STATEMENT OF COMMISSIONER ROBERT M. MCDOWELL

Re: *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; 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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Ways to Further Section 257 Mandate and To Build on Earlier Studies,* Report and Order, MB Docket Nos. 06-121, 02-277, 04-228; MM Docket Nos. 01-235, 01-317 and 00-244

Mark Twain warned us over a century ago, "If you don't read the newspaper you are uninformed. If you do read the newspaper you are misinformed." Of course, Mr. Twain had no other media than newspapers at his fingertips to glean information, opinion and, more importantly, material for his witticisms. The 21st Century's chaotic explosion of information from broadcast radio and television, cable TV, satellite radio and TV, the Internet and many other voices and outlets would have given Twain an ocean of material to use to skewer his targets with his satire. Without question, however, he would have had a blog; and I'm sure it would have been one of the most popular blogs on the Internet. If he were alive today, perhaps his cheerful disdain for newspapers would have led him and his readers to bypass the papers altogether. And that's a point at the heart of today's order: if consumers and content providers *want* to bypass the media technologies of yesteryear in favor of new media, they *can*. And *they are*. In fact, the evidence in the record tells us that if you are under 30, you are probably not reading a traditional newspaper or tuning in to your local broadcasters. You may never do so, at least not in the way the over-30 crowd does. It is precisely this type of paradigm shift that Congress and the courts have charged the Commission with weighing heavily as we revise our media ownership rules.

But before I delve into the substance of today's order, let's take a moment to examine how we got here. The current proceeding began at my very first open meeting as a Commissioner, 18 months ago. This proceeding has been unprecedented in scope and thoroughness. We gathered and reviewed over 130,000 initial and reply comments and extended the comment deadline once. We released a Second Further Notice in response to concerns that our initial notice was not specific enough about proposals to increase minority and female ownership of stations. We gathered and reviewed even more comments and replies in response to the Second Notice. We traveled across our great nation to hear directly from the American people during six field hearings on ownership in: Los Angeles and El Segundo, Nashville, Harrisburg, Tampa-St. Pete, Chicago, and Seattle. We held two additional hearings on localism, in Portland, Maine and here in our nation's capital. In those hearings, we've heard from 115 expert panelists on the state of ownership in those markets and we've stayed late into the night, or early into the next morning, to hear from concerned citizens who signed up to speak. And I want to thank all of those who turned out to express their views.

We also commissioned and released for public comment ten economic studies by respected economists from academia and elsewhere. These studies examine ownership structure and its effect on the quantity and quality of news and other programming on radio, TV and in newspapers; on minority and female ownership in media enterprises; on the effects of cross-ownership on local content and political slant; and on vertical integration and the market for broadcast programming. We received and reviewed scores more comments and replies in response. Some commenters did not like the studies and their critiques are part of the record.

So, during my entire term as a Commissioner, we have been reviewing this matter. But our review did not begin last year. The previous round began in 2002. At that time, the Commission received thousands of formal comments and millions of informal comments. The Commission held four localism hearings across the country to gather additional evidence. The FCC also produced twelve media ownership working group studies. We all know that the 2002 review ended badly for the Commission – with both the legislative and judicial branches reacting through a Congressional override of the national ownership cap, and a reversal and remand from the Third Circuit in the *Prometheus* case. By the way, while the court threw out almost all of the Commission's order, it concluded that, "reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."

But our story didn't begin in 2002 either. In 2001, the FCC issued a rulemaking focused on the newspaper-broadcast cross-ownership ban – a concept that has been around since at least 1975. Comments and replies were gathered there too. That proceeding sprouted up as the result of a June 2000 report from a Democrat-controlled FCC, which found that the ban may not be necessary to protect the public interest in certain circumstances. That report was the result of yet another proceeding, which commenced in 1998. The 1998 proceeding stemmed from a 1996 proceeding; which was sparked by legislation; which was engendered by an overwhelming and bi-partisan vote of a Republican-controlled Congress and signed into law by a Democrat President.

In my 17 years of being in and around the FCC, I can't think of any issue that has been examined more thoroughly. I can't remember any proceeding where the Commission has solicited as much comment and given the American people as much opportunity to be heard.

A point that gets lost in the emotion surrounding this debate is that the directly elected representatives of the American people, the Congress, enacted a statute that contains a presumption in favor of modifying or repealing the ownership rules as competitive circumstances change. Section 202(h) states that we must review the rules and "determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation that it determines to be no longer in the public interest." This section appears to upend the traditional administrative law principle requiring an affirmative justification for the modification or elimination of a rule, and it is crucial for everyone involved in this debate to recognize

this important presumption. It is also important to remember that Section 202(h) is the most recent set of codified instructions we have from Congress. If Congress passes legislation to the contrary, and the President signs it into law, I will work tirelessly to ensure that its intent is carried out. In the meantime, however, Section 202(h) is our legal mandate. We also have a duty to pursue the noble public policy goals of competition, diversity and localism. Today's order accomplishes all of the above.

However, while the FCC races ahead over a twelve-year period like "a runaway glacier," as one analyst put it, the private sector has been busy working around the obstacles constructed by the outdated regulations of yore. Is it any wonder that most of the energy, creativity, capital and growth have been focused on areas that are *less* regulated? That's what our record shows. The ironic truth is: in many cases, media consolidation has actually become media divestiture. Companies such as Disney, Citadel, Clear Channel and Belo actually have been shedding properties to raise capital for new ventures. They are directing new capital investment toward new media ventures. That's where America's eyeballs are looking; so that's where the ad dollars are flowing. The Hollywood writers' strike is all about the concept of following the eyeballs and ad dollars and getting fairly compensated as a result. Just to illustrate the point, over one-third of Americans go online to get their news. As the FCC's own research shows, by July 2006, 107 million Americans viewed video online and about 60 percent of U.S. Internet users download videos.[1] YouTube alone requires more bandwidth than the *entire Internet* did in 2000. Unregulated new media's numbers are growing. Heavily-regulated traditional media's numbers are shrinking.

This new media frontier is especially promising for people of color and women. The rise of so-called "niche" markets is benefiting people who have been underserved in the past. The low barriers to entry and low capital requirements to get started have spawned a plethora of minority and women oriented new media outlets such as: NetNoir.com, a minority owned online destination that connects people interested in African American culture and lifestyle; or iVillage.com, which provides daily hot topics for women; or Women's eNews.com, an online source for news and perspectives of particular concern to women. While this new era is in its infancy, and we have a long way to go before it matures, I am optimistic that the media ownership debates of the early 21st Century will one day fade into obscurity as technology and competition advance.

Before I go further, let me offer a personal observation. Both of my parents were journalists. They met after World War II at the University of Missouri's famed School of Journalism where my mom was on the faculty. She went on to become a reporter for the *Chicago Daily News* at a time when almost no women held such jobs. She later worked for the *Washington Post* and was there when the cross ownership ban went into effect in 1975. So I found it especially remarkable, when I was sorting through her belongings after she passed away in 2005, to find a book entitled *The Fading American Newspaper*. I've read through it and I've come across some timely quotes. Here's one: "As journalism migrates into new areas of communication, its practitioners, too, are on the

[1] News Release, FCC, *FCC Adopts 13th Annual Report to Congress on Video Competition and Notice of Inquiry for the 14th Annual Report* 4 (Nov. 27, 2007).

move. The commerce in information flourishes and quickens its tempo, new skills are developed, and the major problem for the newspaper journalist is to keep his readers from migrating, too." So when was this book written? 2005? 1975? No, it was written in 1960 by a former editor and journalism professor. But the point is that there is not a general concept before us in this proceeding that hasn't been debated for decades.

Even though the newspaper industry was already facing challenges in 1960, it has undergone dramatic change in the 32 years since the newspaper-broadcast cross ownership ban went into effect. Now we have five national networks, not the three I grew up with. Today we have hundreds of cable channels cranking out a multitude of video content produced by more, not fewer, but *more* independent voices than existed 32 years ago. Now we have two vibrant satellite TV companies, telephone companies offering video, cable overbuilders, satellite radio, the Internet and its millions of websites and bloggers, a plethora of wireless devices operating in a robustly competitive wireless market place, iPods, Wi-Fi, and much more. And that's not counting the myriad new technologies and services that are coming over the horizon such as those resulting from our Advanced Wireless Services auction of last year, or the upcoming 700 MHz auction, which starts next month. Certainly, more voices and more delivery platforms exist today than in 1975.

Consumers have more choices and more control over what they read, watch and listen to than ever. As a result of this cacophony of voices competing for consumer's attention, at least 300 daily newspapers have shut their doors forever in the last 32 years because people are looking elsewhere for their content. Newspaper circulation has declined year after year. Since just this past spring, average daily circulation has declined 2.6 percent. Newspapers' share of advertising revenue has shrunk while advertising for unregulated online entities has surged.

Some argue that newspapers are making plenty of money. For many papers, that's absolutely true, for now. As gross revenue declines year after year, publishers cut costs to retain margins. After a while, such cost-cutting slices into the heart of the news-gathering operation: the newsroom and its reporters. As a result, the ability to cover more news diminishes. Some respond by arguing that newspapers and broadcasters should therefore live under *more* regulation than what exists today. But who among them is offering to find ways to pay for the high costs of their mandates? How is such a command-and-control regulatory regime supposed to generate the funds needed to support such capital-intensive endeavors?

With all trend lines showing newspaper top-line income falling fast, the ultimate fate of this platform is obvious: newspapers, as we know them, will cease to exist sooner rather than later under existing regulations. They may disappear some day anyway, regardless of what we do today. But why should stale government industrial policy hasten their demise? While I agree with many of the critics of today's order that it is not the FCC's job to "save the newspapers," or any other industry for that matter, at the same time is it our job to leave in place an outdated regulation that results in the *elimination* of independent voices? With a regulation in place that is linked to the silencing of so many

local community voices, is the cross-ownership ban still in the public interest, or is it a millstone around the neck of a drowning industry? The statute demands an answer.

Despite a strong de-regulatory statutory presumption mandated by Congress and an order from the Third Circuit essentially giving a green light to lifting the ban altogether, today's order is quite modest. The order creates a presumption in favor of lifting the ban only in the top twenty media markets where there is tremendous competition in the traditional media sector. Even then we only allow a combination outside of the top four TV stations and only when at least eight independent major media voices remain in the that market. Outside of the top twenty markets, our rule establishes a negative presumption against permitting the combination. In only two special circumstances will we reverse the negative presumption: first, if a newspaper or broadcast outlet is failed or failing; and second, when a proposed combination results in a new source of a significant amount of local news in a market.

Where neither of these circumstances exists, we establish a four-prong test to determine whether the negative presumption is rebutted. This test is not pocked with loopholes as some have suggested; quite the contrary. To determine if the presumption is overcome, we will consider: 1) whether cross-ownership will increase the amount of local news disseminated through the media outlets in the combination; 2) whether each affected media outlet in the combination will exercise its own independent news judgment; 3) the level of concentration in the Nielsen DMA; and 4) the financial condition of the newspaper and broadcast station, and if the newspaper or broadcast station is in financial distress, the putative owner's commitment to invest significantly in newsroom operations.

Lastly, we will not require divestiture of existing combinations that were grandfathered in conjunction with the 1975 rule or that were granted permanent waivers of the rule. Under both Democrat and Republican chairmen, the Commission previously determined that these combinations were in the public interest and thus warranted a waiver under the prior rule. We should not reverse course here as we modernize our rule. In addition, the Order grandfathers existing combinations operating under temporary waivers where those combinations involve one newspaper and one broadcast property in the same market. These combinations have achieved synergies that have resulted in service to their communities in the public interest. Requiring divestiture would be disruptive to the individual owners, employees and to the communities that rely on their service.

Today's order also may create new opportunities for women and people of color. Under the current rule, minority businesses may not own a newspaper and station in the same market. Now they can after appropriate Commission review. Under our narrowly-tailored rules, a modernization of the ban will create a rising tide that has the potential to float all boats.

In the meantime, all Americans, and the rest of the world, are migrating toward the boundless promise of new media for their news, information and entertainment. The

best news is that all Americans will benefit from this new paradigm because new technology empowers the sovereignty of the individual, regardless of who you are. As future policymakers examine these issues in the years to come, I would urge them to continue to examine the important public policy implications of this new era in the context of these undeniable facts.

Accordingly, I support today's order.