

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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)	MB Docket No. 02-277
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)	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 to)	MB Docket No. 04-228
Build on Earlier Studies)	
)	
Public Interest Obligations of TV Broadcast)	MM Docket No. 99-360
Licensees)	
)	

OPPOSITION TO PETITION FOR RECONSIDERATION

Tribune Company (“Tribune”), by its undersigned counsel and pursuant to Section 1.429 of the Commission’s rules, 47 C.F.R. § 1.429, hereby opposes the Petition for Reconsideration (“Petition”) filed by Common Cause, the Benton Foundation, Consumers Action, Massachusetts Consumers’ Coalition, NYC Wireless, James J Elekes, and National Hispanic Media Coalition

(collectively, “Petitioners”). In challenging elements of the new rules that the Commission adopted in the *2008 Order*¹ and waivers of the rules for specific parties, Petitioners seek to establish the Commission as an arbiter of newspaper transactions and reverse more than a decade of judicially-approved deregulatory history by, among other things, requiring the filing of applications to acquire newspapers and eliminating the rules that permit duopolies. This Petition should be summarily dismissed. These extreme forms of re-regulation would flatly violate Section 202(h), are unsupported by the record in this proceeding, and in many cases would be unconstitutional.²

I. The Commission Should Not Require Licensees To File A Waiver Request Within 30 Days After Acquiring A Daily Newspaper In A Market In Which The Licensee Owns A Television Station.

Petitioners seek a new rule requiring a television broadcast licensee to file a request to waive the Commission’s cross-ownership rule within 30 days after purchasing a daily newspaper located in the same market as the licensee.³ In essence, Petitioners are asking that the Commission mandate that any entity that directly or indirectly holds an attributable interest in a broadcast licensee must file an application with the Commission to acquire a newspaper.⁴ Under Petitioners’ proposal, the licensee would be required to file such an application even if the licensee was not otherwise required to file any other application with the Commission, including

¹ *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd. 2010 (2008) (“*2008 Order*”).

² Tribune’s Opposition to only two parts of the Petition should not be taken to mean that Tribune acquiesces in the remainder of the Petition. Tribune submits this Opposition without prejudice to its right to oppose other parts of the Petition at a later time on appeal or at another appropriate time.

³ Petition at 6. If such a waiver is not granted, Petitioners request that divestiture be required within one year. *Id.*

⁴ Petitioners, and the Commission, must recognize that any new and unprecedented “30-day” filing requirement will have the practical effect of eliminating the ability for a broadcaster to acquire a newspaper absent the filing of an application.

an application for consent to transfer or assign the broadcast license, or an application to renew it.

The Commission has no statutory basis for adopting such a rule. For more than 30 years, the Commission has followed its decision in its *1975 Report and Order*,⁵ which permitted a television station to purchase a daily newspaper in the same market without submitting a request to waive the Commission's rules until the licensee's next renewal application.⁶ As the Commission implicitly recognized, its statutory authority is triggered by the requirement under Section 308 that the Commission "may grant . . . station licenses, or modifications or renewals thereof, only upon written application therefor received by it."⁷ For this reason, the Commission recognized that an entity acquiring a newspaper was not required to obtain Commission consent, and only faced examination of the issue upon the filing by the broadcast licensee of an application under Section 308. Petitioners have made no effort to establish any statutory authority for the required filing of an application to acquire, or continue operating, a newspaper, and no such authority could support eliminating a policy that has been followed by the Commission for more than 30 years, since the adoption of the rule.

Moreover, Petitioners cannot claim that the Commission's traditional policy has caused any harm to the public, or even been the subject of substantial use or abuse. Few broadcast licensees have acquired newspapers, whether collocated or not. This should be a matter of concern at a time when combining the newsgathering and public affairs resources of both media

⁵ *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 (1975) ("*1975 Report & Order*").

⁶ *See id.* at n.25 ("Parties believing that survival of both entities depends on their joint sale may make such an argument in seeking waiver of this requirement."); *id.* at n.26 ("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").

⁷ 47 U.S.C. § 308.

could help an ailing newspaper industry serve the public, without discernible harm to competition or diversity. Indeed, Petitioners cite only a few examples, and are forced to concede that the Commission ultimately concluded that these combinations served the public interest.⁸ Petitioners' request that the Commission abandon its traditional practice of awaiting the filing of an application under Section 308 or 309 before requiring a waiver request therefore is particularly without merit.

Even aside from the Commission's complete lack of statutory authority to require an application specifically to approve or deny a transaction to acquire a daily newspaper, Petitioners' proposal is bad policy. For all its flaws, the cross-ownership policy the Commission has followed since 1975 complied with the statutory scheme. It permitted licensees to establish a track record that could demonstrate value or harm from the cross-owned relationship, without forcing proponents or detractors to rely on theoretical assumptions or promises of public benefit. And as the Commission's own studies have shown, newspaper-broadcast combinations have proven to benefit rather than harm the public interest. Considering the small number of cross-ownership waiver requests that have been presented in each renewal cycle, there is little risk that the public will suffer from a lack of diversity and competition if, as Petitioners contend, a cross-ownership later is found not to be in the public interest.

Finally, contrary to Petitioners' assertion, there is no incentive for entities that hold broadcast licenses to begin seeking greater numbers of cross-ownerships in presumptively non-approved markets. Prior to the *2008 Order*, licensees faced great uncertainty as to which markets the Commission would consider granting cross-ownership waiver requests. In some

⁸ Petition at 5-6. Of course, in the *2003 Order* and the *2008 Order*, the Commission recognized the increased public interest benefits resulting from cross-ownership in a media marketplace with even more sources for local news, public affairs, sports, and entertainment content available than ever before.

instances, this resulted in waiver requests pending for over three years.⁹ Today, however, the Commission has made clear those markets and situations that will qualify for a presumptive waiver and those that do not. Accordingly, the rule adopted in the Commission's *2008 Order* does the exact opposite of what Petitioners assert: "[dis]couraging broadcasters to acquire co-located newspapers that do not qualify for a presumptive waiver in hopes that before their next license renewal, either that the rule will be relaxed further or that the FCC will lack the backbone to require divestiture."

Given the absence of any statutory authority for compelling the filing of an application for consent to acquire a newspaper and the absence of any record of abuse of the 1975 rule or incentive to abuse the new rule, the Commission should not alter its conclusions in the *2003 Order* and the *2008 Order* and adopt Petitioners' unprecedented proposal.

II. The Commission Should Continue To Permit Common Ownership Of Two Television Stations In One Market ("Television Duopolies").

Tribune also opposes Petitioners' request that the Commission now prohibit common ownership of two television stations in the same market and eliminate television duopolies.¹⁰ Petitioners' request is based almost exclusively on the claim that the availability to broadcasters of digital television multicasting, a practice that currently is in its infancy, eliminates any need for broadcasters to hold licenses for two television station facilities. Petitioners' request must be denied because it ignores the judicially-recognized competitive forces that support duopolies under Section 202(h) of the Communications Act, and violates Congress' directive to deregulate where market forces make ownership rules unnecessary or detrimental to the public interest.

⁹ *2008 Order* at 47, n.253.

¹⁰ Petition at 11.

First, Petitioners are completely misconstruing the holding of *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).¹¹ In *Sinclair*, the Court of Appeals for the District of Columbia Circuit clearly held that the Commission could conclude that the “eight-voices” standard strikes “an appropriate balance between permitting stations to take advantage of the efficiencies of television duopolies while at the same time ensuring a robust level of diversity.”¹² Recognizing that Section 202(h) of the Communications Act required the elimination of any rules unnecessary as the result of competition, the *Sinclair* court affirmed the Commission’s conclusion that in the circumstances where there were at least eight independent television operators in a market, competition in the media marketplace made the prohibition Petitioners now seek to reinstitute unnecessary and irrational.¹³ While the Commission in the *2008 Order* (correctly or incorrectly, as it later may be held) determined not to extend the eight-voices test to include other new media, nothing in that order supports the bizarre conclusion that multicasting technology, which expands every television licensee’s potential broadcasts, makes it necessary to reimpose a complete ban on duopolies in a marketplace facing ever-burgeoning competition.

In fact, the D.C. Circuit’s decision in *Sinclair* makes clear that given the state of competition in the marketplace, under the standard set forth in Section 202(h), Petitioners’ reliance on new digital options available to television licensees is wholly insufficient to support reinstatement of the complete ban on duopolies. As Section 202(h) recognizes, where competition makes unnecessary restrictions on the rights of broadcasters to speak, prohibitions like the previous complete ban on duopolies must be eliminated. Indeed, the *Sinclair* court affirmatively required the Commission to explain its decision to ignore competition from other media when it

¹¹ Petition at 14 (citing inadequacy of FCC rationale of excluding non-broadcast media from calculation).

¹² *Sinclair*, 284 F.3d at 162.

¹³ *Id.*

limited its analysis to the presence of television stations in restricting duopoly ownership.¹⁴ The presence of more sources of information from digital operations does not reduce competition in the market, but only multiplies the opportunities to present diverse views.

CONCLUSION

For the forgoing reasons, the Petition for Reconsideration should be denied.

Dated: May 6, 2008

Respectfully submitted,

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¹⁴ *Id.* at 164-66.

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2008, I caused the foregoing document to be served by first class mail, postage pre-paid, on the following:

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