Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
2006 Quadrennial Regulatory Review –	)	
Review of the Commission's Broadcast Ownership	)	MB Dkt No. 06-121
Rules and Other Rules Adopted Pursuant to Section	)	(and MB Dkt No. 02-277,
202 of the Telecommunications Act of 1996	)	and MM Dkt Nos. 01-235, 01-317, 00-244)

REPLY TO MEDIA GENERAL'S OPPOSITION TO MOTIONS FOR EXTENSION OF TIME

Of

FREE PRESS
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION

On September 21, 2007, Media General filed an Opposition to a motion for extension filed on September 11 by Free Press, Consumer Federation of America, and Consumers Union ("Free Press motion") and a motion for extension filed on September 18 by the United Church of Christ, the National Organization for Women, Common Cause, and the Benton Foundation ("UCC motion"). The Free Press motion asked the Commission to reinitiate an adequate peer review process for ten FCC studies in this proceeding or at least to provide the public with sufficient time and underlying data to reproduce and analyze the studies. The UCC motion requested that the Commission release a further notice of proposed rulemaking, detailing and seeking comment on a proposed rule before the Commission adopts an order on that rule, and in the alternative sought additional time to comment on the studies.

Media General's response to the Free Press motion lacks any merit. In its Opposition, Media General argued that, "Any dispute that Free Press and its fellow

movants have with the ten research studies may appropriately be expressed in the comments and reply comments … by October 1 and October 16, respectively, and the merits of those allegations can be resolved at the conclusion of the proceeding."[1] Media General also cites two FCC letters as precedent that the Commission should defer consideration. Media General's argument is flawed on two counts and its "precedent" is irrelevant. First, Free Press et al. cannot express their "disputes" with the studies by October 1 and 16 because of the very dispute it expressed on September 11: the studies are not reproducible by October 1 or 16. The public must have the underlying data and sufficient time to reproduce, test, and analyze the studies. The underlying data for the studies was not available to Free Press et al. until September 20.[2] Eleven or twenty-six days is not enough time for the public properly to evaluate and comment on these studies, which include millions of data points and required eight months for twenty researchers to complete. Second, the Commission cannot defer consideration of peer review for the reasons expressed in the Free Press motion. Peer review should take place early in the process and certainly before release of the studies, not at the end of the proceeding.[3]

Not only are these arguments flawed, Media General's precedent, assuming *arguendo* the letters have precedential value, is irrelevant. In one letter, the Commission did not defer consideration of the complaint until the end of the proceeding, rather it

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[1] Media General Opposition at 3.

[2] Certain video clips underlying Study 6 are not yet available in a means permitting Free Press et al. to use the clips at a location away from the Commission's offices, though presumably the author of Study 6 was not required to code the clips from the Commission's offices. *See* Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, 8456 (Feb. 22, 2002) (republication) ("[A] qualified party, operating under the *same* confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study.") (emphasis added).

[3] Free Press Complaint at 14-16.

addressed the complaint at that time. It rejected the complaint.[4] For the other Commission letter, the Commission deferred consideration of a complaint, by the Center for Regulatory Effectiveness, filed in this proceeding. That complaint, however, argued that the Commission could not rely on a certain study that was cited in the footnotes of public comments.[5] That deferral is not relevant here because the Commission had not itself "disseminated" the information in that study and could address the complaint should it choose to disseminate that study. Here, the Commission has already disseminated (and commissioned and funded) the 10 studies.

Media General's response to the UCC Motion has, if possible, even less merit. Media General claims that the Commission's FNPRM in 2006 provided sufficient notice because it was 18 pages long, that UCC et al. filed lengthy comments and replies based on that FNPRM, that the Third Circuit affirmed removing the blanket prohibition on newspaper-broadcast cross-ownership (NBCO), and that the NBCO rule was adopted in 1975.[6] First, even though the FNRPM was 18 pages, much of the document pertained to the history of the proceeding, not proposed new rules. Indeed, Media General does not list a single proposal put forth by the Commission in that FNPRM. Second, UCC et al. could file lengthy comments because there are several major rules at stake in this proceeding, not because the Commission had provided concrete proposals. Indeed, UCC et al. devoted seven pages of its Reply Comments to explaining why a further notice

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[4] It rejected the complaint because the complaint challenged a policy decision, not the adequacy of data, and because the complaint requested the Commission to open a proceeding on a question subject to another proceeding. Letter of Thomas J. Navin, Chief, Wireline Competition Bureau, to Bruce Kushnick, May 4, 2007, *available at* http://www.fcc.gov/omd/dataquality/requests/2007/teletruth-broadband.pdf

[5] Letter of Monica Desai, Chief, Media Bureau, to Jim Tozzi, May 31, 2007, *available at* http://www.fcc.gov/omd/dataquality/requests/2007/cre-media-ownership.pdf.

[6] Media General Opposition at 4-5.

would be necessary.[7] Third, the Third Circuit affirmed removing a blanket ban but never authorized any particular rule to replace the ban. If the Commission replaces the ban with a rule it has not yet proposed for comment, the Third Circuit should find that the public lacked sufficient notice of the proposed rule and that the Commission deprived itself of public comment on the proposal. Finally, it is unclear how Media General's "argument" about the NBCO ban being adopted in 1975 has anything to do with the Administrative Procedure Act's requirement to provide sufficient notice. Under the logic of this argument, the Commission could get rid of other rules—such as broadcaster character requirements, the duty of candor to the Commission, or any other rules predating 1975—with inadequate notice just because the rules have been around for a long time. Indeed, *because* the NBCO ban has been served the nation for so many years, the public deserves even clearer notice of whether and how the Commission may propose to modify it.

[7] *See* Reply Comments of United Church of Christ et al., Jan. 16, 2007, at 39-47.

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