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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

November 20, 2009

Re: Media Bureau Announces Agenda and Participants for Initial Media Ownership Workshops and Seeks Comment on Structuring of the 2010 Media Ownership Review Proceeding, DA-09-2209, MB Dkt, 09-182 (rel. Oct. 21, 2009).

Dear Ms. Dortch:

For submission in the record, enclosed, please find the remarks of S. Derek Turner, Research Director of Free Press, as prepared for delivery at the Federal Communications Commission November 3, 2009 Public Interest Group Panel on Media Ownership.

Respectfully submitted,

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Remarks of S. Derek Turner, Research Director, Free Press
(as prepared for delivery)
At the Federal Communication Commission Media Ownership Workshop
Public Interest Perspectives
November 3, 2009
MB Docket No. 09-182

Thank you very much for the opportunity to speak today. It is truly an honor to take part in these panels alongside colleagues who have spent so much time thinking about these issues. Before I start, I would like to acknowledge and thank Dr. Mark Cooper of the Consumer Federation of America, a tireless public interest researcher whose past work on these issues serves as a major influence on the comments I make today.

Let me begin by saying that this workshop and the public notice requesting comment on the analytical framework for the 2010 quadrennial review comes as a pleasant surprise to those of us who, given past FCC ownerships reviews, have become somewhat cynical about the Commission's concern for quality public interest focused analysis.

It is a refreshing change from how the 2006 quadrennial review started.

A June 15th 2006 memo authored by the then FCC Chief Economist began with the following sentence: "This document is an attempt to share some thoughts and ideas I have about how the FCC can approach relaxing newspaper-broadcast cross-ownership restrictions." Later in the memo, when laying out a research design for economic studies on the rule, the Chief Economist wrote: "In this section I discuss some studies that might provide valuable inputs to support a relaxation of newspaper-broadcast ownership limits."

Thus, it appears that over a month before the 2006 quadrennial review officially began, the FCC had already started the process with a foregone conclusion. The fundamental question that Congress tasked the Commission with answering – whether or not the Newspaper Broadcast Cross-Ownership rule was in the public interest – was not posed in this memo. Instead, the Commission had decided the Newspaper Broadcast Cross-Ownership rule should be eliminated, and set about constructing a process that would support that predetermined outcome. Unsurprisingly, once the Commission put together its research agenda for the 2006 review, many of the studies, and even the authors tapped to conduct the research, were identical to what was proposed in the Chief Economist's memo.

With that historical backdrop, I'd like to make my first recommendation: Don't start the process with a predetermined outcome.

My second recommendation is that in conducting the statutorily mandated quadrennial review, the Commission must not halt the good work it has already begun on the minority and women's ownership and localism. There are already a host of good ideas on promoting female and minority ownership, as well as localism that came out of past proceedings. As Commissioner Copps highlighted in his remarks yesterday, these efforts should continue, and should not be slowed down or indefinitely delayed by the necessarily deliberate pace of the 2010 review.

Of course, that does not mean that the issues of diversity and localism should not factor into the analytical process of the 2010 review. Promoting localism and diversity are public interest outcome goals that lie at the heart of the ownership review. Accordingly, while the 2010 review should not preclude much needed action in ownership diversity and localism dockets, it is appropriate for the review to question how modifying or repealing existing media ownership rules would impact these and other desired public interest outcomes.

My following recommendations pertain to how the FCC conducts its research in 2010 review, and how to avoid the many pitfalls, omissions and errors made in the past proceedings.

First, the 2006 analytical approach tended to be narrowly focused on certain outputs, such as station-level local news production. While focusing on outputs is fine, there is a real need to more closely examine the inputs to the outputs, and ask how FCC policies impact both. For example, supporters of relaxed duopoly and cross-ownership rules always cite the benefits of consolidated ownership structures – the so-called "efficiencies" they claim will lead to better outcomes. But in practice those efficiencies rarely benefit the public. Instead they tend to result in the elimination of reporting and production jobs, and the substitution of high quality content with lower quality content. Thus, the acceptance of the efficiencies argument is just one among many examples of so-called "givens" that I strongly encourage the FCC to question in its analysis.

Similarly, the Commission should also question claims that the newspaper industry is in an irreversible decline, or if it is, that the relaxation of the cross-ownership rule is a policy that will successfully reverse this trend. It may be that midsize and smaller papers are going through a less pronounced downturn, and that the overall problems we constantly hear about have more to do with the broader economic downturn than they do with some generational paradigm shift.

The FCC should also be very skeptical of claims that "the Internet has changed everything." While it is true that the Internet offers the public an exciting and convenient new platform with which to access content, the simple fact is that most people still get their local news from their local paper and local broadcast stations. Indeed, the majority of popular news websites are those of traditional media outlets. Thus, the Internet is not necessarily a significant new source of diverse and antagonistic local news reporting.

Implicit in this observation is another recommendation: This proceeding is about broadcast ownership rules, and broadcasting is, and should be all about, serving the needs of local communities. Therefore, with regard to the local multiple TV ownership and the

Newspaper Broadcast Cross-Ownership rules, FCC analysis must be focused on local news and public affairs content at the market-level – not merely the station-level.

The 2007 studies conducted during the last media ownership review examined the impact of ownership rules on local news. These studies purported to show that cross-owned TV stations air more local news. However, the researchers mistakenly focused exclusively on what impact these rules had on news production at the station-level rather than the local new production at the market-level.

Using the FCC's own data Free Press and others looked at output at the market level, and were able to show that the presence of a cross-owned station in a market leads to a collective curtailment in local news output by the other stations in the market. The following example illustrates why: If a local newspaper combines with a leading local TV news station, the TV station may produce slightly more minutes of news. However, this station-level result is of little benefit if the combination becomes so dominant in the market that the other stations quit trying to compete on hard news and investigative reporting, and instead cut their losses by firing reporters and adding more wire stories and another 5 minutes of sports and weather, or give up on news provision altogether. By merely focusing on the output at the individual station-level, the Commission's asked the wrong policy question. Instead, the output at the market level is the appropriate inquiry to inform FCC policies seeking to promote the production of diverse sources of local news.

The studies conducted pursuant to 2006 review also failed to assess the impact of increased consolidation on the statutory goal of greater ownership by women and minorities. In fact they didn't even accurately account for women and minority owners. As our research showed, the FCC's "Study #2" missed 67 percent of all minority-owned TV stations and a whopping 75 percent of all TV stations owned by women. Fortunately, reforms recently made to the FCC's ownership data collection forms and processes should fix some of these problems.

Looking ahead to areas of research for the upcoming 2010 review, it is critical that the FCC study the impact of increased use of Local Marketing Agreements and Shared Service Agreements between broadcasters. The ability of the ownership limits to promote diversity of local news and information is significantly eroded if contractual arrangements can be used as end-runs around the rules.

Finally, I'll address the issue of the Commission creating a metric for measuring media market competition and the likely harms of proposed or existing cross-media combinations. In reviewing the 2002 Biennial Review Order the Third Circuit Court of Appeals, took issue with how the FCC developed it so-called "Diversity Index." If this FCC decides to take a similar approach to creating a review standard for cross-media combinations, then it will need to avoid past mistakes.

First, the FCC must count audience shares. This is the only way to avoid errors made in the 2002 review, including the now-infamous mistake of allotting a small community college TV station equal weight to the New York Times. Second, the FCC must weight each media type appropriately. A radio station that reads news at the top of the hour does not have the same impact on news provision as a TV station that does 7 hours of local news each day. Dr. Cooper of CFA has done extensive work in this area, and has developed a very reasonable approach. But here, too, the FCC will need to create an empirical basis for how such an index relates to outcomes.

In conclusion, I encourage this Commission to not only avoid past mistakes, but to be bold in tossing aside past dogma. To that end, I will close with a reminder: the Third Circuit determined that 202(h), which triggers this review process, is not a one-way path to deregulation. Thus, increased consolidation need not be a foregone conclusion. Instead the FCC should model the impact of policies that de-concentrate local markets – the results might be quite instructive.

Thank you.