be met in each market; the radio stations of different radio metro markets may not be counted together.

(C) In areas where there is no radio metro market, count the radio stations present in an area that would be the functional equivalent of a radio market.

(iii) Newspapers: Newspapers that are published at least four days a week within the TV station's DMA in the dominant language of the market and that have a circulation exceeding 5% of the households in the DMA; and

(iv) One cable system: if cable television is generally available to households in the DMA. Cable television counts as only one voice in the DMA, regardless of how many individual cable systems operate in the DMA.

(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 by 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,

(i) 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; and

(ii) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(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) In making a finding under paragraph (2), the Commission shall consider:

(i) whether the combined entity will significantly increase the amount of local news in the market;
(ii) whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment;
(iii) the level of concentration in the Nielsen Designated Market Area (DMA); and
(iv) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

(6) In order to overcome the negative presumption set forth in paragraph (4) with respect to the combination of a major newspaper and a television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth above in paragraph (5) will inform this decision.

(7) The negative presumption set forth in paragraph (4) shall be reversed under the following two circumstances:

(i) the newspaper or broadcast station is failed or failing; or
(ii) the combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination.

(e) National television multiple ownership rule.

(1) No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.

(2) For purposes of this paragraph (e):

(i) National audience reach means the total number of television households in the Nielsen

Designated Market Areas (DMAs) in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.

(ii) No market shall be counted more than once in making this calculation.

(3) Divestiture. A person or entity that exceeds the thirty-nine (39) percent national audience reach limitation for television stations in paragraph (e)(1) of this section through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.

(f) The ownership limits of this section are not applicable to noncommercial educational FM and noncommercial educational TV stations. However, the attribution standards set forth in the Notes to this section will be used to determine attribution for noncommercial educational FM and TV applicants, such as in evaluating mutually exclusive applications pursuant to subpart K.

* * * * *

Note 1 to § 73.3555: The words "cognizable interest" as used herein include any interest, direct or indirect, that allows a person or entity to own, operate or control, or that otherwise provides an attributable interest in, a broadcast station.

Note 2 to § 73.3555: In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this note, attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds

50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this note, X's interest in "Licensee" would be 15% (0.6 x 0.25) and A's interest in "Licensee" would be 1.5% (0.1 x 0.6 x 0.25). Neither interest would be attributed under paragraph (i) of this note.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

(e) Subject to paragraph (i) of this note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the media-related businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

(h) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (h)(1) of this note plus the sum of the interests computed under paragraph (h)(2) of this note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules ("interest holder") shall have that interest attributed if:

(1) The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and

(2)(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph (i); or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, "market," will be defined as it is defined under the specific multiple or cross-ownership rule that is being applied, except that for television stations, the term "market," will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

(j) "Time brokerage" (also known as "local marketing") is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

(1) Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the

broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a), (c), and (d) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(2) Where two television stations are both located in the same market, as defined in the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b), (c), (d) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(3) Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (b), (c), and (d) of this section if the brokering station is a television station or with paragraphs (a), (c), and (d) if the brokering station is a radio station.

(k) "Joint Sales Agreement" is an agreement with a licensee of a "brokered station" that authorizes a "broker" to sell advertising time for the "brokered station."

(1) Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a), (c), and (d) of this section.

(2) Every joint sales agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the limitations set forth in paragraphs (a), (c), and (d) of this section.

Note 3 to § 73.3555: In cases where record and beneficial ownership of voting stock is not identical (*e.g.*, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

Note 4 to § 73.3555: Paragraphs (a) through (d) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled media properties. Paragraphs (a) through (d) will apply to all applications for new stations, to all other applications for assignment or transfer, to all applications for major changes to existing stations, and to applications for minor changes to existing stations that implement an approved change in an FM radio station's community of license or create new or increased concentration of ownership among commonly owned, operated or controlled media properties. Commonly owned, operated or controlled media properties that do not comply with paragraphs (a) through (d) of this section may not be assigned or

transferred to a single person, group or entity, except as provided in this Note or in the Report and Order in Docket No. 02-277, released July 2, 2003 (FCC 02- 127).

Note 5 to § 73.3555: Paragraphs (b) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87-8, FCC 91-182 (released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station, the Grade B contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a "non-satellite" station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87-8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

Note 6 to § 73.3555: For purposes of this section a daily newspaper is one which is published four or more days per week, which is in the dominant language in the market, and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

Note 7 to § 73.3555: The Commission will entertain applications to waive the restrictions in paragraph (b) and (c) of this section (the local television ownership rule and the radio/television cross-ownership rule) on a case-by-case basis. In each case, we will require a showing that the in-market buyer is the only entity ready, willing, and able to operate the station, that sale to an out-of-market applicant would result in an artificially depressed price, and that the waiver applicant does not already directly or indirectly own, operate, or control interest in two television stations within the relevant DMA. One way to satisfy these criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received. We will entertain waiver requests as follows:

(1) If one of the broadcast stations involved is a "failed" station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.

(2) For paragraph (b) of this section only, if one of the television stations involved is a "failing" station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity.

(3) For paragraph (b) of this section only, if the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

Note 8 to § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m

groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

Note 9 to § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

Note 10 to §73.3555: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in MB Docket No. 02-277.[2] The Commission sought written public comment on the proposals in the *NPRM* including comment on the IRFA. The Commission also prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the *Further Notice of Proposed Rulemaking* (*Further Notice*).[3] The Commission sought written public comment on the *Further Notice*, including comment on the Supplemental IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need for, and Objectives of, the *Report and Order and Order on Reconsideration* (*Order*)

2. The *Order* concludes the Commission's 2006 Quadrennial Review of the broadcast ownership rules. This review encompasses the newspaper/broadcast cross-ownership rule, the radio-television cross-ownership rule, the local television multiple ownership rule, the local radio ownership rule, and the dual network rule.[5] The rules are reviewed under Section 202(h) of the Telecommunications Act of 1996 ("1996 Act"),[6] which requires the Commission to review its ownership rules (except the national television ownership limit) every four years and "determine whether any of such rules are necessary in the public interest as the result of competition."[7] Under Section 202(h), the Commission "shall repeal or modify any regulation it determines to be no longer in the public interest."[8] The Commission modifies the newspaper/broadcast cross-ownership rule and retains the other broadcast ownership rules currently in effect.

3. The Commission's approach in this *Order* is a cautious approach that balances the

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601– 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Broadcast Stations in Local Markets, Definition of Radio Markets,* 17 FCC Rcd 18503, 18558 App. A (2002).

[3] *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*, Further Notice of Proposed Rule Making, 21 FCC Rcd 8834 (2006).

[4] *See* 5 U.S.C. § 604.

[5] The Commission's broadcast ownership rules are contained in 47 C.F.R. § 73.3555. For the local television multiple ownership rule, the radio/television cross-ownership rule, and the newspaper/broadcast cross-ownership rule that are currently in effect, *see* 47 C.F.R. § 73.3555(b)-(d) (2002); for the local radio ownership rule, *see* 47 C.F.R. § 73.3555(a) (2006). The dual network rule is contained in 47 C.F.R. § 73.658(g) (2006).

[6] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. at 111-112 *and* Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 100 (2004) (codified at 47 U.S.C. § 303 note (2006)).

[7] In 2004, Congress revised the then biennial review requirement to require such reviews quadrennially. Congress also eliminated the national television multiple ownership rule from the quadrennial review requirement. *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 100 (2004) (codified at 47 U.S.C. § 303 note (2006)).

[8] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

concerns of many commenters that it not permit excessive consolidation, with concerns of other commenters that it afford some relief to assure continued diversity and investment in local news programming by a modest loosening of the 32 year-old prohibition on newspaper/broadcast cross-ownership. The Commission believes that the decisions it adopts in the *Order* serve our public interest goals, appropriately take account of the current media marketplace, and comply with our statutory responsibilities.

B. Legal Basis

4. This *Order* is adopted pursuant to Sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Supplemental IRFA

5. The Commission received no comments in direct response to the IRFA and the Supplemental IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments are discussed in the section of this FRFA discussing the steps taken to minimize significant impact on small entities, and the significant alternatives considered.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under Section 3 of the Small Business Act.[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12]

7. **Television Broadcasting.** In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $13 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[13] According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in

[9] 5 U.S.C. § 603(b)(3).

[10] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies, "unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of the term where appropriate to the activities of the agency and publishes the definition(s) in the Federal Register."

[11] *Id.*

[12] 15 U.S.C. § 632.

[13] 2007 NAICS Code 515120. This category description states: "This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public". U.S. Census Bureau 2007 NAICS Definitions, Television Broadcasting.

the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations[14] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

8. An element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

9. **Radio Broadcasting.** The Small Business Administration defines a radio broadcasting entity that has $6.5 million or less in annual receipts as a small business.[15] Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public."[16] According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of December 7, 2007, about 10,500 (95 percent) of 11,050 commercial radio stations in the United States have revenues of $6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations[17] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

10. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

11. **Daily Newspapers**. The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees.[18] Census Bureau data for 2002 show that there were 5,159 firms in this category that operated for the entire year.[19] Of this

[14] "[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

[15] *See* 2007 NAICS code 515112.

[16] *Id.*

[17] "[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

[18] 13 C.F.R. § 121.201; NAICS code 511110.

[19] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 511110 (issued Nov. 2005).

total, 5,065 firms had employment of 499 or fewer employees, and an additional 42 firms had employment of 500 to 999 employees. Therefore, we estimate that the majority of Newspaper Publishers are small entities that might be affected by our action.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. Broadcasters whose newspaper/broadcast combination is approved under the presumption that a proposed newspaper broadcast combination is consistent with the public interest when it initiates the programming of local newscasts of at least seven hours per week on a broadcast outlet that otherwise was not offering local newscasts prior to the combined operations must report to the Commission annually regarding how they have followed through on their commitment to initiate at least seven hours a week of local news. The *Order* modestly revises the newspaper/broadcast cross-ownership rule and otherwise retains the broadcast ownership rules currently in effect. With the exception of the foregoing reporting requirement, the *Order* imposes no increased reporting, recordkeeping or other compliance requirements.

F. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[20]

14. The *Order* modestly revises the newspaper/broadcast cross-ownership rule. Under the new rule, the Commission presumes a proposed newspaper/broadcast transaction is not inconsistent with the public interest if it meets the following test: (1) the market at issue is one of the 20 largest Nielsen Designated Market Areas ("DMAs"); (2) the transaction involves the combination of only one major daily newspaper and only one television or radio station; (3) if the transaction involves a television station, at least eight independently owned and operating major media voices (defined to include major newspapers and full-power TV stations) would remain in the DMA following the transaction; and (4) if the transaction involves a television station, that station is not among the top four ranked stations in the DMA. All other proposed newspaper/broadcast transactions would continue to be presumed not in the public interest.

15. Under the new rule, the negative presumption will be reversed in two circumstances. First, the newspaper or broadcast station would have to be considered "failed" or "failing." To be deemed "failed," the newspaper or broadcast station would have to have ceased publication or gone dark at least four months before the filing of an application, or be in bankruptcy proceedings. To be treated as "failing," the applicant must show that (a) the broadcast station has had an all-day audience share of 4 percent or lower, (b) the newspaper or broadcast station has had a negative cash flow for the previous three years, (c) the combination will produce public interest benefits, and (d) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the newspaper or station. Second, the negative presumption will be reversed when the combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours

[20] 5 U.S.C. § 603 (c).

per week of local news programming after the combination. Under the new rule, the Commission would consider a negative presumption as establishing a high hurdle as it reviews the transactions on a case-by-case basis. In particular, applicants attempting to overcome a negative presumption about a newspaper television combination will need to demonstrate by clear and convincing evidence that post-merger the merged entity will increase the diversity of independent news outlets (*e.g.*, separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market. The Commission will use the following factors to inform its evaluation: (1) the extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the Nielsen DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations. This approach will permit the Commission to balance the needs of the public for media and viewpoint diversity with its concerns about the financial health of traditional media outlets in the context of each particular transaction.

16. The Commission considered other alternatives, but the *Order* retains the other media ownership rules currently in effect. The Commission believes that the decisions it adopts in the *Order* serve our public interest goals, appropriately take account of the current media marketplace, and comply with our statutory responsibilities. It retains the radio/television cross-ownership rule currently in effect[21] to provide protection for diversity goals in local markets and thereby serve the public interest.

17. The *Order* finds that restrictions on common ownership of television stations in local markets continue to be necessary in the public interest to protect competition for viewers and in local television advertising markets. The Commission concludes that, in order to preserve adequate levels of competition within local television markets, the local TV ownership rule as it is currently in effect should be retained. Accordingly, an entity may own two television stations in the same DMA if: (1) the Grade B contours of the stations do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, *and* at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the combination. To determine the number of voices remaining after the merger, the Commission counts those broadcast television stations whose Grade B signal contours overlap with the Grade B signal contour of at least one of the stations that would be commonly owned.[22] With respect to the waiver standard for the local TV ownership rule, we will reinstate our requirement that a waiver applicant demonstrate that there is no buyer outside the market willing to purchase the station at a reasonable price. Reinstating this requirement will promote the market entry of small businesses, including minority- and women-owned businesses, because it will increase the likelihood that they will learn of purchasing opportunities.

18. The Commission does not revise its decision that DMAs are the more precise geographic markets. Nonetheless, in the instant *Order*, unlike in the *2002 Biennial Review Order*, we are not relaxing the local television ownership rule, and, accordingly, to avoid disruption to settled expectations, we retain the Grade B overlap provision. Furthermore, we believe that maintaining the Grade B provision will promote television service in rural areas by continuing to enable station owners to build or purchase an additional station in a remote corner of the DMA, beyond the reach of their Grade B signal, without regard to the top four/eight voices restriction.

19. The *Order* concludes that the current local radio ownership rule remains "necessary in

[21] 47 C.F.R. § 73.3555(c) (2002).

[22] 47 C.F.R. § 73.3555(b) (2002).

the public interest" to protect competition in local radio markets. As directed by the *Prometheus* court, the Commission also provides a reasoned justification for our decision to retain the existing numerical limits on local radio ownership and the AM subcaps. In addition, we deny or dismiss a number of pending petitions for reconsideration of the Commission's action concerning the local radio ownership rule in the *2002 Biennial Review Order*. Accordingly, an entity may own, operate, or control (1) up to eight commercial radio stations, not more than five of which are in the same service (*i.e.*, AM or FM), in a radio market with 45 or more full-power, commercial and noncommercial radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market.[23] Retaining the AM subcap serves the public interest because the relative affordability of radio compared to other mass media makes it a likely avenue for new entry into the media business, particularly by small businesses.

20. For the same reasons recited by the Commission in 2002, we continue to believe that the dual network rule is necessary in the public interest to promote competition and localism. Accordingly, the *Order* retains the dual network rule in its current form. No petitions were filed asking the Commission to reconsider its decision to retain the rule, and no challenges were filed in *Prometheus*. The Commission sought comment in the *Further Notice* on whether the dual network rule remains necessary in the public interest to promote the Commission's policy goals.[24] Almost all of the few parties commenting on the rule in this proceeding support retaining the rule in its current form. Other parties argue that relaxing or eliminating the rule would increase concentration to the detriment of competition, diversity, and localism.[25] No specific changes to the dual network rule were proposed,[26] and only two parties - Fox and CBS - oppose retaining the rule in any form.[27] Neither of these parties has provided evidence convincing us that a departure from our 2002 decision to retain the rule in its current form is warranted.

21. The *Order* finds that the Commission is foreclosed from addressing the issue of the UHF discount in this proceeding by the 2004 Consolidated Appropriations Act. Although the Appropriations Act did not specifically mention the UHF discount, the *Prometheus* court observed that the statutory 39 percent national cap would be altered if the UHF discount were modified. The court observed that the

[23] *See* 1996 Act § 202(b); 47 C.F.R. § 73.3555(a).

[24] *Further Notice*, 21 FCC Rcd at 8848 ¶ 33.

[25] AFL-CIO Comments at 58-62; SAG Comments at 34; Crudele Informal Comments at 2-3.

[26] One party's suggestion that the Commission should consider restrictions on the common ownership of broadcast and cable networks by a single entity is unrelated to the dual network rule. Desmond Comments at 8.

[27] Fox argues that the rule is unnecessary because antitrust review can address the Commission's concerns about competition in the national advertising and program production markets. As explained above, our concerns here are with competitive harms that would reduce program output, choices, quality, and innovation, to the detriment of viewers, and with reduced affiliate power and influence. We do not think that antitrust enforcement would protect against these harms. CBS contends that the variety of broadcast and cable networks available to viewers makes the rule no longer necessary in the public interest. We continue to believe that the four largest broadcast networks continue to serve a unique role in the electronic media and note that no other networks, cable or broadcast, reach nearly as large an audience as they do. Therefore, we do not believe that the advent of other networks makes this rule unnecessary.

Appropriations Act amended Section 202(h) to exclude "any rules relating to" the 39 percent national cap, and determined that the UHF discount was a rule "relating to" the national TV cap. The Third Circuit concluded that Congress "apparently intended to insulate the UHF discount from periodic review," but left open the possibility that the Commission may consider the discount in a rulemaking "outside the context of Section 202(h)."[28] Accordingly, the *Order* concludes that the UHF discount is insulated from review under Section 202(h).

22. The *Order* notes that in the pending proceeding entitled *Public Interest Obligations of TV Broadcast Licensees*[29] commenters ask the Commission to impose additional "public interest" obligations on television broadcasters. The *Order* explains that some of the issues raised in that proceeding have already been resolved by the Commission. With respect to other ideas raised in this proceeding such as whether the agency should establish more specific minimum public interest requirements for licensees and how broadcasters could improve political candidates' access to television, the Commission declines to take any further action at this time. Nevertheless, to the extent that circumstances change, the Commission agrees to revisit this decision and initiate proceedings as appropriate.

G. Report to Congress

23. The Commission will send a copy of this *Order*, including this FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.[30] In addition, the Commission will send a copy of this *Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[31]

[28] *Prometheus*, 373 F.3d at 397.

[29] *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633 (1999).

[30] *See* 5 U.S.C. § 801(a)(1)(A).

[31] *See* 5 U.S.C. § 604 (b).

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *In the Matter of 2006 Quadrennial Regulatory Review*

Over the past year and a half the Commission has had to grapple with the most contentious and divisive issue to come before it: the review of the media ownership rules. Today's Order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep apace with the marketplace of today.

A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. To that end, the FCC's media ownership rules are intended to further three core goals: competition, diversity, and localism.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television stations, radio stations and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that "...reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." It has been over four years since the Third Circuit stayed the Commission's previous rules and over three years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules.

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input. When we began eighteen months ago, the Commission committed to conducting this proceeding in a manner that was more open and allowed for more public participation.

I believe that is what the Commission has done. First, we provided for a long public comment period of 120 days, which we subsequently extended. We held six hearings across the country at a cost of more than $200,000: one each in Los Angeles, California, Nashville, Tennessee, Harrisburg, Pennsylvania, Tampa Bay, Florida, Chicago, Illinois, and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, DC. The goal of these hearings was to more fully and directly involve the American people in the process.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. We've received over 166,000 written comments in this

proceeding.

We spent almost $700,000 on ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies. We put those studies out for peer review and for public comment and made all the underlying data available to the public.

Although not required, I took the unusual step of sharing with the public the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review my proposal prior to any Commission action.

We cannot ignore the fact that the media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than thirty years ago. Back then, cable was a nascent service, satellite television did not exist and there was no Internet. Indeed, the newspaper/broadcast cross-ownership rule is the only rule not to have been updated in 3 decades, despite that fact that FCC Chairmen – both Democrat and Republican—have advocated doing so. In fact, Chairman Reed Hundt argued for relaxation in 1996 noting, "the newspaper/broadcast cross-ownership rule is right now impairing the future prospects of an important source of education and information: the newspaper industry." Application of Capital Cities/ABC, Inc., Memorandum Op. & Order, 11 FCC Rcd 5841, 5906 (1996). And noted above, in 2003 the Third Circuit recognized this fact when it upheld the Commission's elimination of the newspaper/broadcast cross-ownership ban, affirming the Commission's determination that it was "no longer in the public interest."

Consumers have benefited from the explosion of new sources of news and information. But according to almost every measure, newspapers are struggling. At least 300 daily papers have stopped publishing over the past thirty years. Their circulation is down, and their advertising revenue is shrinking.

Newspapers in financial difficulty oftentimes have little choice but to scale back local news gathering to cut costs. In 2007 alone, 24 newsroom staff at The Boston Globe were fired, including 2 Pulitzer Prize-winning reporters; the Minneapolis Star Tribune fired 145 employees, including 50 from their newsroom; 20 were fired by the Rocky Mountain News; the Detroit Free Press and The Detroit News announced cuts totaling 110 employees; and the San Francisco Chronicle planned to cut 25% of its newsroom staff.

Some have suggested that it is not in the business of the FCC to regulate newspapers and their condition should be of no concern to us. But if that is the case, then why do we have rules about what newspapers can or cannot own?

Without newspapers and their local news gathering efforts, we would be worse off. We would be less informed about our communities and have fewer outlets for the expression of independent thinking and a diversity of viewpoints. I believe a vibrant print press is one of the institutional pillars upon which our free society is built. In their role as watchdog and informer of the citizenry, newspapers often act as a check on the power of other institutions and are the voice of the people. Allowing cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share the high fixed costs of newsgathering across multiple media platforms.

Today's Order amends the 32-year-old absolute ban on newspaper/broadcast cross-ownership. The revised newspaper/broadcast cross-ownership rule would allow a newspaper to purchase a radio station in the largest 20 cities in the country or a television station in such cities—but not one of the top four television stations—as long as 8 independent major voices remain in the market. This relatively

minor loosening of the ban on newspaper/broadcast cross-ownership in markets where there are many voices and sufficient competition will help strike a balance between ensuring the quality of local news gathering while guarding against too much concentration.

As I have previously stated, I always intended the negative presumption for all other transactions to be a very high hurdle. As I testified before Congress, I invited suggestions from my colleagues and those in the public interest community as to how we could tighten that standard so everyone would agree it was not a loophole. The edits we included in the order were made at the suggestion of the public interest and consumer advocacy groups to make more meaningful the presumption against transactions in smaller markets.

I believe we did that today by expressly stating that we will require any applicant attempting to overcome a negative presumption to demonstrate by clear and convincing evidence that post-merger, the merged entity will increase the diversity of independent news outlets and increase competition among independent news sources in the relevant market. Our analysis of the four factors will inform this determination.

In contrast to the FCC's actions 4 years ago and in response to many of the public comments we received in the proceeding, we do not loosen any other ownership rule. We do not permit companies to own any more radio or television stations either in a single market or nationally. Indeed, this rule change is notably more conservative in approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. That rule would have allowed transactions in the top 170 markets. The rule we adopt today would allow only a subset of transactions in only the top 20 markets, which would still be subject to an individualized determination that the transaction is in the public interest.

The new rule balances the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

As the Commission revises its media ownership rules, we must not lose sight of two critical public interest goals – localism and diversity. Indeed, I believe that it is incumbent upon the Commission to do everything it can right now to further these goals and I am pleased the Commission is acting on both today. As difficult as these issues are they are some of the most important to come before us. In fact as many have noted throughout this proceeding, promoting localism and diversity as well as responding to the Congress and the court on the media ownership rules themselves, have been pending before the Commission for far too long. These issues also are ripe for decision and should not be put off any longer.

I appreciate that some of my colleagues and I do not share the same views on the amending the newspaper broadcast cross-ownership rule. But I reject the claims that the process has been unfair or even too rushed. At every step of the process during the last 18 months, whether it came to picking dates or cities for public hearings or commissioning independent studies, I have continually sought, albeit unsuccessfully, consensus with my colleagues throughout this process. For instance, I provided my colleagues a public notice announcing dates for all the remaining hearings, including the Seattle hearing, over a month before it was held, but they did not vote to release it. When we finally announced the Seattle hearing date publicly a week prior to the hearing, they objected that we hadn't provided enough notice. They also claim I didn't listen to the comments of the people in Seattle. However, only 2 people even mentioned newspaper cross-ownership, and one in fact supported relaxation. Indeed, the majority of people expressed concern about consolidation generally, and I believe we are responding by *not* changing the local TV rule, the local radio rule, the local TV/radio rule, the national TV cap, or the national cable cap.

Unfortunately, my Democratic colleagues have been quick to say no to whatever was proposed but never getting to yes or even putting forward their own ideas on the substance of the issues before us.

They wanted public hearings. We agreed. And we provided six.

They asked for independent studies. We agreed.

Only one Commissioner, later in the process, suggested authors for a study. We agreed again, and created another study for those authors to do.

They asked for the studies to be made public. We agreed. They then complained that the studies were posted on the web too soon.

They asked for the studies to be peer reviewed. We agreed. They asked for peer reviews to be made public. We agreed. They then presented us with new individuals they wanted to do additional peer reviews. We again agreed. They then demanded an entirely separate comment cycle on just the peer reviews.

They asked me to complete the localism hearings. We agreed. They then wanted to complete the localism report. We again agreed. They wanted an NPRM on localism. We again agreed. They then wanted more time for the Commission to consider the localism issues and do a final order.

And finally, they demanded I share with the public my proposed rule. I agreed. They then criticized me for making the proposal public in *The New York Times*. They asked for time for the public to comment on my proposal. I agreed. They then demanded a new NPRM on the proposal with many months of comment.

This is a long way of stating the obvious. For a year and half, I have attempted to respond to the legitimate concerns about conducting an open and transparent process with ample opportunity for public input. At each step along the way, as I was crossing the goal line, the goal posts were moved.

While I have and will continue to seek consensus, I have come to the conclusion that it won't ever be possible to ever reach consensus on the media ownership issue. Nevertheless, it is important for the Commission and for the American people that we render a decision on this issue. We must respond to the court remand and to Congress which requires us to review the rules. And we must provide certainty to the media industry which for years has operated in a climate of uncertainty.

In sum, I believe the time has come to act. And I believe today's very modest relaxation of the one rule not relaxed since 1975 is appropriate.

ATTACHMENT
TIMELINE OF MEDIA OWNERSHIP REVIEW PROCESS

July 2, 2003	Commission releases 2002 Biennial Review Order
June 24, 2004	The Third Circuit Court of Appeals issues its decision in *Prometheus v. FCC*, affirming some Commission decisions and remanding others for further justification or modification
July 24, 2006	The Commission releases *Further Notice of Proposed Rulemaking* to call for comment on the rules and to seek arguments and factual data about their impact on competition, localism and diversity.
September 8, 2006	FCC Announces Public Hearing in Los Angeles on Media Ownership
September 26, 2006	FCC Announces Details for Public Hearing on Media Ownership in Los Angeles, CA
September 29, 2006	FCC Announces Further Details for Public Hearing on Media Ownership in Los Angeles, CA
October 6, 2006	Public Hearing on Media Ownership, Los Angeles & El Segundo, CA
October 23, 2006	Comments due in response to July 26, 2006 Further Notice of Proposed Rulemaking
November 14, 2006	FCC Announces Public Hearing in Nashville, Tennessee on Media Ownership
November 22, 2006	FCC Names Economic Studies to Be Conducted As Part of Media Ownership Rules Review
December 1, 2006	FCC Announces Details for Public Hearing on Media Ownership in Nashville, Tennessee
December 5, 2006	FCC Announces Revised Agenda for Public Hearing on Media Ownership in Nashville, Tennessee
December 11, 2006	FCC Announces Further Revised Agenda for Public Hearing on Media Ownership in Nashville, Tennessee
December 11, 2006	Public Hearing on Media Ownership, Nashville, TN
January 16, 2007	Reply Comments due in response to July 26, 2006 Further Notice of Proposed Rulemaking
February 8, 2007	FCC Announces Public Hearing in Harrisburg, PA on Media Ownership
February 16, 2007	FCC Announces Details for Public Hearing on Media Ownership in Harrisburg,

	PA
February 21, 2007	FCC Announces Further Details for Public Hearing on Media Ownership in Harrisburg, Pennsylvania
February 23, 2007	Public Hearing on Media Ownership, Harrisburg, PA
March 13, 2007	FCC Announces Public Hearing on Media Ownership in Tampa-St. Petersburg, Florida Area
April 13, 2007	FCC Announces Details for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida
April 23, 2007	FCC Announces Agenda for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida
April 26, 2007	FCC Announces Revised Agenda for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida
April 30, 2007	Public Hearing on Media Ownership, Tampa, FL
June 8, 2007	FCC Announces Localism Hearing in Portland, Maine June 28, 2007
June 12, 2007	FCC Announces Details for Localism Hearing in Portland, Maine on June 28
June 25, 2007	FCC Announces Agenda for Public Hearing on Localism in Portland, Maine
June 28, 2007	FCC Holds Hearing on Localism Issues in Portland, Maine
July 19, 2007	FCC Announces Public Hearing on Media Ownership in Chicago, Illinois
July 31, 2007	FCC Releases and Seeks Comment on Research Studies on Media Ownership
August 1, 2007	FCC Releases Second Further Notice of Proposed Rulemaking
September 4, 2007	FCC Announces Details for Public Hearing on Media Ownership in Chicago, Illinois
September 17, 2007	FCC Announces Agenda for Public Hearing on Media Ownership in Chicago, Illinois
September 20, 2007	Public Hearing on Media Ownership, Chicago, IL
September 28, 2007	Media Bureau Extends Filing Deadlines for Comments on Media Ownership Studies
October 1, 2007	Comments due in response to August 1, 2007 Second Further Notice of Proposed Rulemaking