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May 15, 2010

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: *2006 Quadrennial Regulatory Review*, MB Docket No. 06-121

Dear Ms. Dortch,

On May 14, 2010, Angela Campbell and Frank Balsamello of the Institute for Public Representation, Counsel for Media Alliance and Common Cause, Andrew J. Schwartzman, Counsel for Prometheus Radio Project, and Corie Wright of Free Press met with Josh Cinelli, Media Advisor to Commissioner Copps .

The parties discussed issues in the above related proceeding, all of which are attached to this document.

Respectfully submitted,

________/s/________
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Option 1: The Commission could vacate the entire 2008 Order on its own motion pursuant to 47 C.F.R. 1.108, which allows the Commission to set aside any action made or taken by it within 30 days from the date of public notice of such action. Because Common Cause et al. filed a petition for reconsideration, the 30 day period has been tolled. *Central Florida Enterprises, Inc. v. FCC,* 598 F.2d 37, 48, n. 51 (D.C. Cir. 1978). In other words, it does not matter that more than 30 days have elapsed since the Commission issued the 2008 order.

The Commission sets aside an action within the meaning of 1.108 when it deliberately changes course by vacating a decision that it determines to have been ill-advised. *Stale or Moot Docketed Proceedings*, 19 FCC Rcd 2527, 2531 (2004). The Commission has vacated orders under Rule 1.108 in a variety of contexts. *See, e.g., December 17, 2001 Mag Access Charge Tariff Filings*, 17 FCC Rcd 1786 (2002)(vacating an order when the parties were later found to be in compliance with Commission rules); *Pamplin Broadcasting, Inc.*, 23 FCC Rcd 2571 (2008) (vacating an order when there was a factual error in the analysis of the order); *Cox Communications Kansas LLC*, 2010 FCC Lexis 2909 (May 11, 2010)(vacating an order that did not reflect the full record amassed in the proceeding.)

Here, vacating the entire order would restore the *status quo*, that is, the Further NPRM in the 2002 Biennial would remain pending, and the old rules would remain in effect. This action is appropriate where a majority of the Commission do not support the order or the new Commission wants the opportunity to review the rules based on the current technological and economic conditions because there have been so many recent changes.

Option 2: The FCC could grant Common Cause's petition for reconsideration in part so as to close up the most troubling loopholes. Below is a summary of the revised NBCO rule in black ink, 2008 Order at ¶¶65-68, with suggestions on how it should be revised in red ink.

TV-newspaper cross-ownership is presumed to be in the public interest if:

a) the DMA is in the top 20

b) the tv station is not ranked among the top-four;

c) the combination involves only one broadcast station; and

d) eight voices (*i.e.*, television stations or daily newspapers) remain post-merger.

The FCC could retain this presumption so long as it makes sure that members of the public have a meaningful opportunity to rebut the presumption. This means that waiver applicants must include in their on-air announcements and print notifications to their community that they are seeking a waiver and the FCC must give explicit public notice that the applicant is seeking a waiver of the rules. In addition, the FCC should require broadcast licensees that acquire a co-located newspaper to file a waiver request within 30 days.

Even if the cross-ownership is not presumptively in the public interest, the FCC can still approve it under any of three tests.

1) the station or newspaper is failing ("failing media test");

The FCC should retain this test; it is essentially the same as the existing waiver standard.

2) that the proposed combination will result in 7 hours per week of additional news programming on a broadcast outlet that did not previously provide news ("new local news test");

The FCC should eliminate or modify this test. Although the 2008 Order states that the station will be required to report annually to the FCC on their commitment, the FCC and the public have no way to verify the reports because the FCC has failed to implement its enhanced disclosure rule. If the FCC modifies the test, it also needs to explain will happen if a station fails to meet its commitments.

3) the applicant shows by clear and convincing evidence that the merged entity will increase diversity and increase competition among independent news sources ("four factor test"). The FCC considers four factors under this test:

1) the extent to which the cross-ownership will increase local news;

2) whether each media outlet will exercise independent news judgment;

3) the level of concentration in the DMA; and

4) the financial condition of the newspaper or broadcast station.

The FCC should eliminate the 4-factor test because it is so vague that it does not constrain the FCC's discretion. It can allow waivers in any market. Moreover, there is no feasible way for the FCC to verify the applicant's claims that local news has been increased, that the entities are exercising independent news judgments, or the financial condition of the newspaper or broadcast station.

Although the FCC did not change the local tv or radio rule, it should explain how any further relaxation is unnecessary because with digital broadcasting, stations may expand program offering using their multicast capabilities instead of acquiring another station in the same market. Moreover, further relaxation of these rules would undermine diversity by making it more difficult for minorities, women and other new entrants to purchase a station and compete in the marketplace.