

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
2010 Quadrennial Regulatory Review – Review of the)	MB Docket No. 09-182
Commission’s Broadcast Ownership Rules and Other)	
Rules Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
Promoting Diversification of Ownership)	MB Docket No. 07-294
In the Broadcasting Services)	

To: Office of the Secretary
Attn: Chief, Media Bureau

COMMENTS OF THE
ASSOCIATION OF FREE COMMUNITY PAPERS
MID-ATLANTIC COMMUNITY PAPERS ASSOCIATION
AND THE FREE COMMUNITY PAPER INDUSTRY

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Summary

Dismantling the safeguards against newspaper/broadcast cross-ownership will most certainly trigger an unprecedented wave of cross-media consolidation, strangling the remaining competition and putting local economies at serious risk. The use of proprietary DMAs as proxies for real communities would place a vast and arbitrary bullseye on local media. While the documented media merger challenge history of the DOJ and FTC ensures that not much will stand in the way of widespread local media consolidation. The free community paper industry competes with the proponents of cross-media consolidation every day on Main Street. We keep Gutenberg's print legacy alive and relevant, embracing free and fair competition as modern day Town Criers, often from the short end of the stick.

In doing so we provide a service to our communities and an essential resource for local business, the lifeblood of our collective economies. We submit that the more some things have changed the more some things stay the same, including the trend toward greater consolidation in local media. As ownership shrinks to fewer and fewer capitalized concerns, some argue for new cross-media acquisition opportunities. Even as they lament their stock prices, they propose pulling local media from community reliance and subjecting them to the same whims of Wall Street. Faceless shareholders replace community stakeholders, and the fiduciary responsibilities to the parent company take precedence over the needs, concerns and values of the community.

We disagree that the Internet provides an excuse to relax competitive safeguards. It would seem that if the Internet were as transformational as the energetic language offered by certain pro-consolidation advocates, arguments to overturn the rules relating to mature media would be abandoned in favor

of focusing all energies on maximizing current success in internet ventures. The act of leveraging internet properties and innovation are not unduly restricted by regulation, and not at all by the safeguards against newspaper/broadcast cross-ownership. The fact that certain parties in the print and broadcast industries are still arguing for the opportunity to cross-merge, is a tacit admission that they do recognise their continued relevance and market dominance even in this new world where computers and gadgets are interconnected in real time.

Finally, those who lament “heavy-handed government regulation of the media,” usually fail to mention their own successful pleas for privileged statutory protection. Those heavy-handed, legalized marketplace advantages include the Newspaper Preservation Act, Periodicals Mail Privileges and in most states, the exclusive market on government mandated advertising, known as Legal and Public Notice. From our position in the local media landscape, we contend that the current level of concentration in local media markets makes the ban on newspaper-broadcast cross-ownership more critical now than when it was first enacted. We urge the Commission to preserve these vital safeguards.

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Association of Free Community Papers and Mid-Atlantic Community Papers Association, on behalf of Midwest Free Community Papers, Community Papers of Michigan, Free Community Papers of New York, Community Papers of Florida, Community Papers of Ohio and West Virginia, Southeastern Advertising Publishers Association, Texas Community Newspaper Association, and Wisconsin Community Papers (collectively “Free Community Paper Industry”), take this opportunity to continue engaging in the Commission’s 2010 Quadrennial Regulatory Review, bringing our truly local, market-based perspective. We hereby submit these Comments in response to the Commission’s invitation extended in its *NOTICE OF PROPOSED RULEMAKING*.¹ In the *NPRM*, the Commission seeks detailed comment on a sweeping range of interrelated matters surrounding the proposed revisions to Broadcast Ownership

¹ *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Notice of Proposed Rulemaking, FCC 11-186, MB Docket No. 09-182 (rel. December 22, 2011) (“*2010 Quadrennial Review NPRM*” or “*NPRM*”).

Rules, and in particular, loosening of the longstanding newspaper/broadcast cross-ownership rule. This rule, revised under the prior Review and subsequently vacated and remanded by the Third Circuit Court of Appeals,² generally bars common ownership of a broadcast station and a daily newspaper in the same market. 47 C.F.R. § 73.3555(d). The Commission notes that comments were submitted in response to the initial *Notice Of Inquiry (NOI)* by numerous corporations in the newspaper publishing and broadcasting industries, trade associations, local media outlets, consumer and other advocacy groups, as well as concerned private citizens.

The Commission distills comments received into two distinct sets of opinion regarding the longstanding newspaper/broadcast cross-ownership rules. Commenters with the access to capital and the economies of scale to leverage cross-media acquisitions argue for lifting current regulatory safeguards. Commenters representing a broader range of social and economic interests and diverse perspectives, conclude that robust safeguards remain most necessary for American society and should therefore be preserved and even strengthened. In these Comments, the Free Community Paper Industry reiterates the rationale echoed by the majority of commenters that community interests compel a broad retention of current newspaper/broadcast cross-ownership rules, and responds to requests for specific input regarding Localism, Competition, Diversity and the use of DMAs as proxies for real communities.

I. Introduction

The Commission is directed by the Communications Act to place the broad public interest above the narrow interest of broadcasting and daily newspaper corporations. As the Commission duly notes on that threshold, “In *Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004) (“*Prometheus*”), the Third Circuit concluded that “necessary in the public interest” is a “‘plain public interest’ standard under which ‘necessary’ means ‘convenient,’ ‘useful,’ or ‘helpful,’ not ‘essential’ or ‘indispensable.’”³

² See *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) (“*Prometheus II*”).

³ See *2010 Quadrennial Review NPRM* at footnote 2.

This reasoned threshold ensures that the common good of all citizens, as well as those enterprises competing locally at a disadvantage, will hold sway over forces primarily seeking competitive advantage and financial gain. While some parties would prefer “public interest” to mean deference to their “orderly transaction planning” or serve their limited wants for “adequate predictability for the industry” to begin the final wave of cross-media consolidation unchallenged,⁴ we submit that such designs are clearly not a “plain public interest.”

In conducting its Quadrennial Review, the Commission is further compelled to take “a fresh look”⁵ as it weighs comments and evaluates current regulatory framework through the lens of promoting public interest. On point, the Commission offered explicit assurances that it would begin this Review with a clean slate and an open mind: “we commence this proceeding with no preconceived notions about the framework that will result from this review or what rules we will adopt. We will examine ownership issues based on the record that is established in this proceeding and will seek to establish a forward-looking framework based on the media marketplace of today.”⁶ As for the fresh look at current media markets, the Commission pledged to investigate “consolidation,” referring explicitly to Broadcast trends following the promise: “We will take a close look at the impact of consolidation on media markets.”⁷ In our comments, we stressed that “the same line of inquiry must also apply to the Newspaper Industry.”⁸

⁴ See *Comments of the Newspaper Association of America, 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996, Notice of Inquiry, FCC 10-92, MB Docket No. 09-182, July 12, 2010, at 9.*

⁵ See *2010 Quadrennial Review NPRM at footnote 2.*

⁶ See *2010 Quadrennial Review NOI at para 3.*

⁷ *Id. at para 4.*

⁸ See *Free Community Paper Comments at 8.*

We are hard pressed to find the requisite “fresh look” in either the current analysis or the consequent proposed outcomes. The opposite of fresh, the proposed Newspaper/Broadcast Cross-Ownership Rule has the flavor and substance of a reheated version of the prior Commission’s work product. Among relevant factors deserving a “fresh look,” the role of the internet in the modern media marketplace received a thorough, thoughtful evaluation. However, cross-media competition was all but dismissed as a settled and uncontested issue,⁹ even as emerging direct competition on the digital front in local markets is the main rationale for removing longstanding safeguards. Potentially relevant but missing is a fresh look, or any look whatsoever, at the competition for spectrum, itself.

⁹ “In the 2002 Biennial Review Order, the Commission determined that a ban on newspaper/broadcast cross-ownership was not necessary to promote its competition goal. The Commission concluded that most advertisers do not consider newspapers, television stations, and radio stations to be close substitutes for each other, and that therefore newspapers and broadcast stations do not compete in the same product market.” See *2010 Quadrennial Review NPRM at para 84*. The Commission does not offer a “fresh look” here, instead a been there, done that, directing to footnotes from the 2006 Order, which in turn redirect to footnotes from the 2002 Order, which rely in large part on a critically flawed and dated MOWG Study. We contested the dubious findings in our *NOI Reply*, “Pulling the Lynchpin: MOWG Study #10 Debunked - Cross-media consolidation advocates perpetually cite a nearly decade old study that purports to describe the forms of media under current regulatory consideration as separate, distinct and non-competing markets. They cite their own assertions and the same dusty FCC study riddled with critical caveats: “newspapers and broadcasters are not direct rivals for advertising revenue and, accordingly, that the NBCO rule does not impact competition. An empirical study commissioned by the FCC in conjunction with the 2002 Biennial Review, which demonstrates that local advertisers do not view newspapers and broadcast outlets as close substitutes, amply supports these prior conclusions.” They also continue to claim that no party has ever directly challenged the flawed conclusions of that study. In fact, we have and continue to challenge this argument as well as the underlying data and assertions that fed Media Ownership Working Group study number 10, *On the Substitutability of Local Newspaper, Radio, and Television Advertising in Local Business Sales*. The academic language of its summary conclusion, “estimated elasticities of substitution and the estimated ordinary cross-price elasticities suggest weak substitutability between local media,” betrays the words and deeds of merchants on Main Street.

The conclusions are also undermined by the study’s own recognition that the data are problematic: “The following caveat must be acknowledged when considering this study in communications policy. There are limitations inherent in the underlying data. For example, local radio ad expenditures are not total expenditures on radio within a DMA because total local radio revenue is not reported. In addition, local newspaper ad expenditures are constructed through an allocation process that introduces some degree of error.” In fact, there is much more than “some degree of error,” where units of cost per point (“CPP”) are forced into equivalence with Standard Advertising Units (“SAU”), without recognition of the existence of prevailing contract rates or even a cross check of airtime or lineage actually sold. Further, expenditures for entire local business categories were possibly ignored, as classified advertising revenue was not factored into the equation. These critical categories include, but are not limited to, automotive, real estate and recruitment.

We submit that the flaws in determining elasticity run deeper, as the hodgepodge of admittedly incomplete underlying data are furnished by proprietary providers as well as by the same trade associations seeking to eliminate cross-ownership rules. Moreover, simply dividing a sample market’s incomplete advertising expenditures by number of “establishments” recognized in five year old U.S. Census Bureau surveys to achieve a “representative local business,” would seemingly translate into a representation of no particular business at all. Dividing the sum of advertising allocations of an orthodontist that spends no money and a furniture store that spends lots, by their sample number of two, may give you an average, but it won’t describe advertising decisions and media competition on Main Street, America.

We strained to find any meaningful examination of the “impact of consolidation on media markets” in either the Introduction, Background or Discussion relating to the proposed Newspaper/Broadcast Cross-Ownership Rule. Found instead is an unhealthy avoidance of both the issues of concentration of local ownership under control of increasingly fewer firms, and the impact that corresponding leverage has on those firms and their communities. Considering that significant debt service will surely follow any cross-media mergers allowed by removing current safeguards, it would seem that the Commission might want to look at newsroom contractions and outright bankruptcies in a broader context that includes repayment of borrowed fortunes, and not merely subscribe to the simple narrative of ad declines.¹⁰

As past is prelude, the Open Season that these Proposed Rules invite risks unprecedented new levels of cross-media consolidation. This will be on top of current levels still awaiting analysis and appreciation. All of which will impact the merged firms, their smaller competitors, their communities and their expectations for localism, diversity and competition. There is still time to “take a fresh look” at the predictable intended and unintended consequences.

Ctd. Plugging incongruous numbers into a convoluted formula that obscures real world advertising decision making and expenditures can be made to suggest on paper that a local car dealer, advertising in the local newspaper, while airing on local radio and television stations, is statistically doing all or none of the above. Anybody that has actually sold media, and encountered their counterparts from competing media on real world sales calls, knows experientially that newspapers compete with radio stations who compete with television stations for the same advertising dollars in the same local marketplace. Trade associations representing the advertiser side of this equation maintain credible databases relating to their membership’s advertising expenditures by media, and a broad survey from this consumer data will surely yield more credible results, reflective of the intense cross-media competition in the local marketplace.”

¹⁰ See 2010 Quadrennial Review NPRM at para 3, “advertising revenues have been shrinking in recent years. Some broadcast and newspaper outlets have contracted the size of news staffs in response.” And at para 93, “and several newspaper publishers have sought bankruptcy protection, while others have ended their print editions.” citing among sources debt-laden Media General, and Tribune Company which was in fact profitable before being forced to swallow and service more than \$13 billion in debt. What role does debt play and what ratios exist between funding journalism and paying down debt? Moody’s Investor Service issued this alarm, June 04, 2009: “Currently, a structural disconnect exists in the newspaper industry’s cost structure. Just 14% of cash operating costs, on average, are devoted to content creation -- the primary value creation activity -- while about 70% of costs support the print distribution model and corporate functions....The overall imbalance limits the industry’s flexibility to overcome competitive threats.”

II. Localism

In its stated Policy Goals, the Commission reaffirms the longstanding commitment to ensuring Competition, Localism and Diversity, while reiterating that Media Ownership Rules continue to be necessary towards those objectives.¹¹ In seeking additional comment on defining and promoting Localism for policy purposes, the Commission asks specifically about, “whether, and how, to reevaluate localism to account for changes in the way consumers get local news.”¹² The context for the query is accounting for emerging digital platforms for delivery and potential new sources including hyper-local websites and blogs. One underlying presumption seems to be that there will be an ever-increasing expansion of local content offerings.

While the scenario seems likely near term on the digital front, the converse may well be true on the legacy front. All the more will that be likely depending on the degree of any lifting of safeguards against local cross-media mergers. For the purposes of Localism Policy, a thorough census of each media segment and its representative outlets should be taken, striving toward the most localized levels achievable. That data will be critical to an informed understanding of local media ecosystems. Such a detailed accounting of undercounted legacy enterprises bringing traditions of hyper-local before that term became hip, with a corresponding appreciation of what outlets could now be at risk, may well reinforce the prognosis and prescriptions offered by the Free Community Paper Industry.

¹¹ See *NPRM* at 10-17.

¹² *Id* at 5.

Arguments favoring elimination of the remaining competitive safeguards in local media echo the meme that “restrictions on cross-ownership undermine the potential quality and quantity of investigative news reporting,” and offer proof that journalism is a good thing.¹³ We agree that journalism is a vital endeavor, however we must humbly remind our peers and the Commission that our industry is actively engaged in that noble enterprise as well. Increasingly, our hometown publishers report on the local happenings that the larger, consolidated media companies abandoned coverage of long ago. From our competitive vantage, we disagree strongly with the claim that “The outdated rule does not serve any of the FCC’s stated public interest goals. To the contrary, because it disadvantages traditional media outlets with a long history of supporting local journalism and frustrates transactions that would enhance local news and informational services, the ban in reality is a hindrance to these objectives.”¹⁴ Our publishers, themselves “traditional media outlets with a long history of supporting local journalism” are boggled by the notion that our outsized rivals are “disadvantaged” by modest restrictions on their ability to simply purchase means to fatally “disadvantage” we local competitors.

As we’ve commented before, we believe the Commission needs to ask: And what about the other local media outlets? The Commission stated in the NOI that it intended to investigate “consolidation,” in reference to Broadcast trends with this promise: “We will take a close look at the impact of consolidation on media markets.”¹⁵ We implored that the same line of inquiry also apply to the Newspaper Industry. In the absence of a vigilant cop on the beat, the publishing industry has undergone comparatively more profound consolidation on both the macro and micro levels. We continue to assert that the Commission will not only gain a solid, granular perspective on the truly local media ecosystem, it will also find

¹³ See *or17 See NAA 2010 Comments at 25.*

¹⁴ *Id. at 1.*

¹⁵ See *2010 Quadrennial Review NOI at para 4.*

abundant amounts of the “predictive evidence” it expressly seeks.¹⁶ History does repeat itself, and the “we need to amortize assets across” talking point was carried out ferociously in publishing. Those “efficiencies” may have been realized, but the bulk were siphoned off for debt service and dividends. The facts have been chronicled¹⁷ and even a cursory look debunks this false assertion: “As a direct result of the rule, news organizations are forced to spend more money on back-office administration, and less money on expensive investigative news stories that are directly in the public interest”¹⁸

A. Promoting Localism by Preserving Local Competition

Across America, daily newspapers already enjoy a monopoly in 99% of local communities. In virtually Everytown, USA, one paid daily holds the dominant position in print, as well as in local online traffic and advertising. In the last decades, the largest players eliminated their competition in a continuous series of acquisitions, adding link after link to daily chains and then forming wholesale regional clusters buttressed by paid and free weeklies. Our members compete with these regional print powerhouses, and from our hands-on perspective in these highly concentrated local markets, our communities cannot withstand the blunt force trauma of bold, new cross-media monopolies. Such unrivaled market force, and the corresponding tools for leverage, will obliterate all remaining prospects for fair competition. Any furtherance of anticompetitive deregulatory schemes would ultimately force what remains of independent local media to merge for their survival, and the fallout to our industry will inevitably snow-

¹⁶ *Id.* at 25. “We invite commenters to provide predictive evidence....”

¹⁷ As a starting point, here are two historical snapshots along the march to consolidation in the newspaper industry. They offer ample “predictive evidence” of what will follow the elimination of remaining competitive safeguards: Stephen R. Barnett, “Anything Goes: When a newspaper wanted to fold its JOA partner, buy its local rival or gobble up weeklies, the Bush administration was no obstacle. Will Clinton’s Justice Department be tougher?” *American Journalism Review*, October, 1993. And see also: Mary Walton, “The State of The American Newspaper: The Selling of Small-town America,” *American Journalism Review*, May 1999.

¹⁸ See *NAA 2010 Comments at 26*.

ball onto the entire local business community in the form of higher rates and fewer effective advertising options.

We submit that the ultimate result of the abolishment of current safeguards will be the outsized local market power coming after effective competition is neutralized by consolidation. It is the ability to hold demand hostage to the will of the aggregator of coveted cross-media supply, otherwise described as the ability to set prices at will. Although that might be the desire of many business owners, in most industries the idea could only ever remain a dream. Mass media ownership is intrinsically different, and the responsibilities of the Commission to the broadest public interest in this proceeding are monumental. The fifth Review of the Radio Industry, a comprehensive update to the FCC's own Media Ownership Working Group Study No. 12, made unceremoniously public well into the last Review, revealed that the significant removal of FCC enforceable safeguards on radio station ownership has been a disaster for diversity of ownership, a homogenizing force on programming and an economic hardship for dependent advertisers. The Telecommunications Act of 1996, which decapitated local and national radio ownership limits for single entities, led to a furious spiral of radio station acquisitions unprecedented in history both in volume and in single entity concentration locally and nationally.

Please consider that the quantified effects of intra-medium, broadcast radio consolidation,¹⁹ are only one side of the equation. This outcome is the unstated but ultimate goal of deregulatory com-

¹⁹ The conclusions of the update to the FCC's Media Ownership Working Group Study No. 12 were reportedly not made available to Commissioners during deliberations on the 2002 Biennial Regulatory Review, Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, nor were they seemingly available to any petitioner in Prometheus. That body of evidence, invisible to the deliberators and therefore in the final product of deliberations, should weigh heavier now on these proceedings. The study shows continuing increases in concentration and a dramatic increase in advertising rates. From March 1996 to March 2003, the 4 firm concentration ratio increased from 83% to 92% nationally, but increases were much greater in the top 50 markets. Over the same period, radio advertising rates increased by 87% in nominal dollars or, by Mark Cooper's calculation about 74% in inflation adjusted (real) dollars. Using a standard economic calculation for the mark-up of price above cost, the Lerner Index ($L=HHI/\text{elasticity of demand}$), he estimates that two thirds of the real increase can be attributed to increased concentration. See *MACPA 2007 Comments* at 9.

menters. And in hometown media markets, the whole of the collateral damage will be greater than the sum of its once-independent parts. To be certain, the results of radio consolidation were neither a mystery nor a disappointment for those that engineered it. The clear implications for the mutually dependent policy objectives of Competition and Localism are found in the looming void on the legacy side, and the increasingly clear inability of a new distribution platforms to magically transform into actual sources. As the Commission notes, local news online is still most viewed on the sites of the local legacy creators, and further in citing PEW's famous Baltimore Study, quantity does not equal quality. Or even original sourcing. For all the new places to find local affairs, the bulk of information was actually repurposed from traditional outlets.²⁰

In closing on preserving Localism, Diversity and Competition, we remind the Commission that our nation's airwaves are a public trust, and thus maintaining a license for broadcast spectrum is a privilege, not a right. Community interests, by law and tradition, take precedent over pure profit. As many have noted in this and in past Proceedings, the Prometheus Court held that the Commission erroneously reviewed the regulations by applying a presumption in favor of eliminating or relaxing the rules. *Prometheus Radio Project*, 373 F.3d at 394-395; see also *Cellco P'ship v. FCC*, 357 F.3d 88, 98 (D.C. Cir. 2004). Further, the Commission is clearly not under any presumptive obligation to either relax or eliminate the rules; *Prometheus Radio Project*, 373 F.3d at 394-395. In order to comply with the Court's directive, the Commission's decision must benefit 'the public interest and support its decision

²⁰ See *NPRM* at 97. The Baltimore Study serves as a separate and unintentional cautionary tale, on the need to take much better account of our local media ecosystem. The worthwhile inquiry and compelling approach were fatally undermined by the failure to find two thirds (2/3) of the newspapers reporting and circulating in the study's self-designated "media universe," geographically, the Baltimore, MD, metropolitan area. Had they added the contributions from the at least eleven (11) papers they missed, to that of the six (6) they did track down, they would have found another interesting facet of the "best of times, worst of times" argument, where both positions are simultaneously bolstered. At the time, of the eleven papers operating in the Baltimore, MD, metropolitan area that were not included in the study, seven were under the common ownership of Tribune Co., and four were independent. The latter group is serving up original reporting and news of interest to their hyper-local communities, the former largely repurposing across shared titles.

with a reasoned analysis.’ *Id.* at 395. We urge the Commission to consider the balance of public interest in favor of the broadest public good and not in the narrowest private interests.

III. Arbitrary DMAs vs. Real Cities and Communities

While we continue to steadfastly oppose the Commission’s proposed erosion of safeguards against newspaper/broadcast cross-ownership, we raise separate concerns about such a Rule’s reliance on the privately owned and trademarked “DMA” as the market model for the next wave of cross-media consolidation. The NPRM seeks “comment on the impact of changing from a contour-based rule to a DMA-based rule”²¹ and we submit to start that such a blunt demarcating tool is inconsistent with the foundational objective of local focus, “we reaffirm the Commission’s previous findings that our local ownership rules should be analyzed in the context of local markets.”²² In neither size, scope nor ownership could a DMA ever be confused with its municipal namesake, the City. Nearly half of all Americans live within the shifting borders of the twenty largest DMAs, and they live there as designated consumers, not citizens.

To place this proposal in context, it is worth revisiting mass media accounts of the last Commission’s product. Aside from the deliberate, and overused qualifier of “modest,” it was ubiquitously reported that only the 20 largest cities would be impacted. If only that were true then, or is only the range of real communities implicated here, we would have much less of an issue. However, 9 of the Top 20 American Cities by population do not fit within Nielsen’s DMA scheme. Moreover, 10 of the Top 20

²¹ *See NPRM* at para 99.

²² *Id.* at 12.

DMA's have namesake cities, and clusters of additional forced-combinations of cities that are not Top 20 Cities by population or any other measure. The stunning degree of capture of the scores and scores of non-namesake cities helps to answer the NPRM's query: "For any proposed rule, would many more newspaper/television station combinations be implicated by the cross-ownership rule under a DMA-based approach as compared to a contour-based approach? Are there negative consequences to switching to a DMA-based rule?"²³

Philadelphia, which is not the capitol of Pennsylvania, is instead the DMA of the capitols of Delaware and New Jersey. And while the DMA namesake city has a population of roughly one and a half million, the gerrymandered expanse plotted by Nielsen captures over six million citizens from otherwise distinct Metropolitan and Micropolitan Statistical Areas. Due to the number of unrelated counties and communities similarly force fitted across the Top 20, far more cross-media mergers would now be permissible especially at the geographical extremes. And it is precisely there, approaching the farthest points from the Namesake City presumed to have robust media offerings, where the new wave of consolidation will do the most harm. It is also troubling that the arbitrary and capricious boundary lines, which would determine twenty new cross-media consolidation zones, are the property of The Nielsen Company. As Commission staff can surely attest from complaints received, the proprietary mapping of a Designated Market Area designed for broadcasters to bill Madison Avenue firms for advertising, is miserably flawed in parceling the dependent local television content. As gerrymandered borders for an open season on hunting and swapping media properties, the undemocratic foundation of DMA's are a disaster.

Nielsen has decided that the Mid-Atlantic region where our members publish, has four "Top

²³ *Id.* at 99.

20” so-called DMAs, and three more in their rankings between twenty-one and thirty-one. The relationship between these markets and their city-label namesakes has more to do with helping a media buyer find an abstract audience on a map or a header on a spreadsheet, than it does with the vast underlying tapestry of real, local communities. Absolutely not to be confused with cities, the New York, Philadelphia, Washington, D.C., and Cleveland DMAs lasso a combined eighty-nine counties in nine states and one district.²⁴ But while voters in New Jersey cannot vote to secede from either “New York” or “Philadelphia,” the for-profit subscription data and publishing company, by sheer whim, can lump or scoop whole counties onto, or off of, their DMAs.

This common practice has forced Pennsylvania communities onto Nielsen’s maps of New York and D.C., and with the click of a mouse all of Erie’s media could land within the borders of Cleveland or Pittsburgh. Each scenario demonstrates its own real danger, where the somehow contiguous Cleveland DMA is already in the Top 20, and nearby Pittsburgh is just outside the arbitrary threshold at number twenty-two. Proprietary remapping in the first instance demonstrates the ease of radically expanding “intended consolidation zones,” whereas the second clearly shows the unregulated simplicity of establishing new cross-media merger-friendly markets: Simply shoving a few counties onto DMAs in the low and mid-twenties would heap those disparate communities into the Nielsen Top 20, opening vast new cross-media hunting grounds, while simultaneously grandfathering the terrain that dropped out of the capricious “top 20 threshold.”

²⁴ Nielsen has decided that the Midwest has five “Top 20” so-called DMAs, and three more in their rankings between twenty-one and thirty-one. The relationship between these markets and their city-label namesakes has more to do with helping a media buyer find an abstract audience on a map or a header on a spreadsheet, than it does with the vast underlying tapestry of real, local communities. Absolutely not to be confused with cities, the Chicago, Detroit, Minneapolis, Cleveland and Denver DMAs lasso a combined one hundred sixty-six counties in nine different states. But while voters in thirteen Nebraska counties cannot vote to secede from “Denver,” the for-profit subscription data and publishing company, by sheer whim, can lump or scoop whole counties onto, or off of, their DMAs. Simply adding a few counties onto the fifteen in Missouri or the fifteen in Illinois that currently mint the St. Louis DMA, would bring that collection of communities into the top twenty, opening yet another cross-media hunting ground, simultaneously grandfathering the terrain that dropped out of the equally arbitrary “top 20 threshold.”

IV. Conclusion: Preserving Fair Competition

Dismantling the safeguards against newspaper/broadcast cross-ownership will most certainly trigger an unprecedented wave of cross-media consolidation, strangling the remaining competition and putting local economies at serious risk. The use of proprietary DMAs as proxies for real communities would place a vast and arbitrary bullseye on local media. While the documented media merger challenge history of the DOJ and FTC ensures that not much will stand in the way of widespread local media consolidation. The free community paper industry competes with the proponents of cross-media consolidation every day on Main Street. We keep Gutenberg's print legacy alive and relevant, embracing free and fair competition as modern day Town Criers, often from the short end of the stick.

In doing so we provide a service to our communities and an essential resource for local business, the lifeblood of our collective economies. We submit that the more some things have changed the more some things stay the same, including the trend toward greater consolidation in local media. As ownership shrinks to fewer and fewer capitalized concerns, some argue for new cross-media acquisition opportunities. Even as they lament their stock prices, they propose pulling local media from community reliance and subjecting them to the same whims of Wall Street. Faceless shareholders replace community stakeholders, and the fiduciary responsibilities to the parent company take precedence over the needs, concerns and values of the community.

Those who lament "heavy-handed government regulation of the media," often fail to mention their own successful pleas for privileged statutory protection. Those heavy-handed, legalized marketplace advantages include the Newspaper Preservation Act, Periodicals Mail Privileges and in most states, the exclusive market on government mandated advertising, known as Legal and Public Notice. From our position in the local media landscape, we contend that the current level of concentration in local media markets makes the ban on newspaper-broadcast cross-ownership more critical now than when it was first enacted. We urge the Commission to preserve these vital safeguards.

Respectfully Submitted,

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