

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review – Review)	MB Docket No. 06-121
of the Commission’s Broadcast Ownership)	
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications)	
Act of 1996)	
)	
2002 Biennial Regulatory Review – Review)	MB Docket No. 02-277
of the Commission’s Broadcast Ownership)	
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications)	
Act of 1996)	
)	
Cross-Ownership of Broadcast Stations)	MM Docket No. 01-235
and Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations)	
in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

OPPOSITION TO MOTIONS FOR EXTENSION OF TIME

Media General, Inc. (“Media General”), by its attorneys, hereby opposes the “Motion for Extension of Time of Free Press, Consumer Federation of America, and Consumers Union,” filed in the above-referenced proceedings on September 11, 2007 (the “Free Press Motion”), and the “Motion for Issuance of a Further Notice, or in the Alternative, an Extension of Time To Comment on Studies,” filed by the Office of Communication of the United Church of Christ, the National Organization for Women, Common Cause, and the Benton Foundation in the above-referenced proceedings on September 18, 2007 (the “UCC Motion”). As they pertain to the

Commission's consideration of the newspaper/broadcast cross-ownership rule, both Motions are unwarranted and should be denied.¹

On July 31, 2007, the Commission sought comment by October 1, 2007, with replies due on October 16, 2007, on 10 research studies related to media ownership issues at issue in the above-referenced proceedings.² On September 4, 2007, the FCC released peer reviews of those studies.³ The Free Press Motion requests an extension of the October 1 comment deadline and subsequent extension of the reply deadline based on its allegation that, by not conducting peer reviews prior to its dissemination of the studies, the Commission violated the Data Quality Act and the implementing guidelines adopted by the Office of Management and Budget and the Commission.⁴ Alternatively, Free Press seeks additional time based on its contention that parties have been given insufficient access to, and inadequate time to utilize, the data underlying the FCC's 10 studies.

The UCC Motion similarly seeks relief in the alternative. UCC claims a further notice of proposed rulemaking is necessary so the parties, at this stage, are given the exact specifics of the

¹ The newspaper/broadcast cross-ownership rule is codified at 47 C.F.R. § 73.3555(d) (2003) (the "1975 Rule"). This Opposition is timely filed pursuant to Section 1.45(b) of the Commission's Rules, 47 C.F.R. § 1.45(b) (2006).

² *FCC Seeks Comment on Research Studies on Media Ownership*, Public Notice, DA 07-3470 (rel. July 31, 2007).

³ The peer reviews are available at http://www.fcc.gov/mb/peer_review/peerreview.html (last visited Sept. 21, 2007).

⁴ Treasury and Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515, *codified at* 44 U.S.C. § 3516 Historical and Statutory Notes ("Data Quality Act"); 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 (Feb. 22, 2002); Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554, 17 FCC Rcd 19,890 (2002) ("FCC Information Quality Guidelines"); Office of Management and Budget Final Information Quality Bulletin for Peer Review, Supplementary Information, 70 Fed. Reg. 2664 (Jan. 14, 2005).

proposed FCC rules and an articulation of their relationship to the FCC's 10 studies.

Alternatively, noting its support for the Free Press Motion, the UCC Motion seeks additional time for public comment "after the peer review process is properly conducted and all of the relevant information is made available to the public."⁵

Neither party has advanced any reason to delay the comment deadlines the FCC has established. In resolving previous complaints under the Data Quality Act, the Commission has deferred consideration of the merits of such complaints as they relate to rulemakings until the subsequent disposition of the related rulemaking proceedings themselves.⁶ The Free Press Motion presents absolutely no reason for the Commission to depart from that approach here. Any dispute Free Press and its fellow movants have with the 10 research studies may appropriately be expressed in the comments and reply comments that the FCC has requested parties file by October 1 and October 16, respectively, and the merits of those allegations can be resolved at the conclusion of the proceeding. The FCC and OMB guidelines make clear that agencies have significant discretion in their conduct and review of studies, and the FCC in this case has not acted outside the bounds of that discretion. To delay this proceeding further by

⁵ UCC Motion at 5.

⁶ *E.g.*, Letter of Monica Desai, Chief, Media Bureau, to Mr. Jim Tozzi, dated May 31, 2007, available at <http://www.fcc.gov/omd/dataquality/requests/2007/cre-media-ownership.pdf> (last visited Sept. 21, 2007); Letter of Thomas J. Navin, Chief, Wireline Competition Bureau to Mr. Bruce Kushnick, dated May 4, 2007, available at <http://www.fcc.gov/omd/dataquality/requests/2007/teletruth-linecharges.pdf> (last visited Sept. 21, 2007).

Indeed, the Commission's guidelines implementing the Data Quality Act raise a question whether complaints under that act are even relevant in this context. The FCC's guidelines state that "[t]he procedures for filing and resolving complaints set forth in these guidelines...do not apply to information disseminated in rulemaking proceedings." FCC Information Quality Guidelines, 17 FCC Rcd at 19,898.

restarting the peer review process or commencing alternative data review procedures would be unprecedented and unwarranted.

Additional delay in repealing the 1975 Rule, in particular, would be highly inappropriate. Over the last 11 years, the Commission has evaluated the 1975 Rule on numerous occasions and in lengthy proceedings.⁷ Like the current rulemaking, each of the earlier reviews involved the compilation of extensive records demonstrating that the 1975 Rule is no longer necessary to advance the Commission's policy goals. Those reviews culminated in the Commission's well substantiated determination in 2003, and the United States Court of Appeals for the Third Circuit's affirmance in 2004, that the 1975 Rule's wholesale ban on newspaper/broadcast cross-ownership no longer serves the public interest.⁸ The Motions provide absolutely no reason for the Commission to delay further its consideration of the continued necessity of a 32-year old rule that, when adopted, was premised merely on speculative reasons that no longer bear any relation to current media realities.

Given this history and the multiple records, the request in the UCC Motion that the FCC issue a new further notice of proposed rulemaking -- at least as it might pertain to the 1975 rule -- seems intended only to seek further delay. The FCC already released such a document in

⁷ The docketed proceedings have included the following: Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197; 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35; Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235; 2002 Biennial 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. 02-277. For a lengthy list of recent FCC consideration of the 1975 Rule, see Appendix 3 of Comments of Media General, Inc. in MB Docket No. 06-121 (Oct. 23, 2006).

⁸ 2002 Biennial Review, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13620, 13747-13767 (2003), *aff'd and remanded sub nom., Prometheus Radio Project v. FCC*, 373 U.S. 372, 398-400 (3d Cir. 2004), *cert. denied, Media General, Inc. v. FCC*, 545 U.S. 1123 (2005).

the summer of 2006.⁹ It was a lengthy, 18-page further notice, accompanied by six pages of supplemental material. The parties seeking more time at this juncture did not seem to need additional clarification last fall and earlier this winter when they submitted lengthy and detailed comments and reply comments in response to that further notice.¹⁰ Those filings and their own “studies” did not evidence confusion about the issues in this proceeding. The 2006 further notice was more than legally adequate under administrative law principles and precedent,¹¹ and there is no further need to stall these proceedings -- at least with respect to the 1975 Rule -- as movants request. Thirty-two years is a sufficiently long time to ban an entire industry -- the newspaper industry, which is not even regulated by the FCC -- from entering the broadcast market based on nothing more than a conjectural “hoped-for” gain in diversity.

⁹ *2006 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, Further Notice of Proposed Rulemaking* in MB Docket Nos. 06-121 and 02-277, and MM Docket Nos. 01-235, 03-317, and 00-244, 21 FCC Rcd 8834 (2006).

¹⁰ Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket No. 06-121 (Oct. 23, 2006); Comments of Office of Communication of United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause and Benton Foundation in MB Docket No. 06-121 (Oct. 23, 2006); Reply Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket No. 06-121 (Jan. 16, 2007); Reply Comments of Office of Communication of United Church of Christ, Inc., National Organization for Women Foundation, Media Alliance, Common Cause, and Benton Foundation in MB Docket No. 06-121 (Jan. 16, 2007).

¹¹ Reviewing courts have repeatedly given agencies latitude in the exercise of their discretion and application of their expertise in the crafting of rules. “An agency’s final rule need only be a ‘logical outgrowth’ of its notice. *See Shell Oil Co. v. EPA*, 950 F.2d 741, 750-51 (D.C. Cir. 1991); *see also Env’l Integrity Project v. EPA*, 429 F.3d 992, 996 (D.C. Cir. 2005).” *Covad Communications Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006).

For the foregoing reasons, Media General respectfully submits that the Commission should deny the Motions as they pertain to the 1975 Rule; proceed with the schedule set forth in its July 31 Public Notice, which provided ample opportunity for comments and replies; and repeal the regulatory relic that is the 1975 Rule.

Respectfully submitted,

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September 21, 2007