

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**JOINT COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION
AND THE SCRANTON TIMES, L.P.**

Bonneville International Corporation (“Bonneville”) and The Scranton Times, L.P. (“Scranton”) (collectively “Bonneville/Scranton”) hereby submit these comments in response to the Commission’s request for comment on a new ownership-related study submitted in the above-referenced dockets.¹ Specifically, the study commissioned and filed by the Minority Media and Telecommunications Council (“MMTC”) – “The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations” (“Impact Study”) – provides further support for

¹ FCC Public Notice, *Media Bureau Invites Comment on the Study Submitted by the Minority Media and Telecommunications Council in the 2010 Quadrennial Review of Broadcast Ownership Rule*, DA 13-1317 (rel. June 7, 2013). Bonneville owns 12 radio stations and a television station in markets in several states, including stations ultimately commonly owned with a newspaper in Salt Lake City, Utah. Scranton owns six radio stations and has commonly owned newspaper/radio interests in Scranton, Pennsylvania.

Although Bonneville/Scranton believes that the record here justifies the elimination of the entire newspaper/broadcast cross-ownership restriction, our active participation in the rulemaking centers on the newspaper/radio ban. *See, e.g.*, Comments of Bonneville/Scranton, MB Dockets No. 09-182 and 07-294 (March 5, 2012) (“Bonneville/Scranton Comments”).

eliminating the newspaper/radio component of the newspaper/broadcast cross-ownership (“NBCO”) rule.²

The 2010 Quadrennial docket has from its beginning lacked any of the empirical support required to justify retaining the newspaper/radio cross-ownership ban. Instead, the submissions in this proceeding to date demonstrate that the restraint is not necessary to advance the Commission’s identified goals here, including diversity as a general “viewpoint” concept or diversity in the more specific sense of minority/female ownership. The Impact Study, drawing on the observations of actual broadcasters in the marketplace, indicates that newspaper/radio combinations impose no “disparate impact” on minority or female licensees.³ No party has submitted factual evidence to the contrary. Accordingly, the Commission should now act on its proposal to eliminate the newspaper/radio rule.⁴

At the same time, the agency can and should adopt initiatives to help alleviate the main challenge facing would-be broadcasters, including minorities and women: access to capital. MMTC (through the Diversity and Competition Supporters coalition), Bonneville/Scranton, and many other commenters in this proceeding have urged the Commission to actively explore options such as incubator programs, eased limitations on foreign investment, a sustainable tax certificate program, and educational programs for small banks and other potential investors.⁵ It is well within the Commission’s power today to make significant progress on these initiatives.

² 47 C.F.R. § 73.3555(d) (restricting common ownership of a daily newspaper and a radio or television broadcast station in the same local market).

³ Impact Study at i; *see also id.* at 10 (“The results of this study, while not dispositive, do provide evidence that the impact of cross-media ownership on minority and women broadcast ownership is probably negligible.”).

⁴ *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, FCC 11-186, ¶ 112 (rel. Dec. 22, 2011) (“*2011 NPRM*”).

⁵ *See, e.g.*, Comments of the Diversity and Competition Supporters (“DCS”), MB Dockets No. 09-182 and 07-294, at 4-12 (Dec. 26, 2012); Reply Comments of Bonneville/Scranton, MB Dockets No. 09-182 and 07-294, at 13-14 (Jan. 4, 2013).

I. THE IMPACT STUDY UNDERMINES THE FACTUALLY UNSUPPORTED CONTENTION THAT THE NEWSPAPER/RADIO RULE IS NECESSARY TO FOSTER MINORITY OR FEMALE OWNERSHIP OF BROADCAST STATIONS

As the Commission reviews the nearly five years' worth of submissions compiled in this statutorily mandated proceeding,⁶ it will hunt in vain for empirical support to bolster retention of the now 38-year-old newspaper/radio cross-ownership ban. The only potentially relevant evidence in the docket before the Impact Study – the FCC's own Study No. 7 – reveals no demonstrably strong nexus between the demographics of radio station owners and their production of programming targeted to minority listeners.⁷ The addition of the Impact Study clarifies that, in the real-world setting, both minority/female licensees and non-minority/female licensees react similarly to newspaper/radio combinations in their markets: Both groups expressed little or no concern.⁸ Instead, when asked to identify their main competitive challenges, the two groups provide similar answers – often leading with, not surprisingly, the general economic climate, the strength of their leading competitor (regardless of ownership structure), and the looming business implications of new technologies.⁹

The Impact Study opens by usefully framing a fundamental legal issue here: “[W]hether the existence of a commonly owned cross-media operation has a *disparate impact* on minority

⁶ A recent search of the Commission's ECFS database for Docket 09-182 alone reveals that approximately 900 submissions have been filed since the fall of 2009, when the agency kicked off this proceeding with workshops and other efforts targeted to data collection. This number of submissions excludes “brief comments.”

⁷ Because both minority- and non-minority-owned radio broadcasters provided content designed to appeal to African-Americans or Hispanics, the study author was “unable to draw strong conclusions” about the nexus, if any, between radio ownership structure and broadcast content. Joel Waldfogel, *Radio Station Ownership Structure and the Provision of Programming to Minority Audiences: Evidence from 2005-2009*, at 23-24 (dated July 18, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308591A1.pdf

⁸ Impact Study at i, 5-6. According to the Impact Study, the only cross-media combination mentioned by survey respondents at all was a newspaper/TV/radio combination in one market, and even there the reactions of the minority/female licensee and the non-minority/female licensees in that market were the same – not disparate. *Id.* at 5-6.

⁹ *Id.* at 6-7.

and/or women owned broadcast stations.”¹⁰ In other words, the only potentially valid issue for the Commission to consider is whether the cross-media combination affects minority- or women-owned broadcast stations in a different, more negative way than it affects other stations in the same market.¹¹

At least with respect to newspaper/radio combinations, the evidentiary record indicates that there is no disparate impact. While being modest about the limitations of its survey data,¹² the Impact Study detected no difference between the responses of minority/female broadcasters and non-minority/female broadcasters to the combinations in their markets.¹³ This observation held true whether the question centered on their nearest competitors, the sale of advertising time, or the production of local news and informational programs.¹⁴ In short, the Impact Study authors were

struck by the lack of any large concern by almost all of the respondents to these cross-media operations.... [I]t appears from this study that cross-media interests’ impact on minority and women broadcast ownership is not sufficiently noticeable to station operators on the ground to be a material justification for tightening or retaining the rules.¹⁵

The value of the Impact Study’s survey results are enhanced by its methodological approach. By employing a short series of open-ended questions, the “unaided recall” procedure

¹⁰ *Id.* at i (emphasis added).

¹¹ It would be prudent to bear in mind that the Commission’s authority to retain or adopt rules to foster minority or female ownership remains uncertain. *See, e.g., Fisher v. University of Texas*, 133 S.Ct. 2411, 2013 U.S. LEXIS 4701, 4719 (2013) (majority declining to explicitly rule on whether racial diversity in the university setting remains a compelling state interest). Although *Fisher* did not resolve all questions about race-conscious government programs, it does make clear that every aspect of such rules is subject to strict scrutiny review – and therefore the restraints in operation would have to be narrowly tailored to demonstrably serve the government’s “compelling” objective. *Id.* at 4720-21; *contra Prometheus Radio Project v. FCC*, 652 F.3d 431, 471 n.42 (3d Cir. 2011) (citing with approval to intermediate scrutiny employed in *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547, 567 (1990)).

¹² Impact Study at 2.

¹³ *Id.* at i, 5-6, 10-11.

¹⁴ *Id.* at 6-9.

¹⁵ *Id.* at 9, 10-11.

helped to ensure that respondents identified their own issues and concerns without any outside prompting.¹⁶ The Commission therefore should accept the survey results as persuasive. That decision is supportable given that those who raise minority/female ownership concerns as a basis for agency inaction have themselves never submitted hard data buttressing their contentions.

Moreover, as the next section briefly outlines, the agency lacks any other empirical data that could support continuation of restrictions on newspaper/radio cross-ownership. Given this factual record, a decision to retain any newspaper/radio restraints would be vulnerable on both statutory and constitutional grounds.¹⁷

II. THE EVIDENTIARY RECORD CONTINUES TO COMPEL ELIMINATION OF THE NEWSPAPER/RADIO RULE, AS DOES MORE RECENT DATA REVEALING THE ONGOING DECLINE IN NEWSPAPER STAFFING AND ADVERTISING REVENUE

Before MMTC submitted the Impact Study, the record before the Commission contained no empirical data to substantiate the few generalized claims made about the need to retain the newspaper/radio restriction. The same remains true today.

Certainly nothing has changed the FCC's long history of treating the newspaper/radio component of the NBCO rule as a minor after-thought.¹⁸ Nor are there new facts in the docket to fill the existing void between the newspaper/radio rule, on the one hand, and its wholly

¹⁶ *Id.* at 5 & n.5. *See also, e.g.*, Tom Webster, “‘Unaided Recall’ in Social Media Research,” BrandSavant blog (dated Aug. 30, 2010), available at <http://brandsavant.com/unaided-recall-in-social-media-research/> (describing unaided recall as a “bread-and-butter metric” designed to determine which ideas “have true top-of-mind awareness, and which ones don’t”); Jacob Jacoby, Symposium Review: Considering the Who, What, When, Where and How of Measuring Dilution, 24 Santa Clara Computer & High Tech. L.J. 601, 618 (2007/2008) (explaining that researcher questions relying upon unaided recall “imposes a more stringent demand on the consumer’s memory than do questions that rely on either aided recall ... or recognition ...”).

¹⁷ *See, e.g.*, Bonneville/Scranton Comments at 9 n.19; *id.* at 18 n.55; *see also* Comments of the Newspaper Association of America, MB Dockets No. 09-182 and 07-294, at 20-21 & n.81, 25-27 (March 5, 2012); Comments of Cox Media Group, MB Dockets No. 09-182 and 07-294, at 14, 18-19 (March 5, 2012); Comments of the National Association of Broadcasters, MB Dockets No. 09-182 and 07-294, at 40-48 (March 5, 2012).

¹⁸ Bonneville/Scranton Comments at 5-10.

theoretical impact on the Commission’s traditional goals – competition, localism, and diversity – on the other.¹⁹

Bonneville/Scranton pointed out earlier in this proceeding that because radio plays only a minor role in newsgathering at the local level, joint operation of radio and newspaper outlets cannot adversely affect viewpoint diversity.²⁰ And viewpoint diversity, in turn, is the key touchstone upon which policies to advance minority and female broadcast ownership rest.²¹ Gallup polling results released just days ago confirm this understanding about radio’s limited place in local news production: “While many Americans certainly tune in to radio for entertainment as well as talk radio, it is clearly not the place most turn for hard news about current events.”²² Even Free Press, in its very recent criticism of the Impact Study’s methodology, tacitly concedes that its principal NBCO policy concern centers on newspaper/TV combinations, not newspaper/radio ones – a position consistent with its focus on newspaper/TV in the earlier comment rounds in this proceeding.²³

The passage of time also has done nothing to alter the precarious financial state of daily newspapers, which the Commission must consider in determining whether to eliminate the newspaper/radio rule. The most recent State of the News Media report issued by the Pew

¹⁹ *Id.* at 11-14.

²⁰ *Id.* at 18-22.

²¹ The Commission has long pointed to the production of broadcast content designed to address minority needs and interests as its main rationale for seeking to foster greater minority ownership. *See, e.g., Metro Broadcasting*, 497 U.S. at 553 (citing FCC’s *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978)).

²² *See* Lydia Saad, *TV Is Americans’ Main Source of News*, Gallup, Inc. (dated July 8, 2013), available at <http://www.gallup.com/poll/163412/americans-main-source-news.aspx>. The survey indicates that only 6 percent of American adults point to radio as their main source of news. *Id.*

²³ Letter of Matt Wood, Policy Director, Free Press, MB Dockets No. 09-182 and 07-294, at 2-3 (June 18, 2013) (critiquing survey’s putative “conflation of newspaper/radio cross-ownership with newspaper/TV cross-ownership” and criticizing as insufficient its “focus primarily on the radio market”); *see also* Comments of Free Press, MB Dockets No. 09-182 and 07-294, at 25-35 (March 5, 2012) (discussing TV/newspaper combinations at length).

Research Center shows that print advertising revenues continue to fall, digital ad revenues remain anemic, and newsroom staffing numbers continue to slide.²⁴ In addition, more daily papers are expected to reduce their print editions to three days a week, a trend that many newspaper executives predict will continue.²⁵

Bonneville/Scranton has never contended that elimination of the newspaper/broadcast rule will fully address all of the newspaper industry's challenges. But the Commission has no evidentiary basis for barring radio station owners from attempting to build and maintain viable local enterprises that could help co-owned daily newspapers survive their transition to the digital media era.²⁶ Former Chairman Reed Hundt, who once favored the NBCO ban, recently said that “under current conditions, the rule is perverse.”²⁷ Failure to account for the new and existing

²⁴ See Pew Research Center, Project for Excellence in Journalism, *The State of the News Media 2013*, available at <http://stateofthemedial.org/2013/overview-5/> (visited July 22, 2013) The newspaper-specific section of the report, available at <http://stateofthemedial.org/2013/newspapers-stabilizing-but-still-threatened/> (reflecting data updated as of July 18, 2013) (“*Pew Newspaper Chapter*”), states that despite some hopeful signs that daily papers may have hit bottom, “the most basic indicators have not turned around.” *Id.* Print advertising fell for a sixth consecutive year, even while the economy is improving, and digital advertising “does not come close to covering print losses.” *Id.* The loss of newsroom positions in 2012, in fact, appears to have exceeded early forecasts: The American Society of News Editors (“ASNE”) reported that its annual newsroom census revealed the permanent elimination of about 2,600 jobs. Emily Guskin, *Newspaper newsrooms suffer large staffing decreases*, Pew Research Center, Factank – News in Numbers (June 25, 2013), available at <http://www.pewresearch.org/fact-tank/2013/06/25/newspaper-newsrooms-suffer-large-staffing-decreases/> (comparing Pew estimate of approximately 1,000 newspaper journalist jobs lost in 2012 to ASNE reported figure of 2,600 jobs lost). “That leaves the industry at 38,000 full-time professional editorial employees and is the first time that figure has been below 40,000 since the census began in 1978.” *Id.*

²⁵ Pew reports that Advance Publications, the publisher which cut the *New Orleans Times-Picayune* to three-days-a-week paper publication in 2012, plans to do the same with its large papers in Newark, Cleveland, and Portland, OR this year. See *Pew Newspaper Chapter*. Executives at 13 major newspaper companies predict that others will follow Advance’s lead. *Id.*

²⁶ As the Commission well knows, it is the plight of daily newspapers that moved the Diversity and Competition Supporters to switch from opposing relaxation of the NBCO rule to endorsing it. See, e.g., DCS Comments, MB Dockets No. 09-182 and 07-294, at 40-43 (March 5, 2012). Today’s concern is not simply about preserving the number of daily newspapers but about stemming job losses at those papers that still survive. See *Pew Newspaper Chapter*.

²⁷ Reed Hundt, *The FCC should repeal its newspaper-broadcast ownership rule*, WASHINGTON POST (June 6, 2013), available at http://articles.washingtonpost.com/2013-06-06/opinions/39789368_1_fcc-rule-reed-hundt-social-media (“But if I lacked the gumption and votes at the FCC to get rid of the rule then, the proliferation of Internet access and content over the past 17 years should give today’s commissioners the conviction to do the right thing.”). Hundt also stated that it “important that minority views ... have the chance to be heard. But there is no way for the FCC to accomplish this laudable goal by controlling who can own a newspaper.” *Id.*

data in this docket concerning radio/newspaper cross-ownership would disserve the public interest, constitute arbitrary and capricious action, and raise grave First Amendment concerns.

III. CONCLUSION

MMTC's submission of the Impact Study emphasizes what the empirical record in this proceeding already showed: Newspaper/radio combinations do not impose a disparate impact on minority- or women-owned broadcast stations, and elimination of the restraint cannot threaten any of the traditional FCC goals – competition, localism, and diversity – underlying the agency's broadcast ownership rules. The Commission therefore should act promptly to eliminate the newspaper/radio cross-ownership rule, while moving forward on a parallel track to help facilitate easier access to the capital that new broadcast entrants need.

Respectfully submitted,

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