Before the
Federal Communications Commission

CONSUMERS UNION, ET AL. HAS NOT DEMONSTRATED A LINK BETWEEN MARKET CONCENTRATION AND MINORITY/FEMALE STATION OWNERSHIP

In the Matter of	)	
	)	
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	)	MB Docket No. 06-121
	)	
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
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies	)	MB Docket No. 04-228

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I. Issues:

1. ***Quality of Form 323 Data***. The comments of Consumers Union, Consumer Federation of America and Free Press ("CU, *et al*.")[1] demonstrate the adequacy of the raw Form 323 data on female and minority ownership. The success of the NGOs' data crunching exercise stands in stark contrast to the efforts of other researchers who have failed to understand the quality of the raw data.

   CU, *et al*. deserve commendation for their hard work in evaluating the quality of the Form 323 database.

2. ***Fallacy of CU, et al.'s Regulatory Conclusion***. The primary regulatory conclusion/ recommendation of CU, *et al*. is succinctly stated in the Executive Summary of their comments,

   > *In these comments we present empirical evidence that demonstrates to the Commission that any policy changes resulting in increased market concentration will* ***unambiguously*** *lead to a decline in the level of female and minority ownership.*[2]

   As discussed below, the CU, *et al*. assertion is incorrect, does not comply with the Data Quality Act ("DQA") and cannot be used or relied upon by the Commission.[3]

II. Why Concentration Restrictions Are Counterproductive to Increasing Minority and Female Ownership

The primary basis for CU, *et al*.'s regulatory conclusion concerning concentration and female and minority ownership are their assertions that:

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[1] http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519739055.

[2] CU, *et al*., p. 3. [Emphasis added.]

[3] For a discussion of the Data Quality Act and its applicability to third-party studies, please see "The Data Quality Act: New Legal Constraints on the FCC Media Ownership Rulemakings," found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518711204.

1) Increased market concentration “artificially” increases station prices; and

2) Higher station prices harm women and minorities.[4]

With respect to supposedly artificial prices, reducing regulation moves station prices close to their natural, *i.e.* free market, level.

With respect to the impact of prices, CU, *et al*. is wrong, it is regulations artificially depressing the value of broadcast stations that harm minority and female investors. Regulations which reduce station value harm current and potential female and minority investors since:

- Lowering station values reduces the borrowing capabilities of existing minority and female broadcast investors owners;

- Reducing station prices makes them more affordable to *all* investors, not just women and minorities; and

- Limiting station values makes broadcast properties them a less attractive investment opportunity for all investors including women and minorities.

Devaluing the Assets and Borrowing Capability of Minority and Female Station Owners

Regulatory policies which reduce the asset and net worth values of minority and female station owners, also reduce the ability of these owners to borrow against their assets to finance business growth. Types of investment which depend on the financing capabilities of station owners include:

- Acquiring additional broadcast properties;

- Upgrading programming; and

- Making other investments such as buying rather than leasing station offices.

CU, *et al*. argue that along raising station prices, higher concentration diminishes “the ability of smaller and single-station owners to compete for both advertising and programming contracts.”[5] Even aside from the fact that the NGOs provide only scant anecdotal evidence for their contention, the groups fail to recognize that it is higher, not lower, net assets that allow station owners to better compete for programming and advertising.[6]

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[4] CU, *et al*., p. 26.

[5] Ibid.

[6] In an appendix to their comments discussing commercial television stations, CU, *et al*. note that “These stations also produce the highest-rated local news content and thus command most of the local advertising revenue.” [p. 72] Thus, it is ratings, not concentration, that determines advertising revenue.

Instead of recognizing the harm that would be done to existing female and minority broadcast owners by regulations diminishing their wealth, CU, *et al*. favor such restrictions. As the comments state,

> *This, combined with the inflated asset values creates immense pressure for the smaller owners to sell their station licenses to larger owners.*
>
> *This destructive cycle disproportionately impacts women and minority owners, as they are far more likely to own just a single station in comparison to their white-male and corporate counterparts. Current owners are driven out of markets....*[7]

The CU, *et al*. comments do not recognize that minority and female station owners may be driven out of the market by their inability to finance business expansion rather than by the value of their assets being "inflated."

Since access to capital is a key barrier to entry, the CU, *et al*. policy would be counterproductive to female and minority ownership – ***reducing the capital of female/minority broadcasters will not increase their ownership of broadcast properties***.

In short, the primary problem experienced by owners of single stations and small groups is too little money, not too much.

Making Stations More Affordable for White Male Investors

Reducing the value of broadcast properties makes the stations easier to purchase by *all investors*, not just women and minorities. Since white males, on average, have greater access to capital than other investors, artificially reducing station prices would disproportionately increase their ability to afford broadcast stations.

Making Stations Less Attractive to Minority and Female Investors

Regulatory limits that reduce station value are also going to reduce the long run investment attractiveness of broadcast stations relative to other opportunities. While regulations that reduce the desirability of station ownership impact all potential investors, the smaller pool of female and minority investors means that even small fluctuations in how competitive stations are as an investment property could have an outsized impact on female/minority ownership.

CU, *et al*. highlight low representation rates by minority and female owners but do not discuss the role of regulatory burden in discouraging broadcast investments by outsiders, *i.e*., people who do

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[7] Ibid.

not currently own stations. One reason for increasing industry concentration may be that it is the "insiders" who already own or manage multiple stations that are best positioned to: 1) navigate the daunting broadcast regulatory regime; and 2) take the risks associated with an industry where investments can be undermined by regulatory policy decisions. Increased regulation can only make station ownership less attractive to all outside investors, irrespective of gender or ethnicity.

III. CU's Regulatory Conclusion Is Contradicted By Their Own Data

CU, *et al.*'s own data contradict their assertion that increased media ownership concentration "unambiguously" leads to reduced minority and female ownership. According to CU, *et al*., ***minority ownership of full power television stations increased by 25% between 2000 and 2006***.[8]

The increase in minority ownership occurred over the six years following, according to CU, *et al*., when the Commission "went forward with rule changes that allowed increased market concentration."[9] Even if the NGOs were correct about the rules changes leading to higher concentration, such regulatory liberalization has coincided with increased minority television ownership.[10]

Thus, the CU, *et al*. statement that "any policy changes resulting in increased market concentration will unambiguously lead to a decline in the level of female and minority ownership" is demonstrably wrong and, under the DQA, cannot be used or relied on by the Commission.

IV. CU's Use of the Discredited Rogue Localism Study

CU, *et al*. incorrectly claim that "given that the median minority or female owner controls just a single station, these operations are more likely to better serve their local communities than stations controlled by large group owners."[11] The basis for their assertion is the discredited and disproved Localism study against which CRE filed a Data Quality petition.[12] Two of the FCC-commissioned Media Ownership studies also demonstrated that the Localism study: 1) did not meet FCC and OMB Data Quality requirements in its methodology; and 2) was substantively wrong in its conclusions.[13]

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[8] Ibid., p. 68, Figure 13.

[9] Ibid., p. 10.

[10] The CU, *et al*. comments did not provide similar data on changes in minority or female owned radio stations or on female-owned television stations.

[11] CU, *et al*. p. 71.

[12] http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519408960.

[13] http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519740878.

Since the Localism study does not meet Data Quality standards, the assertions of CU, *et al.* predicated on the study also fail to comply with the DQA. Continued use of the Localism study by major organizations participating in the rulemakings demonstrates the need for the FCC to speedily determine that the study fails to meet Commission and OMB guidelines.

V. Conclusion

- CU, *et al.*'s claim that "any policy changes resulting in increased market concentration will unambiguously lead to a decline in the level of female and minority ownership" is factually incorrect, in violation of the Data Quality Act, and cannot be used or relied on by the Commission.