

**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

Fox Television Stations, Inc. (“Fox”), 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”). The Commission’s *2008 Order*¹ made only exceedingly modest changes to its media ownership rules, and the record in this proceeding overwhelmingly demonstrates that those changes are wholly inadequate to meet the competitive realities of today and that the Commission should have provided substantially greater deregulatory relief. Petitioners, however, ask the Commission to adopt extreme forms of media regulation that either have *never* been thought necessary (*i.e.*, a rule requiring the filing of an application to acquire a newspaper) or that no Commission has thought to be necessary for a decade (*i.e.*, prohibiting all television 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 television broadcast licensees 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

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

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

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

The Commission has no statutory authority for adopting such a rule. For more than 30 years – since the newspaper-broadcast rule was first adopted – the Commission has followed its original decision in the *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.

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.

Moreover, Petitioners cannot claim that the Commission's traditional "footnote 25" policy has caused any harm to the public. There have been few broadcast licensees that have acquired newspapers, typically as part of an effort to maintain quality news and public affairs operations in a newspaper industry that has faced increasing competition for the eyes of its readers and the dollars of its advertisers. Indeed, Petitioners cite only a few examples, and are forced to concede that the Commission ultimately concluded in each and every case 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 unsupported.

Even aside from the absence of statutory authority to require Commission approval for the acquisition of a newspaper, Petitioners' proposed rule would be poor policy and almost certainly unconstitutional. The Commission has no licensing authority over newspapers, and the statutory scheme allows for broadcast licenses for fixed terms. The mid-term acquisition of a newspaper provides no valid basis for upsetting the statutory scheme of fixed license terms; if anything, the "footnote 25" policy adopted in 1975 not only follows the statutory scheme but also benefits the public by providing a historic record for the Commission to review in determining whether the cross-ownership satisfies its waiver standard. Allowing a television licensee to own a daily newspaper in the same market for a period of time provides an opportunity for the Commission to evaluate whether the cross-ownership is in the public interest. Given the absence of any statutory authority for compelling the filing of an application for consent to acquire a newspaper, the absence of any problem from the application of the policy adopted in 1975, and the absence of any incentive to abuse the rule in the future, the Commission

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.

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”).

Fox also opposes Petitioners' request that the Commission now prohibit common ownership of two television stations in the same market and eliminate television duopolies.⁹ 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 are missing the point. Section 202(h) *requires* the Commission to repeal any rule that is no longer necessary in the public interest as a result of competition. For more than decade, the Commission has recognized that competition in the largest media markets has exploded, and that there is no longer any need for a rule prohibiting television duopolies in those markets. The advent of multicasting does not change the reality that myriad other sources of competition already justify relaxation of the ban on duopolies. Indeed, those markets are more competitive than ever today, and Petitioners have not even remotely made the case that the Commission should now go back to a total prohibition on duopolies – a rule that no Commission has considered necessary for a decade.

In particular, Petitioners are completely misconstruing the holding of *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).¹⁰ In *Sinclair*, the Court of Appeals for the District of Columbia Circuit clearly held that the Commission could conclude that the “eight-

⁹ Petition at 11.

¹⁰ *Id.* at 14 (citing inadequacy of FCC rationale of excluding non-broadcast media from calculation).

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.”¹¹ Recognizing that Section 202(h) of the Communications Act required the elimination of any rules unnecessary as a result of competition, the *Sinclair* court affirmed the Commission’s conclusion that in 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.¹² 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, there is nothing in this record (and certainly nothing in the Petition) that would support a finding that markets have become less competitive since the *Sinclair* decision, and that the complete ban on duopolies thus could lawfully be reimposed.

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 the competition in the marketplace from other media when it limited its analysis to the presence of television stations in restricting duopoly ownership.¹³ The presence of more sources of information from digital operations does

¹¹ *Sinclair*, 284 F.3d at 162.

¹² *Id.*

¹³ *Id.* at 164-66.

not reduce competition in the market, but only extends the opportunity for the presence of diverse views.

CONCLUSION

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

Dated: May 6, 2008

Respectfully submitted,

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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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