

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)	MB 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)	MB Docket No. 00-244
)	
Ways to Further Section 257 Mandate 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

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OPPOSITION TO PETITION FOR RECONSIDERATION

I. INTRODUCTION AND SUMMARY

The Newspaper Association of America (“NAA”) hereby opposes the Petition for Reconsideration (“Petition”) filed by Common Cause, *et al.* (“Petitioners”) on March 24, 2008 in the above-captioned proceedings.¹ Petitioners seek to significantly dilute the modest regulatory

¹ The other parties to the Petition include the Benton Foundation, Consumers Action, Massachusetts Consumers’ Coalition, NYC Wireless, James J. Elekes, and National Hispanic Media Coalition. Notice of the Petition was published in the Federal Register on April 21, 2008. *See* 73 Fed. Reg. 21,347 (2008). Thus, pursuant to Section 1.429(e) of the Commission’s Rules, this Opposition is timely. *See* 47 C.F.R. § 1.429.

relief the Commission provided with respect to its flat ban on newspaper/broadcast cross-ownership in its December 18, 2007 decision.² These parties even go so far as to suggest that the revised rule should be more restrictive in certain respects than the previous absolute restriction. None of Petitioners' requests finds even a modicum of support in the exhaustive record that was before the agency in this proceeding. The FCC's decision to modestly relax the cross-ownership ban was buttressed by extensive marketplace evidence and important policy considerations. Petitioners do not even attempt to prove otherwise. Accordingly, NAA submits that the Petition for Reconsideration of the modified newspaper/broadcast rule should be summarily rejected by the Commission.³

Despite an outburst of concern that the revised cross-ownership ban will lead to rampant media consolidation, the changes that the Commission actually has made to the restriction will allow additional newspaper/broadcast combinations only in limited circumstances. Moreover, the voluminous record in this proceeding was replete with evidence that cross-ownership serves the agency's localism objectives, without causing countervailing public interest harms, and that regulatory relief is drastically needed in this area. Indeed, given that the FCC was under both a statutory and a judicial mandate to relax its absolute prohibition on newspaper/broadcast cross-ownership, NAA submits that the modifications that have been adopted in this proceeding were about as limited as reasonably could have been anticipated. For these reasons, total repeal—or at

² See *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*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010 (2007) (“*2007 Ownership Order*”).

³ NAA notes that it is not by this filing requesting any Commission reconsideration of the newspaper/broadcast cross-ownership rule, and that it is exclusively seeking judicial review of the *2007 Ownership Order*. NAA files this Opposition for the limited purpose of responding to Petitioners' request for further regulatory restrictions on reconsideration.

least far more significant relaxation—of this long outdated restriction would have been fully justified.

Nonetheless, Petitioners persist in pressing their contention that the FCC has gone too far in this proceeding. They specifically request that the Commission further narrow the already limited opportunities that newspaper publishers and broadcasters will have under the revised rule to make case-by-case showings that particular combinations will serve the public interest. Especially because the new rule presumptively will permit cross-ownership in few circumstances, NAA submits that providing potential cross-owners with some opportunity to make individualized showings is highly important and must be maintained in the modified restriction.

In addition to their suggestion that the agency revert to the 1975 version of the cross-ownership ban, Petitioners ask the Commission to eliminate the “footnote 25” policy concerning implementation of the rule. Certainly, the record before the FCC offers no basis for such regressive action. The footnote 25 component of the cross-ownership ban, which permits broadcasters acquiring same-market daily newspapers to seek approval for such transactions at the time of their next license renewals, has been in existence for more than 30 years without any adverse effects. To the contrary, the small handful of combinations that came into being under this policy clearly have served the public interest with enhanced local programming and outstanding community service.

Similarly, Petitioners provide no basis for their request that the Commission subject newspaper/broadcast applicants to heightened public notice requirements or other unnecessary regulatory burdens. Given that the FCC already is considering its public notice rules in a separate proceeding, this request is better considered in that forum. Likewise, there is no reason

for the Commission to pre-judge the remedies it would impose in the unlikely event that a newspaper/broadcast waiver applicant fails to live up to its commitment to enhance local news programming. Finally, despite Petitioners claims to the contrary, the FCC's decision to grant individual waivers of the cross-ownership ban in connection with the *2007 Ownership Order* was fully justified and consistent with longstanding agency precedent as well as the Commission's stated policy objectives.

II. BACKGROUND

The FCC's decision in this proceeding to modify its absolute ban on newspaper/broadcast cross-ownership was based on a voluminous evidentiary record demonstrating that the flat restriction no longer serves, and in fact is inimical to, the agency's policy objectives. The Commission also issued its decision in the face of an express judicial finding that the blanket prohibition no longer served the public interest.⁴

Given these considerations, the cautious changes that the FCC made to its cross-ownership rule in its *2007 Ownership Order* are as limited as reasonably could be expected. In fact, the revised restriction effectively leaves intact a general prohibition on common ownership of a same-market newspaper and broadcast station. Rather than establishing a true bright-line standard under which newspaper/broadcast cross-ownership definitively will be permissible, the new rule will subject all combinations to case-by-case review. Only a very narrow subset of combinations—those that meet several strict criteria—will be presumed to serve the public interest.⁵ All others will be deemed presumptively impermissible. A “four factor test” will

⁴ In directing the Commission to reconsider the revised cross-media limits that the agency sought to adopt in 2003, the U.S. Court of Appeals for the Third Circuit expressly found that “reasoned analysis supports the Commission’s determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest.” *Prometheus Radio Project v. FCC*, 373 F.3d 373, 398 (3rd Cir. 2004).

⁵ Specifically, a same-market combination will be presumed to serve the public interest only if: (1) it is located in one of the top 20 Designated Market Areas (DMAs); (2) the transaction involves the combination of a daily

inform the Commission's determinations as to whether a particular proposed combination serves or disserves the public interest.⁶ The FCC stated in its decision, moreover, that those transactions that are subject to a "negative presumption" will face a "high hurdle" to win Commission approval.⁷

As NAA and many other parties have demonstrated throughout the FCC's serial media ownership rulemakings, complete repeal, or at least substantial relaxation, of all restrictions on newspaper/broadcast cross-ownership would have been fully justified in this proceeding.⁸ The voluminous record shows unequivocally that newspaper/broadcast cross-ownership significantly enhances the agency's localism goals without harming viewpoint diversity or competition. The evidence further makes clear that meaningful regulatory relief is needed in order to alleviate the

newspaper and either one radio station or one television station; (3) for television stations, the station is not ranked among the top four in the DMA, based on the most recent Nielsen all-day audience share; and (4) for television stations, at least eight independently owned and operated major media voices would remain in the DMA post-transaction. *2007 Ownership Order* at ¶53.

⁶ The four factors to be taken into consideration are: (1) the extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the Nielsen DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations. *Id.* at ¶ 68.

⁷ *Id.* In two limited circumstances, the Commission will reverse the negative presumption. First, the presumption will be reversed where the newspaper or broadcast station is failed or failing. *Id.* at ¶¶ 65-66. Second, the presumption will be reversed "when a proposed combination results in a new source of a significant amount of local news in the market." *Id.* at ¶ 67.

⁸ *See, e.g.*, Comments and Reply Comments of Newspaper Association of America, MB Docket Nos. 06-121, *et al.* (filed Oct. 23 2006 and Jan. 16, 2007) ("NAA 2006 Comments/2007 Reply Comments"); Comments and Reply Comments of Belo Corp., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006 and Jan. 16, 2007) ("Belo 2006 Comments/2007 Reply Comments"); Comments of Bonneville International Corporation, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006); Comments of Cox Enterprises, Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006) ("Cox 2006 Comments"); Comments and Reply Comments of Gannett Co., Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006 and Jan. 16, 2007) ("Gannett 2006 Comments/2007 Reply Comments"); Comments and Reply Comments of Media General, Inc., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006 and Jan. 16, 2007) ("Media General 2006 Comments/2007 Reply Comments"); Comments and Reply Comments of Morris Communications Company, LLC, MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006 and Jan. 16, 2007) ("Morris 2006 Comments/2007 Reply Comments"); Comments and Reply Comments of Tribune Company, MB Docket Nos. 06-121, *et al.* (filed Oct 23, 2006 and Jan. 16, 2007) ("Tribune 2006 Comments/2007 Reply Comments").

monumental financial and competitive challenges facing today's newspaper publishers and broadcasters. In light of these considerations, NAA believes that the steps the FCC has taken to relax the flat restriction on newspaper/broadcast cross-ownership will provide only a modicum of the regulatory relief that is clearly called for and fully justified. Petitioners have advanced no substantial basis for jettisoning the very limited relief the new rule and waiver standards will afford.

III. THERE IS NO BASIS FOR THE FCC TO SCALE BACK THE MODEST CHANGES IT HAS MADE TO THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP BAN.

Petitioners seek to undo the modest regulatory relief that was afforded to newspaper publishers and broadcasters in this proceeding. They ask the FCC to eliminate opportunities for case-by-case showings by potential newspaper/broadcast combinations that do not precisely fit the narrow criteria established by the agency for presumptively permissible cross-ownership. Further, Petitioners go so far as to ask the agency to make the revised rule even more restrictive than the pre-existing absolute ban on newspaper/broadcast cross-ownership by abolishing the so-called "footnote 25" policy concerning implementation of the rule. That component of the regulation provides that a broadcaster's acquisition of a co-located daily newspaper will be considered by the Commission when the subject station submits its license renewal application. Petitioners do not offer any reasoned analysis in support of these requests.

A. The FCC's Decision to Adjust the Newspaper/Broadcast Ban Was Based on Extensive and Clear Marketplace Evidence.

There can be little question that the modest recalibration of the cross-ownership ban adopted in this proceeding was supported by far more than adequate marketplace evidence.⁹ In

⁹ Pursuant to the Administrative Procedure Act, the Commission must examine the relevant data and articulate a satisfactory explanation for its action based on the materials that were before it at the time its decision was made. *Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1388-1389 (D.C. Cir. 1995). Similarly, reviewing courts require

asserting that the revised rule should be rolled back, Petitioners do not even attempt to demonstrate otherwise. The record before the agency consisted of more than 160,000 comments, ten empirical studies from academic and other economic experts, and testimony from six field hearings.¹⁰ Included within this massive record was extensive documentation concerning the financial challenges facing the traditional media in today's intensely competitive marketplace and the resulting need for regulatory relief from the long outdated and counterproductive cross-ownership restriction.

As the FCC stated in the *2007 Ownership Order*, the record in this proceeding elucidated the self-evident fact that “the media environment has changed considerably over the past three decades.”¹¹ More specifically, the agency determined that “the emergence of new forms of electronic media in recent years has come at the expense of traditional media, and of newspapers in particular.”¹² Some of the more notable changes observed by the agency “include a diminished number of newspaper outlets, ebbing popularity with consumers, and a notable shift in the role that traditional media outlets play in gathering and disseminating news and information.”¹³

Each of these findings was based on solid data. For example, the Commission relied on statistics showing that there has been a significant drop in the readership of daily newspapers in

that the Commission examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. *California Metro Mobile Comm'n, Inc. v. FCC*, 365 F.3d 38, 43 (D.C. Cir. 2004); *see also Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Under these standards, relaxation of the cross-ownership rule—and not tightening—plainly was required.

¹⁰ *2007 Ownership Order* at ¶ 5.

¹¹ *Id.* at ¶ 21.

¹² *Id.*

¹³ *Id.*

recent years.¹⁴ While in 1975 “there were more than 1,756 daily newspapers with a total circulation of about 60.7 million readers,” these numbers had dropped to “1,452 daily newspapers, with a total circulation of 53.3 million” by 2005.¹⁵ Notably, these downturns have occurred “even as the population of the country has increased more than 80 percent in the last half-century.”¹⁶ The record further revealed that this decrease in circulation, in turn, has led to a sharp reduction in the number of professional journalists in the newspaper industry as well as the number of news bureaus each paper maintains. For example, evidence submitted in the docket showed that “[i]n 2006, the industry began with roughly 3,000 fewer full-time newsroom staff than it had at its peak of 56,400 in 2000.”¹⁷

In addition, the data before the agency made clear that the advertising income earned by daily newspaper publishers has been stagnant in recent years. In particular, the Commission observed that “[a]dvertising revenues, which currently account for slightly more than 80 percent of the industry’s total revenues, steadily increased for decades, but appear to have leveled off after 2000.”¹⁸ What is more, evidence showed that this trend is expected to worsen in the foreseeable future. Industry experts have predicted that there will be “declines in all categories of newspaper advertising revenue, including online ad revenue, through 2011.”¹⁹

¹⁴ *Id.* at ¶ 27.

¹⁵ *Id.* The 2007 *Ownership Order* also relied on data from the Audit Bureau of Circulations pertaining to the six-month period ending September 2007, which showed further declines in circulation for 700 daily newspapers across the country. *Id.* Of the top 25 papers in daily circulation, only four showed gains. Circulation for newspapers such as *The New York Times*, *The Washington Post*, *The Denver Post*, and *The Boston Globe* showed declines ranging from 3.2 percent to 10 percent. *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at ¶¶ 28-29.

¹⁸ *Id.* at ¶ 30 (*internal citations omitted*).

¹⁹ *Id.*

The Commission further found that these problems have been exacerbated by a continued increase in newspaper operational costs. In reaching this conclusion, the agency again relied on concrete data. For example, the FCC explains that, based on a benchmark of 100 that was established in 1992, the input costs for newspaper publishers have climbed from 106.3 in 2000 to 122.9 in 2005.²⁰ This means that total input costs rose by 6.3 percent in the eight years from 1992 to 2000 and by a whopping 15.6 percent in the five years from 2000 to 2005.²¹ Not surprisingly, further evidence showed that stock prices for many of the major newspaper companies have fallen dramatically in the face of these numerous financial challenges.²²

In explaining its decision to relax the cross-ownership ban, the Commission further noted that these factors were not present when the rule was implemented in 1975. The agency aptly observed that the original cross-ownership restriction “arose in an era when daily newspapers and broadcast stations enjoyed relatively unrivaled power in their local markets to collect information and to decide what constituted ‘news’ worth transmitting to their audiences.”²³ Today, in contrast, the Internet and other forms of electronic media have significantly diminished newspapers’ and broadcasters’ traditional function as “gatekeepers” of news. These considerations convinced the agency “that newspaper combinations no longer pose the same

²⁰ *Id.* at ¶ 32.

²¹ *Id.*

²² *Id.* at ¶ 33. This trend has continued since the *2007 Ownership Order* was released. For example, the Journal Register Company, owner of 22 daily and 346 non-daily newspapers, recently announced that it has fallen below the New York Stock Exchange’s continued listing standard because its share price fell below the required minimum of \$1.00. Press Release, Journal Register Company, Journal Register Company Notified by NYSE of Non-Compliance with a Continued Listing Standard (April 3, 2008) (<http://www.journalregister.com/press/04032008.htm>) (last visited April 11, 2008)). See also Andrew LaVallee, *Newspaper-Circulation Drop Sharpens*, Wall Street Journal, April 29, 2008, at B1 (reporting that the newspaper publishing industry “could be looking at its worst [circulation] numbers in more than a decade” and that industry-wide declines of one to three percent are anticipated over the same period last year).

²³ *2007 Ownership Order* at ¶ 37.

threat to diversity that they once did.”²⁴ Accordingly, the FCC correctly found that the benefits of relaxing the blanket ban outweighed any theoretical public interest harms.²⁵

B. Petitioners Provide No Legitimate Basis for the FCC to Reverse the Modest Cross-Ownership Relief Afforded in This Proceeding.

Despite the well-reasoned and extensively documented bases for the FCC’s decision to finally eliminate its flat ban on newspaper/broadcast cross-ownership, Petitioners persist in their claims that the agency’s actions in this proceeding were too deregulatory. Indeed, Petitioners even assert that the public interest would best be served by retaining “the former across-the-board prohibition . . . with waivers available using the traditional four-prong test. . . .”²⁶ Petitioners further suggest that the agency, for the first time, should require a broadcaster that acquires a co-located daily newspaper to apply for a waiver within one month.²⁷ Given the overwhelming evidence that daily newspaper publishers are in need of regulatory relief in this proceeding, these requests inexplicably seek to move the agency in the wrong direction. Moreover, the so-called “footnote 25” component of the cross-ownership ban has been in existence for more than 30 years without any adverse effects. To the contrary, the evidence unequivocally shows that recently established combinations subject to the footnote 25 policy—like those that were grandfathered by the Commission in 1975—affirmatively have served the public interest with enhanced local programming and outstanding community service.²⁸

²⁴ *Id.* at ¶ 38.

²⁵ *See id.* at ¶ 19.

²⁶ *See* Petition at 2.

²⁷ *See id.* at 6-7.

²⁸ *See, e.g.*, NAA 2006 Comments at III.C; Media General 2006 Comments at III; Gannett 2006 Comments at II.B.

Further, NAA submits that Petitioners' complaints about the continued existence of certain footnote 25 combinations are misplaced.²⁹ Each of these combinations came into existence during the long period of time in which the FCC's cross-ownership rules have been in a state of flux. This regulatory uncertainty has made it exceedingly difficult for broadcasters and newspaper publishers to appropriately plan transactions. What is more, the FCC repeatedly recognized during this period that the absolute restriction on cross-ownership no longer served the public interest and needed to be revised—a proposition that was affirmed by the U.S. Court of Appeals for the Third Circuit.³⁰ Accordingly, NAA submits that these individual situations do not in any way counsel against maintenance of the footnote 25 exception to the cross-ownership ban.

In addition, Petitioners ask the FCC to close the door on potential newspaper/broadcast combinations that do not meet the strict criteria for a presumption in favor of cross-ownership. Specifically, they request that the agency eliminate the possibility under the newly adopted rule for parties to make an individualized showing that a specific combination would serve the public interest under the “four factor test.”³¹ In support of this suggestion, Petitioners broadly claim that building such flexibility into the restriction would “swallow the rule” and involve the FCC in “difficult factual determinations.”³² The FCC's clear statement that such combinations will have “a high hurdle to cross in order to win Commission approval” belies any claim that the opportunity to submit a waiver request addressing the four enumerated factors somehow will

²⁹ See Petition at 6-7.

³⁰ See note 4, *infra*; see also NAA 2006 Comments at II.A., II.B.

³¹ See Petition at 3.

³² *Id.*

eviscerate the new rule.³³ Further, Petitioners do not raise any objection to the use of the four factor test as a means to question combinations that would qualify for a positive presumption, even though such situations would involve precisely the same factual determinations. Petitioners cannot have it both ways. Most importantly, given the extremely narrow circumstances in which cross-ownership will be permissible under the revised restriction, NAA submits that the opportunity for case-by-case determinations is essential. Otherwise, the FCC needlessly would foreclose the creation of newspaper/broadcast combinations that clearly would serve the public interest by preserving and strengthening local broadcast and print outlets and expanding the quantity and variety of news and information available to the public.

IV. PETITIONERS FAIL TO SUPPORT THEIR REQUEST TO SUBJECT NEWSPAPER/BROADCAST APPLICANTS TO HEIGHTENED PUBLIC NOTICE REQUIREMENTS OR OTHER SUPERFLUOUS REGULATORY BURDENS.

Petitioners also ask that applicants for newspaper/broadcast combinations pursuant to the new rule be subject to “enhanced public notice” requirements.³⁴ The agency’s public notice rules have been in place for many years and, as evidenced by the high volume of comments filed in this and many other Commission proceedings, the public participates very actively in FCC matters. Moreover, Petitioners fail to explain why broadcast applicants seeking to acquire daily newspapers should be singled out in this manner. In any event, the Commission already has indicated that its public notices will flag requests for waiver of the cross-ownership rule.³⁵ Further, as acknowledged by Petitioners, the Commission has commenced a separate rulemaking

³³ See *2007 Ownership Order* at ¶ 68.

³⁴ See *Petition* at 5.

³⁵ See *2007 Ownership Order* at ¶ 79.

to address the public notice requirements for broadcast applicants.³⁶ Petitioners' counsel filed comments in that proceeding,³⁷ and this issue is more appropriately addressed in that forum.

Similarly, Petitioners ask the agency to provide further "mechanisms" by which to hold parties accountable if they fail to follow through with commitments to increase local news or other pledges made in connection with an application for waiver of the newspaper/broadcast cross-ownership rule.³⁸ Particularly in light of the strong and well-documented incentives newspaper publishers have to enhance broadcast local news and informational offerings, Petitioners' concerns are highly speculative. More importantly, although Petitioners suggest that the FCC has no "remedy" if an applicant fails to follow through with commitments made in the context of a waiver application, this is not true.³⁹ The agency has broad discretion to sanction regulated entities in the event that they do not comply with Commission rules, policies, or other directives. Petitioners provide no reason for the FCC to pre-determine the penalties it would impose if the need should arise and to limit its flexibility to deal with any such issues on an individual basis.

V. THE FCC'S DECISION TO GRANT INDIVIDUAL WAIVERS IN CONNECTION WITH THE 2007 OWNERSHIP ORDER WAS FORESEEABLE AND WELL-REASONED.

In addition to their requests that the Commission reverse course and tighten the cross-ownership rule, Petitioners question the FCC's decision to grant five pending waivers of the

³⁶ See *Revision of the Public Notice Requirements of Section 73.3580*, Notice of Proposed Rule Making, MB Docket No. 05-6, 20 FCC Rcd 5420 (2005).

³⁷ See Comments of United Church of Christ, Inc., *et al.*, MB Docket No. 05-6 (filed Aug. 1, 2005).

³⁸ See Petition at 4-5.

³⁹ *Id.*

cross-ownership rule in connection with the *2007 Ownership Order*.⁴⁰ Petitioners claim that they had insufficient notice of the Commission’s intent to act on pending waiver requests and were afforded inadequate opportunity to weigh in on whether these existing combinations serve the public interest. These assertions are belied by directly applicable agency precedent as well as the direct relationship between these waivers and the issues at stake in this proceeding. Further, there is no merit to Petitioners’ suggestion that the waiver decisions were not well-reasoned or adequately supported by the record.

It is neither improper nor unusual for the FCC to grant waivers or otherwise grandfather certain ventures in the context of a rulemaking decision.⁴¹ Administrative agencies commonly accommodate existing operations when making a policy change that could significantly affect regulated entities.⁴² Indeed, the grandfathering of existing newspaper/broadcast combinations was an integral part of the 1975 decision that established the cross-ownership rule in the first place.⁴³ Except for the fact that the waiver recipients in the instant proceeding formally

⁴⁰ See Petition at 7-10; *2007 Ownership Order* at ¶ 77. The Commission granted permanent waivers to Gannett Co. Inc.’s combination in Phoenix, Arizona (*The Arizona Republic* and KPNX(TV)), Media General Inc.’s combination in Myrtle Beach-Florence, South Carolina (WBTW(TV) and the *Morning News*), Media General, Inc.’s combination in Columbus, Georgia (WRBL(TV) and the *Opelika-Auburn News*), Media General, Inc.’s combination in Panama City, Florida (WMBB(TV) and the *Jackson County Floridian*), and Media General’s combination in the Tri-Cities, Tennessee/Virginia DMA (WJHL-TV and the *Bristol Herald Courier*).

⁴¹ See, e.g., *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12965 (n. 97) (1999) (television duopolies); *id.* at ¶ 146 (television LMAs); *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559, 12630 (¶ 168) (1999) (cable/broadcast combinations and cable/MDS combinations).

⁴² See, e.g., *Revision of Radio Rules and Policies*, First Order on Reconsideration, 7 FCC Rcd 6387, 6397 (¶ 48) (1992) (declining to restrict the transfer of station groups that no longer were in compliance with audience limits because “penalizing enterprises that grow into stronger competitors” would have been inconsistent with the FCC’s goal of “promot[ing] robust competition”); *Revision of Radio Rules and Policies*, 9 FCC Rcd 7183, 7193 (¶ 57) (1994) (permitting transfers of existing radio time brokerage agreements that were not in compliance with FCC rules because failure to do so “could severely and unnecessarily restrict the marketability of stations and station combinations that involve brokerage agreements and seriously undermine the utility of such agreements”).

⁴³ *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 FCC 2d 1046, 1085 (¶ 119) (1975) (“1975 Order”).

requested waivers of the cross-ownership ban in connection with their license renewal applications, the grant of permanent waivers here is virtually on all fours with the grandfathering of existing newspaper/broadcast combinations in 1975. Given this highly analogous precedent, every party to the instant proceeding reasonably should have anticipated that the FCC's decision to adjust the ban once again could involve decisions regarding specific newspaper/broadcast combinations. Further, the record in the instant proceeding is replete with discussion of specific existing newspaper/broadcast combinations and the long unresolved status of some of those combinations.⁴⁴ Moreover, it is simply disingenuous for Petitioners, who indisputably have been intimately involved in the media ownership proceedings in recent years,⁴⁵ to allege that the Commission blindsided them by granting waivers in the context of its rulemaking order.

Further, the Administrative Procedure Act does not require an agency to specify each and every action it proposes to take before it adopts a rulemaking order. As the courts have stated, such a standard would be antithetical to notice and comment proceedings.⁴⁶ In the instant case,

⁴⁴ See, e.g., Gannett 2006 Comments at II.B.; Morris 2006 Comments at IV; Cox 2006 Comments at II; Media General 2006 Comments at III; Belo 2006 Comments at II.B.; Tribune 2006 Comments at III; Comments of Shamrock Communications Inc. and Scranton Times, L.P., MB Docket Nos. 06-121, *et al.* (filed Oct. 23, 2006).

⁴⁵ See, e.g., Comments on Chairman Martin's Proposal by Office of Communication of United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, Benton Foundation, Consumers Action, Massachusetts Consumers' Coalition, NYC Wireless, Democracy Now, Wayne Caswell, and James J. Elekes, MB Docket Nos. 06-121, *et al.* (filed Dec. 11, 2007); Reply Comments of National Hispanic Media Coalition, MB Docket Nos. 06-121, *et al.* (filed Oct. 31, 2007); Reply Comments of Office of Communication of United Church of Christ, Inc., National Organization for Women Foundation, Media Alliance, Common Cause, Benton Foundation, MB Docket Nos. 06-121, *et al.* (filed Jan. 16, 2007); Statement of Chellie Pingree, president and CEO of Common Cause, MB Docket No. 02-277 (filed May 26, 2003).

⁴⁶ The standard under the Administrative Procedures Act is that the final rule is a "logical outgrowth" of the notice provided to interested parties such that those parties should have reasonably anticipated that the change was possible; however, "[t]he notice-and-comment requirements presume that the contours of the agency's final rule may differ from those of the rule it initially proposes in an NPRM." *Crawford v. FCC*, 417 F.3d 1289, 1295 (D.C. Cir. 2005); see also, *Covad Communications Co. v. F.C.C.*, 450 F.3d 528 (D.C. Cir., 2006); *Sprint Corp. v. FCC*, 315 F.3d 36 (D.C. Cir. 2003).

grant of five long-pending waiver requests was simply a logical outgrowth of the Commission's modification of the cross-ownership rule.

In the *2007 Ownership Order*, the FCC found that the public interest would be served by granting waivers to five newspaper/broadcast combinations. Accordingly, it "grandfathered" the combinations "in the same manner as the Commission did in 1975."⁴⁷ In so doing, the agency drew on extensive evidence and thoroughly explained the bases for its decisions. The Commission specifically determined that these waivers were warranted

in light of the synergies that have already been achieved from the newspaper/broadcast station combination, the new services provided to local communities by the combination, the harms associated with required divestitures, the prolonged period of uncertainty surrounding the status of the newspaper/broadcast cross-ownership ban, and the length of time that the waiver request has been pending.⁴⁸

Noting that "divestiture introduces the possibility of disruption for the industry and hardship for individual owners,"⁴⁹ the FCC expressly found that such divestitures would be particularly ill-advised considering the currently fragile state of the newspaper industry.⁵⁰

In addition, the agency's determinations were informed by the exhaustive record compiled in the protracted media ownership proceedings, the extensive showings made by the parties in their renewal applications,⁵¹ and prior decisions to permanently waive the cross-

⁴⁷ *2007 Ownership Order* at ¶ 77.

⁴⁸ *Id.*

⁴⁹ *Id.* (citing *1975 Order* at ¶ 109).

⁵⁰ *2007 Ownership Order* at ¶ 27-33.

⁵¹ See BRCT-20060531ACB (renewal application for KPNX(TV)); BRCT-20040802BIK (renewal application for WBTW(TV)); BRCT-20041201BZP (renewal application for WRBL(TV)); BRCT-20041001AQF (renewal application for WMBB(TV)); BRCT-20050401BYS (renewal application for WJHL-TV).

ownership ban.⁵² For all of these reasons, Petitioners' claims that the waivers were improper lack merit and should be rejected by the Commission.

⁵² See *Kortes Communications, Inc.*, 15 FCC Rcd 11846 (2000); *Columbia Montour Broadcasting Co., Inc.*, 13 FCC Rcd 13007 (1998); *Fox Television Stations, Inc.*, 8 FCC Rcd 5341 (1993), *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995); *Field Communications Corp.*, 65 FCC 2d 959 (1977).

VI. CONCLUSION

For the reasons provided above, the Commission promptly should dismiss or deny the Petition for Reconsideration of the December 18, 2007 decision to revise the newspaper/broadcast cross-ownership ban. Petitioners' attempt to significantly scale back the modest regulatory relief that was afforded in this proceeding lacks any legitimate factual, policy-based, or legal premise. Petitioners utterly fail to demonstrate that the agency's decision to relax the absolute cross-ownership rule was unreasonable or that it was based on insufficient marketplace evidence.

Respectfully submitted,

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May 6, 2008

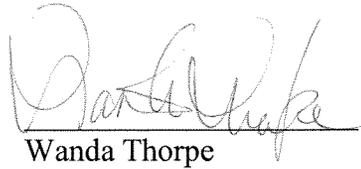
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CERTIFICATE OF SERVICE

I, Wanda Thorpe, in the law firm of Wiley Rein LLP, do hereby certify that I have on this 6th day of May, 2008, caused to be mailed by first class mail, postage prepaid, a copy of the foregoing "**Opposition**" to the following:

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