



September 11, 2008

VIA ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notification of *Ex Parte* Communication
MB Docket Nos. 06-121 and 02-277
MM Docket Nos. 01-235, 01-317, and 00-244

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that yesterday, September 10, 2008, Kurt A. Wimmer, Senior Vice President and General Counsel of Gannett Co., Inc., and I, on behalf of Media General, Inc., met with Matthew B. Berry, General Counsel to the Federal Communications Commission, to discuss the positions that Gannett and Media General took and the arguments that they set forth in the Oppositions to the Petition for Reconsideration that they filed on May 6, 2008 in the above-referenced dockets. Copies of the Oppositions were provided to Mr. Berry along with the attached excerpt from the *Congressional Record*.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for each above-referenced docket.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. Anne Swanson', with a long horizontal flourish extending to the right.

M. Anne Swanson

Enclosure
cc w/encl. (by email):
Matthew B. Berry, Esquire
Kurt A. Wimmer, Esquire

know there are diverse views on this issue. We will try to work out an orderly procedure so that Members will be able to get their views out and considered in the Senate and do it in a timely way.

Again, I thank the two leaders and the Senator from Wyoming as well for his cooperation, as always.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS CONSENT AGREEMENT—S.J. RES. 28

Mr. REID. Mr. President, I ask unanimous consent that, upon disposition of the House message on S. Con. Res. 70, the Senate proceed to the consideration of Calendar No. 731, S.J. Res. 28, a joint resolution disapproving the rule submitted by the FCC with respect to broadcast media ownership, the statutory time be reduced to 2 minutes equally divided and controlled between Senators DORGAN and STEVENS or their designees; that upon the use or yielding back of the time, the Senate proceed to vote on passage of the joint resolution; provided further that all remaining provisions of the statute remain in effect. I further ask that all statements relating to the matter be printed in the RECORD prior to the vote on this important piece of legislation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Finally, as I understand, we have one more rollcall vote we are going to have now. There will be no votes tomorrow. This will be the last vote until Tuesday morning, unless someone has an objection.

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to vote on a motion offered by the Senator from New Hampshire, Mr. GREGG, on discretionary spending.

The Senator from North Dakota.

Mr. CONRAD. Mr. President, under the budget resolution, spending goes down each and every year as a share of domestic product, 20.8 percent down to 19.1 percent.

The Senator opposite speaks to make those reductions more steep and embrace the President's proposal which would eliminate the CORS Program—not just cut it but eliminate it, a program that puts 100,000 police on the street—cut the Weatherization Assistance Program 100 percent at a time of \$120 oil; cut the first responder grants—police, fire, emergency medical 78 percent; cut community development 24 percent; cut clean water 24 percent; cut LIHEAP 15 percent.

More than that, because of the way this amendment has been written, this would put defense in the pool to be cut. If you want to do that, vote for the Senator's motion. I urge a "no" vote.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I have no charts. I simply have a number: \$1 trillion. We should draw the line somewhere around here. We should say to the American people: It is time that we exercise fiscal discipline. Let's do it at

\$1 trillion. That means that in this budget, you only have to reduce it 1 percent to get back underneath that number.

We don't have to look to the President to do that. We can't, amongst ourselves, come up with \$10 billion of savings on a \$1 trillion budget? If we can't, we should all go home.

Vote to draw the line at \$1 trillion. Vote for the American taxpayer.

Mr. President, I yield back my time. The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Hampshire, Mr. GREGG.

Mr. GREGG. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYE. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Tennessee (Mr. CORKE), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 48, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—47

- | | | |
|-----------|-----------|-----------|
| Allard | DeMint | Lugar |
| Barraso | Dole | Martinez |
| Bayh | Domenici | McConnell |
| Bennett | Ensign | Murkowski |
| Bond | Enzi | Roberts |
| Brownback | Feingold | Sessions |
| Bunning | Graham | Shelby |
| Burr | Grassley | Smith |
| Cantwell | Gregg | Stevens |
| Chambliss | Hagel | Sununu |
| Coburn | Hatch | Thune |
| Cochran | Hutchison | Vitter |
| Coleman | Inhofe | Voinovich |
| Cornyn | Isakson | Warner |
| Craig | Klobuchar | Wicker |
| Crapo | Kyr | |

NAYS—48

- | | | |
|-----------|------------|-------------|
| Akaka | Harkin | Nelson (FL) |
| Baucus | Inouye | Nelson (NE) |
| Biden | Johnson | Pryor |
| Bingaman | Kennedy | Reed |
| Boxer | Kerry | Rockefeller |
| Brown | Kohl | Salazar |
| Byrd | Landrieu | Sanders |
| Cardin | Lautenberg | Schumer |
| Carper | Leahy | Snowe |
| Casey | Lieberman | Specter |
| Collins | Lincoln | Stabenow |
| Conrad | McCaskill | Tester |
| Dodd | Mendez | Webb |
| Dorgan | Mikulski | Whitehouse |
| Durbin | Murray | Wyden |
| Feinstein | | |

NOT VOTING—5

- | | | |
|-----------|--------|-------|
| Alexander | Corke | Obama |
| Clinton | McCain | |

The motion was rejected.

Mr. CONRAD. Mr. President, I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Chair appoints Mr. CONRAD, Mrs. MURRAY, Mr. WYDEN, Mr. GREGG, and Mr. DOMENICI conferees on the part of the Senate.

DISAPPROVAL OF FCC OWNERSHIP RULE SUBMITTAL

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S.J. Res. 28, which the clerk will report.

The legislative clerk read as follows:

A resolution (S.J. Res. 28) disapproving the rules submitted by the Federal Communications Commission with respect to broadcast media donorship.

The PRESIDING OFFICER. There is 2 minutes equally divided. The Senator from North Dakota is recognized.

Mr. DORGAN. This is a resolution of disapproval of an FCC rule dealing with media ownership. The Commerce Committee has passed this out to the floor of the Senate. I will not go into great length on the merits of the issue except to say we have visited this issue previously. I think there is too much concentration in the media. The FCC rule moves in exactly the wrong direction, adding more concentration.

I ask that Members of the Senate who wish to would be able to make statements that appear prior to this vote. I believe we have agreed to a voice vote.

I yield the floor. I reserve my time.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. I yield to the Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I know we are going to have a voice vote. I ask unanimous consent I be recorded as a "no."

The PRESIDING OFFICER. The record will so reflect.

Mr. ISAKSON. Mr. President, I wish the record also to reflect I voted "no" on S.J. Res. 28.

Mr. STEVENS. I ask unanimous consent statements in opposition to the resolution of the Senator from North Dakota be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

CROSS OWNERSHIP RULE

Mr. WEBB. Mr. President, I rise today to thank my colleague from North Dakota for his work on media ownership issues and to engage him in a colloquy to clarify one point about the resolution of disapproval. I note that Senator DORGAN has long been a champion of media localism and diversity, issues that are quite important to me as well.

Because I believe that the Federal Communications Commission ignored Congress's repeated admonitions about following appropriate processes in reaching the agency's new cross-ownership rules, I support this bipartisan resolution.

Yet I believe that if the Senate adopts this resolution, the existing waivers contemplated under the FCC cross-ownership rule should be protected. This means that those waivers would not be a part of this resolution.

I have significant concerns that if these waivers are not protected, this legislation could harm some media markets and constituents' access to news and information in my State of Virginia.

I would like to confirm that this resolution, while it would nullify the revised version of the FCC's newspaper cross-ownership ban, would not undo or in any manner change the FCC's decision to grant permanent waivers to five existing newspaper-broadcast combinations, and thus grandfather them, as set forth in paragraphs 77 and 158 of the FCC's December 18, 2007 Report and Order. It is my understanding that this resolution will not affect these five specific waivers, and I would like to clarify this understanding.

Senator DORGAN, is it your goal and understanding that the waivers that the FCC granted in conjunction with the cross-ownership rule be protected?

Mr. DORGAN. Under the Congressional Review Act, the resolution of disapproval is intended to overturn a specific rule, not other parts of an agency's order. The waivers are not rules.

The resolution is written in a specific way referring to an order, but it is the rule that is nullified. These waivers could have been granted alone or under the previous cross-ownership ban. It is not the intention of this resolution to affect the waivers in the order.

Ms. SNOWE. Mr. President, I rise today in strong support of the resolution of disapproval that repeals the recent Federal Communications Commission's media ownership rulemaking.

As an original cosponsor of this measure, I applaud Senator DORGAN for once again taking the lead in introducing critical legislation to overturn a misguided attempt by the commission to relax crucial media ownership rules—a move that will only lead to further consolidation within the industry that will ultimately harm consumers.

As my colleagues are well aware, consolidation in the media market has led to fewer locally owned stations, and less local programming and content. Indeed, it speaks volumes that the number of independent radio owners has plunged in the past 11 years by 39 percent.

Just in 1996 and 1997 alone, more than 4,400 radio stations were sold following the first round of consolidation following passage of The Telecommunications Act of 1996. Between 1995 and 2003, ownership of the top 10 largest television stations increased from 104 owners to 299 owners.

At the same time, we know that locally owned stations aired more local news and programming than non-locally owned stations—and that is not

just me talking. That is according to the FCC's own studies, which also found that smaller station groups overall tended to produce higher quality newscasts compared to stations owned by larger companies.

So there should be no mistake—fewer independent, local stations mean less local content and programming.

Minority and women-ownership of media outlets are also at perilously low levels—currently only 6 percent of full-power commercial broadcast radio stations are owned by women and 7.7 percent are owned by minorities. Ownership of broadcast television is even lower—5 percent for women and only 3.3 percent for minorities. Instead of being a catalyst promoting localism and ownership diversity, the FCC's action will actually hasten the decline in these crucial areas.

The Senate Committee on Commerce, Science, and Transportation last fall held a hearing to consider these very issues, and the actions required for improvement. During that hearing, I and several of my colleagues voiced strong concern about Chairman Martin's intent to ease current media ownership rules, particularly because of the potential impact on localism and diversity in broadcasting.

That is why I, along with many committee members, joined Senators DORGAN and LOTT in introducing The Media Ownership Act of 2007, which was reported out of the committee favorably in December. This constitutes yet another step in the mounting opposition to the loosening of these crucial rules. We had hoped that Chairman Martin would heed not only our urgings, but the concerns expressed by the American public, and complete the 4-year-old rulemaking on localism.

However, on November 13, less than a week after that hearing, the Chairman issued a new proposal to lift the 32-year-old newspaper-broadcast cross-ownership ban in the top 20 media markets. Worse still, the FCC allowed only 28 days for the public to comment on the proposal when it has historically provided 60 to 90 days on pivotal matters such as this.

Clearly, the FCC's actions demonstrate a litany of highly-misguided priorities that neglect to consider the full impact of the FCC's rule change on the American people. Therefore, this resolution of disapproval is necessary to rescind this haphazard approach.

I must say it feels a little like déjà vu all over again, when nearly 5 years ago the FCC attempted a similar effort to relax another set of media ownership rules. And fittingly, the opposition to the commission's attempt then mirrors the opposition that is coalescing now. And the action we are considering now is reminiscent of the joint resolution passed by the U.S. Senate in September 2003, which I cosponsored, condemning the Commission's efforts to rewrite those rules.

So that naturally begs the question—why would the commission continue to

attempt to weaken media ownership rules when the American public has vociferously opposed these efforts time and again? When the U.S. Congress in 2004 enacted a statute prohibiting the FCC from raising national ownership limits above 39 percent? When the Third Circuit Court of Appeals rejected as arbitrary and capricious this attempt at revising the rules after finding the FCC had no factual basis for the limits it set? We deserve an answer.

Many proponents for relaxing media ownership rules have pointed to the precipitous decline of the newspaper industry as the reason change is mandatory. They have even cited a recent report by the Newspaper Association of America, NAA, which found print ad revenue for the industry fell by 9.4 percent last year—the biggest decline since it started keeping records in 1950.

However, what these proponents are neglecting to mention is that the NAA also found that online newspaper advertising revenue increased 19 percent last year.

Furthermore the NAA president and CEO John Sturm stated “newspaper publishers are continuing to drive strong revenue growth from their increasingly robust Web platforms.” This hardly sounds like an industry in irreversible peril if this longstanding rule remains in place.

Opponents of this resolution will also argue that the FCC crafted a very narrow revision, lifting the cross-ownership ban for only the top 20 media markets, so this resolution is unnecessary. However, the FCC also adopted “four factors” and two broad “special circumstances” that would allow this ban to be lifted for a station in any media market.

These scenarios and factors include evaluating financial condition, possible increased local news, as well as existing market media concentration, and news interdependency. Given the vagueness and loopholes that exist with the rulemaking, the “high hurdle” that the Commission has supposedly set for proposed combinations could be easily cleared by using only a stepladder.

Preventing further media consolidation has been a bipartisan effort, and the resolution before us today is no different. We must not allow the indispensable role the media plays in promoting diversity and localism to be further marginalized and miniaturized by unchecked consolidation within the industry.

We owe it to the American people to restore confidence in the FCC's commitment not only to uphold the public interest but to advance it and strengthen it. That is why it is undeniably incumbent upon the commission members to revisit these rules and establish a set of standards that will effectively promote localism and minority and women-ownership, not more media consolidation. I urge my colleagues to support this resolution.

Mr. MENENDEZ. Mr. President, today we are considering a critical