Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF MORRIS COMMUNICATIONS COMPANY, LLC ON THE FCC'S MAY 25, 2010 NOTICE OF INQUIRY

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I. INTRODUCTION AND SUMMARY

Morris Communications Company, LLC ("Morris") hereby submits its Comments in response to the *Notice of Inquiry* ("NOI") issued by the Commission on May 25, 2010 in the above-captioned proceeding.[1] Morris is one of the country's strongest mid-sized, privately held media companies, with diversified holdings that include daily newspapers and broadcast radio stations. Morris currently operates co-located radio/newspaper combinations in Topeka, Kansas and Amarillo, Texas. A Morris subsidiary is the licensee of WIBW(AM) and WIBW-FM in Topeka, where Morris also publishes the *Topeka Capital-Journal*. In Amarillo, Morris publishes the *Amarillo Globe-News*, while a subsidiary of Morris is the licensee of KGNC(AM) and KGNC-FM.[2] While the radio

[1] *2010 Quadrennial Regulatory Review – Review of the Commn's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Inquiry, MB 09-182 (rel. May 25, 2010) ("*NOI*").

[2] *See In re Application of Stauffer Amarillo Radio Trust*, 11 FCC Rcd 14865, 14868 (1996) (granting 12 month waiver of newspaper/broadcast cross-ownership rule to permit common ownership of the Morris newspaper/broadcast combinations in Topeka and Amarillo); *Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (MMB Aug. 11, 1997) (extending waiver until six months after the effective date of the Commission's action in MM Docket 96-197); *Cross-Ownership of Broad. Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd 17283, 17268 n.16) (2001) (further extending waiver); *See 2002 Biennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the*

and newspaper outlets are separately staffed and operated in these markets, both the stations and the daily newspapers reflect Morris' longstanding commitment to serving the news and informational needs of their communities.

Morris long has advocated repeal of the FCC's ban on newspaper/broadcast cross-ownership (the "NBCO Rule").[3] The evidence presented to the Commission in prior proceedings strongly supported such action across-the-board, and especially with respect to newspaper/radio cross-ownership. Yet, in its most recent media ownership review, the FCC took only the most modest of steps to provide any regulatory relief to prospective newspaper/radio cross-owners. Despite the agency's own recognition that cross-ownership between radio outlets and newspapers raises less concern than newspaper/television combinations and the lack of record evidence that newspaper/radio cross-ownership poses any credible threat to the FCC's public interest goals, the agency opted to maintain harsh restrictions on newspaper/radio combinations and, in fact, imposed the same exacting standards on both television and radio combinations. This unjustified action perpetuated the FCC's practice of placing companies with interests in both newspaper publishing and radio broadcasting at a significant regulatory and

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Telecomms. Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,767 (¶ 369) (2003) ("*2003 Order*"), *aff'd in part*, *remanded in part*, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005); *2006 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2056-57 (¶ 78 and n. 258) (2008) (affording licensees with temporary newspaper/broadcast cross-ownership waivers 90 days after the effective date of order to either amend its waiver/renewal request or file a request for permanent waiver) ("*2008 Order*"); *2006 Quadrennial Regulatory Review – Review of the Comm'ns Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Order, DA 10-1181 (extending deadline for amending waiver/renewal requests or filing a request for permanent waiver until October 4, 2010).

[3] *See, e.g.*, Comments of Morris Communications Company LLC, MB Docket No. 06-121 (filed Oct. 23, 2006) ("Morris 2006 Comments"); Comments of Morris Communications Corporation, MB Docket No. 02-277 (filed Jan. 2, 2003); Comments of Morris Communications Corporation, MM Docket No. 01-235 (filed Dec. 3, 2001).

competitive disadvantage vis-à-vis their pure-play broadcast competitors. Moreover, the current restrictions prohibit Morris from acquiring any radio properties, and thereby from improving the quantity and quality of news and informational content available to radio listeners, in any of the other small and mid-sized markets in which it currently publishes a daily newspaper.

As evidenced by Morris' combinations in Topeka and Amarillo, newspaper/radio combinations continue to serve the public interest by giving radio outlets the resources and incentives to increase their commitment to community-oriented programming, often through the adoption or continuation of an all news or informational format. These significant benefits are delivered, moreover, without any sacrifice to the Commission's competition or diversity goals. Accordingly, Morris submits, once again, that the FCC should eliminate the outdated NBCO Rule or, at a minimum, repeal or substantially relax all restrictions on newspaper/radio cross-ownership.

II. THE FCC'S DECISION IN 2008 TO MAINTAIN HIGHLY BURDENSOME RESTRICTIONS ON NEWSPAPER/RADIO CROSS-OWNERSHIP WAS CONTRARY TO RECORD EVIDENCE AND THE AGENCY'S OWN FINDINGS.

In its most recent media ownership decision (the "*2008 Order*"), the FCC retained a blanket restriction on newspaper/broadcast cross-ownership and overlaid the prohibition with a complicated set of new standards for obtaining a waiver.[4] These stringent waiver standards provide few opportunities for cross-ownership and, in reality, change the outlook for potential newspaper/broadcast combinations only minimally. As the Commission itself explained in the *2008 Order*, the revised waiver standards are

[4] *See* 2008 Order, 23 FCC Rcd at 2022-23 (¶ 20).

intended to disfavor cross-ownership "in the vast majority" of cases.[5] While the changes adopted in 2008 represent a small step in the right direction, the Commission's actions in its last media ownership review fell short of its legal obligation to meaningfully change the NBCO Rule and plainly provided insufficient relief to owners of same-market newspaper and broadcast properties.[6]

Most importantly from Morris' perspective, the Commission decided to subject newspaper/radio combinations to the same exacting and restrictive waiver criteria as newspaper/television combinations. This decision was made in spite of sound and unrefuted record evidence demonstrating that newspaper/radio combinations do not raise any appreciable concerns under the agency's public interest objectives and the FCC's own statements acknowledging as much. As the FCC concluded in the *2008 Order*, "radio is generally not as influential a voice as is television" and, thus, newspaper/radio combinations are "less likely to raise concentration concerns" than other combinations.[7] In support of these statements, the FCC noted extensive evidence demonstrating that television is a considerably more popular source of local news and information than

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[5] *Id*. at 2040 (¶ 52).

[6] *See* Comments of Morris Communications Company, LLC Concerning Chairman Martin's Proposed Revision to the Newspaper/Broadcast Cross-Ownership Rule, MB Docket No. 06-121 (Filed Dec. 11, 2007); *see also* Brief of Petitioners Newspaper Association of America, Belo Corp., Bonneville International Corporation, Gannett Company, Inc., Morris Communications Company, LLC, and The Scranton Times, L.P., *Prometheus Radio Project v. FCC*, No. 08-3078 (3rd Cir. May 17, 2010).

[7] *2008 Order*, 23 FCC Rcd at 2052 (¶ 73). In this regard, Morris emphasizes that the FCC's failure to accord appropriate treatment to newspaper/radio cross-ownership is inconsistent with longstanding principles of administrative law. While there is no question that an "agency must provide adequate explanation when it treats similarly situated parties differently," the "converse is also true" and "[a]n agency must justify its failure to take account of circumstances that appear to warrant different treatment for different parties." *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (citations omitted).

radio.[8] Indeed, record evidence shows that radio is no more popular a source of local news than weekly newspapers, which are entirely exempt from cross-ownership restrictions.[9]

What is more, the Commission limited its definition of "major media voices" to "full-power commercial and noncommercial television stations and major newspapers" for purposes of determining the applicability of a positive or negative presumption under the revised waiver standards.[10] In excluding radio from this definition, the FCC explained that daily newspapers and television stations "are generally the most important and relevant outlets for news and information in local markets today" and that "there is relatively unanimous support for the position that consumers continue predominantly to get their local news from daily newspapers and broadcast television."[11]

Finally, and most importantly, in adopting the revised NBCO waiver standards, the FCC ignored extensive record evidence that newspaper/radio cross-ownership advances the agency's public interest goals. Notably, the Commission did not even acknowledge the findings in two of the empirical studies it had commissioned concluding that cross-owned radio stations are four to five times more likely to have a news-based format and that cross-ownership significantly enhances the quality of radio programming.[12] Nor did the Commission take into account any of the real-world

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[8] *See 2008 Order* at 2042-43 (¶ 57) and n.187.

[9] *See id.*

[10] *Id.*

[11] *Id.*

[12] *See* Comments of Morris Communications Company, LLC on Media Ownership Research Studies, MB Docket No. 06-121 (filed Oct. 22, 2007); Craig Stroup, Factors that Affect a Radio Station's Propensity to Adopt a News Format, FCC Media Study 4, Section III-14 (Sept. 2007),

evidence provided by Morris, the Newspaper Association of America, and other parties confirming that these types of benefits consistently are realized, and brought to consumers, by existing newspaper/radio cross-owners.[13]

Accordingly, the *2008 Order* provides no satisfactory justification for maintaining any prohibition on newspaper/broadcast cross-ownership whatsoever, much less for adopting restrictions on newspaper/radio combinations that are as onerous as the stringent limits imposed on newspaper/television combinations. Although the FCC vaguely suggests that it may be "less difficult" for newspaper/radio combinations to "overcome the negative presumption" than it will be for newspaper/television combinations and that such combinations "will not face as high a hurdle,"[14] it fails to offer any guidance as to how the standards may differ for prospective radio and television combinations. For all practical purposes, these imprecise statements provide no additional relief and leave prospective newspaper/radio cross-owners on the same unacceptable regulatory footing as newspaper/television combinations.

III. THE CURRENT NBCO RULE UNNECESSARILY PUTS PROSPECTIVE CO-OWNERS OF NEWSPAPER AND BROADCAST PROPERTIES AT A SIGNIFICANT COMPETITIVE DISADVANTAGE.

The current prohibition against same-market newspaper/broadcast cross-ownership inflicts particular competitive harm against radio licensees with newspaper

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http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A5.pdf ("Study 4.3") (concluding that, "[a]s one might expect, radio stations that are cross owned with a newspaper in the same city are significantly more likely to be [a] news station;") Tasneem Chipty, Station Ownership and Programming in Radio, FCC Media Study 5, at 43 (June 24, 2007), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A6.pdf ("Study 5").

[13] *See, e.g.,* Morris 2006 Comments at Section IV; Comments of the Newspaper Association of America, MB Docket No. 06-121, at Section III.C.1 (filed Oct. 23, 2006).

[14] *2008 Order*, 23 FCC Rcd at 2052 (¶ 73); *id*. at 2049 (¶ 68, n.220).

holdings. Under the FCC's current ownership rules, for example, one entity may own up to two full-power TV stations and as many as six or seven radio stations in the same market. Even in the smallest markets, a single owner may operate one TV station and one radio station.[15] Similarly, under the FCC's existing local radio ownership rule, one company may own as many as eight radio stations in a single market, and up to five stations in the smallest markets.[16] In stark contrast, the NBCO Rule presumptively disallows newspaper/radio cross-ownership in all but the twenty largest markets (*i.e.*, in 190 out of 210 designated markets). Even in those few markets where a presumption in favor of cross-ownership may be available, a single entity is permitted to own, at most, one daily newspaper and one radio station.

Consequently, the NBCO Rule also prohibits parties to newspaper/broadcast combinations currently in existence (pursuant to either grandfathering or a waiver) from adding additional broadcast properties, while their competitors often own a full complement of radio stations or a combination of radio and television properties. In this manner, the archaic cross-ownership rule works to keep newspaper publishers at a significant disadvantage in the radio sector vis-à-vis companies that do not have newspaper holdings. This disparity makes no sense from a public interest standpoint, given that daily newspapers have vastly more extensive newsgathering resources than other local media outlets, have strong journalistic and business incentives to use these resources to strengthen other commonly-owned outlets, and, therefore, are far more likely than other types of media entities to significantly improve the local news and

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[15] 47 C.F.R. 73.3555(b), (c).

[16] *Id.* § 73.3555(a)(1).

informational offerings of co-owned broadcast stations.[17] The current discriminatory restrictions also foreclose opportunities for companies like Morris to acquire any additional radio properties in their newspaper markets and thereby to enhance the quality and quantity of radio news and informational content available to consumers. In order to resolve these unwarranted inconsistencies and ensure that its broadcast ownership regime provides meaningful public interest benefits, the FCC should, at a minimum, put newspaper publishers on a regulatory par with other broadcasters by eliminating or significantly relaxing the NBCO Rule.

IV. MORRIS' EXPERIENCES IN THE TOPEKA AND AMARILLO MARKETS DEMONSTRATE THAT NEWSPAPER/RADIO CROSS-OWNERSHIP PROMOTES THE PUBLIC INTEREST.

The newspaper/radio combinations owned and operated by Morris in the Topeka, Kansas and Amarillo, Texas markets have offered high-quality local service to their respective communities for decades. In particular, the Morris radio stations in each of these markets are clear standouts in the provision of local news and information. Without the journalistic focus of their sister newspapers, and the newspaper and journalistic heritage of Morris generally, the Topeka and Amarillo radio stations almost certainly would devote fewer resources to local news coverage and reporting. The continuing traditions of excellence at these radio stations underscore the public interest benefits that would arise from permitting greater levels of newspaper/radio cross-ownership and thus from elimination of the long outdated NBCO Rule.[18]

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[17] *See infra* Section IV.

[18] Morris has not fully integrated the operations of its Topeka and Amarillo properties due to separate staffing conditions in the original temporary waivers for these combinations and the uncertainties inherent in the Commission's long series of ownership review proceedings. *See* note 2, *supra*. Morris shows herein, however, that its co-owned newspaper and broadcast properties provide exemplary public service,

Topeka, Kansas: Morris' Topeka radio stations provide exceptional local service to Northeast Kansas. At a time when many radio stations have cut expenses and downsized their news operations, WIBW(AM) and –FM continue to increase their commitment to local news; the stations' newsroom budget increased by 3.6% in 2009 and 2.6% in 2010. Absent their association with a newspaper company that highly values local content, the stations most likely would not have the financial support or institutional backing to make these continued investments in local news operations. Simply put, Morris' newspaper division believes strongly that the broadcast stations should have the same caliber of news gathering and dissemination capabilities as the company's daily newspapers.

WIBW(AM) and -FM employ a 10-person news team of six full-time and four part-time news personnel – the largest of any Topeka-based station. This high level of staffing translates into a high level of service. WIBW(AM) broadcasts a news/talk format with heavy emphasis on local issues. In light of the critical importance of agriculture to the Kansas economy, the station has a full-time agriculture news department (the only one in the market) and airs locally produced programming dealing with agriculture and agriculture-related issues for two consecutive hours each weekday morning, from 5:00 A.M. to 7:00 A.M. In addition, four full-time news employees cover local stories and issues for WIBW(AM). Each weekday morning (from 7:00 A.M. to 8:00 A.M.), the station airs locally-produced news, weather, sports, and traffic programming. WIBW(AM) also provides live news updates throughout the day Monday

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which unquestionably could be enhanced further if the same-market properties were able to share costs and resources more fully.

through Saturday. All told, WIBW(AM) broadcasts 26 locally produced newscasts each weekday and eight newscasts on Saturday and Sunday.

During the Kansas legislative session, the station assigns a news staff member to cover the legislature full time and to produce "Capitol Insight," a news feature that airs in the late afternoon each weekday. Again, the station stands out in this regard: WIBW(AM) is the only station in the market with a designated legislative correspondent. Further evidencing its commitment to the community, WIBW(AM) airs a three-hour local talk show each weekday featuring two full-time hosts that addresses issues that affect the city, county, and state, as well as community and charitable events. The station also airs a local sports talk show each weekday afternoon from 2:00 P.M. to 6:00 P.M., which discusses local teams and sporting events, as well as local high school and college football and basketball. In total, more than 80% of the station's weekday programming is locally produced with live on-air talent, and all of its local news and weather content is generated locally. The station continues its local presence on the weekends with a locally produced program reviewing the top news stories of the week in Topeka and Northeast Kansas, as well as local programming addressing gardening, real estate, and sports.

WIBW-FM, in turn, is a country music station that is locally programmed for 17 consecutive hours each weekday and for 12 to 13 hours on each weekend day. In addition to the station's music entertainment programming, WIBW-FM emphasizes locally produced news, weather, and sports segments in the morning, as well as news and weather updates throughout the day. WIBW-FM broadcasts seven locally produced newscasts each weekday. In addition, the two stations broadcast a combined total of more than 75 locally produced weathercasts each weekday and 44 weathercasts on the weekend.

WIBW(AM) and –FM also jointly produce independent investigative news coverage. Several recent examples include a five-day series on the changing mission of the Kansas National Guard, an investigative series regarding patient care at local nursing homes, and an in-depth series of 25 reports on agricultural trade between Japan and the U.S.

The Morris stations, moreover, provide a *unique* service to their market. Only one other station in the market carries news, and that station has a one-person news staff. Morris' Topeka stations provide in-depth reporting and investigative journalism targeted to local residents that is, on the whole, unmatched by any other radio broadcaster in the market. Not surprisingly, the stations' outstanding news broadcasts have gained considerable local respect and recognition. Morris has won the Kansas Association of Broadcasters Station of the Year award eight of the last nine years for the service that WIBW(AM) and –FM provide. During this period, the Morris stations have received first place awards in Public Service Programming, In Depth Reporting, Complete News Feature, and Complete Newscast. In addition, the stations have been honored with a number of Associated Press awards in recent years, including first place awards for Best Newscast and Enterprise Feature Reporting.

Amarillo, Texas: Morris's Amarillo radio stations likewise have served their region well for decades, and their dedication to community-oriented news, information, and service continues today. KGNC(AM), which broadcasts a news/talk format, has operated in Amarillo for more than 75 years and is a major presence in the region.

Producing more than 30 hours of local content each week, the station has the largest local news team of any radio station in the market, with two full-time news reporters, a full-time agribusiness reporter (the only such reporter in the area), and a full-time sports director (again, the only one employed by an Amarillo radio station).

Each weekday, KGNC(AM) airs a three-hour morning news show, *NewsDay Amarillo*, which provides in-depth coverage of local news and is the only radio show of its kind in the community. In addition, the station provides hourly news reports for all but three hours each weekday and locally produced, informational programming Monday through Saturday from 5:00 A.M. to 11:00 A.M. KGNC(AM) also produces narrowly-targeted programs that address locally important topics that are not covered by other local media outlets. For instance, the *KGNC Agribusiness and Information Hour* is a source of vital information to the region's significant agriculture and ranching industries. Moreover, the *John Terry Show,* which provides commentary on local news events, is Amarillo's only locally-produced radio talk show.[19]

In sum, both of Morris' existing newspaper/broadcast combinations exemplify the benefits to localism, and therefore to consumers, that result from permitting newspaper publishers to own co-located radio outlets. If cross-ownership were more freely permissible, these benefits would be enhanced because both the newspapers and broadcast stations would be able to save on costly news gathering resources and more radio stations would have the ability to adopt news or informational formats. In addition, eliminating or relaxing the restriction on newspaper/broadcast cross-ownership would allow Morris and other newspaper companies to improve the news and information

[19] For its part, although KGNC-FM is primarily a country music station, it also provides live local news, weather, and sports Monday through Saturday from 5:30 AM to 8:30 AM.

content available to radio consumers by operating stations in markets where they already publish a daily newspaper.

V. <u>THE JUSTIFICATIONS FOR ELIMINATING RESTRICTIONS ON NEWSPAPER/BROADCAST CROSS-OWNERSHIP ARE EVEN MORE COMPELLING IN THE CURRENT ECONOMIC ENVIRONMENT.</u>

As discussed at length in the comments of the Newspaper Association of America, the newspaper publishing and broadcast industries have faced extreme economic challenges over the past two and a half years due to competition from the Internet and other new media outlets as well as the continued nationwide economic downturn.[20] In the current environment, broadcast stations are continuing to operate under significant economic stress and recently have experienced double-digit declines in advertising revenues.[21] These losses are threatening many stations' ability to sustain their news operations.

The newspaper industry is facing similar economic challenges. Indeed, the Commission itself recognizes that the financial crisis in the newspaper industry is threatening its traditional business model.[22] Both advertising and circulation revenues – the key financing sources for newspapers' newsgathering and reporting activities – have declined severely since the FCC last examined the NBCO Rule, as advertising revenues shift to alternative online options; newspapers lose advertising revenues to news aggregators, search engines, and online news forums; and print circulation continues to

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[20] *See Comments of the Newspaper Association of America on the FCC's May 25, 2010 Notice of Inquiry* (July 12, 2010) at 12-18 ("NAA Comments").

[21] *See id.* at 17.

[22] *See 2010 Quadrennial Review NOI* ¶¶ 6-11.

drop rapidly.[23] As a result, most, if not all, daily newspapers are struggling to sustain their cost-intensive news operations. Many newspapers recently have been forced to scale back news reporting operations, lay off journalists, close domestic and foreign news bureaus, limit the scope of news coverage, and take other steps to limit the money spent on creating and reporting news content.[24]

In order to continue to exist as critical sources of local news and information, newspapers and broadcast stations should be permitted to take advantage of the economic savings and benefits that flow from common ownership. Consistent with its duty to serve the public interest and its goal of fostering broadcast localism, the FCC should move forward as quickly as possible to place prospective newspaper/broadcast cross-owners on even regulatory footing vis-à-vis pure-play broadcasters and the vast array of emerging alternative media outlets.

[23] *See* NAA Comments at 12-14.

[24] *See id.* at 15-16.

VI. CONCLUSION

For all of the reasons set forth above, Morris urges the FCC to finally eliminate the NBCO Rule in this proceeding. At the very minimum, the Commission should relax restrictions on newspaper/radio cross-ownership so that newspaper publishers can operate on a regulatory par with other broadcast outlets and competing alternative media in the local marketplace.

Respectfully submitted,

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