

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996)	MB Docket No. 06-121
)	
2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996)	MB Docket No. 02-277
)	
Cross-Ownership of Broadcast Stations and Newspapers)	MM Docket No. 01-235
)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets)	MM Docket No. 01-317
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies)	MB Docket No. 04-228
)	
Public Interest Obligations of TV Broadcast Licensees)	MM Docket No. 99-360

**OPPOSITION TO PETITION FOR RECONSIDERATION OF
SHAMROCK COMMUNICATIONS INC. AND THE SCRANTON TIMES, L.P.**

Shamrock Communications Inc. and The Scranton Times, L.P. (“Times-Shamrock”),¹ pursuant to 47 C.F.R. § 1.429(f), hereby opposes the Petition for Reconsideration filed by Common Cause, *et al.* (“Petitioners”) in the above-captioned proceeding.² Times-Shamrock opposes the Petition for Reconsideration generally, but particularly objects to Petitioners’ request

¹ Times-Shamrock operates six radio stations and has commonly owned newspaper/radio interests in Wilkes-Barre/Scranton, Pennsylvania.

² Petition for Reconsideration of Common Cause, the Benton Foundation, Consumers Action, Massachusetts Consumers’ Coalition, NYC Wireless, James J. Elekes, and National Hispanic Media Coalition (filed Mar. 24, 2008) (“Petition for Reconsideration”).

that the Commission modify the *2006 Quadrennial Review Order*³ in order to (1) restrict waivers of the newspaper-broadcast cross-ownership rule (“Newspaper Rule”) in Designated Market Areas (“DMAs”) ranked 21 and below,⁴ and (2) require broadcasters that acquire a co-located newspaper to apply for a waiver within one month.⁵ The Commission should deny the Petition for Reconsideration.

I. THE COMMISSION SHOULD NOT RESTRICT THE STANDARDS FOR WAIVERS OF THE NEWSPAPER RULE

Petitioners urge the Commission to restrict significantly waivers of the Newspaper Rule with regard to combinations in the DMAs ranked 21 and below.⁶ Specifically, Petitioners ask the Commission to eliminate the four factors considered in overcoming the negative presumption for waiver requests in DMAs ranked 21 and below.⁷ The only circumstance in which Petitioners would permit the Commission to grant a waiver for combinations in these markets is “where the applicant meets either the failing media test, or the local news test modified as suggested” by the Petitioners.⁸ The Commission should not restrict the waiver standards.

Times-Shamrock continues to believe that all restrictions on newspaper-broadcast combinations should be eliminated.⁹ As Times-Shamrock has observed previously, Commission restrictions on newspaper-broadcast combinations unfairly and unreasonably discriminate against

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 et al.*, MB Docket Nos. 06-121 & 02-277 and MM Docket Nos. 01-235, 01-317 & 00-244, Report and Order and Order on Reconsideration, FCC 07-216 (rel. Feb. 4, 2008) (“*2006 Quadrennial Review Order*”).

⁴ Petition for Reconsideration at 3-5.

⁵ *Id.* at 6-7.

⁶ *Id.* at 1-6.

⁷ *Id.* at 3-5.

⁸ *Id.* at 3.

⁹ See Comments of Shamrock Communications, Inc. and The Scranton Times, L.P. (filed Oct. 23, 2006).

broadcasters and newspaper publishers and restrict their ability to compete in today's highly complex, diverse and competitive media marketplace.¹⁰ Eliminating such restrictions is especially critical in smaller markets "where the efficiencies to be gained from cross-ownership are needed most to promote the production of local news and information."¹¹

Thus, even the Commission's new, modified Newspaper Rule is overly restrictive. To this end, The Scranton Times, L.P. has filed a petition for review of the *2006 Quadrennial Review Order* challenging the Commission's decision not to eliminate the Newspaper Rule.¹² In any event, the Commission should not now retreat from the limited relief provided by the *2006 Quadrennial Review Order*. The Commission should instead deny Petitioners' request to restrict the standards for granting waivers of the Newspaper Rule.

II. THE COMMISSION SHOULD NOT REVISIT ITS PROCEDURE PERMITTING A BROADCASTER THAT ACQUIRES A CO-LOCATED NEWSPAPER TO HOLD BOTH ENTITIES UNTIL LICENSE RENEWAL

Petitioners urge the Commission to eliminate the process established in footnote 25 of the *1975 Report and Order*, and require a broadcaster acquiring a co-located newspaper to file a request for waiver of the Newspaper Rule within one month, rather than permitting the broadcaster to hold the newspaper until renewal.¹³ Petitioners' proposal would reverse a long-standing and sensible Commission procedure and the Commission cannot and should not change this now.¹⁴

¹⁰ *See id.*

¹¹ *Id.* at 6; *see also* Reply Comments of Shamrock Communications, Inc. and The Scranton Times, L.P. at 3 (filed Feb. 15, 2002).

¹² *See The Scranton Times, L.P. v. FCC, et al.*, Case No. 08-1090 (filed Mar. 4, 2008) (consolidated with *Newspaper Ass'n of America v. FCC, et al.*, Case No. 08-1082).

¹³ Petition for Reconsideration at 6-7.

¹⁴ Petitioners admit that their proposal would require a rule change. *See id.* at 7 ("... the FCC should require that a waiver request be submitted within one month after a broadcaster acquires a co-located daily newspaper and the FCC should act on such waiver requests on an expedited basis. . . . *Unless the*

Footnote 25 established a mechanism to address the application of the Newspaper Rule when a broadcaster acquired a co-located newspaper.¹⁵ The Commission has no jurisdiction over such an acquisition which is not subject to any transfer of control application or other Commission review process. Consequently, the Commission decided to consider the newspaper acquisition in the context of the station's next renewal.¹⁶ The Commission went on to conclude in footnote 25:

. . . if a broadcast station licensee were to purchase one or more daily newspapers in the same market, it would be required to dispose of its stations there within 1 year or by the time of its next renewal date, whichever is longer.¹⁷

Petitioners would have the Commission abandon footnote 25 and create an entirely new process whereby a broadcaster acquiring a co-located newspaper would file a request for waiver of the Newspaper Rule within one month of the acquisition.¹⁸ Petitioners, however, offer no legal authority upon which the Commission can take such a step, nor can they.

The Administrative Procedure Act ("APA") prohibits the Commission from modifying a rule on reconsideration absent notice of the modification under Section 553(b)(3) of the APA.¹⁹ The Commission, however, has provided no notice that it might amend footnote 25 of the *1975 Report and Order*. Both the *2006 Quadrennial Review Order* and the underlying *Further Notice of Proposed Rulemaking* are silent with regard to footnote 25 or any potential modification

FCC amends its rules in this manner, its presumptive waiver approach could have the perverse effect of encouraging broadcasters to acquire co-located newspapers that do not qualify for a presumptive waiver. . . ." (emphasis supplied).

¹⁵ *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*, 50 FCC 2d 1046, 1076 (1975) ("*1975 Report and Order*").

¹⁶ *Id.*

¹⁷ *Id.* at n.25.

¹⁸ Petition for Reconsideration at 6-7.

¹⁹ *Sprint Corp., et al. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

thereof. Petitioners' assertion that they raised concerns about footnote 25 in comments does not compel a contrary conclusion.²⁰ “[C]omments by members of the public [do] not in themselves constitute adequate notice.”²¹

Finally, even if the Commission could adopt a new waiver process, it should not apply that process retroactively to combinations created after 1975 and in conformance with footnote 25 of the *1975 Report and Order*. It would be fundamentally unfair to penalize owners of media properties for their investments made in reliance on the existing regulatory environment. Indeed, applying any new rules retroactively would be particularly unfair and harmful here given that the procedures in question have been in place and remained unchanged for decades.

²⁰ Petition for Reconsideration at 6.

²¹ *Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991).

CERTIFICATE OF SERVICE

I, LaVon E. Nickens, hereby certify that, on this 6th day of May, 2008, copies of the forgoing Opposition to Petition for Reconsideration were served via U.S. first class mail, postage prepaid, on the following:

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