

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

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| In the Matter of |) | |
| |) | |
| 2006 Quadrennial Regulatory Review – |) | MB Docket No. 06-121 |
| 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 |) | MB Docket No. 02-277 |
| 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 |) | MM Docket No. 01-235 |
| Newspapers |) | |
| |) | |
| Rules and Policies Concerning Multiple |) | MM Docket No. 01-317 |
| Ownership of Radio Broadcast Stations in |) | |
| Local Markets |) | |
| |) | |
| Definition of Radio Markets |) | MM Docket No. 00-244 |
| |) | |
| Ways to Further Section 257 Mandate and To |) | MB Docket No. 04-228 |
| Build on Earlier Studies |) | |
| |) | |
| Public Interest Obligations of TV Broadcast |) | MM Docket No. 99-360 |
| Licenses |) | |

To: The Commission

**OPPOSITION OF
BONNEVILLE INTERNATIONAL CORPORATION**

Bonneville International Corporation (“Bonneville”), pursuant to Section 1.429(f)
of the Commission’s rules, 47 C.F.R. § 1.429(f), respectfully submits the following

opposition to the petition for reconsideration¹ filed against the Commission's 2007 *Media Ownership Order*.² In contrast to Petitioners' claims, the revisions the Commission adopted to the newspaper/broadcast cross-ownership rule ("Rule") are *too limited*, not too expansive. The petition is unfounded and, given that numerous parties have already sought judicial review of the *Media Ownership Order*, the Commission should act quickly here to reject the petition.

I. INTRODUCTION

As Bonneville has observed on many occasions, the media marketplace is evolving at breakneck speed, with an explosion of emerging platforms, new outlets, and revolutionary technologies – allowing for an endless array of voices and viewpoints.³ Despite the line drawing adopted in the *Media Ownership Order*, this phenomenon has expanded *all* media markets – not just the top 20 DMAs. The Commission's order did not go far enough: in today's media environment, cross-ownership restrictions involving newspapers are an anachronism and should be eliminated *in toto*. In fact, Bonneville and many others have petitioned the courts to find that the new Rule is too restrictive and unlawful.⁴

¹ Common Cause, Benton Foundation, Consumers Action, Massachusetts Consumers' Coalition, NYC Wireless, James J. Elekes, and National Hispanic Media Coalition, Petition for Reconsideration, MB Docket 06-121 *et al.* (filed Mar. 24, 2008) ("Petition").

² 2006 *Quadrennial Regulatory Review*, MB Docket No. 06-121 *et al.*, Report and Order and Order on Reconsideration, FCC 07-216 (rel. Feb. 4, 2008) ("*Media Ownership Order*").

³ *See, e.g.*, Comments of Bonneville International Corporation, MB Docket No. 06-121 *et al.* (filed Dec. 11, 2007); Comments of Bonneville International Corporation, MB Docket No. 06-121 *et al.* (filed Oct. 23, 2006).

⁴ *See Bonneville International Corporation v. FCC et al.*, Case No. 08-1089 (D.C. Cir. filed Mar. 4, 2008) (consolidated with *Newspaper Ass'n of America v. FCC et al.*, No. 08-1082 (D.C. Cir.)). The positions set forth in this opposition should not be construed as a petition for reconsideration before the Commission.

The Petitioners, meanwhile, seek to roll back the limited relief the Commission provided and impose new, unnecessary regulatory requirements on any combinations that are approved. As demonstrated below, the Commission should act quickly to rebuff these claims.

II. THE FCC SHOULD REJECT PETITIONERS' CALL TO NARROW THE FACTORS FOR CONSIDERATION IN A WAIVER OF THE NEGATIVE PRESUMPTION

By the Commission's own admission, the *Media Ownership Order* involved "a modest step in loosening the complete ban on cross-ownership."⁵ In markets below the top 20 DMAs the Commission adopted a negative presumption against newspaper/broadcast combinations. Yet Petitioners seek to reverse even this limited relief in those markets. They argue that the four factors identified to overcome the negative presumption (increased local news, independent news judgment, market concentration, and financial condition) "should be eliminated" because they are "vague" and provide no specific remedy if an applicant were to fail to fulfill commitments made in the context of the waiver.⁶

As an initial matter, Petitioners' proposal contemplates a flat bar against any newspaper/broadcast combinations in DMA markets 21-210 – more than 90 percent of the country – with only two narrow exceptions: if the newspaper or broadcast station meets a failed/failing test or if the broadcast station offers no local news prior to the combination. This approach completely ignores the growth in media markets beyond the top 20 DMAs that has added diversity of voices and local content in communities across America.

⁵ *Media Ownership Order* at ¶ 13.

⁶ Petition at 3.

When the Commission adopted the Newspaper Rule in 1975, it considered how broadcasting had evolved from its early days and weighed issues of viewpoint diversity and competition. In doing so, it observed, “[t]he Commission is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was.”⁷ The same principle should apply with equal force today.

Petitioners’ proposal to narrow the new Rule is unjustifiable given the changes that have occurred in the marketplace: more local television stations; hundreds of video channels offered by cable, DBS, and IPTV providers; nearly double the number of local radio stations; the advent of satellite radio, digital television and radio multicasting; and of course, the Internet and all its varied sources of news and information.

Further, Petitioners’ proposal would result in a rule that is arbitrary and capricious and unsustainable. Petitioners readily accept that the negative presumption can be reversed under “an enforceable version of the local news test,”⁸ which allows an applicant to reverse the negative presumption if it initiates at least seven hours of local news programming on a station that was not offering local newscasts prior to the combination.⁹ Under Petitioners’ view, however, if the subject station offered a 5-minute local news show *once a week* it would not be eligible for a combination – even if the proposed combination would offer an all-news format. This line drawing makes no sense and would be arbitrary and capricious. Worse, it would disserve the interests of localism.

⁷ *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*, Second Report and Order, 50 F.C.C.2d 1046, 1075 (1975) (“1975 Order”).

⁸ Petition at 3.

⁹ *Media Ownership Order* at ¶ 67.

Petitioners' proposal could force stations to drop all local newscasts in order to become eligible for the local news test.

Finally, Petitioners' claim that the four factors are vague is without basis and must be rejected. Because of the important "safety valve" function that waivers perform, it is well established that the Commission must give all requests for waivers a "hard look."¹⁰ The factors identify specific criteria the Commission can consider in assessing requests for a proposed combination in DMA markets 21-210. They offer a framework for analyzing proposed combinations and provide significant guidance. Petitioners would almost end waivers in DMA markets 21-210 whether or not the purpose of the Rule would be served – a result at odds with *WAIT Radio* and its progeny. In Bonneville's view, there should be no rule against newspaper/broadcast combinations and, if there is *any* rule, no waiver should be subject to a negative presumption. At a minimum, the Commission must have discretion to consider the factors identified in the *Media Ownership Order*.

III. THE FCC SHOULD REFRAIN FROM IMPOSING UNNECESSARY AND OVERZEALOUS REQUIREMENTS ON NEWSPAPER/BROADCAST COMBINATIONS

Petitioners seek identification of enforcement measures to be taken in the event of licensee violations, more annual reporting, and additional public notice requirements with regard to waiver requests. These proposals add new and unnecessary regulations on top of the stringent new rule adopted in the *Media Ownership Order* and should be rejected.

The FCC should reject the proposal to establish bright-line remedies in the event of licensee violations. As Section 503(b) of the Communications Act establishes,

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

determining enforcement measures will inevitably involve a fact-intensive inquiry and will depend on the totality of the circumstances.¹¹ The FCC should address enforcement on a cases-by-case basis in this context, just as it has done time and again.¹²

Further, the Petitioners suggest the need for “more detail” about the annual reporting requirement associated with a grant under the local news test.¹³ As Petitioners themselves acknowledge, the *Media Ownership Order* expressly stated that licensees “report to the Commission annually *regarding how they have followed through on their commitment.*”¹⁴ It is unclear what more the FCC would expect, and the request should be denied.

Petitioners also ask for more widespread local public notice of newspaper/broadcast combination waiver requests – but again, as Petitioners recognize – the Commission addressed this concern. The *Media Ownership Order* noted that applications for approval of newspaper/broadcast combinations are subject to the local public notice filing requirements of the highly proscriptive Section 73.3580 of the

¹¹ See 47 U.S.C. § 503(b) (“[i]n determining the amount of such a forfeiture penalty, the Commission . . . shall take into account the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, . . . the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”).

¹² See, e.g., Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Order on Reconsideration*, 19 FCC Rcd 17503, 17564 ¶ 127 (2004) (declining to codify dispositive rules as to what constitutes a violation for holding licensee’s accountable in favor of case-by-case review); Development of a National Framework to Detect and Deter Backsliding to Ensure Continued Bell Operating Company Compliance with Section 271 of the Communications Act Once In-region InterLATA Relief is Obtained, *Order*, 15 FCC Rcd 1473, 1474 ¶ 2 (2000) (dismissing petition for rulemaking calling for defined remedies to deter conduct because FCC had already decided to adopt case-by-case enforcement framework); Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, *Memorandum Opinion and Order*, 15 FCC Rcd 3953, 4174 ¶ 451 (1999) (opting to address enforcement on a cases-by-case basis instead of cataloging all of the possible ways that a party may fall out of compliance).

¹³ Petition at 4.

¹⁴ *Media Ownership Order* at ¶ 67 (cited in Petition at 4) (emphasis added).

CERTIFICATE OF SERVICE

I, Paula Lewis, 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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