

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
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2014 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. 14-50
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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
)	

To: The Commission

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

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 engage in the Commission’s 2014 Quadrennial Regulatory Review, again bringing our truly local, market-based perspective. We hereby submit these Comments in response to the Commission’s invitation extended in its *FURTHER NOTICE OF PROPOSED RULEMAKING*.¹ In the *FNPRM*, the Commission seeks comment on a wide

¹ 2014 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, Further Notice of Proposed Rulemaking, FCC 14-28, MB Docket No. 14-50 (rel. April 15, 2014) (“2014 Quadrennial Review FNPRM” or “FNPRM”).

range of interrelated matters surrounding the proposed revisions to Broadcast Ownership Rules, including policy of particular interest to our hometown publishers, the loosening of the longstanding newspaper/broadcast cross-ownership rule. This rule, revised under the 2006 Quadrennial 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 over the course of the 2010 Quadrennial Review 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.

From our own reading, as well as Commission discussion of the immediate past proceeding's record, comments can once again be distilled 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, along with independent local media outlets, conclude that robust safeguards remain most necessary for American society and should therefore be preserved and even strengthened. While nothing has changed substantially between the competing expressions of preferred policy outcomes, there have been recent market developments that would seem to undermine cross-media consolidation ambitions: As recently as the eve of this first comment deadline, another of the

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

chief proponents of abolishing safeguards against newspaper/broadcast cross-ownership, has now jumped on the growing wave of media conglomerates legally severing newspaper and broadcast operations.³

The Free Community Paper Industry continues to embrace the persuasive rationales it has furnished throughout multiple proceedings, along with similar and expanded as echoed by the majority of commenters, that public interests compel a broad retention of current newspaper/broadcast cross-ownership rules. We therefore simply restate, in response to the Commission's direct invitation to "comment also on whether and in what way we should modify the newspaper/television cross-ownership restriction,"⁴ that we maintain that no modification is warranted at this time. We continue to have grave concerns over intra-industry consolidation that has yet to be fully taken into account, and believe the timing for any significant revisions should be subordinated to outcomes of pending Commission proceedings that will implicate the number of broadcast television stations in existence, and whether the Open Internet will devolve into a two-tiered, pay-for-priority communications regime.

As stakeholders, commenters and participants in the current and prior Quadrennial Reviews, as well as in the proceedings of the Future of Media Report, we have consistently pleaded for the Commission to conduct a comprehensive evaluation of the impacts on smaller media enterprises,

³ See **USA Today Owner Gannett Splits Off Publishing From TV**, *AdAge*, August 05, 2014: <http://adage.com/article/media/usa-today-owner-gannett-splits-publishing-tv>. "Gannett Co., the owner of USA Today, will split into two publicly traded companies, one focused on broadcasting and digital businesses and the other on publishing, it said today, following the trend that has swept the media business." Noting that the breakup follows recent, "similar moves by News Corp., Time Warner and Tribune Co," all of which were, as was Media General, previously active in these proceedings.

⁴ See FNPRM at ¶ 117.

as well as on disadvantaged, female and minority ownership. We have stressed over and over again our anticompetitive concerns as local media enterprises competing against rivals already outsized via intra-industry consolidation, and called for a granular examination of the local media ecosystem. We have previously, and repeatedly, detailed the anticompetitive hazards of local, cross-media consolidation which are clearly forecast by the fallout from prior waves of intra-industry mergers. But those concerns do not exist in a local market vacuum. Grave enough on their own, these anticompetitive hazards could well be amplified by a looming confluence of separate, but interrelated Commission policymaking. We continue to draw attention to two critical factors that could bring about a perfect storm for hometown media: The upcoming Spectrum Auctions, combined with the real prospect of the elimination of Open Internet Safeguards.⁵

We are tentatively encouraged that Commission understanding remains that there is no legal “presumption in favor of repealing or modifying the ownership rules,”⁶ and reasserts the fact that the “media ownership rules have consistently been found to be necessary to further the Commission’s longstanding policy goals of fostering competition, localism, and diversity.”⁷ Moreover, we applaud the reasoned rejection of “Because of the Internet” arguments for cross-media consolidation: “At the current time and based on the record before us, we tentatively find that the record does not support the conclusion that the impact of the Internet has obviated the

⁵ Critical attention must first be given to the game-changing impact that auctioning TV broadcast stations to cellular companies could have on local media markets. The combined impacts of potential scenarios arising from multiple, interrelated media policies directed by its authority could produce outcomes counter to the public interest such as: Far fewer media firms, with artificially skewed valuations, competing at severe disadvantages with local cross-media juggernauts across traditional and digital channels, under pay-to-play bandwidth prioritization regimes, where well-capitalized incumbents dominate. Such a perfect storm for hometown media would not likely enhance the objectives of diversity, localism and competition.

⁶ See FNPRM at ¶ 9.

⁷ *Id.* at ¶ 14.

need for cross-ownership restrictions. The NBCO rule is intended to preserve access to a variety of viewpoints on substantive matters of local concern. We tentatively find that the diversity of local news coverage is not enhanced by the fact that newspapers from around the world are only a click away. Remote access to hometown sports scores and local weather reports expands the availability, but not the diversity, of information.”⁸

While we continue to express our strongest possible preference for keeping the NBCO safeguards fully intact, and are not prepared at this time to agree that the so-called relaxation as currently envisioned is a “modest tweaking” as some have characterized, we reserve guarded optimism for an approach that will not signal a loud, clear invitation to would-be cross-media consolidators. The Commission’s pledge that “we do not propose to adopt a bright-line rule allowing newspaper/television combinations, even under narrowly prescribed circumstances,”⁹ would seem to fulfill that limited objective. Given that there is already a “a case-by-case waiver approach” for those entities seeking such merger consideration, we would support enhanced procedures designed to “produce sensible outcomes and also improve transparency and public participation in the process,” where all interested parties, commercial and civic, would be afforded ample “opportunity to comment on a proposed newspaper/television combination because the parties to the transaction would be required to seek a waiver of the Commission’s rules regardless of whether the transaction involved the transfer of a broadcast license.”¹⁰ As the Commission has learned from notorious loophole abuse in the past, stations should be required to file

⁸ *Id.* at ¶ 133.

⁹ *Id.* at ¶ 151.

¹⁰ *Id.* at ¶ 153.

waiver requests prior to a newspaper acquisition, rather than at the time of the station's license renewal, and such waiver requests should be placed on public notice.

Within the context of limiting the wave of new cross-media consolidation to the greatest extents possible, and isolate potential mergers to communities where they would wreak the least amount of havoc, we offer brief and preliminary comment on aspects of the scope of the Proposed Rule. We had previously raised critical concerns about a pure DMA-based threshold as a shifting fence around consolidation zones including nearly half our nation's population, and offer that a combined approach also incorporating broadcast contours, the PCC of a television station and a direct hit over the community in which the newspaper is published, could alleviate troubles in remote corners of the largest media markets.¹¹ If market tiers are to be adopted, we would certainly argue for only the largest of the largest, while we recognize others are still pushing for many more and all, and to multiple commenters of opposing views, the Top-20 DMA demarcation seemed oddly convenient even arbitrary. However, the evidence the Commission cites to critically distinguish between the twenty largest Nielsen media markets and the remainder including local media composition, is compelling at face value.¹² If we were to support a waiver standard with presumptive guidelines, we would seek a strong unfavorable presumption for newspaper/television combinations in each of the smaller DMAs, as we would for any such merger involving a station ranked in the Top-Four in their market. Conversely, we would not necessarily embrace favorable presumptions in alternative scenarios, but a neutral non-presumption and the opportunity

¹¹ *Id.* at ¶¶ 159-164.

¹² *Id.* at ¶ 169.

for individualized waiver case review. In all instances, any after-merger scenario should leave no less than eight independently owned and operating “major media voices” in the DMA,¹³ where all commonly owned or directed entities, broadcast and newspaper, count for only one “voice” for attribution purposes. Moreover, strong consideration should be given towards substantially higher remaining “major media voices” in the very largest markets.

We are still exploring factors for consistent consideration in a Case-by-Case Waiver Approach, and only comment tentatively with respect to Overcoming the Negative Presumption, that a robust and credible determination that “either the newspaper or the television station involved in a proposed merger is failed or failing” should be a compelling factor. Like the Commission, we also appreciate that “the risk that a common owner will influence the viewpoint of a newly acquired outlet is preferable to the greater diversity harm of losing the outlet altogether.”¹⁴ That stated, and as we look forward to other stakeholders’ comments on point, approaching individual waiver requests as in the broader rationale for safeguards against NBCO, would otherwise be guided by the fundamental promotion of viewpoint diversity, localism and competition. Here we see a potentially major problem for the Commission and champions of the public interest and fair competition. While the FNPRN embraces the Commission’s longstanding underpinnings for the NBCO rule, citing the 2002 Biennial Review Order, “[a] diverse and robust marketplace of ideas is the foundation of our democracy,” it simultaneously seems to settle on only one leg of the three-legged stool, “promoting viewpoint diversity,” noting that the Supreme Court determined that singular goal a “basic tenet of national communications policy.”¹⁵

¹³ *Id.* at ¶ 178.

¹⁴ *Id.* at ¶ 142.

¹⁵ *Id.* at ¶ 114.

The Free Community Paper Industry, like most stakeholders and interested parties on all sides of the policy discussions surrounding the newspaper/broadcast cross-ownership rule, continue to address each of the original, legal and fundamental considerations: The promotion of viewpoint diversity, localism and competition. However, it appears that the Commission is now prepared to foreclose substantial, arguably still highly relevant and emerging inquiry: “We seek comment, for purposes of the 2014 Quadrennial Review proceeding, on our tentative view...that the NBCO rule is not necessary to promote our localism and competition goals but that some form of cross-ownership restriction remains necessary to preserve and promote viewpoint diversity in local markets.”¹⁶ Such a determination could terminally alter the course of this and future Reviews, and handicap efforts for a robust process should waiver requests eventually increase by orders of magnitude as some anticipate under the proposals now under consideration.

For the reasons stated in this filing, and offered in painstaking detail in numerous prior Comments and publisher testimony at public hearings in the preceding Quadrennial Reviews, we implore the Commission to maintain consideration of the inextricably linked public interest components of localism and competition. We assert that if the Commission were to conduct, as we and others have suggested over the last many years, a comprehensive census of the local media ecosystem, including analysis or even marginal evaluation of the impacts of proposed pro-consolidation regimes on independent, smaller media enterprises, as well as on disadvantaged, female and minority ownership, demonstrable concerns would implicate the ever-present relationships between local competition, localism and diversity, among primary subjects and corollary media market participants.

¹⁶ *Id.* at ¶ 143.

The preliminary modeling produced in justification of the Top-20 DMA approach is an adequate starting point, in juxtaposition with the routine, count the maximum in all categories for regulatory compliance, data set provided to check the box on the Initial Regulatory Flexibility Analysis (“IRFA”) count of potentially impacted Small Entities in Television Broadcasting, Radio Broadcasting and Daily Newspapers.¹⁷ We appreciate that Small Entities for this purpose do not include the collateral damage of the much more difficult to quantify universe of media market competitors, only the direct subjects of regulatory implication. However, the process deserves more than plopping default top-line sums over 90% in each category to reflect only consideration of net incomes or average payroll counts, when significant attributable measures also call for account, and those same standards however difficult to determine, are also paramount to a minimum picture of the current media landscape. We readily grant that “dominant in its field of operation” is seemingly subjective and would take extraordinary resources to rationalize across all markets, but any accounting whatsoever for the final critical element of the SBA definition of “small business,” that the entity must be independently owned and operated? These data inaccurately portray a homogenous, balanced media landscape which is anything but. Attention to detail even here would paint a drastically different picture, validating critical concerns, and likely bring competition and localism back alongside viewpoint diversity as we all proceed in this ongoing Rulemaking.

¹⁷ See FNPRM, *Appendix D, Supplemental Initial Regulatory Flexibility Analysis*, at ¶¶ 28-34. These data are crucial to this proceeding, potential waiver requests, and a credible portrait of today’s media landscape that is objective and can be agreed to by all parties. In particular, how consolidated are things now, how few firms own how much by category, and we concede better analysis of market-dominant players would be a bonus. Unfortunately, for RFA purposes, not unlike Rulemaking-specific data collection, the Commission provides: “In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.”

Respectfully Submitted,

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