

May 14, 2012

VIA ELECTRONIC FILING

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Communication, 2010 Quadrennial 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. 09-182; Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294*

Dear Ms. Dortch:

On May 10, 2012, Kenneth Satten and the undersigned, representing Bonneville International Corporation and The Scranton Times, L.P. (“Bonneville/Scranton”), met with William Lake, Sarah Whitesell, Hillary DeNigro, Judith Herman, and Julie Salovaara, all of the Media Bureau, concerning the above-referenced proceeding (“2010 Quadrennial Review”). The purpose of the meeting was to demonstrate how the Commission’s precedent, its current rulemaking record, and pursuit of its articulated policy goals support elimination of the FCC’s newspaper/radio cross-ownership rule.

Specifically, we pointed out that although the Commission has called for comment on the newspaper/radio rule seven times since 1996, for various reasons nothing has changed – even though throughout this period the rule seems to be little more than an after-thought in the larger debate over the newspaper/broadcast cross-ownership (“NBCO”) rule. As detailed in the comments Bonneville/Scranton submitted March 5, 2012 (“Bonneville/Scranton Comments”), the FCC’s pronouncements in this regard have been remarkably consistent over an even longer period: From the date when the NBCO rule was first proposed 42 years ago, the agency has stated repeatedly that radio has not been a primary concern. *See* Bonneville/Scranton Comments at 5-10. To the contrary, the Commission from the beginning has recognized that radio plays only a limited role in newsgathering and dissemination, particularly with respect to local news. Eliminating the newspaper/radio rule, therefore, would finally bring the FCC’s actions into accord with its own observations over the years about the actual impact of the regulation.

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In reviewing the record now before the agency, we pointed out that a number of commenters in addition to Bonneville/Scranton – including Cox Media Group, Morris Communications Company, the National Association of Broadcasters, and the Newspaper Association of America – have submitted serious, analytical arguments for lifting the newspaper/radio rule, buttressed by cites to empirical evidence. In contrast, those who apparently oppose any changes to the rule offer no specific discussion concerning newspaper/radio combinations; they simply call for retention of all the broadcast ownership rules generally. When these commenters do go beyond general references to the NBCO rule, they focus on television, not radio.

We also discussed one of the most noteworthy developments in the current record: the changed viewpoint of the Diversity and Competition Supporters (“DCS”), a coalition of 50 prominent associations and organizations that collectively represent a wide range of minorities’ and women’s interests. Several DCS members have participated in the Commission’s broadcast ownership rulemakings over the years and previously raised objections to proposed changes to the NBCO rule. Today, however, DCS supports amendment of the entire NBCO ban because of the “current climate facing the newspaper industry,” so long as the rule change does not discourage minority ownership. *See* DCS Comments, MB Docket No. 09-182, at 40, 42-43 (March 5, 2012). DCS goes on to state that “in practice, ... cross-ownership appears to have little impact on minority ownership” but can “help underwrite original journalism.” *Id.* at 41.

In addition, we noted that the record is devoid of empirical data that might buttress retention of the newspaper/radio rule. As a result, we indicated that the Commission has not been provided with a factual foundation, or even serious legal argument, for keeping the restriction. *See* Bonneville/Scranton Comments at 11-13, 17-22.

We also explained that retaining the rule would serve none of the long-standing policy goals that purportedly have served to justify the FCC’s broadcast ownership restrictions – competition, localism, and diversity. With respect to competition, we noted that newspapers and radio do not compete in the same product market, a determination long established by FCC precedent and upheld by reviewing courts. *See id.* at 14-15. With respect to localism, we advocated that the Commission follow its own precedent in concluding that newspaper/radio combinations can advance that goal in at least two respects: (1) They afford newspapers the possibility of a broader base of financial support, regardless of whether the radio stations air news in heavy rotation; and (2) they can encourage radio stations to air more local news. *See id.* at 15-18.

As for diversity, we showed that lifting the newspaper/radio rule would not harm viewpoint diversity. The *Notice of Proposed Rulemaking* in the 2010 Quadrennial Review (“*NPRM*”) states that radio generally plays only a limited role in contributing to viewpoint diversity in the manner that most interests the FCC in this proceeding, *i.e.*, the production and airing of local news in the broader media marketplace. No commenter has challenged that determination, and it remains consistent with the data in the record. In this regard, we directed the meeting participants’ attention to the Commission staff’s *Information Needs of Communities* report (the “*INC Report*”), the FCC-commissioned “Station Ownership and Provision and

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Consumption of Radio News” (“Study 5”), and the Pew Research Center’s analysis of the origins of local news reporting in Baltimore. *See id.* at 11-13, 18-20. Accordingly, because radio serves only a limited role in production of local news, lifting the newspaper/radio rule cannot negatively affect viewpoint diversity.

We explained that these three major points – the Commission’s historical understanding of the newspaper/radio rule, the current rulemaking record’s support for eliminating the regulation, and the lack of any underlying policy rationale for the restraint – have serious implications for the Commission’s legal authority in this proceeding. Given the factual and policy backdrop here, a decision to retain the newspaper/radio rule in any form would violate Section 202(h) of the Telecommunications Act of 1996, run counter to the Administrative Procedure Act’s prohibition against arbitrary and capricious agency action, and suffer from serious constitutional infirmities. *See Bonneville/Scranton Comments* at 9 n.19; *id.* at 18 n.55.

With respect to minority and female ownership, we noted that Bonneville/Scranton supports the Commission’s ongoing efforts to help increase diversity among station owners. We urged the FCC to move forward with these efforts while also working on a parallel track to complete the 2010 Quadrennial Review proceeding. In particular, we suggested that the Commission give serious consideration to several proposals advanced by DCS. In this regard, a number of broadcast entities, including Bonneville/Scranton, endorse the concept of an incubator program and support the revival of a tax certificate program.

Finally, as discussed in the Bonneville/Scranton comments, we explained the factual inconsistencies that would plague any effort to establish a top-20-market threshold for granting newspaper/radio regulatory relief. *See id.* at 22-24. We also urged the FCC to adopt its proposal to retain a contour-overlap approach for determining relevant geographic boundaries should any revised newspaper/radio restraint be maintained. *See id.* at 24-25.

In accordance with the Commission’s *ex parte* rules, 47 C.F.R. § 1.1206, this notice is being filed in the above-referenced dockets. If you have any questions about this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/ Rosemary C. Harold

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cc: William Lake, Sarah Whitesell, Hillary DeNigro, Judith Herman, Julie Salovaara