October 16, 2007	Reply Comments due in response to August 1, 2007 Second Further Notice of Proposed Rulemaking
October 22, 2007	Comments due in response to July 31, 2007 release of media studies
October 24, 2007	FCC to Hold Localism Hearing and Open Commission Meeting, Wednesday, October 31, 2007
October 29, 2007	FCC Announces Panelists for Public Hearing on Localism at FCC Headquarters
October 31, 2007	FCC Holds Public Hearing on Localism in Washington, DC
November 1, 2007	Reply Comments Due in response to July 31, 2007 release of media studies
November 2, 2007	FCC Announces Public Hearing on Media Ownership in Seattle, Washington
November 8, 2007	FCC Announces Agenda and Witnesses for Public Hearing on Media Ownership in Seattle, Washington
November 9, 2007	Public Hearing on Media Ownership, Seattle, WA
November 13, 2007	Chairman Martin Publishes Revision to Newspaper/Broadcast Cross-Ownership Rule
December 4, 2007	Letter sent from Secretary of Commerce, Carlos M. Gutierrez to the Honorable Harry Reid, Senate Majority Leader, expressing opposition to legislation that would delay FCC action on media ownership rules
December 11, 2007	The Commission waives the sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 C.F.R. § 1.1203, until 5:30 pm on Friday, December 14, 2007
December 14, 2007	Sunshine rules go into effect at 5:30pm; Last day to comment on Chairman's proposed rule
December 18, 2007	FCC Open Meeting

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re. 2006 Quadrennial Media Ownership Review

Today's decision would make George Orwell proud. We claim to be giving the news industry a shot in the arm—but the real effect is to reduce total newsgathering. We shed crocodile tears for the financial plight of newspapers—yet the truth is that newspaper profits are about double the S&P 500 average. We pat ourselves on the back for holding six field hearings across the United States—yet today's decision turns a deaf ear to the thousands of Americans who waited in long lines for an open mike to testify before us. We say we have closed loopholes—yet we have introduced new ones. We say we are guided by public comment—yet the majority's decision is overwhelmingly opposed by the public as demonstrated in our record and in public opinion surveys. We claim the mantle of scientific research—even as the experts say we've asked the wrong questions, used the wrong data, and reached the wrong conclusions.

I am not the only one disturbed by this illogical scenario. Congress and the American people have done everything but march down to Southwest DC and physically shake some sense into us. Everywhere we go, the questions are the same: Why are we rushing to encourage more media merger frenzy when we haven't addressed the demonstrated harms caused by previous media merger frenzy? Women and minorities own low single-digit percentages of America's broadcast outlets and big consolidated media continues to slam the door in their faces. It's going to take some major policy changes and a coordinated strategy to fix that. Don't look for that from this Commission.

Instead we are told to be content with baby steps to help women and minorities—but the fine print shows that the real beneficiaries will be small businesses owned by white men. So even as it becomes abundantly clear that the real cause of the disenfranchisement of women and minorities is media consolidation, we give the green light to a new round of—yes, you guessed it—media consolidation.

Local news, local music and local groups so often get shunted aside when big media comes to town. Commissioner Adelstein and I have heard the plaintive voices of thousands of citizens all across this land in dozens of town meetings and public forums. From newscasters fired by chain owners with corporate headquarters thousands of miles away to local musicians and artists denied airtime because of big media's homogenization of our music and our culture. From minorities reeling from the way big media ignores their issues and caricatures them as people to women saying the only way to redress their grievances is to give them a shot to compete for use of the people's airwaves. From public interest advocates fighting valiantly for a return of localism and diversity to small, independent broadcasters who fight an uphill battle to preserve their independence. It will require tough rules of the road to redress our localism and diversity gaps. Do you see any such rules being passed today? To the idea that license holders should give the American people high quality programming in return for free use of the public airwaves, the majority answers that we need more study of problems that have been documented and studied to death for a decade and more. Today's outcome is the same old same old: one more time, we're running the fast-break for our big media friends and the four corner stall for the public interest.

It is time for the American people to understand the game that's being played here. Big media doesn't want to tell the full story, of course, but I have heard first-hand from editorial page editors who have told me they can cover any story, save one—media consolidation, and that they have been instructed to stay away from that one. But that's another story.

Today's story is a majority decision unconnected to good policy and not even incidentally concerned with encouraging media to make our democracy stronger. We are not concerned with

gathering valid data, conducting good research, or following the facts where they lead us.

Our motivations are less Olympian and our methodology far simpler—we generously ask big media to sit on Santa's knee, tell us what it wants for Christmas, and then push through whatever of these wishes are politically and practically feasible. No test to see if anyone's been naughty or nice. Just another big, shiny present for the favored few who already hold an FCC license—and a lump of coal for the rest of us. Happy holidays!

If you need convincing of just how non-expertly this expert agency has been acting lately, you couldn't have a better example than the formulation of the cross-ownership rule that the majority is adopting today. I know it's a little detailed to see how the sausage is made, but it's worth a listen.

On November 2, 2007—with just a week's notice—the FCC announced that it would hold its final media ownership hearing in Seattle. Despite the minimal warning, 1,100 citizens turned out to give intelligent and impassioned testimony on how they believed the agency should write its media ownership rules. Little did they know that the fix was already in, and that the now infamous *New York Times* op-ed was in the works announcing a highly-detailed cross-ownership proposal.

Put bluntly, those Commissioners and staff who flew out to Seattle with staff, the sixteen witnesses, the Governor, the State Attorney General and all the other public officials who came, plus the 1,100 Seattle residents who had chosen to spend their Friday night waiting in line to testify were, as Rep. Jay Inslee put it, treated like "chumps." Their comments were not going to be part of the agency's formulation of a draft rule—it was just for show, to claim that the public had been given a chance to participate. The agency had treated the public like children allowed to visit the cockpit of an airliner—not actually allowed to fly the plane, of course, but permitted for a brief, false moment to imagine that they were.

The *New York Times* op-ed appeared on November 13, the next business day after the Seattle hearing. That same day, a unilateral public notice was issued, providing just 28 days for people to comment on the specific proposal, with no opportunity for replies. The agency received over 300 comments from scholars, concerned citizens, public interest advocates, and industry associations—the overwhelming majority of which condemned the Chairman's plan. But little did these commenters know that on November 28, two weeks ***before*** their comments were even due, the draft Order on newspaper-broadcast cross ownership had already been circulated. Once again, public commenters were treated as unwitting and unwilling participants in a Kabuki theater.

Then, last night at 9:44 pm—just a little more than twelve hours before the vote was scheduled to be held and long after the Sunshine period had begun—a significantly revised version of the Order was circulated. Among other changes, the item now granted all sorts of permanent new waivers and provided a significantly-altered new justification for the 20-market limit. But the revised draft mysteriously deleted the existing discussion of the "four factors" to be considered by the FCC in examining whether a proposed combination was in the public interest. In its place, the new draft simply contained the cryptic words "[Revised discussion to come]." Although my colleagues and I were not apprised of the revisions, *USA Today* fared better because it apparently got an interview that enabled it to present the Chairman's latest thinking. Maybe we really are the Federal Newspaper Commission.

At 1:57 this morning, we received a new version of the proposed test for allowing more newspaper-broadcast combinations. I can't say that I fully appreciate the test's finer points given the lateness of the hour and the fact that there was no time afforded to parse the finer points of the new rule. But this much is clear: the new version keeps the old loopholes and includes two new one pathways to

cross ownership approval. So please don't buy the line that the rule we adopt today involves fewer loopholes—it adds new ones. Finally, this morning at 11:12 a.m. as I was walking out my office door to come to this meeting, we received an e-mail containing additional changes. The gist of one of these seems to be that the Commission need not consider all of the "four factors" in all circumstances.

This is not the way to do rational, fact-based, and public interest-minded policy making. It's actually a great illustration of why administrative agencies are required to operate under the constraints of administrative process—and the problems that occur when they ignore that duty. At the end of the day, process matters. Public comment matters. Taking the time to do things right matters. A rule reached through a slipshod process, and capped by a mad rush to the finish line, will—purely on the merits—simply not pass the red face test. Not with Congress. Not with the courts. Not with the American people.

It's worth stepping back for a moment from all the detail here to look at the fundamental rationale behind today's terrible decision. Newspapers need all the help they can get, we are told. A merger with a broadcast station in the same city will give them access to a revenue stream that will let them better fulfill their newsgathering mission. At the same time, we are also assured, our rules will require "independent news judgment" (at least among consolidators outside the top 20 markets). In other words, we can have our cake and eat it too—the economic benefits of consolidation without the reduction of voices that one would ordinarily expect when two news entities combine.

But how on earth can this be? To begin with, to the extent that the two merged entities remain truly "independent," then there won't be the cost savings that were supposed to justify the merger in the first place. On the other hand, if independence merely means maintaining two organizational charts for the same newsroom, then we won't have any more reporters on the ground keeping an eye on government. Either way, we can't have our cake and eat it, too.

Also, since when do unprofitable businesses support themselves by merging with profitable ones—and then sink ***more*** resources into the money-losing division simply as a public service? Think about it this way. If any of us were employed by a struggling company, and we suddenly learned that a Wall Street financier had obtained control, would we (1) clap our hands with joy because we expect the new owner is going to throw a bunch of cash our way and tell us to keep on doing what we'd been doing, except more lavishly or (2) start to fear for our jobs and brace for a steady diet of cost cutting?

Here's my prediction on how it will really work. Mergers will be approved in both the top 20 and non-top-20 markets—towns big and small—because the set of exceptions we announce today have all the firmness of a bowl of Jell-O. Regardless of our supposed commitment to "independent news judgment" the two entities' newsrooms will be almost completely combined, with round after round of job cuts in order to cut costs. It's interesting to hear the few proponents of this rule bemoan the lost jobs that they say result from failing newspapers. Ask them this: in this era of consolidation in so many industries, isn't cutting jobs about the first thing a merged entity almost always does so it can show Wall Street it is really serious about cutting costs and polishing up the next quarterly report? These job losses are the ***result*** of consolidation. And more consolidation will mean more lost jobs. Newly-merged entities will attempt to increase their profit margins by raising advertising rates and relentless cost-cutting. Herein is the ***real*** economic justification for media consolidation within a single market.

The news isn't so good for other businesses in the consolidated market, either. Think about the other broadcast stations there. It's just like Wal-Mart coming to town—the existing news providers look around at the new reality and figure out pretty fast that they ought to head for the exit when it comes to producing news. Now, it may not be as stark as actually cancelling the evening news—it could just mean

doing more sports or more weather or more ads during that half hour. But at the end of the day, the combined entity is going to have a huge advantage in producing news—and the other stations will make a reasonable calculation to substantially reduce their investment in the business. This is why, by the way, experts have been able to demonstrate—***in the record before the FCC, using the FCC's own data***—that cross ownership leads to ***less*** total newsgathering in a local market. And that has large and devastating effects on the diversity and vitality of our civic dialogue.

Let's also be careful not get too carried away with the supposed premise for all this contortionism, namely the poor state of local newspapers. The death of the traditional news business is often greatly exaggerated. The truth remains that the profit margins for the newspaper industry last year averaged around 17.8%; the figure is even higher for broadcast stations. As the head of the Newspaper Association of America put it in a Letter to the Editor of the *Washington Post* on July 2 of this year: "The reality is that newspaper companies remain solidly profitable and significant generators of free cash flow." And as Member after Member Congress has reminded us, our job is not to ensure that newspapers are profitable—which they mostly are. Our job is to protect the principles of localism, diversity and competition in our media.

Were newspapers momentarily discombobulated by the rise of the Internet? Probably so. Are they moving now to turn threat into opportunity? Yes, and with signs of success. Far from newspapers being gobbled up by the Internet, we ought to be far more concerned with the threat of big media joining forces with big broadband providers to take the wonderful Internet we know down the same road of consolidation and control by the few that has already inflicted such heavy damage on our traditional media.

In the final analysis, the real winners today are businesses that are in many cases quite healthy, and the real losers are going to be all of us who depend on the news media to learn what's happening in our communities and to keep an eye on local government. Despite all the talk you may hear today about the threat to newspapers from the Internet and new technologies, today's *Order* actually deals with something quite old-fashioned. Powerful companies are using political muscle to sneak through rule changes that let them profit at the expense of the public interest. They are seeking to improve their economic prospects by capturing a larger percentage of the news business in communities all across the United States.

Let's get beyond the weeds of corporate jockeying and inking up our rubber stamps for a new round of media consolidation to look for a moment at what we are ***not*** doing today. That's the real story, I think—that the important issues of minority and female ownership and broadcast localism and how they are being short-changed by today's rush to judgment.

Minority and Female Ownership

Racial and ethnic minorities make up 33 percent of our population. They own a scant 3 percent of all full-power commercial TV stations. And that number is plummeting. Free Press recently released a study showing that during just the past year the number of minority-owned full-power commercial television stations declined by 8.5%, and the number of African American-owned stations decreased ***by nearly 60%***. It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

In most places there is something approaching unanimity that this has to change. Broadcasters, citizens, Members of Congress, and every leading civil rights organization agree that the status quo is not acceptable. Each of my colleagues has recognized, I believe, that paltry levels of minority and female

ownership are a reality—which makes today's decision all the more disappointing. There was a real opportunity to do something meaningful today after years of neglect, and we blew it.

It didn't have to be this way. I proposed both a process and a solution. We should have started by getting an accurate count of minority and female ownership—the one that the Congressional Research Service and the Government Accountability Office both just found that we didn't have. The fact that we don't even know how many minority and female owners there are is indicative of how low this issue is on the FCC's list of priorities. We also should have convened an independent panel proposed by Commissioner Adelstein, and endorsed by many, that would have reviewed all of the proposals before us, prioritized them, and made recommendations for implementation. We could have completed this process in ninety days or less and then would have been ready to act.

Today's item ignores the pleas of the minority community to adopt a definition of "Eligible Entity" that could actually help their plight. Instead, the majority directs their policies at general "small businesses"— a decision that groups like Rainbow/Push and the National Association of Black Owned Broadcasters assert will do little or nothing for minority owners. Similarly, MMTC and the Diversity and Competition Supporters conclude that they would rather have no package at all than one that includes this definition. Lack of a viable definition poisons the headwaters. Should we wonder why the fish are dying downstream?

So while I can certainly support the few positive changes in this item that do not depend on the definitional issue—such as the adoption of a clear non-discrimination rule—these are overshadowed by the truly wasted opportunity to give potential minority and female owners a seat at the table they have been waiting for and have deserved for far too long. My fear now is that with cross ownership done, the attentions of this Commission will turn elsewhere.

Localism

At the same time that we have shamefully ignored the need to encourage media ownership by women and minorities, we have also witnessed a dramatic deterioration of the public interest performance of all our licensees. We have witnessed the number of statehouse and city hall reporters declining decade after decade, despite an explosion in state and local lobbying. The number of channels have indeed multiplied, but there is far less local programming and reporting being produced.

Are you interested in learning about local politics from the evening news? About 8 percent of such broadcasts contain any local political coverage at all, including races for the House of Representatives, and that was during the 30 days before the last presidential election. Interested in how TV reinforces stereotypes? Consider that the local news is four times more likely to show a mug shot during a crime story if the suspect is black rather than white.

The loss of localism impacts our music and entertainment, too. Just this morning, I had an e-mail from a musician who took a trip of several hundred miles and heard the same songs played on the car radio everywhere he traveled. Local artists, independent creative artists and small businesses are paying a frightful price in lost opportunity. Big consolidated media dampens local and regional creativity, and that begins to mess around pretty seriously with the genius of our nation.

All this is a travesty. We allow the nation's broadcasters to use half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

Once upon a time, the FCC actually enforced this bargain by requiring a thorough review of a licensee's performance every three years before renewing the license. But during decades of market absolutism, we pared that down to "postcard renewal," a rubber stamp every eight years with no substantive review.

To begin with, the FCC needs to reinvigorate the license-renewal process. We need to look at a station's record every three or four years. I am disappointed that the majority so cavalierly dismisses this idea. And we should be actually ***looking*** at this record. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, do these owners meet regularly with local leaders and the public to receive feedback? Why don't we make sure that's done ***before*** we allow more consolidation?

In 2004, the Commission opened up a Notice of Inquiry to consider ways to improve localism by better enforcing the *quid pro quo* between the nation's broadcasters and the public. The Notice addressed many of the questions raised by earlier, dormant proceedings dating from years before. Today's Localism Notice asks more questions and tees up meritorious ideas—but again my question: why the rush to vote more consolidation now, consolidation that has been the bane of localism, and why put off systematic actions to redress the harms consolidation has inflicted?

Our FCC cart is ahead of our horse. Before allowing Big Media to get even bigger—and to start the predictable cycle of layoffs and downsizing that is the inevitable result of, indeed the economic rationale for, many types of mergers—we should be enforcing clear obligations for each and every FCC licensee.

Conclusion

Those who look for substantive action on these important issues concerning localism and minorities will look in vain, I predict, once the majority works its way on cross ownership. We are told that we cannot deal with localism and minority ownership because that would require ***delay***. But these questions have been before the Commission for almost a decade—and they have been ignored year after year. These issues could have been—should have been—teed up years ago. We begged for that in 2003 when we sailed off on the calamitous rules proposed by Chairman Powell and pushed through in another mad rush to judgment. Don't tell me it can't be done. It should have been done years ago. And we had the chance again this time around. Now, because of a situation not of Commissioner Adelstein's or my making, we are accused of delaying just because we want to make things better before the majority makes them far worse. I see.

When I think about where the FCC has been and where it is today, two conclusions:

First, the consolidation we have seen so far and the decision to treat broadcasting as just another business has ***not*** produced a media system that does a better job serving most Americans. Quite the opposite. Rather than reviving the news business, it has led to ***less*** localism, ***less*** diversity of opinion and ownership, ***less*** serious political coverage, ***fewer*** jobs for journalists, and the list goes on.

Second, I think we have learned that the purest form of commercialism and high quality news make uneasy bedfellows. As my own hero, Franklin Delano Roosevelt, put it in a letter to Joseph Pulitzer, "I have always been firmly persuaded that our newspapers cannot be edited in the interests of the general public from the counting room." So, too, for broadcast journalism. This is not to say that good journalism is incompatible with making a profit—I believe that both interests can and must be balanced. But when TV and radio stations are no longer required by law to serve their local communities, and are

owned by huge national corporations dedicated to cutting costs through economies of scale, it should be no surprise that, in essence, viewers and listeners have become the products that broadcasters sell to advertisers.

We could have been—should have been—here today lauding the best efforts of government to reverse these trends and to promote a media environment that actually strengthens American democracy rather than weakens it. Instead, we are marking not just a lost opportunity but the allowance of new rules that head media democracy in exactly the wrong direction.

I take great comfort from the conclusion of another critic of the current media system, Walter Cronkite, who said, "America is a powerful and prosperous nation. We certainly should insist upon, and can afford to sustain, a media system of which we can be proud."

Now it's up to the rest of us. The situation isn't going to repair itself. Big media is not going to repair it. This Commission is not going to repair it. But the people, their elected representatives, and attentive courts ***can*** repair it. Last time the Commission went down this road, the majority heard and felt the outrage of millions of citizens and Congress and then the court. Today's decision is just as dismissive of good process as that earlier one, just as unconcerned with what the people have said, just as heedless of the advice of our oversight committees and many other Members of Congress, and just as stubborn—perhaps even more stubborn—because this time it knows, or should know, what's coming. Last time a lot of insiders were surprised by the country's reaction. This time they should be forewarned. I hope, I really hope, that today's majority decision will be consigned to the fate it deserves and that one day in the not too distant future we can look back upon it as an aberration from which we eventually recovered. We have had a dangerous, decades-long flirtation with media consolidation. I would welcome a little romance with the public interest for a change.

DISSENTING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: 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; 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 Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Ways to Further Section 257 Mandate and To Build on Earlier Studies; Public Interest Obligations of TV Broadcast Licensees

Unprecedented media consolidation in recent years has allowed giant multinational media conglomerates to dominate growing numbers of local news markets from coast to coast. These media giants have swallowed up locally owned newspapers, TV and radio stations across America. This has presented challenges to both our culture and our democracy by undercutting the American tradition of a local press, rooted in and responsive to their own communities.

Central to our American democracy is a rich and varied supply of news and information. An informed citizenry requires the "uninhibited marketplace of ideas," where there is an open exchange of communications regarding music, news, information and entertainment programming over the public airwaves. Broadcasters, along with newspapers, still produce, disseminate, and ultimately control the news, information, and entertainment programs that most inform the discourse, debate, and the free exchange of ideas. As the Supreme Court has observed, "it is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences."[1] That right is enshrined in the First Amendment to the U.S. Constitution.

By moving forward now with relaxation of the newspaper-broadcast cross-ownership rule, the majority ignores the repeated pleas of the American people and their representatives in Congress. There is no time-sensitive issue that compels us to act today. In fact, we were asked by leaders in Congress, including our oversight committees, to defer today and conduct a more inclusive process. That we are moving forward when the voices that matter are asking us to refrain defies the imagination.

The FCC has never attempted such a brazen act of defiance against Congress. Like the Titanic, we are steaming at full speed despite repeated warnings of danger ahead. We should have slowed down rather than put everything at risk.

The reasons for Congressional concern were underscored by the frantic scramble to make major policy changes at the last minute to this item. Late last night, there was a brand new proposal to provide waivers to 42 newspaper-television combinations. And not until early this morning, we learned of massive changes to the waiver standards – an issue of grave concern to me and a number of leaders in Congress. The majority argues this item is the product of long and careful deliberation. But after an odyssey through the Commission and the Courts, massive changes and new, previously unseen waivers were adopted in the dead of night on the eve of a vote. That hardly inspires confidence that this was an open, transparent and deliberative process.

The choices made by the majority are stark. The only entities asking for relief are the very media giants we are charged with overseeing. As we were reminded on Capitol Hill, the law does not say we are to serve those who seek to profit by using the public airwaves. The law says we are to serve the public

[1] *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390; 89 S.Ct 1794, 1807 (1969).

interest. And the public has repeatedly told us they are not interested in further media consolidation.

Traveling across the country, we have heard this message in community after community. It is a nonpartisan chorus. Americans from all walks of life and all political perspectives, whether right or left and virtually everybody in between, do not want a handful of companies dominating their primary sources of news, information and entertainment. American distrust of the concentration of power is as old as our nation itself, and is rooted in the American spirit.

The millions of Americans who have spoken up scored a solid victory in forcing the majority to back away from further changes to the Commission's remaining TV and radio ownership rules. Nevertheless, by rolling back the cross-ownership rule, today's decision will open a nationwide bazaar of consolidation that flies in the face of overwhelming public sentiment. Today's decision says to all those people who spoke to us across the country, in churches, synagogues and city halls, "you were wrong. We here inside the Beltway somehow know what is best for you -- better than you know for yourselves." It is a big mistake for big government to say big media is good for you.

Well, I for one believe in the people who pleaded for us to stop further media consolidation. They have extensive experience in the field, devouring media at an enormous rate. The statute governing media ownership is unusually broad in allowing us leeway to define the public interest. Of course, the FCC cannot make these decisions solely by popular opinion, but we walk a dangerous course when three out of five unelected bureaucrats overrule the American people, a much better judge and jury.

People understand what study after study confirms. Despite the growth of other media delivery systems, broadcasting and newspapers are still the most pervasive of all platforms. When people look for local news and information, they turn to their local newspapers and TV stations. For example, 89 percent of people say traditional media are their most important sources of news and current affairs.[2] Free over-the-air broadcasting licenses are scarce, and broadcasters still have an enormous impact on the free exchange of ideas.

This debate is fundamentally about priorities. As we solicited the views of citizens across the country, we did not hear a clamor for relaxation of the cross-ownership rules. We only hear that from media company lobbyists inside the Beltway.

The public is concerned about the lack of responsiveness of their media outlets to what is happening in their local communities, their local artists, their local civic and cultural affairs. They are concerned that people of color and women own too few outlets to have their unique voices heard over the airwaves. They are furious about the level of sexual, violent and degrading material they are seeing and believe media consolidation has something to do with it. And they want us to address the public interest obligations of broadcasters first.

That is why I have insisted that we address and implement improvements to localism and diversity of ownership before – not after – we address the media ownership rules.
To get it right, I called for an independent, bipartisan panel to guide us on a course to implement improvements in the level of ownership of media outlets by women and people of color. Many members

[2] *See Further Comments Of Consumers Union, Consumer Federation Of America And Free Press at 111 (Oct. 22, 2007) (noting that these findings are from an FCC-commissioned survey of media usage by Nielsen Media Research, Inc.) (also noting that while a full 46 percent of respondents use TV, radio and/or newspapers but no alternative media, a mere 1 percent of respondents use cable or the Internet, but none of the traditional media).*

of Congress and leading civil rights organizations joined that call. And I have demanded, along with many members of Congress, that we finalize the Localism Report and implement real improvements in the responsiveness of media outlets to local concerns first.

Instead, today we are offered half-measures, setbacks and draft proposals in place of real improvements to diversity and localism. While there are a few useful ideas put forth, for the most part these are half-baked gestures clearly intended as cover for the media consolidation agenda. Rather than take this in order, and address these lingering crises first, the Commission moves obsessively to allow more consolidation, notwithstanding congressional and public concern.

Most troubling, we are not dealing with the problems created by past media consolidation – loss of localism and diversity – before allowing even greater concentration. Allowing newspapers to merge with broadcast outlets only takes more opportunities out of circulation for local owners, women and people of color. And it even further raises the already exorbitant price of station ownership, the biggest barrier to new entrants and aspiring local owners.

The proposal, though portrayed as "modest," is fraught with substantive problems that should have been addressed through more thoughtful Commission consultation and negotiations. The majority's decision actually opens the door to dominant local newspapers buying up broadcast outlets in every market in America and potentially of any size.

Even if the proposal were limited to the top 20 markets, that would account for 43 percent of U.S. households, or over 120 million Americans. But the details reveal loopholes that would permit new cross-owned combinations from the largest markets down to the smallest markets, potentially affecting every American household.

There was an effort to tighten the waiver standards, but only very little progress was made, and the implications remain unclear. Unfortunately, we were not shown these changes until the last minute, with little time to respond or offer improvements. Those suggestions we offered were rejected. Despite these eleventh hour changes, the Commission historically has been so lax in granting waivers, even under the current stronger standards of a blanket prohibition on cross-ownership, there is little encouragement that the new waiver language will help. It will be open season for consolidation in markets of all sizes for those who engage in mergers that test our determination to hold the line on these waiver standards.

Exhibit A of a failed waiver process is what occurred just last night at the Commission. After all the time and debate that has occurred over this rule, we learned late last night, on the eve of this morning's vote, that the Commission would grant waivers to six new newspaper-broadcast combinations, and 36 grandfathered stations, for a total of 42 new waivers. I doubt my colleagues in the majority engaged in much deliberation on how the public interest was served in those communities, ranging from Myrtle Beach, South Carolina to Phoenix, Arizona. Yet this late-night decision will affect the people of these communities profoundly on a daily basis for years to come. Anybody who thinks our processes are open, thoughtful or deliberative should think twice in light of these nocturnal escapades.

Exhibit B is a newly devised Chinese menu of ways to create newspaper-broadcast combinations in markets outside of the Top 20. Under the draft that was circulated around dawn, there are now at least three ways to merge a newspaper with a broadcast outlet in non-top 20 markets. Now, in addition to the rebuttable presumption factors announced in the Chairman's November 13th press release, there will be a strong presumption in favor of more consolidation if a proposed combination meets our existing failing stations standard or results in a new source of local news in the market. I have serious questions about these new proposals. For example, I have real doubts about the Commission's willingness to enforce the

seven-hour weekly news requirement. Also, such a requirement could have a negative impact on the total amount of news through the media. As a study from Free Press and Consumer Union has shown, while the newspaper-broadcast combinations increase its news output – in this case, seven hours per week – news production market-wide diminishes. The Commission should more closely examine this proposal to ensure that it will produce the desired effect.

These loopholes in the Order also undercut the assertion that the proposal would prevent a newspaper from buying one of the top-four rated stations in the same market. That protection does not apply in markets below the top 20, and can be dismissed with the wave of the Commission's hand in the larger markets. In reality, under this proposal a newspaper could buy any TV station in any city, no matter how large.

A main public interest justification for newspaper-broadcast cross-ownership has been the claim that relaxing the rule would create more local news. A path-breaking study by leading consumer organizations, using the FCC's own data, demonstrated that claim to be wrong. They found that the data underlying an FCC-sponsored study finding more local news by cross-owned stations actually reveals that there is less local news in those markets as a whole, taking into account all news outlets. It remains unclear exactly why the overall level of local news available diminishes. Perhaps it is because other outlets choose not to compete with the local leviathan or maybe they lose equal access to the newspaper's investigative and news resources. But the fact is the Commission's own data reveals the other outlets in those cities reduce their news coverage more than the cross-owned outlets increase it. So not only is less news produced in the market, but an independent voice is silenced when the dominant local newspaper swallows up a broadcast outlet. We should have examined the root causes of this problem and addressed it before relaxing the cross-ownership rule.

We also failed to study the relationship between inappropriate programming for children, such as excessively sexual or violent programs, and the concentration of media ownership. A 2005 report found that 96 percent of all the indecency fines levied by the FCC in radio from 2000 to 2003 (97 out of 101) were levied against four of the nation's largest radio station ownership groups. The remaining 11,000-plus stations were responsible for just four percent of all FCC radio indecency violations, a fraction of their national audience share. While the radio report did not prove a causal link between ownership concentration and broadcast indecency, I believe the Commission has an obligation to study and understand the relationship between media concentration – station ownership and program ownership – and indecency before we permit more consolidation. Further, a study last year by the Parents Television Council found that, in the midst of an unprecedented wave of media consolidation between 1998 and 2006, violence on TV during the evening hours of 8:00, 9:00 and 10:00 grew by 45, 92 and 167 percent, respectively. Commissioner Copps and I requested a full FCC field hearing to explore the relationship between media consolidation and the rising volume of material inappropriate for children in the media, but not one was held.

For many years, the underpinnings of the Commission's public interest analysis with regard to media have been to promote localism, competition, and diversity. Yet it is clear from the record that this decision undermines all of these goals. As a result of newspaper-broadcast cross-ownership, there is less local news in the market as a whole and there is less competition for stories and ideas since two competing entities become one. There is also less diversity, as a voice in the market is lost, and broadcast outlets are taken even further out of reach of women and people of color.

The ostensible reason to ignore all of these detrimental consequences was the importance of saving the newspaper industry that would otherwise wither on the vine. As many have pointed out, we are not in the business of guaranteeing newspaper profits. Perhaps if we were, we would better

understand why relaxing the cross-ownership rule is not the right prescription for addressing real issues and opportunities newspapers face as the internet rapidly becomes the means of distribution for news. The record shows that news content is still largely generated by newspapers and TV stations, even though the means of distribution are changing with the emergence of broadband.

In fact, the newspaper industry is quite healthy, with profit margins of around 20 percent, exceeding the average of S&P 500 companies.[3] The problem for newspapers is that those margins and revenues are declining, and Wall Street looks askance at the trends, despite the huge continued cash generation of newspapers. The problem is that broadcasters are also seeing slow growth or revenue declines, again despite very healthy, if shrinking, margins. Wall Street analysts have recognized what the majority apparently missed. You cannot address the financial problem of shrinking margins of newspapers by combining them with broadcast outlets that also have shrinking margins. The real challenge for both outlets is to better monetize their news-gathering functions from the growing audience who views them for free on the Internet.

In the final analysis, we could have achieved a bipartisan agreement on a reasonable process to finalize the media ownership proceeding that addressed the many concerns raised by the public, leading consumer advocates and Congress. I worked to achieve that goal by offering to follow the bipartisan path laid out by Members of Congress and the Senate Committee on Commerce, Science and Transportation.

Sadly, that was a road not taken, and Members of Congress have clearly signaled there will be consequences for this breakdown of deference and cooperation. We ran so many red lights it would make Mario Andretti blush. It is now up to Congress and the courts to address the pileup that resulted. With the encouragement of the American people, who are certain to share the outrage over this decision, I certainly hope and believe that others will have the final word on this issue.

Finally, I want to recognize and thank the many groups and individuals who have provided me with important counsel during this difficult proceeding: Free Press, Media Access Project, Consumers Union, Institute for Public Representation, Consumer Federation of America, Communications Workers of America, the Writers' Guilds of America, the Media and Democracy Coalition and the tens of thousands of volunteers and members of the public who have reached out to this Commission to express their concerns.

[3] *See Further Comments of Consumers Union, Consumer Federation of America and Free Press at 48 (Dec. 11, 2007).*

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

RE: 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; 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202of the Telecommunications Act of 1996; Cross Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Ways to Further Section 257 Mandate and To Build on Earlier Studies; Public Interest obligations of TV Broadcast Licensees.

As Commissioners of the Federal Communications Commission we face many serious, far-reaching, and contentious decisions affecting this nation. While I always strive to seek consensus, I know there will be some times when consensus is simply not possible, and we must agree to disagree. Today is one of those days.

I believe that the process we have engaged in over the past year and a half, has been open, transparent, and thorough—a true example of our vibrant democracy at work. Others may disagree. While I think we would all prefer to be part of a unanimous decision, I do not believe waiting would have resulted in any further agreement.

In its 2004 remand, the 3rd Circuit affirmed "the power of the Commission to regulate media ownership." In addition, Congress requires that the Commission undertake a review of our media ownership rules every four years. The 3rd Circuit also made clear that the FCC must not simply be a "revolving door" of notice and comment. We must act to fulfill our obligations: "monitor the effect of . . . competition . . . and make appropriate adjustments' to its regulations." In this Order we conclude our 2006 Quadrennial Review, and respond to the Court's remand of our 2002 Biennial Review Order.

I wish that I had time to truly capture and describe the places we visited and the thousands of individuals who lined up to speak to us – from California to Maine; Chicago to Florida; Pennsylvania to Tennessee – we traveled literally from sea to shining sea. In several cases, we stayed until after midnight in order to accommodate those citizens who took time to sit through hours of public testimony. These lengthy hearings provided an opportunity for thousands of American citizens to have unprecedented access to a governmental body about the role media plays in their lives and their opinion regarding media ownership. Over my 20-plus years of public service – at all levels of government – I cannot remember a single time that an agency expended this much institutional energy and investment on an issue, or was this open and thorough regarding a matter of public interest. We invited comment not only from the general public, but also from expert panels of economists; TV, radio, and film producers; musicians; directors; professors; students; small and large TV and radio broadcasters, and community organizations. During the roughly year and a half of on-going hearings, we arranged for ten media studies by experts – preeminent economists, academics, and researchers – and also released all of those studies for public comment as well as peer review by unaffiliated experts. Four of the studies were peer reviewed by multiple reviewers.

In addition to the FCC's formal process, I also felt it was important to seek first-hand knowledge regarding the challenges, as well as the exciting innovations, facing broadcasters and newspapers. I toured large and small media outlets, local broadcasters, network affiliates, and newspapers. In addition, I spent time hearing from consumer organizations, such as Media Access Project and the Consumer

Federation of America, as well as some of our nation's most knowledgeable professors and economists, and Members of Congress.

Throughout this process, I was struck by the ongoing, dramatic changes in how Americans use the media to receive news, information, and entertainment. Increases in broadband penetration have transformed the Internet into a viable platform for streaming full-length video programming, with more content moving online daily. And our mobile phones now provide us with stock quotes, email and news updates from sources locally and around the globe. With the multiplicity of sources now available at the click of a button, the historic concerns underlying the newspaper-broadcast cross-ownership ban would seem to be alleviated. Many academics and professionals note that developments since the Commission last reviewed its rules show that the diminishment of mainstream media power over information flow is real. This will only continue as the Internet and other communications networks develop. The diminution in the power of old media enhances the need to permit exploration of the synergies of limited cross-ownership. The Commission must ensure that our rules do not unduly stifle efficient communications that are likely to preserve or increase the amount and quality of local news available to consumers via these outlets.

As we traveled across America, one of the most prominent concerns we heard was with regard to radio consolidation. This was especially true at the hearing we held in my hometown of Nashville, TN--Music City USA. While best known as the "Home of Country Music", Nashville is the #2 video production locale in the country; second only to L.A. Nashville is the home of some of the greatest songwriters and musicians in the entire world. It provided an appropriate forum to take a look at how ownership affects artists and their art. I want to thank all the Tennessee public officials, Belmont University, and so many Nashville stars who participated: Naomi Judd, Big and Rich, George Jones, Dobie Gray and my good friend, the late Porter Wagner. We listened and heard from you, and many fans as well, who opposed further radio consolidation, and today we retain the current radio ownership limits.

For those concerned about radio consolidation, it is important to note that the industry has recently seen a number of radio giants engaging in significant divestitures. Major companies like Clear Channel, ABC, Entercom, and CBS have divested, or filed applications to divest, hundreds of stations over the last few years. This is a good example of the marketplace in action. In addition, many of the stations that were spun off were made available to new owners through capital supplied by the former ones. This will hopefully result in additional women and minority owners; a good result for them, and for America's diverse citizenry.

In addition to radio ownership, the other concern that stands out in my mind is the content provided by today's media outlets. From concerns about the pervasive impact media has on our children, to the lack of diversity of programming, to the "negativity" of news coverage in general. Some commenters took issue with a specific local station. To those citizens, I commend you to our website, www.fcc.gov, where you can file complaints regarding a broadcaster who may not be fulfilling their public interest obligations, or you believe has violated other Commission regulations. Also, we recently adopted an Enhanced Disclosure Order, requiring local broadcasters to post their public inspection files online, which will make it easier for individuals and citizens to review those files to ensure that broadcasters are meeting their regulatory responsibilities.

It was important to the process that we heard not only from passionate members of the public who shared personal stories of how media ownership has impacted their lives, but also from dispassionate academics and economists who analyzed marketplace data and derived findings that directed our inquiries. The studies examined various subjects, but several conclusions were reached. First, there is a staggeringly low rate of female and minority ownership in the broadcasting industry. Today, we adopt a

separate order that takes positive steps to address that concern. Second, according to three of our media studies, cross-ownership of newspapers and broadcast stations actually results in more local news. Some point out the potential inconclusiveness as to the outcome of some of the studies, but this concern lends credence to our decision to conduct a case-by-case review of the particular characteristics of specific combinations in specific markets, rather than adopting a one-size-fits-all rule.

In conclusion, I think it is important to step back from the emotionally-charged debate that has surrounded this issue over the past few weeks, and consider the narrowness of the rule change we make today. In this Order, we retain the limits on television ownership, radio ownership, and radio-television cross-ownership. We retain the newspaper-broadcast cross-ownership ban, except in the top 20 markets, which are our most media-rich, highly-populated markets. We establish a heavy presumption against cross-ownership in markets outside the top 20. This was at the heart of the 3rd Circuit's decision which affirmed the elimination of the ban, upholding the Commission's conclusion that the ban undermined localism and was unnecessary to protect diversity.

We have traveled across the country and heard from thousands of citizens. The process has been long, but fruitful. Many wanted us to go further in repealing the ownership restrictions, but we have chosen a measured and cautious approach. We recognize the changing dynamics of the media market, but also give due consideration to the weight of the record before us. In the end, our approach is an extremely modest change, which reflects the views of citizens as well as experts gathered over the past 18 months.

Thank you to the Media Bureau for organizing the many public hearings and for drafting this item. Most of all, thank you to all of those citizens who participated in this truly monumental process. We value your insight and hope you will continue to be part of this Commission's work in the future.

STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL

Re: *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; 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 Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Ways to Further Section 257 Mandate and To Build on Earlier Studies*

Mark Twain warned us over a century ago, "If you don't read the newspaper you are uninformed. If you do read the newspaper you are misinformed." Of course, Mr. Twain had no other media than newspapers at his fingertips to glean information, opinion and, more importantly, material for his witticisms. The 21st Century's chaotic explosion of information from broadcast radio and television, cable TV, satellite radio and TV, the Internet and many other voices and outlets would have given Twain an ocean of material to use to skewer his targets with his satire. Without question, however, he would have had a blog; and I'm sure it would have been one of the most popular blogs on the Internet. If he were alive today, perhaps his cheerful disdain for newspapers would have led him and his readers to bypass the papers altogether. And that's a point at the heart of today's order: if consumers and content providers *want* to bypass the media technologies of yesteryear in favor of new media, they *can*. And *they are*. In fact, the evidence in the record tells us that if you are under 30, you are probably not reading a traditional newspaper or tuning in to your local broadcasters. You may never do so, at least not in the way the over-30 crowd does. It is precisely this type of paradigm shift that Congress and the courts have charged the Commission with weighing heavily as we revise our media ownership rules.

But before I delve into the substance of today's order, let's take a moment to examine how we got here. The current proceeding began at my very first open meeting as a Commissioner, 18 months ago. This proceeding has been unprecedented in scope and thoroughness. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not specific enough about proposals to increase minority and female ownership of stations. We gathered and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our nation's capital. In those hearings, we've heard from 115 expert panelists on the state of ownership in those markets and we've stayed late into the night, or early into the next morning, to hear from concerned citizens who signed up to speak. And I want to thank all of those who turned out to express their views.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. Some commenters did not like the studies and their critiques are part of the record.

So, during my entire term as a Commissioner, we have been reviewing this matter. But our review did not begin last year. The previous round began in 2002. At that time, the Commission received thousands of formal comments and millions of informal comments. The Commission held four localism hearings across the country to gather additional evidence. The FCC also produced twelve media ownership working group studies. We all know that the 2002 review ended badly for the Commission –

with both the legislative and judicial branches reacting through a Congressional override of the national ownership cap, and a reversal and remand from the Third Circuit in the *Prometheus* case. By the way, while the court threw out almost all of the Commission's order, it concluded that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

But our story didn't begin in 2002 either. In 2001, the FCC issued a rulemaking focused on the newspaper-broadcast cross-ownership ban – a concept that has been around since at least 1975. Comments and replies were gathered there too. That proceeding sprouted up as the result of a June 2000 report from a Democrat-controlled FCC, which found that the ban may not be necessary to protect the public interest in certain circumstances. That report was the result of yet another proceeding, which commenced in 1998. The 1998 proceeding stemmed from a 1996 proceeding; which was sparked by legislation; which was engendered by an overwhelming and bi-partisan vote of a Republican-controlled Congress and signed into law by a Democrat President.

In my 17 years of being in and around the FCC, I can't think of any issue that has been examined more thoroughly. I can't remember any proceeding where the Commission has solicited as much comment and given the American people as much opportunity to be heard.

A point that gets lost in the emotion surrounding this debate is that the directly elected representatives of the American people, the Congress, enacted a statute that contains a presumption in favor of modifying or repealing the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest." This section appears to upend the traditional administrative law principle requiring an affirmative justification for the modification or elimination of a rule, and it is crucial for everyone involved in this debate to recognize this important presumption. It is also important to remember that Section 202(h) is the most recent set of codified instructions we have from Congress. If Congress passes legislation to the contrary, and the President signs it into law, I will work tirelessly to ensure that its intent is carried out. In the meantime, however, Section 202(h) is our legal mandate. We also have a duty to pursue the noble public policy goals of competition, diversity and localism. Today's order accomplishes all of the above.

However, while the FCC races ahead over a twelve-year period like "a runaway glacier," as one analyst put it, the private sector has been busy working around the obstacles constructed by the outdated regulations of yore. Is it any wonder that most of the energy, creativity, capital and growth have been focused on areas that are *less* regulated? That's what our record shows. The ironic truth is: in many cases, media consolidation has actually become media divestiture. Companies such as Disney, Citadel, Clear Channel and Belo actually have been shedding properties to raise capital for new ventures. They are directing new capital investment toward new media ventures. That's where America's eyeballs are looking; so that's where the ad dollars are flowing. The Hollywood writers' strike is all about the concept of following the eyeballs and ad dollars and getting fairly compensated as a result. Just to illustrate the point, over one-third of Americans go online to get their news. As the FCC's own research shows, by July 2006, 107 million Americans viewed video online and about 60 percent of U.S. Internet users download videos.[1] YouTube alone requires more bandwidth than the *entire Internet* did in 2000. Unregulated new media's numbers are growing. Heavily-regulated traditional media's numbers are shrinking.

[1] News Release, FCC, *FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report* 4 (Nov. 27, 2007).

This new media frontier is especially promising for people of color and women. The rise of so-called "niche" markets is benefiting people who have been underserved in the past. The low barriers to entry and low capital requirements to get started have spawned a plethora of minority and women oriented new media outlets such as: NetNoir.com, a minority owned online destination that connects people interested in African American culture and lifestyle; or iVillage.com, which provides daily hot topics for women; or Women's eNews.com, an online source for news and perspectives of particular concern to women. While this new era is in its infancy, and we have a long way to go before it matures, I am optimistic that the media ownership debates of the early 21st Century will one day fade into obscurity as technology and competition advance.

Before I go further, let me offer a personal observation. Both of my parents were journalists. They met after World War II at the University of Missouri's famed School of Journalism where my mom was on the faculty. She went on to become a reporter for the *Chicago Daily News* at a time when almost no women held such jobs. She later worked for the *Washington Post* and was there when the cross ownership ban went into effect in 1975. So I found it especially remarkable, when I was sorting through her belongings after she passed away in 2005, to find a book entitled *The Fading American Newspaper*. I've read through it and I've come across some timely quotes. Here's one: "As journalism migrates into new areas of communication, its practitioners, too, are on the move. The commerce in information flourishes and quickens its tempo, new skills are developed, and the major problem for the newspaper journalist is to keep his readers from migrating, too." So when was this book written? 2005? 1975? No, it was written in 1960 by a former editor and journalism professor. But the point is that there is not a general concept before us in this proceeding that hasn't been debated for decades.

Even though the newspaper industry was already facing challenges in 1960, it has undergone dramatic change in the 32 years since the newspaper-broadcast cross ownership ban went into effect. Now we have five national networks, not the three I grew up with. Today we have hundreds of cable channels cranking out a multitude of video content produced by more, not fewer, but *more* independent voices than existed 32 years ago. Now we have two vibrant satellite TV companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a plethora of wireless devices operating in a robustly competitive wireless market place, iPods, Wi-Fi, and much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year, or the upcoming 700 MHz auction, which starts next month. Certainly, more voices and more delivery platforms exist today than in 1975.

Consumers have more choices and more control over what they read, watch and listen to than ever. As a result of this cacophony of voices competing for consumer's attention, at least 300 daily newspapers have shut their doors forever in the last 32 years because people are looking elsewhere for their content. Newspaper circulation has declined year after year. Since just this past spring, average daily circulation has declined 2.6 percent. Newspapers' share of advertising revenue has shrunk while advertising for unregulated online entities has surged.

Some argue that newspapers are making plenty of money. For many papers, that's absolutely true, for now. As gross revenue declines year after year, publishers cut costs to retain margins. After a while, such cost-cutting slices into the heart of the news-gathering operation: the newsroom and its reporters. As a result, the ability to cover more news diminishes. Some respond by arguing that newspapers and broadcasters should therefore live under *more* regulation than what exists today. But who among them is offering to find ways to pay for the high costs of their mandates? How is such a command-and-control regulatory regime supposed to generate the funds needed to support such capital-intensive endeavors?

With all trend lines showing newspaper top-line income falling fast, the ultimate fate of this

platform is obvious: newspapers, as we know them, will cease to exist sooner rather than later under existing regulations. They may disappear some day anyway, regardless of what we do today. But why should stale government industrial policy hasten their demise? While I agree with many of the critics of today's order that it is not the FCC's job to "save the newspapers," or any other industry for that matter, at the same time is it our job to leave in place an outdated regulation that results in the *elimination* of independent voices? With a regulation in place that is linked to the silencing of so many local community voices, is the cross-ownership ban still in the public interest, or is it a millstone around the neck of a drowning industry? The statute demands an answer.

Despite a strong de-regulatory statutory presumption mandated by Congress and an order from the Third Circuit essentially giving a green light to lifting the ban altogether, today's order is quite modest. The order creates a presumption in favor of lifting the ban only in the top twenty media markets where there is tremendous competition in the traditional media sector. Even then we only allow a combination outside of the top four TV stations and only when at least eight independent major media voices remain in the that market. Outside of the top twenty markets, our rule establishes a negative presumption against permitting the combination. In only two special circumstances will we reverse the negative presumption: first, if a newspaper or broadcast outlet is failed or failing; and second, when a proposed combination results in a new source of a significant amount of local news in a market.

Where neither of these circumstances exists, we establish a four-prong test to determine whether the negative presumption is rebutted. This test is not pocked with loopholes as some have suggested; quite the contrary. To determine if the presumption is overcome, we will consider: 1) whether cross-ownership will increase the amount of local news disseminated through the 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 and broadcast station, and if the newspaper or broadcast station is in financial distress, the putative owner's commitment to invest significantly in newsroom operations.

Lastly, we will not require divestiture of existing combinations that were grandfathered in conjunction with the 1975 rule or that were granted permanent waivers of the rule. Under both Democrat and Republican chairmen, the Commission previously determined that these combinations were in the public interest and thus warranted a waiver under the prior rule. We should not reverse course here as we modernize our rule. In addition, the Order grandfathers existing combinations operating under temporary waivers where those combinations involve one newspaper and one broadcast property in the same market. These combinations have achieved synergies that have resulted in service to their communities in the public interest. Requiring divestiture would be disruptive to the individual owners, employees and to the communities that rely on their service.

Today's order also may create new opportunities for women and people of color. Under the current rule, minority businesses may not own a newspaper and station in the same market. Now they can after appropriate Commission review. Under our narrowly-tailored rules, a modernization of the ban will create a rising tide that has the potential to float all boats.

In the meantime, all Americans, and the rest of the world, are migrating toward the boundless promise of new media for their news, information and entertainment. The best news is that all Americans will benefit from this new paradigm because new technology empowers the sovereignty of the individual, regardless of who you are. As future policymakers examine these issues in the years to come, I would urge them to continue to examine the important public policy implications of this new era in the context of these undeniable facts.

Accordingly, I support today's order.