STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING

Re. 2006 Quadrennial Media Ownership Review – MB Docket 06-121, et al.

Today's decision would make George Orwell proud. We claim to be giving the news industry a shot in the arm—but the real effect is to reduce total newsgathering. We shed crocodile tears for the financial plight of newspapers—yet the truth is that newspaper profits are about double the S&P 500 average. We pat ourselves on the back for holding six field hearings across the United States—yet today's decision turns a deaf ear to the thousands of Americans who waited in long lines for an open mike to testify before us. We say we have closed loopholes—yet we have introduced new ones. We say we are guided by public comment—yet the majority's decision is overwhelmingly opposed by the public as demonstrated in our record and in public opinion surveys. We claim the mantle of scientific research—even as the experts say we've asked the wrong questions, used the wrong data, and reached the wrong conclusions.

I am not the only one disturbed by this illogical scenario. Congress and the American people have done everything but march down to Southwest DC and physically shake some sense into us. Everywhere we go, the questions are the same: Why are we rushing to encourage more media merger frenzy when we haven't addressed the demonstrated harms caused by previous media merger frenzy? Women and minorities own low single-digit per centages of America's broadcast outlets and big consolidated media continues to slam the door in their faces. It's going to take some major policy changes and a coordinated strategy to fix that. Don't look for that from this Commission.

Instead we are told to be content with baby steps to help women and minorities—but the fine print shows that the real beneficiaries will be small businesses owned by white men. So even as it becomes abundantly clear that the real cause of the disenfranchisement of women and minorities is media consolidation, we give the green light to a new round of—yes, you guessed it—media consolidation.

Local news, local music and local groups so often get shunted aside when big media comes to town. Commissioner Adelstein and I have heard the plaintive voices of thousands of citizens all across this land in dozens of town meetings and public forums. From newscasters fired by chain owners with corporate headquarters thousands of miles away to local musicians and artists denied airtime because of big media's homogenization of our music and our culture. From minorities reeling from the way big media ignores their issues and caricatures them as people to women saying the only way to redress their grievances is to give them a shot to compete for use of the people's airwaves. From public interest advocates fighting valiantly for a return of localism and diversity to small, independent broadcasters who fight an uphill battle to preserve their independence. It will require tough rules of the road to redress our localism and diversity gaps. Do you see any such rules being passed today? To the idea that license holders should give the American people high quality programming in return for free use of the public airwaves, the majority answers that we need more study of problems that have

been documented and studied to death for a decade and more. Today's outcome is the same old same old: one more time, we're running the fast-break for our big media friends and the four corner stall for the public interest.

It is time for the American people to understand the game that's being played here. Big media doesn't want to tell the full story, of course, but I have heard first-hand from editorial page editors who have told me they can cover any story, save one—media consolidation, and that they have been instructed to stay away from that one. But that's another story.

Today's story is a majority decision unconnected to good policy and not even incidentally concerned with encouraging media to make our democracy stronger. We are not concerned with gathering valid data, conducting good research, or following the facts where they lead us.

Our motivations are less Olympian and our methodology far simpler—we generously ask big media to sit on Santa's knee, tell us what it wants for Christmas, and then push through whatever of these wishes are politically and practically feasible. No test to see if anyone's been naughty or nice. Just another big, shiny present for the favored few who already hold an FCC license—and a lump of coal for the rest of us. Happy holidays!

If you need convincing of just how non-expertly this expert agency has been acting lately, you couldn't have a better example than the formulation of the cross-ownership rule that the majority is adopting today. I know it's a little detailed to see how the sausage is made, but it's worth a listen.

On November 2, 2007—with just a week's notice—the FCC announced that it would hold its final media ownership hearing in Seattle. Despite the minimal warning, 1,100 citizens turned out to give intelligent and impassioned testimony on how they believed the agency should write its media ownership rules. Little did they know that the fix was already in, and that the now infamous *New York Times* op-ed was in the works announcing a highly-detailed cross-ownership proposal.

Put bluntly, those Commissioners and staff who flew out to Seattle with staff, the sixteen witnesses, the Governor, the State Attorney General and all the other public officials who came, plus the 1,100 Seattle residents who had chosen to spend their Friday night waiting in line to testify were, as Rep. Jay Inslee put it, treated like "chumps." Their comments were not going to be part of the agency's formulation of a draft rule—it was just for show, to claim that the public had been given a chance to participate. The agency had treated the public like children allowed to visit the cockpit of an airliner—not actually allowed to fly the plane, of course, but permitted for a brief, false moment to imagine that they were.

The *New York Times* op-ed appeared on November 13, the next business day after the Seattle hearing. That same day, a unilateral public notice was issued, providing just

28 days for people to comment on the specific proposal, with no opportunity for replies. The agency received over 300 comments from scholars, concerned citizens, public interest advocates, and industry associations—the overwhelming majority of which condemned the Chairman's plan. But little did these commenters know that on November 28, two weeks ***before*** their comments were even due, the draft Order on newspaper-broadcast cross ownership had already been circulated. Once again, public commenters were treated as unwitting and unwilling participants in a Kabuki theater.

Then, last night at 9:44 pm—just a little more than twelve hours before the vote was scheduled to be held and long after the Sunshine period had begun—a significantly revised version of the Order was circulated. Among other changes, the item now granted all sorts of permanent new waivers and provided a significantly-altered new justification for the 20-market limit. But the revised draft mysteriously deleted the existing discussion of the "four factors" to be considered by the FCC in examining whether a proposed combination was in the public interest. In its place, the new draft simply contained the cryptic words "[Revised discussion to come]." Although my colleagues and I were not apprised of the revisions, *USA Today* fared better because it apparently got an interview that enabled it to present the Chairman's latest thinking. Maybe we really are the Federal Newspaper Commission.

At 1:57 this morning, we received a new version of the proposed test for allowing more newspaper-broadcast combinations. I can't say that I fully appreciate the test's finer points given the lateness of the hour and the fact that there was no time afforded to parse the finer points of the new rule. But this much is clear: the new version keeps the old loopholes and includes two new one pathways to cross ownership approval. So please don't buy the line that the rule we adopt today involves fewer loopholes—it adds new ones. Finally, this morning at 11:12 a.m. as I was walking out my office door to come to this meeting, we received an e-mail containing additional changes. The gist of one of these seems to be that the Commission need not consider all of the "four factors" in all circumstances.

This is not the way to do rational, fact-based, and public interest-minded policy making. It's actually a great illustration of why administrative agencies are required to operate under the constraints of administrative process—and the problems that occur when they ignore that duty. At the end of the day, process matters. Public comment matters. Taking the time to do things right matters. A rule reached through a slipshod process, and capped by a mad rush to the finish line, will—purely on the merits—simply not pass the red face test. Not with Congress. Not with the courts. Not with the American people.

It's worth stepping back for a moment from all the detail here to look at the fundamental rationale behind today's terrible decision. Newspapers need all the help they can get, we are told. A merger with a broadcast station in the same city will give them access to a revenue stream that will let them better fulfill their newsgathering mission. At the same time, we are also assured, our rules will require "independent news judgment" (at least among consolidators outside the top 20 markets). In other words, we

can have our cake and eat it too—the economic benefits of consolidation without the reduction of voices that one would ordinarily expect when two news entities combine.

But how on earth can this be? To begin with, to the extent that the two merged entities remain truly "independent," then there won't be the cost savings that were supposed to justify the merger in the first place. On the other hand, if independence merely means maintaining two organizational charts for the same newsroom, then we won't have any more reporters on the ground keeping an eye on government. Either way, we can't have our cake and eat it, too.

Also, since when do unprofitable businesses support themselves by merging with profitable ones—and then sink ***more*** resources into the money-losing division simply as a public service? Think about it this way. If any of us were employed by a struggling company, and we suddenly learned that a Wall Street financier had obtained control, would we (1) clap our hands with joy because we expect the new owner is going to throw a bunch of cash our way and tell us to keep on doing what we'd been doing, except more lavishly or (2) start to fear for our jobs and brace for a steady diet of cost cutting?

Here's my prediction on how it will really work. Mergers will be approved in both the top 20 and non-top-20 markets—towns big and small—because the set of exceptions we announce today have all the firmness of a bowl of Jell-O. Regardless of our supposed commitment to "independent news judgment" the two entities' newsrooms will be almost completely combined, with round after round of job cuts in order to cut costs. It's interesting to hear the few proponents of this rule bemoan the lost jobs that they say result from failing newspapers. Ask them this: in this era of consolidation in so many industries, isn't cutting jobs about the first thing a merged entity almost always does so it can show Wall Street it is really serious about cutting costs and polishing up the next quarterly report? These job losses are the ***result*** of consolidation. And more consolidation will mean more lost jobs. Newly-merged entities will attempt to increase their profit margins by raising advertising rates and relentless cost-cutting. Herein is the ***real*** economic justification for media consolidation within a single market.

The news isn't so good for other businesses in the consolidated market, either. Think about the other broadcast stations there. It's just like Wal-Mart coming to town—the existing news providers look around at the new reality and figure out pretty fast that they ought to head for the exit when it comes to producing news. Now, it may not be as stark as actually cancelling the evening news—it could just mean doing more sports or more weather or more ads during that half hour. But at the end of the day, the combined entity is going to have a huge advantage in producing news—and the other stations will make a reasonable calculation to substantially reduce their investment in the business. This is why, by the way, experts have been able to demonstrate—***in the record before the FCC, using the FCC's own data***—that cross ownership leads to ***less*** total newsgathering in a local market. And that has large and devastating effects on the diversity and vitality of our civic dialogue.

Let's also be careful not get too carried away with the supposed premise for all this contortionism, namely the poor state of local newspapers. The death of the traditional news business is often greatly exaggerated. The truth remains that the profit margins for the newspaper industry last year averaged around 17.8%; the figure is even higher for broadcast stations. As the head of the Newspaper Association of America put it in a Letter to the Editor of the *Washington Post* on July 2 of this year: "The reality is that newspaper companies remain solidly profitable and significant generators of free cash flow." And as Member after Member Congress has reminded us, our job is not to ensure that newspapers are profitable—which they mostly are. Our job is to protect the principles of localism, diversity and competition in our media.

Were newspapers momentarily discombobulated by the rise of the Internet? Probably so. Are they moving now to turn threat into opportunity? Yes, and with signs of success. Far from newspapers being gobbled up by the Internet, we ought to be far more concerned with the threat of big media joining forces with big broadband providers to take the wonderful Internet we know down the same road of consolidation and control by the few that has already inflicted such heavy damage on our traditional media.

In the final analysis, the real winners today are businesses that are in many cases quite healthy, and the real losers are going to be all of us who depend on the news media to learn what's happening in our communities and to keep an eye on local government. Despite all the talk you may hear today about the threat to newspapers from the Internet and new technologies, today's *Order* actually deals with something quite old-fashioned. Powerful companies are using political muscle to sneak through rule changes that let them profit at the expense of the public interest. They are seeking to improve their economic prospects by capturing a larger percentage of the news business in communities all across the United States.

Let's get beyond the weeds of corporate jockeying and inking up our rubber stamps for a new round of media consolidation to look for a moment at what we are ***not*** doing today. That's the real story, I think—that the important issues of minority and female ownership and broadcast localism and how they are being short-changed by today's rush to judgment.

Minority and Female Ownership

Racial and ethnic minorities make up 33 percent of our population. They own a scant 3 percent of all full-power commercial TV stations. And that number is plummeting. Free Press recently released a study showing that during just the past year the number of minority-owned full-power commercial television stations declined by 8.5%, and the number of African American-owned stations decreased ***by nearly 60%***. It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

In most places there is something approaching unanimity that this has to change. Broadcasters, citizens, Members of Congress, and every leading civil rights organization agree that the status quo is not acceptable. Each of my colleagues has recognized, I

believe, that paltry levels of minority and female ownership are a reality—which makes today's decision all the more disappointing. There was a real opportunity to do something meaningful today after years of neglect, and we blew it.

It didn't have to be this way. I proposed both a process and a solution. We should have started by getting an accurate count of minority and female ownership—the one that the Congressional Research Service and the Government Accountability Office both just found that we didn't have. The fact that we don't even know how many minority and female owners there are is indicative of how low this issue is on the FCC's list of priorities. We also should have convened an independent panel proposed by Commissioner Adelstein, and endorsed by many, that would have reviewed all of the proposals before us, prioritized them, and made recommendations for implementation. We could have completed this process in ninety days or less and then would have been ready to act.

Today's item ignores the pleas of the minority community to adopt a definition of "Eligible Entity" that could actually help their plight. Instead, the majority directs their policies at general "small businesses"— a decision that groups like Rainbow/Push and the National Association of Black Owned Broadcasters assert will do little or nothing for minority owners. Similarly, MMTC and the Diversity and Competition Supporters conclude that they would rather have no package at all than one that includes this definition. Lack of a viable definition poisons the headwaters. Should we wonder why the fish are dying downstream?

So while I can certainly support the few positive changes in this item that do not depend on the definitional issue—such as the adoption of a clear non-discrimination rule—these are overshadowed by the truly wasted opportunity to give potential minority and female owners a seat at the table they have been waiting for and have deserved for far too long. My fear now is that with cross ownership done, the attentions of this Commission will turn elsewhere.

Localism

At the same time that we have shamefully ignored the need to encourage media ownership by women and minorities, we have also witnessed a dramatic deterioration of the public interest performance of all our licensees. We have witnessed the number of statehouse and city hall reporters declining decade after decade, despite an explosion in state and local lobbying. The number of channels have indeed multiplied, but there is far less local programming and reporting being produced.

Are you interested in learning about local politics from the evening news? About 8 percent of such broadcasts contain any local political coverage at all, including races for the House of Representatives, and that was during the 30 days before the last presidential election. Interested in how TV reinforces stereotypes? Consider that the local news is four times more likely to show a mug shot during a crime story if the suspect is black rather than white.

The loss of localism impacts our music and entertainment, too. Just this morning, I had an e-mail from a musician who took a trip of several hundred miles and heard the same songs played on the car radio everywhere he traveled. Local artists, independent creative artists and small businesses are paying a frightful price in lost opportunity. Big consolidated media dampens local and regional creativity, and that begins to mess around pretty seriously with the genius of our nation.

All this is a travesty. We allow the nation's broadcasters to use half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

Once upon a time, the FCC actually enforced this bargain by requiring a thorough review of a licensee's performance every three years before renewing the license. But during decades of market absolutism, we pared that down to "postcard renewal," a rubber stamp every eight years with no substantive review.

To begin with, the FCC needs to reinvigorate the license-renewal process. We need to look at a station's record every three or four years. I am disappointed that the majority so cavalierly dismisses this idea. And we should be actually ***looking*** at this record. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, do these owners meet regularly with local leaders and the public to receive feedback? Why don't we make sure that's done ***before*** we allow more consolidation?

In 2004, the Commission opened up a Notice of Inquiry to consider ways to improve localism by better enforcing the *quid pro quo* between the nation's broadcasters and the public. The Notice addressed many of the questions raised by earlier, dormant proceedings dating from years before. Today's Localism Notice asks more questions and tees up meritorious ideas—but again my question: why the rush to vote more consolidation now, consolidation that has been the bane of localism, and why put off systematic actions to redress the harms consolidation has inflicted?

Our FCC cart is ahead of our horse. Before allowing Big Media to get even bigger—and to start the predictable cycle of layoffs and downsizing that is the inevitable result of, indeed the economic rationale for, many types of mergers—we should be enforcing clear obligations for each and every FCC licensee.

Conclusion

Those who look for substantive action on these important issues concerning localism and minorities will look in vain, I predict, once the majority works its way on cross ownership. We are told that we cannot deal with localism and minority ownership because that would require ***delay***. But these questions have been before the Commission for almost a decade—and they have been ignored year after year. These issues could have been—should have been—teed up years ago. We begged for that in 2003 when we

sailed off on the calamitous rules proposed by Chairman Powell and pushed through in another mad rush to judgment. Don't tell me it can't be done. It should have been done years ago. And we had the chance again this time around. Now, because of a situation not of Commissioner Adelstein's or my making, we are accused of delaying just because we want to make things better before the majority makes them far worse. I see.

When I think about where the FCC has been and where it is today, two conclusions:

First, the consolidation we have seen so far and the decision to treat broadcasting as just another business has ***not*** produced a media system that does a better job serving most Americans. Quite the opposite. Rather than reviving the news business, it has led to ***less*** localism, ***less*** diversity of opinion and ownership, ***less*** serious political coverage, ***fewer*** jobs for journalists, and the list goes on.

Second, I think we have learned that the purest form of commercialism and high quality news make uneasy bedfellows. As my own hero, Franklin Delano Roosevelt, put it in a letter to Joseph Pulitzer, "I have always been firmly persuaded that our newspapers cannot be edited in the interests of the general public from the counting room." So, too, for broadcast journalism. This is not to say that good journalism is incompatible with making a profit—I believe that both interests can and must be balanced. But when TV and radio stations are no longer required by law to serve their local communities, and are owned by huge national corporations dedicated to cutting costs through economies of scale, it should be no surprise that, in essence, viewers and listeners have become the products that broadcasters sell to advertisers.

We could have been—should have been—here today lauding the best efforts of government to reverse these trends and to promote a media environment that actually strengthens American democracy rather than weakens it. Instead, we are marking not just a lost opportunity but the allowance of new rules that head media democracy in exactly the wrong direction.

I take great comfort from the conclusion of another critic of the current media system, Walter Cronkite, who said, "America is a powerful and prosperous nation. We certainly should insist upon, and can afford to sustain, a media system of which we can be proud."

Now it's up to the rest of us. The situation isn't going to repair itself. Big media is not going to repair it. This Commission is not going to repair it. But the people, their elected representatives, and attentive courts ***can*** repair it. Last time the Commission went down this road, the majority heard and felt the outrage of millions of citizens and Congress and then the court. Today's decision is just as dismissive of good process as that earlier one, just as unconcerned with what the people have said, just as heedless of the advice of our oversight committees and many other Members of Congress, and just as stubborn—perhaps even more stubborn—because this time it knows, or should know, what's coming. Last time a lot of insiders were surprised by the country's reaction. This time they should be forewarned. I hope, I really hope, that today's majority decision will

be consigned to the fate it deserves and that one day in the not too distant future we can look back upon it as an aberration from which we eventually recovered. We have had a dangerous, decades-long flirtation with media consolidation. I would welcome a little romance with the public interest for a change.