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January 23, 2013

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

***Via Electronic Filing***

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

Dear Ms. Dortch:

On January 18, 2013, Craig Aaron, Matt Wood and Joe Torres of Free Press met with Commissioner Clyburn; Dave Grimaldi, her Chief of Staff and Media Legal Advisor; Louis Peraertz, her Legal Advisor for Wireless, International, and Public Safety; and Brian Indovina, her Law Clerk, regarding matters in the above-captioned dockets.

We discussed Free Press’s positions in these proceedings, as articulated in our initial and reply comments filed in March and April 2012, as well as our more recent Form 323 Summary Report comments filed over the course of the last month. In each of these submissions, we have described the harms that media consolidation causes to journalism and diversity alike, and have urged the Commission not to alter its media ownership rules before adequately analyzing the impact of such changes on broadcast opportunities for women and people of color. The consensus on this point is evidenced in letters and filings from more than sixty members of Congress, and more than forty civil rights, labor, and media reform organizations, all opposing rule changes without adequate Commission study of the likely results from such decisions.

We noted once more that if the Commission were to relax its rules before conducting and completing the proper analysis, it would violate the Third Circuit’s directives on this issue in the *Prometheus II* decision. For instance, that court noted that the Commission’s 2002 quadrennial review order had “fail[ed] to consider the effects of its . . . rules on minority and female ownership more broadly.” See *Prometheus Radio Project v. FCC*, 652 F.3d 431, 465 (3d Cir. 2011). The court then cited its earlier decision “requiring the Commission to consider the effect of its rules on minority and female ownership” and “re-emphasize[d] that the actions required on remand should be completed *within the course of* the Commission’s 2010 Quadrennial Review.” *Id.* at 471-72 (emphasis added). After rebuking the Commission for having “punted yet again” by “side-stepping” these issues in the last two quadrennial review proceedings, *id.* at 471-72, it is hard to imagine the court cheering if and when the punt team is sent out for a third time in a row.

Free Press also explained that the Commission cannot, consistent with the Third Circuit's rulings and the agency's statutory obligations, simply repeal or modify ownership rules without providing the reasoned analysis supporting such action. As the Third Circuit made clear in its first *Prometheus* decision, the quadrennial review requirement in Section 202(h) of the 1996 Act is not a "one-way ratchet" requiring elimination of existing rules by default. See *Prometheus Radio Project v. FCC*, 373 F.3d 372, 394 (3d Cir. 2004). Rather, the legislative provision in question still requires the Commission "to justify affirmatively a rule's repeal or modification" just as it must justify promulgating or retaining a media ownership rule. *Id.* at 395.

For all of these reasons, the Commission cannot remove or relax cross-ownership provisions on the basis of unsupported assertions from the few commenters who suggest that deals would be unlikely to follow such rule changes. Contrary to their claims, Free Press and others have shown consistently on the record that concentration inexorably decreases the amount of news produced in a consolidating market, as well as the opportunities for diversity of ownership and viewpoint. To address deplorably low levels of ownership for women and people of color illustrated in the Form 323 Summary Report and our comments, the Commission must first decline to allow for still more consolidation. It can and should fund forward-looking studies on methods to promote diversity in the broadcast bands. Yet simply allocating funds now for future research cannot possibly satisfy the Third Circuit's mandates that require further in-depth analysis by the Commission itself of the probable impact from such rule changes.

Furthermore, the Commission should not accept suspect claims about the diminished importance or reach of broadcasting as justification for changes to these still important ownership protections. For example, as the "Information Needs of Communities" Report noted, "radio seems surprisingly healthy. Audiences have declined very little over the last decade and almost 240 million Americans – more than 90 percent of the population over age 12 – listened to at least some radio during an average week in the fall of 2010."<sup>1</sup> The Arbitron information cited for those statistics reported that in 2010, overall radio listenership had increased year over year, with even greater reach among African American and Hispanic listeners.<sup>2</sup> Those trends continue today according to Arbitron data for 2012.<sup>3</sup>

Neither can the Commission reasonably conclude that consolidation, and specifically newspaper-broadcast cross-ownership, increase the amount of news available at the market level

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<sup>1</sup> Steven Waldman, Federal Communications Commission, "The Information Needs of Communities" at 61 (2011).

<sup>2</sup> See Arbitron Inc., "Overall Radio Listeners Persons Aged 12 and Older Increases More Than 3.3 Million Year Over Year," Dec. 7, 2010, available at <http://arbitron.mediaroom.com/index.php?s=43&item=731> ("[R]adio continues to reach more than 93 percent of Black [ ] Persons aged 12 and older and more than 95 percent of Hispanics aged 12 and older on a weekly basis. Hispanic listeners 12 years and older grew more than 1.4 million year over year.").

<sup>3</sup> See, e.g., Arbitron Inc., "Black Radio Today 2012," at 2, available at <http://www.arbitron.com/study/blackrt.asp> ("About 94% of Black consumers aged 12 years and over listen to the radio each week at home, at work, in the car, and in other locations.").

where such concentration exists. As Free Press noted in our March 2012 comments in these dockets, research conducted for this proceeding by Jack Erb in Media Ownership Study #4 confirms our own prior findings, and all of the evidence shows that newspaper-broadcast cross-ownership rules retain their important and beneficial effect on the amount of news in local markets.

Turning briefly to the topic of Shared Service Agreements (SSAs) and other contracts between putatively separate stations, Free Press suggested that the draft item's reported focus on Joint Sales Agreements (JSAs) is puzzling. News co-production and "sharing" arrangements seem more likely to allow for control or influence over another licensee's programming than do JSAs, in which one station sells advertising for another. Like mergers and explicit cross-ownership arrangements often posited as ways to preserve viewpoints and salvage journalism, SSAs and other covert consolidation agreements do just the opposite.

We file this *ex parte* notice today pursuant to Section 1.1206(b) of the Commission's rules. If you have any questions regarding this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/ Matthew F. Wood

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cc: Dave Grimaldi  
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