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November 8, 2012

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

Re: *2010 Quadrennial Regulatory Review, MB Docket Nos. 07-294 and 09-182*

Dear Ms. Dortch:

During recent visits with Commission leadership and the Media Bureau staff, the Newspaper Association of America ("NAA") has been asked for its position on certain elements of the Commission's proposal to modify the newspaper-broadcast cross-ownership ("NBCO") ban. The NAA has proposed repeal of this regulatory relic, which suppresses crucial investment in local journalism. The Notice of Proposed Rulemaking ("NPRM") in this docket, however, proposes maintaining the ban but introducing a "waiver" standard that would permit certain limited combinations. In our view, the waiver standard would simply perpetuate the 1970s-era approach embodied in the NBCO ban, which is counterproductive and fails to support local journalism and localism. We continue to urge the Commission to repeal the NBCO rule, and not to delay that long-overdue action by keeping the rule and simply adopting a waiver standard.

The Commission recognizes that cross-ownership "may improve the ability of commonly owned media outlets to provide local news and information."[1] Journalists at cross-owned newspapers and television stations collaborate on long-term investigative projects, share breaking news tips, and produce in-depth analysis of current events.[2] FCC-commissioned research demonstrates that cross-owned television stations devote more resources to local news coverage than other commercial stations. On average, a cross-owned television station produces nearly 50 percent more local news,[3] airs 30 percent more coverage of state and local political

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[1] NPRM ¶ 84; *see also id.* ¶ 98 ("The Commission has found evidence previously that some newspaper/broadcast cross-ownership may produce increased local news").

[2] *See* Comments of Tribune Company, MB Docket Nos. 07-294 and 09-182 (March 5, 2012), at pp. 12-15.

[3] Jack Erb, Media Ownership Study 4, *Local Information Programming and the Structure of Television Markets*, at pp. 27-28.

candidates, [4] and devotes 40 percent more time to candidates' speeches and comments.[5] One study questioned "the economic basis for keeping the [cross-ownership rule] in place, given the recent declines in newspaper revenues and news production expenditures, the influence of newspapers on voter information and turnout, and the potential economies of scope available to joint owners of news outlets in multiple media."[6] In short, abundant evidence supports the conclusion that cross-ownership strengthens local newsrooms.

Unfortunately, the NPRM's proposed change to the NBCO rule is too incremental to recognize the full benefit of repeal. Rather than eliminate the cross-ownership ban altogether, the NPRM proposes to provide waivers that allow cross-ownership in very limited circumstances. Under the NPRM's proposal, a waiver is presumed to be consistent with the public interest only if three criteria are met: (1) the newspaper and television station are in one of the nation's top 20 media markets, (2) the television station is not among the top four in the market, and (3) at least eight "major media voices" would remain after the merger.[7] This proposal is so narrow that it would exclude nearly all news-broadcasting television companies from making meaningful investments in the newspaper sector.

By only providing waivers to television stations in the nation's 20 largest media markets, the proposal ignores the hundreds of smaller communities that are most in need of more robust local journalism. According to the Commission's research, more than 200 newspapers closed or eliminated a newsprint edition between 2007 and 2010, and the vast majority of these changes were in small and mid-sized communities such as Ann Arbor, Michigan; Tucson, Arizona; Coatesville, Pennsylvania; and Coral Gables, Florida.[8] As the Commission's own report found, many small newspapers have faced particular challenges in coverage of state and local government, religion, and business.[9] Small-town television news also struggles to survive. Of the 92 communities that receive 500 minutes or less of local television news per day, 91 are small or medium-sized markets.[10] Twenty-one percent of commercial stations do not broadcast

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[4] Jeffrey Milyo, *Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News*, FCC Media Study 6 (Sept. 2007).

[5] *Id.*

[6] Adam D. Rennhoff & Kenneth C. Wilbur, Media Ownership Study 1, *Local Media Ownership and Media Quality* (April 5, 2011) at p. 15.

[7] NPRM ¶ 102.

[8] Steven Waldman *et al.*, *The Information Needs of Communities* ("INC Report") (July 2011) at 41.

[9] *Id.* at 45-46, 54.

[10] *Id.* at 101.

any local news, and most of these stations are in small communities.[11] The small stations that still air newscasts have drastically scaled back their coverage of politics and other community news. The NPRM offers no help to these smaller communities. Instead, the NPRM proposes to encourage newsroom investments only in the top 20 markets. The NPRM does not explain why, for instance, Sacramento (No. 20) is better suited for cross-ownership than St. Louis (No. 21). The NPRM suggests that newspaper-television mergers in smaller markets would lead to reduced viewpoint diversity,[12] but it fails to support this claim with any empirical data. Nor does the NPRM explain why smaller markets would not benefit from the economies of scale that are well-documented in the FCC-commissioned research discussed above.

Even within the 20 largest markets, the NPRM would provide only illusory relief. The proposal only allows newspapers to be co-owned with television stations that are not among the top four in these markets. This effectively prevents newspapers from combining with affiliates of the four major broadcast networks, which produce the vast majority of local television news, and with the major Spanish-language networks in certain markets where their presence is particularly significant.[13] In other words, the NPRM would only allow newspapers to merge with small television stations that often do not air local news. In New York City, for example, the new rule would permit ION Media or Trinity Broadcasting Networks to make an investment in the New York Times Company, but would continue to ban such an investment from CBS Corp., Disney, or Hearst. This is an irrational result, and not one that serve the public interest or one that helps ensure the future information needs of communities.

Similarly constraining is the NPRM's proposed requirement that at least eight "major media voices" remain after the merger. The NPRM narrowly defines "major media voice" as "full-power commercial and noncommerical television stations and major newspapers."[14] While that definition may have sufficed 30 years ago, it does not reflect modern media consumption. Many consumers receive local news from cable systems, community news websites, social media, weekly newspapers, and radio stations. Yet the NPRM does not explain why those outlets should not count as "voices." Indeed, when the Commission first imposed an eight-voices requirement on mergers between two television stations in the same market, it limited the definition of "major media voices" to broadcast television. In 2002, the United States Court of Appeals for the District of Columbia Circuit rejected this definition because it was not "readily apparent" why the commission excluded other media, such as newspapers and cable

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[11] *Id.* at 100.

[12] NPRM ¶ 105.

[13] NPRM ¶ 109. *See also* INC Report at 100 ("Most of those that do not offer local news are independent stations with no affiliation with a broadcast network.").

[14] NPRM ¶ 102, n.238.

systems.[15] Ten years later, it equally unclear why only television stations and major newspapers should count as "voices" when consumers receive local news from so many other media.

Local journalism is at a crossroads, as newspapers and television stations deal daily with the challenges of a new media landscape. The NPRM clearly identifies the urgent need for new investments in local news operations. And it acknowledges that cross-ownership could help spur these investments by allowing newspapers and television stations to pool their resources. But the NPRM's waiver proposal fails to advance this goal. If the Commission adopts this proposal, the cross-ownership ban will continue to prevent the vast majority of newspapers and television stations from creating new avenues of information for their communities. Nothing short of complete repeal of the cross-ownership rule will allow newsrooms to expand and adapt to the modern information economy.

Please contact the undersigned with any questions regarding this matter.

Respectfully submitted,

Kurt Wimmer
Jeff Kosseff

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[15] *Sinclair Broad. Group v. FCC*, 284 F.3d 148, 165 (D.C. Cir. 2002).