

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

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 Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

**COMMENTS OF**  
**CENTER FOR CREATIVE VOICES IN MEDIA**  
**CENTER FOR DIGITAL DEMOCRACY**  
**CCTV CENTER FOR MEDIA AND DEMOCRACY**  
**COMMON CAUSE**  
**MEDIA ALLIANCE**  
**NATIONAL HISPANIC MEDIA COALITION**  
**NEW AMERICA FOUNDATION**  
**PROMETHEUS RADIO PROJECT**  
**AND**  
**U.S. PUBLIC INTEREST RESEARCH GROUPS**

Parul P. Desai  
Andrew Jay Schwartzman  
Harold Feld

Media Access Project  
Suite 1000  
1625 K Street, NW  
Washington, DC 20006  
(202) 232-4300

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## SUMMARY

Media ownership regulation is not simply about creating a competitive, profitable marketplace. More importantly, media ownership regulation is designed to insure a vibrant marketplace for democracy, civic discourse, and diverse viewpoints. Media ownership rules insure that we create an informed electorate, rather than “dumbing down” the public. Appropriate media ownership regulations create genuine options, rather than cookie-cutter options. Without the current broadcast ownership regulations, media ownership would simply serve what is in the best interest of broadcasters, leaving the public to wonder whatever happened to its best interest.

Congress and the public stand together in seeking to maintain current restrictions on ownership of broadcast stations. Although the Commission is required to review the current rules, the Commission is not required to modify or eliminate any of them. Modification of the current rules can be justified only if the broadcasters demonstrate that current rules are no longer in the public interest.

Broadcasters are mandated to serve the public interest in exchange for their free and exclusive use of the public airwaves. This means citizens are entitled to a diversity of voices, including voices from members of the local community, minorities, and women. A diversity of voices allows citizens to be informed and adequately participate in the democratic process. Indeed, the First Amendment requires broadcasters to honor the individual rights of citizens by providing a diversity of voices.

The Commission has another chance to assure the public that it is committed to ensuring that broadcasters are serving the public interest, rather than ensuring that broadcasters have the ability to maximize profits. In doing so, the Commission must recognize the importance traditional media continues to play in the everyday lives of the public. The Commission must also recognize the impact of any changes to the rules on diversity and localism, not merely on competition. Any careful analysis

can only lead the Commission to the conclusion that it should retain or strengthen current broadcast ownership regulations.

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There is no dispute that ownership rights to the broadcast spectrum belong to the public. For this reason, the public is entitled to expect that broadcasters serve the public interest. Current broadcasting ownership regulations, at a minimum, help to promote the Commission’s statutory goals of diversity, localism and competition.

The Commission has been directed to reexamine these rules without any presumption in favor of deregulation, and there is no evidence to suggest that a regulated environment, rather than other

factors, is detrimental to these goals. It is imperative, then, that unless the Commission can demonstrate otherwise, the Commission must refrain from either relaxing or eliminating any of the rules which serve as an important means of ensuring and furthering diversity, localism, and competition.

The Center for Creative Voices in Media, *et al.* (“Commenters”) are dedicated to increasing the diversity of voices in the media.<sup>1</sup> These organizations strive to promote a free and vibrant media, full of diverse and competing voices, which is the lifeblood of America’s democracy and culture, as well as an engine of growth for its economy.

#### **I. THE COMMISSION MUST UNITE WITH CONGRESS AND THE PUBLIC.**

In June 2003 the Commission went against the wishes of the public and Congress when it substantially relaxed its rules regulating multiple and cross- ownership of broadcast stations. *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*, 18 FCC Rcd 13620 (2003) (“*2002 Biennial Order*”). This course of action was hindered in June 2004, when the U.S. Court of Appeals for the Third Circuit reversed the Commission’s action and remanded the rules to the Commission for further review. *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004). On remand, the Commission now has another chance to unite with the public and Congress by retaining the current regulations to avoid further harm to the public interest.<sup>2</sup>

The *Prometheus* Court held that the Commission erroneously reviewed the regulations by

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<sup>1</sup>Exhibit A lists the individual commenting organizations and their missions.

<sup>2</sup>The Commission is also reviewing its media ownership rules pursuant to Section 202(h) of the Telecommunications Act of 1996, which requires the Commission to review its ownership rules every four years. Telecommunications Act of 1996, §202(h), 110 Stat. 56, 111-12 (1996).

applying a presumption in favor of eliminating or relaxing the rules. *Prometheus Radio Project*, 373 F.3d at 394-395; *see also Cellco P'ship v. FCC*, 357 F.3d 88, 98 (D.C. Cir. 2004). The Court made clear that the Commission is under no presumptive obligation to either relax or eliminate the rules. *Prometheus Radio Project*, 373 F.3d at 394-395. In fact, to comply with the Court's directive, the Commission's decision must benefit "the public interest and support its decision with a reasoned analysis." *Id.* at 395.

An honest assessment of the public interest is critical to the Commission's review. Consonant with the public interest, the Court has already recognized the importance of the availability of viewpoint diversity, and the Commission must do the same. Thus, to comply with the Court's directive, it is imperative the Commission seriously weigh the benefits of the current rules to employ a diversity of voices.

In other words, the Commission should not simply consider the rules' effects on the industry's competitive edge in the marketplace. Rather, the Commission must place a greater emphasis on whether the public is actually being served by a diversity of voices and whether the current rules at least help to maintain those voices. That is what the Court, Congress, and the public expects.

An honest assessment of the public interest also includes recognition of the public's continuing dependence on traditional media. Despite the welcome arrival of new platforms such as the Internet, what has not changed is the ubiquity and influence of over-the-air broadcasting. Indeed, President and CEO David Rehr of the National Association of Broadcasters noted that "by any measure, broadcasting remains the undisputed leader in news and entertainment." Press Release, National Association of Broadcasters, Rehr Declares Broadcasting as "Overwhelming Choice" of Media in America, (October 4, 2006), *available at* <http://www.nab.org/AM/Template.cfm?Section=>

News\_Room&CONTENTID=6933&TEMPLATE=/CM/ContentDisplay.cfm.

Further, a recent study conducted by the Radio-Television News Directors Foundation (“RTNDF”), an organization aligned with the industry, found that dependence on the traditional media continues to be prevalent. Specifically, the RTNDF Study found yet again that the majority of people receive their news from local television. *See* RTNDF’s 2006 Future of News Survey at 3, *available at* <http://www.rtnda.org/resources/future/index.shtml>. The RTNDF Study also found that “[p]eople like traditional media ... and that prediction of the imminent demise of traditional news media are premature. That is especially true for local television.” *Id.*

Another extremely well designed and executed study recently conducted by Consumer Federation of America , Consumers Union and Free Press (“Media Usage Study”) also supports the notion that communities rely heavily on traditional local media for news and information. *See* Study IX Media Usage: Traditional Outlets Still Dominate Local News and Information (to be filed in MB Docket Nos. 06-121, 02-277, 01-235, 01-317, and 00-244). Specifically, the Media Usage Study found that newspapers and television are the overwhelmingly dominant sources of national news and information, while reliance for local news is dominated by local television, local newspapers (daily and weekly), and local radio. *Id.*

Because of the importance of the role traditional media plays and will continue to play, the Commission must demonstrate that the current regulated environment has actually had detrimental effects to the public interest, rather than the industry’s competitive edge. Again, that is what the Court, Congress, and the public expects, especially in light of broadcasting’s role in citizen speech and democracy.

## II. THE POWER OF BROADCASTING.

The broadcast medium is a powerful tool which can educate the public, shape public opinions and perceptions, and generally promote citizen speech and democracy. The Supreme Court recognized the impact of broadcasting on citizen speech and democracy when it found that the “First Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public....” *Assoc. Press v. United States*, 326 U.S. 1, 20 (1945). The Commission has relied on ownership regulations to ensure that at least a minimal amount of “diverse and antagonistic sources” continue to be available.

The Commission must now determine if those regulations “are necessary in the public interest as a result of competition.” Telecommunications Act of 1996, § 202(h), 110 Stat. 56, 111-12 (1996). However, in addition to competition, the public interest is also guided by localism and diversity. The Commission itself has recognized localism and diversity as essential goals to promoting the public interest. *See Further Notice of Proposed Rulemaking*, 21 FCCRcd, 8834 at ¶ 4 (July 24, 2006).

Inherently critical to this discussion of what rules best serves the public interest (*i.e.*, localism, and diversity, as well as competition) are the rules’ impact on: (1) ownership opportunities for minorities and women; (2) the viability of independently-owned broadcasting outlets; (3) the civil rights community; (4) employment opportunities; and (5) creativity and independence of content providers.

Commenters and other supporters of restoring the existing rules have submitted a wealth of powerful data in this record to prove that relaxing or removing the current rules would have a devastating impact on the public interest. Therefore, Commenters strongly urge the Commission, at the least, to retain the current rules as absolutely necessary in the public interest, as guided by the goals

of diversity, localism and competition.

### **III. OWNERSHIP MATTERS IN PRESERVING DIVERSITY, LOCALISM, AND COMPETITION.**

Through the broadcast spectrum, broadcasters, unlike individual citizens, have the means to play a critical role in civic life and shaping the democratic process. In reviewing the current regulations, it is critical for the Commission to continue to recognize that the airwaves continue to belong to individual citizens, who have permitted broadcasters to profit from their exclusive use of the spectrum. In return, broadcasters have an obligation to provide programming that serves the public interest. 47 U.S.C. § 309(a).

#### **A. The First Amendment Mandates Restrictions.**

Because of this obligation, “the [Commission] is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium.” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969)(citations omitted). Not only are regulations encouraged but they must be premised on the principle that “[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.” *Id.* (citations omitted).

In other words, a vibrant and informed democracy can only be achieved when broadcasters honor the First Amendment rights of individual citizens to be informed through a variety of sources. To achieve this, broadcasters must provide programming and information to citizens through diverse viewpoints. These diverse viewpoints actually must be relevant to the local communities broadcasters are licensed to serve.

Competition between as many independently minded and independently owned broadcasters

can serve to ensure that viewers are indeed receiving accurate and a wide range of information. This can only be achieved by encouraging policies that actually foster diversity, localism, and competition and putting the necessary “restraints on licensees in favor of others whose views should be expressed on this unique medium.” *Id.*

**B. Broadcast Regulation must Foster Policies that Ensure Diversity, Localism and Competition.**

Broadcast regulation must proceed on the theory that “diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power.” *FCC v. NCCB*, 436 U.S. 775,780 (1978). Moreover, the Commission has been called on to ensure broadcasters “present those views and voices which are representative of [their] community and which would otherwise .... be barred from the airwaves.” *Red Lion Broad. Co.*, 395 U.S. at 389.

It has been the Commission’s position that “competition is the most effective means of producing the marketplace results that best serve the public interest.” *2002 Biennial Order*, 18 FCC Rcd at 13638, ¶ 55. Despite the Commission’s hope that competition would bring out the best in diversity and localism, unfortunately, evidence submitted by Commenters and other supporters of the rules prove that the existence of diverse voices is almost non-existent and coverage of importance to local communities is abysmally low.

Yet, the Commission has the ability and responsibility to change this course and should take this opportunity to do so. Diverse viewpoints and a focus on localism can be achieved through a variety of policies, which can inevitably lead to true competition.

**C. The Commission Must Ensure that Its Regulations Foster Minority and Female Ownership.**

An important way the Commission can promote diversity is to endorse policies that encourage ownership of broadcast stations by minorities and women. The Commission itself has long understood the ramifications of inadequate minority ownership of outlets of expression:

Acute underrepresentation of minorities among the owners of broadcast properties is troublesome because it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his or her audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial portion of our citizenry will remain underserved, and the larger, non-minority audience will be deprived of the views of minorities.

FCC Minority Ownership Task Force, *Report on Minority Ownership in Broadcasting* 1 (1978). Similarly, the lack of ownership by women also results in a large portion of the population remaining underserved.

The Commission's own numbers show that in only 3.4% of broadcasting stations do women have a greater than 50% voting interest in the broadcast licensee entity. Female/Minority Broadcast Ownership Data 2004-2005, available at <http://www.fcc.gov/ownership/data.html>. And, in only 3.6% of all broadcasting stations do minorities have a greater than 50% voting interest in the broadcast licensee entity. *Id.* These numbers should be of great concern to the Commission.

Rather than relaxing or eliminating ownership regulations, which allow for fewer owners of broadcast stations, and further leave minorities and women out of the equation, the Commission should be fostering policies to level the playing field. Indeed, the Commission has been mandated by the Court to specifically look at how the regulations affect ownership by women and minorities. *Prometheus Radio Project*, 373 F.3d at 420-21. Thus, it is the Commission's responsibility and duty to consider the impact of the regulations on minority and female ownership, and to ensure that own-

ership of the spectrum at least have the potential to reflect the citizens it is supposed to serve.

**D. The Commission Must Ensure that Its Regulations Ensure the Viability of Independent Broadcasting Outlets.**

Additionally, the Commission should endorse policies that will result in more independently-owned broadcasting outlets. Outlets that do not share common owners have the freedom to make their own programming decisions and are able to focus on a community's needs and issues. This is the essence of localism, which has been interpreted "to mean that licensees must air programming that is responsive to the interests and needs of their communities." *In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCCRcd 12425 1 (2004), ¶1.

Today, commercial broadcasters are excessively focused on maximizing profits, rather than serving the local communities to which they are licensed. As a result, many communities have been suffering from a lack of local news, political discussion, and diverse programming choices. Indeed, evidence submitted by coalition members shows that consolidation has promoted a lack of localism. Thus, continuing to limit ownership of multiple stations, which hampers localism, as well as diversity, can ensure broadcasters maintain the independent judgment required to be responsive and attune to local needs.

More independently-owned broadcasting outlets could also result in the necessary competition that would actually encourage broadcasters to serve the public interest. The Commission has determined that competition ensures "pro-competitive market structures. Consumers receive more choice, lower prices, and more innovative services in competitive markets than they do in markets where one or more firms exercises market power." *2002 Biennial Order*, 18 FCCRcd 13638, ¶ 57.

The Commission has couched competition in terms of consolidation, which can only serve to maximize the profits of commercial broadcasters, rather than enlighten citizens. Indeed, consolidation

allows entities to save costs by sharing content, usually entertainment or national news among commonly-owned stations, regardless of where the stations are located, while disregarding the obligation to serve the public interest. A focus on entertainment and national news can only deter and detract from the goals of diversity and localism. Thus, competition should not automatically equate to consolidation, which inevitably favors commercial broadcasters, rather than the citizens they are supposed to serve.

**E. The Effects of Ownership Beyond the Traditional Notions of Diversity, Localism and Competition.**

It is also critical to bear in mind that the Commission's efforts in regulating ownership of the spectrum and actions of broadcasters go beyond the traditional definitions of diversity, localism, and competition. Inherent, but often overlooked, in the discussion of media ownership is ownership's effects on the civil rights community, the creativity and independence of content providers, and employment opportunities.

For example, the impact of any regulatory scheme regarding ownership affects the civil rights community. The only way for all citizens to engage in free speech, and to participate and be reflected in public debate is to ensure equality of all voices is reflected on the public spectrum. Through consolidation, minority and women owned outlets, as well as other independent outlets, will be squeezed out, and the resulting commercial broadcasters will continue to focus on the bottom line. Consequently, despite public interest obligations, there is little assurance that issues relevant to civil rights communities will be broadcast or even accurately depicted.

Moreover, despite promises of competition through consolidation, commercial broadcasters will continue to focus on maximizing their own profits rather than focus on programming that promotes an informed citizenry. In doing so, broadcasters will attempt to save costs by, among other

ways, sharing generic content among commonly owned properties.

As a result, employment opportunities for the U.S. workforce will continue to decrease as broadcasters downsize their work force as they consolidate among themselves. Similarly, opportunities for creative and independent content providers will also continue to decrease as consolidated entities focus on homogenized programming that can be shared among its commonly owned stations. A lack of creative and independent content can only result in a lack of “diverse and antagonistic” voices necessary to promote citizen speech and democracy.

#### **IV. CONCLUSION.**

Congress recognized the need to increase citizens’ access to the airwaves when it found that “it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.” 47 U.S.C. §396(a)(7). It is now the Commission’s duty and responsibility to ensure that the public spectrum, is in fact, benefitting and available to the citizens that own it and to ensure that broadcasters fulfill their obligations to serve the public interest. This is what the Court, Congress, and the public expect. There is no reason to suggest that a repeal or relaxing of the rules would promote diversity, localism, and competition. Thus, Commenters ask the Commission to promote only those polices and regulations that in fact support the ideals of citizen participation, citizen representation and democracy.

Respectfully submitted,

Parul P. Desai  
Andrew Jay Schwartzman  
Harold Feld  
MEDIA ACCESS PROJECT  
Suite 1000  
1625 K Street, NW  
Washington, DC 20006  
(202) 232-4300  
*Counsel for Commenters*

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## EXHIBIT A

*Center for Creative Voices in Media:* The Center for Creative Voices in Media is a nonprofit 501(c)(3) organization dedicated to preserving in America's media the original, independent, and diverse creative voices that enrich our nation's culture and safeguard its democracy.

*Center for Digital Democracy:* The Center for Digital Democracy is committed to preserving the openness and diversity of the Internet in the broadband era, and to realizing the full potential of digital communications through the development and encouragement of noncommercial, public interest programming.

*CCTV Center for Media and Democracy:* Since 1984, CCTV has worked to promote democracy, alternatives to mainstream media, and economic opportunity for our fellow citizens. CCTV's Center for Media and Democracy includes: Cyberskills Vermont, Channel 17, and CCTV Productions.

*Common Cause:* Common Cause is a nonpartisan nonprofit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Common Cause is working to ensure that the media meet their obligations to serve the public by promoting diversity, accessibility, and accountability among media corporations and the government agencies that regulate the media.)

*Media Alliance:* Media Alliance is a 30 year-old media resource and advocacy center for media workers, non-profit organizations, and social justice activists. Our mission is excellence, ethics, diversity, and accountability in all aspects of the media in the interests of peace, justice, and social responsibility.

*National Hispanic Media Coalition:* The National Hispanic Media Coalition is a coalition of Hispanic-American organizations that have joined together to address a variety of media related issues that affect the Hispanic-American community across the nation. The National Hispanic Media coalition is a non-profit organization.

*New America Foundation:* The New America Foundation is an independent, nonpartisan, nonprofit public policy institute that was conceived through the collaborative work of a diverse and intergenerational group of public intellectuals, civic leaders, and business executives. The purpose of the New America Foundation is to bring exceptionally promising new voices and new ideas to the fore of our nation's public discourse.

*Prometheus Radio Project:* The Prometheus Radio Project is a non-profit organization founded by a small group of radio activists in 1998. Our primary focus is on building a large community of LPFM stations and listeners. We hope that this community will grow into a powerful force working toward the democratic media future we envision. Prometheus recently completed its 10th Radio Barnraising with the Pineros y Campesinos Unidos de Noroeste, a farmworker union in Oregon. Prometheus is currently preparing to help community organizations around the country apply for the last full power noncommercial radio licenses available in a generation.

*U.S. Public Interest Research Groups:* The state PIRGs created U.S. Public Interest Research Group (“U.S. PIRG”) in 1983 to act as watchdog for the public interest in our nation's capital, much as PIRGs have worked to safeguard the public interest in state capitals since 1971. Our organization's roots at the state level, and U.S. PIRG members across the country, give us a unique "outside the beltway" perspective and provide the grassroots power necessary to influence the national policy debate.