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I. Introduction

Pursuant to the Press Release issued by Commission Chairman Kevin J. Martin on November 13, 2007 seeking comments on revising the newspaper-broadcast cross-owner and other media ownership rules, past and present members of the Federal Communications Commission's Consumer Advisory Committee ("CAC") hereby submits these comments.

On November 13, 2007, Federal Communications Commission Chairman Martin proposed that the Commission conclude its review of the broadcast ownership rules by adopting the regulatory changes that would allow a newspaper to own one television station or one radio station subject to certain criteria and limitations. Chairman Martin also proposes that the Commission make no changes to the other media ownership rules currently under review.¹ Chairman Martin invited public comment on his proposals to be filed in Media Bureau Docket No. 06-121 by December 11, 2007.

In his press release, Chairman Martin notes that the media marketplace has changed considerably since the newspaper/broadcast cross ownership was put in place. Consumers have benefited from the explosion of new sources of news and information. In a *New York Times* op-ed released the same day,² Chairman Martin wrote, "***The challenge is to restore the viability of newspapers while preserving the core values of a diversity of voices and a commitment to localism in the media marketplace.***" [emphasis added]

II. The Commission's Consumer Advisory Committee's Recommendations on Media Ownership Rules Stressed Promotion of Localism, Competition and Diversity

In 2006, the CAC made two sets of recommendations to the Commission on its media ownership proceeding.³ The July 2006 Recommendation focused mainly on the Commission's process for compiling a far more complete record; promoting the core values of localism, competition, and diversity; and expanding the multiplicity of voices and choices that support our marketplace of ideas and that sustain American democracy and creativity. The July 2006 Recommendation also asked the Commission to address some outstanding issues – localism, the UHF Discount, minority ownership, public service, indecency, small broadcasters, payola, independent programming, and the transition to digital television – before finalizing new media ownership rules. The November 2006 Recommendation addressed *how* the Commission should promote localism, competition and diversity from a consumer perspective. The November 2006

¹ Chairman Kevin J. Martin Proposes Revision to the Newspaper/Broadcast Cross-Ownership Rule. November 13, 2007. (see http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278113A1.pdf)

² Martin, Kevin. The Daily Show. New York Times. November 13, 2007

³ Attachment A: Recommendation Regarding 2006 Regulatory Review of the Commission's Media Ownership Rules. Consumer Advisory Committee ("CAC"). Adopted July 21, 2006. ("July 2006 Recommendation"). And Attachment B: Further Recommendation Regarding 2006 Quadrennial Regulatory Review of the Commission's Media Ownership Rules. CAC. Adopted November 5, 2006. ("November 2006 Recommendation")

Recommendation also offered additional suggestions on process and the importance of enforcing Commission media ownership rules.

As the CAC recognized in its November 2006 Recommendation:

The Commission's stated goals, both in its 2002 Biennial Review Order and the 2006 Further Notice of Proposed Rulemaking, in reviewing and possibly revising its media ownership rules are to promote localism, competition and diversity.⁴ From the earliest days of broadcasting, federal regulation has sought to foster the provision of programming that meets local communities' needs and interests. Thus, the Commission has licensed stations to serve local communities and it has obligated them to serve the needs and interests of their communities. Stations may fulfill this obligation by presenting local news and public affairs programming and by selecting programming based on the particular needs and interests of the station's community. Further, one of the FCC's purposes in retaining the national TV ownership rule has been "to preserve the power of affiliates in bargaining with their networks and thereby allow the affiliates to serve their local communities better."

The FCC has relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress than markets that are less competitive. In general, the intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers.

Diversity advances the values of the First Amendment, which, as the Supreme Court stated, "rests on the assumption that *the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.*" The FCC has elaborated on the Supreme Court's view, positing that "*the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.*" [emphasis added]

The FCC has considered four aspects of diversity:

- *Viewpoint diversity* ensures that the public has access to "a wide range of diverse and antagonistic opinions and interpretations." The FCC attempts to increase the diversity of viewpoints ultimately received by the public by providing opportunities for varied groups, entities and individuals to participate in the different phases of the broadcast industry

⁴ In the Matter of 2006 Quadrennial Regulatory Review at 4. (FCC 06-93) Adopted June 21, 2006. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-93A1.pdf

- *Outlet diversity* is the control of media outlets by a variety of independent owners.
- *Source diversity* ensures that the public has access to information and programming from multiple content providers.
- *Program diversity* refers to a variety of programming formats and content.

Since 1973, minority media ownership has been a goal of the Commission's structural ownership regulation. However, recent research shows that 1) Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations in the US, 2) Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations, 3) Hispanics or Latinos comprise 14 percent of the entire U.S. population, but only own a total of 15 stations, or 1.11 percent of all stations, 4) Blacks or African Americans comprise 13 percent of the entire U.S. population but only own a total of 18 stations, or 1.3 percent of all stations, 5) Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations, or 0.44 percent of all stations, and 6) Non-Hispanic White owners controlled 1,033 stations, or 76.6 percent of the all stations.

Minority ownership is endangered because of the present effects of past discrimination, much of which was practiced with the participation of the Commission itself. Discrimination among advertisers and lack of access to capital also remain systemic impediments to diversity. Unless implemented with caution and wisdom, further consolidation is likely to imperil the prospects for a fully integrated radiofrequency spectrum.

Minority ownership promotes competition by ensuring that all sources of intellectual and creative capital are put to their highest use, and because an integrated industry serves the public better and thus competes more effectively than a segregated industry. Minority ownership promotes diversity because minority owners serve interests and address needs not served or often recognized by most majority media.

In its November 2006 Recommendation, the CAC also called on the Commission to adopt rules that will “promote the core values of localism, competition, and diversity, and that will expand the multiplicity of voices and choices that support our marketplace of ideas and that sustain American democracy and creativity. Specifically, accessibility for people who are disabled – including appropriate quality captioning and description – should be part of each broadcast station’s mandate.”

III. CAC Asked if Consumers’ Questions on Localism Will be Answered in Time by the Commission

In response to consumer warnings about the detrimental impact consolidation has had, and will continue to have, on localism and diversity, the Commission, in August 2003, launched a “localism and broadcasting” initiative with the following components:⁵

- created the Localism Task Force (“LTF”) which was charged to –
 - conduct studies to determine the nature and extent of “local” service being provided by broadcasters;
 - organize public hearings on broadcast localism around the country;
 - make recommendations to the Commission on how the agency could best promote localism in radio and television; and
 - advise the Commission on how Congress might change the relevant laws to enhance localism.
- indicated that the FCC would increase its efforts to facilitate the licensing of low power FM stations, which provide highly local service; and
- stated that the FCC would start a formal proceeding, through a Notice of Inquiry (“NOI”), on broadcasting and localism (released July 1, 2004, MB Docket No. 04-233).
 - The NOI process was to operate in tandem with the LTF’s work and seek comment on whether current FCC policies and rules designed to promote localism in fact satisfy their intended purpose, or instead should be changed or supplemented.

A) Results of Localism Task Force Remain Unreleased

In its July 2006 Recommendation, the CAC asked,

Will Consumer Questions on Localism Be Answered in Time by the FCC? From the earliest days of broadcasting, the Commission has obligated licensees to serve the needs and interests of their local communities, as localism is in the public interest and one of the fundamental goals of our ownership rules. In response to consumer warnings about the detrimental impact consolidation has had, and will continue to have, on localism and diversity, the Commission launched an inquiry in 2004 to examine localism. What will the commission conclude from its localism proceeding? How can the FCC proceed on ownership without the localism conclusions available?

As of December XX, 2007, the Commission has not released the LTF’s findings or recommendations to the Commission on how the agency could best promote localism in radio and television. The LTF’s work, therefore, has neither informed Chairman Martin’s proposed rules change nor the public’s comments on that proposal.

B) Disclosure important, but PIOs needed, too

⁵ Broadcasting and Localism. Federal Communications Commission (see http://www.fcc.gov/localism/Localism_Fact_Sheet.pdf)

In its July 2006 Recommendation, the CAC noted that “The public interest would profit immeasurably with some meaningful, but user-friendly, interaction between licensees and their communities.” The CAC asked the Commission to address this question when finalizing media ownership rules changes: “As media conglomerates grow ever bigger and control moves further away from the local community, does it make sense to require, as a condition of renewal or new acquisition, that the owners come to a community and visit with consumers to learn about the problems, needs, and issues facing the local community?” “Such a suggestion,” CAC recognized, “would promote awareness of what members of local communities really want to see and hear in their programming.”

In its November 2006 Recommendation, the CAC, for a second time, called on the Commission to define the consumer interest obligations of broadcasters so that local communities know what to expect from licensees and that these media outlets disclose their public service in an easily-accessible format.

On November 27, 2007, the Commission adopted a Report and Order (not yet available) which requires television broadcasters to provide more information on the local programming they are broadcasting and facilitate the public’s access to that information.⁶ The form requires broadcasters to list various types of programming, including local civic programming, local electoral affairs programming, public service announcements, and independently produced programming, and also includes information about efforts that have been made to ascertain the programming needs of various segments of the community, and information regarding closed captioning and video described content.

However, as of December XX, 2007, the Commission has still not acted on a proceeding⁷ began in 1995 to define the public interest obligations of digital television broadcasters. The changes in media ownership rules considered here are intended, in part, to allow opportunities for new owners of US television stations, namely local. These potential licensees will need further guidance on how to fulfill a new role -- public trustees of the airways in the digital age.

C) Commission Proposal Does Not promote Local Ownership

In its November 2006 Recommendation, the CAC recommended that the Commission adopt rules that encourage local ownership of media outlets. In July 2004, a Commission study, *Do Local Owners Deliver More Localism?*, concluded that locally-owned television stations provide more local news.

Chairman Martin’s proposal does not necessarily encourage local ownership of media outlets. Although newspapers would be permitted to own radio and television stations in their current markets, the newspaper industry already has ownership consolidation: as

⁶ “FCC Requires Television Broadcasters to Provide More Local Programming Information to the Public.” Federal Communications Commission. November 27, 2007. (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278450A1.doc)

⁷ See “Public Interest Obligations of Digital Television Broadcasters Timeline 1995-2007: More than 4,000 days of inaction” Benton Foundation. (<http://www.benton.org/index.php?q=node/4754>).

2005, the 21 newspaper groups with a combined circulation of over 500,000 own 37% of US daily newspapers that represent 66% of the total daily circulation.⁸

IV. CAC Called on the Commission to Adopt Rules that Promote Competition

As representatives of consumers, the CAC recognized in its November 2006 Recommendation that the benefits of competition are innovation, better services and lower prices. The CAC recommended that the Commission adopt rules that it can justify with the delivery of these benefits and manifested through increased responsiveness to community needs and increased diversity of programming. The CAC recommended that the Commission adopt media ownership rules that create an environment for civic discourse where numerous, independently-owned, institutionally-distinct media outlets are accessible to the public including people with disabilities, responsive to local needs and reflective of diverse socio-economic and cultural points of view.

A) Will Ownership Concentration Increase Indecency and Impact Consumer Choice?

In October 2005, the Center for Creative Voices in Media released a report, *Ownership Concentration and Indecency in Broadcasting: Is There a Link?*, which found that from 2000 to 2003, four of the nation's largest radio companies were responsible for 96% of FCC indecency fines, while their stations accounted for only about half of the country's listening audience. The report suggests that an effective and First Amendment-friendly approach to the indecency problem would be to reintroduce meaningful station ownership caps, limit vertical integration of program ownership, and promoting localism and diversity of voices in our nation's media.

In July 2006, the CAC asked the Commission to address this possible link when crafting new rules:

Has consolidation led to an increase in the amount of indecent programming? When programming decisions are made on Wall Street or Madison Avenue, rather than closer to the community, do indecency and excessive violence grow more pervasive? Could meaningful station ownership caps, limits on vertical integration of program ownership, and promotion of localism and diversity in our nation's media curtail broadcast indecency by providing greater consumer choice?

As of December XX, 2006, the Commission has taken no action to investigate a possible link between indecency and media ownership consolidation.

B) What Does Concentration Mean for Consumer Access to Small Local Broadcasters?

⁸ The State of the Media 2007. Project for Excellence in Journalism. (<http://stateofthedia.org/2007>)

In its July 2006 Recommendation, the CAC asked, “What is the potential impact of loosened media ownership rules on small, local broadcasters? Media analysts predict that the only option for most local broadcasters would have been to sell their stations if the 2003 rules were implemented. Would increased consolidation risk sweeping them all away?” These questions are potentially related to the amount of local news and information a community receives: in July 2004, a Commission study, *Do Local Owners Deliver More Localism?*, concluded that locally-owned television stations provide more local news.

Chairman Martin’s proposal bans local newspaper purchase of Top 4 television stations (likely major network affiliates) making smaller (independent stations the targets for purchase).

C) Does Further Concentration Increase the Chances of Payola?

In its July 2006 Recommendation, the CAC noted that the Commission had launched an investigation into allegations of pay-for-play that might form the basis for an enforcement action under the current rules. CAC asked, “Does increasing media consolidation make this problem worse?”

On April 13, 2007, the Commission released Orders adopting Consent Decrees with CBS Radio, Citadel Broadcasting Corporation, Clear Channel Communications, Inc. and Entercom Communications Corp. (collectively, “the broadcasters”). Under the Consent Decrees, the broadcasters agree to pay a combined \$12.5 million to close investigations into each broadcaster’s possible violations of the Commission’s sponsorship identification rules for the practice commonly referred to as “payola.” Specifically, the Consent Decrees resolve allegations that the broadcasters may have accepted cash or other valuable consideration from record labels in exchange for airplay of artists from those labels, without disclosing those arrangements.

When the Consent decrees were released, Commissioner Michael Copps said:

[W]e put the pernicious effects of payola on steroids when we allow excessive consolidation among the licensees of our airwaves. Here, then, is the second culprit: media concentration. The Telecommunications Act of 1996 eliminated the national radio cap, leading to a tremendous wave of consolidation in terrestrial radio. The top ten radio conglomerates now control 2/3 of the total U.S. radio audience. As a result, the payola kingmakers must grease only a relative handful of palms in order to get their anointed commercial artists on the air. This makes an ugly situation uglier. It makes for radio that sounds the same everywhere. It is why in so many places the same handful of songs by the same small crop of artists is in heavy rotation, while local and independent voices never get a spin. What a price we pay. Musical genius in this country runs deep and wide. But, by and large, our airwaves do not reflect it. Concentration of radio ownership has ushered in a new and especially challenging age of payola. But don’t just take my word for it. As the American Federation of

Television and Radio Artists puts it bluntly: “[b]ecause the radio industry is so consolidated, it is more difficult than ever for artists to get airplay on commercial radio.”

This is why I believe these agreements are a starting point, not an end. They address payola in some of its guises, but ignore the harms inflicted by consolidation.

Despite the fact that the broadcasters in this decision were some of the largest radio station owners, the Commission has taken no further action to investigate a link between payola and media ownership consolidation.

D) Do Consumers Deserve More Independent Programming?

In its July 2006 Recommendation, the CAC asked,

Is there a need for independent programming requirements to ensure that consumers do not end up with national, vertically integrated conglomerates that control the distribution of channels and of program content? Network ownership of the full range of prime time programming risks constraining competition, consigning independent production to oblivion or marginal roles, and crippling the production of diverse programming. It can also cause substantial job losses, including for creative artists, technicians and many others.

In October 2007, the entertainment guilds filed a call to the Commission require the major television networks to set aside a quarter of their primetime schedule for independent programming in order to offset growing ownership consolidation.⁹ The Screen Actors Guild, the Directors Guild of America, the Producers Guild of America, the American Federation of Television and Radio Artists, the Writers Guild of America West and East and the Caucus for Television Producers, Writers and Directors argue that one of the Commission’s own media ownership studies showed that the consolidated media landscape was diminishing the number of independent programs on network TV. That study, "Vertical Integration and the Market for Broadcast and Cable Television Programming" by University of Chicago professor Austan Goolsbee, found that of the network shows in primetime only 18% were from independents. The guilds argue that the networks discriminate against independent programming by favoring their own shows over independent programming, even when the independents had higher ratings.

Chairman Martin’s proposal does not address the amount of independent programming available to broadcast television viewers.

⁹ Boliek, Brooks. “Guilds seek primetime quota for indies.” The Hollywood Reporter. October 23, 2007. (http://www.hollywoodreporter.com/hr/content_display/television/news/e3i5cad4a74d4feae82be813e4d3add66eb)

E) Should the Transition to Digital Television Effect how the Media Ownership Rules Are Formulated?

In its July 2006 Recommendation, the CAC notes,

The broadcasters' primary argument for increased local consolidation is to take advantage of economies of scale derived from programming two channels. Once the transition to digital television is complete, television broadcast stations will be able to broadcast multiple program streams in the spectrum space that was previously necessary, with an analog signal, to broadcast only one program stream. With the availability of multiple program streams to each broadcaster without reducing the number of individual broadcast speakers in a local market, does it make any sense to relax any broadcast ownership rules based on economies of scale?

During testimony delivered at the Commission's October 31, 2007 hearing on localism, long-time broadcast television and radio station owner Jim Goodman, the President and CEO of Capital Broadcasting, urged the FCC to wait until after the digital television transition is completed in February 2009 before changing media ownership rules.

F) Should Certain Consumers Count Only Half as Much?

In its July 2006 recommendation, the CAC asked, "Is there still good reason to count a UHF station as only half a VHF station in terms of audience reach?"

Chairman Martin and commenters including the CAC note the changes in the media landscape due to technological changes. However, the Chairman, in proposing no changes other than loosening the newspaper-broadcast cross-ownership rule, fails to recognize changes in how consumers receive local broadcast TV stations.

Cable operators are dominant players in the television delivery market. On cable systems, consumers receive UHF broadcast signals just as well as VHF broadcast signals. However, the Commission has failed to adopt rules that would eliminate the "UHF Discount."

V. How Will the Commission Improve Minority and Female Media Ownership?

In January 2007, Commissioner Michael J. Copps said, "The facts are downright chilling. While people of color make up over 30 percent of our country's population, a study from Free Press last fall tells us that they own only 3.26 percent of all broadcast television stations. Unpack these numbers a little further and you'll find that African-Americans own only 1.3 percent of all stations. And it's sad to say, we're not making progress. There has been no improvement in the level of minority ownership since 1998, even as the total universe of stations has increased by 12 percent. Truth is that there has been a

sharp drop in the total numbers of African-American stations since 1998 – by 30 percent. This isn't just a problem. ***It's a national disgrace.***¹⁰ [*emphasis added*]

In its July 2006 Recommendation, the CAC asked: “What effect could further consolidation have on providing Hispanics, African Americans, Asian-Pacific Americans, Native Americans, women and other minority interests the opportunity to own media outlets? Moreover, what effect does media ownership have on the programs, access, viewpoint diversity, and career opportunities available for these groups as well as the disabled and low-income communities? Specifically, how might media ownership rules affect the availability of closed captioning and video description in markets of all sizes?”

In its November 2006 Recommendation, the CAC recommended that the Commission adopt rules to promote ownership opportunities for minorities, women and people with disabilities before it considers other changes to its media ownership rules. Specifically, the CAC asked the Commission to consider six steps to design its structural rules to promote and protect minority ownership:

1) Manage radio spectrum more efficiently -- including modernizing the antiquated FM allotments process -- so as to create opportunities for new entrants to build and operate their own facilities. There are three ways the Commission could achieve this result:

- i. The Commission could create two new FM classes: Class A1 (1,500 watts at 100 meters) And Class A2 (1,000 watts at 50 meters).
- ii. The Commission could perform a comprehensive engineering search of the FM spectrum to identify the most-needed new allotment opportunities.
- iii. The Commission could replace FM station classes with pure interference-based criteria.

2) Require “Equal Transactional Opportunity” – analogous to Equal Employment Opportunity – barring discrimination on the basis of race or gender in broadcast transactions. The FCC should design a nondiscrimination and modest outreach program in a manner that provides “transactional transparency” and does not disrupt the expectations of station sellers that potential buyers be qualified and observe confidentiality.

3) Build incentives into the rules to reward licensees for trading with, selling to, or incubating socially and economically disadvantaged businesses, including but not limited to minorities. For example allowing holders of expiring construction permits to sell the permits to socially and economically disadvantaged businesses, as an alternative to forfeiting the permits entirely.

¹⁰ Curry, George E. “FCC Commissioner: Declining Black Media Ownership is a ‘National Disgrace’” Baltimore Times. (January 16, 2007) (see <http://www.btimes.com/News/article/article.asp?NewsID=11945&sID=3>)

4) Adopt a Zero Tolerance Policy for ownership structure abuse, thereby assuring that if new rules are adopted, companies will not push the limits even farther, on a de facto basis, than the Commission wishes to go.

5) Phase new regulations into operation cautiously through a Staged Implementation Plan. If the Commission changes media ownership rules, the regulations should take effect in a series of logical Stages (i.e., large markets, then medium, then small; or a few percentage points of permissible market power added at each Stage). Before each Stage, the Commission should measure diversity, competition, localism and minority ownership levels, and each deregulatory Stage would take effect only if each of these measurements shows that the factor being measured is healthy. This procedure will ensure that those lacking quick access to capital (particularly minorities) will have sufficient time to reconfigure themselves in order to compete effectively in the new regulatory environment. A Staged Implementation Plan would avoid the market dislocations that often attend sudden deregulation, and it would have the highly desirable effect of allowing the Commission to terminate its current practice of evaluating requests for waivers of its ownership rules.

6) Encourage voluntary industry efforts to assist minority entrepreneurs, and taking account of these efforts, both in crafting new regulations and in evaluating their impact as they are phased into operation.

Despite calls from the courts, Members of Congress, public interest advocates, and the CAC, the Commission has not addressed minority and female media ownership before proposing rules that could lead to additional media ownership concentration. As Commissioners Copps and Jonathan Adelstein point out, “The non-top four stations that major newspapers will now be competing for are precisely the stations more likely to be owned by small, independent broadcasters. If we ever got serious about women and minority ownership, these are also the stations most available to them. Chairman Martin’s rule pretty much reserves these outlets for the big guys. So this proposal actually *perpetuates* the shamefully low levels of minority and female media ownership.”¹¹

VI. Enforce Media Ownership Rules

In its November 2006 Recommendation, the CAC recommended that the Commission insure that the media ownership rules it retains or modifies are aggressively enforced. The CAC recommended that the Commission clearly state that it will not endorse efforts to evade the spirit of its ownership rules through devices like Local Market Agreements (LMAs)¹² and Joint Services Arrangement (JSAs).¹³ Without effective enforcement these

¹¹ Joint Statement By Commissioners Copps and Adelstein On Chairman Martin’s Cross-Ownership Proposal. November 13, 2007. (see http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278142A1.doc)

¹² An LMA, or time brokerage agreement, is a type of contract in which the licensee of a broadcast station makes available blocks of broadcast time to a broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming.

¹³ JSAs are agreements for the joint sales of broadcast commercial time.

agreements could lead to “virtual duopolies” in markets where such ownership is prohibited.

The CAC also recommended that the Commission ensure and provide clear guidance that requests for ownership rules waivers will be closely scrutinized.

VII. The Commission’s Process Is Rushed

In its July 2006 Recommendation, the CAC recommended the Commission adopt a process in the 2006 media ownership review that would provide a full record on the potential impact of media ownership concentration and actively engage consumers in the proceeding. Specifically, the CAC recommended that the Commission:

- initiate a comprehensive proceeding to adopt rules that would promote the core values of localism, competition, and diversity, and that will expand the multiplicity of voices and choices that support our marketplace of ideas and that sustain American democracy and creativity,
- schedule and attend a series of hearings across the country to engage the American people on the future of their media and to gain a better understanding of the impact of media concentration on our communities,
- compile a complete record, including independent research studies on media concentration in a variety of markets, so that the Commission could make a decision on a more solid foundation than the 2003 effort,
- in releasing a Notice of Proposed Rulemaking, provide full notice and a significant comment period on the specific proposals, as warranted, so that the public knows what new rules the Commission is considering.

The Commission held six media ownership hearings around the country, most recently in Seattle, Washington on November 9, 2007. Just four days after the Seattle hearing, Chairman Martin released his proposal. The public has been given just 19 working days to comment on his proposal and, if press reports are accurate, the Commission will vote on the proposal just one week after receiving these comments.

In July 2007, the Commission released ten research studies intended to inform the Commission’s comprehensive review of its broadcast ownership rules. The studies, which were conducted by outside researchers and by Commission staff, examine a range of issues that impact diversity, competition, and localism, three important policy goals of those rules. The Commission sought public comment on the studies and allowed for peer review. In September 2007, a number of public interest groups asked for additional time to study the research. They also argued that the studies violate the Data Quality Act because they cannot be reproduced and the peer review does not pass muster, and that they violate OMB guidelines because the peer review was not released prior to the studies' publication.

In its November 2006 Recommendation, the CAC urged the Commission freeze all media ownership rulemaking until a full Inspector General investigation can be performed on recently-disclosed FCC studies concerning media ownership. Further, the CAC recommends expansion of the investigation in order to search for any more suppressed research including the results of a contract worth over \$300,000 with Edison Media Research to analyze local radio content.

In August 2006, the Institute for public Representation (IPR) filed a Freedom of Information Act Request (FOIA) for all studies and drafts of studies, reports, and contracts for data or research relating to the FCC's localism and media ownership proceedings. In response the FCC released thousands of pages of documents, including staff memoranda, research, and government contracts. Many of the studies revealed through IPR's request had been previously unreleased by the Commission. Additionally, during a senate reconfirmation hearing for the FCC Chairman, it was suggested that studies covered by IPR's FOIA request may have been intentionally suppressed.

Though the FCC released a sizable amount of material, it withheld an additional 1400 pages of responsive documents, claiming various FOIA exemptions. IPR determined that the FCC had offered insufficient explanations for why it was withholding certain documents, and in some cases had misapplied the FOIA exemptions altogether. In February 2007, IPR filed an administrative appeal of the FCC's FOIA decision, requesting that the FCC release the remaining documents or clarify why it was entitled to continue to withhold materials responsive to IPR's FOIA request. In November 2007, IPR filed a FOIA complaint against the Commission, saying that it failed to respond to its challenge.

In July, the CAC recommended that the Commission provide full notice and a significant comment period on the specific proposals, as warranted, so that the public knows what new rules the Commission is considering. Shortly after, the Commission released its current Further Notice of Proposed Rulemaking (FNPRM) in this proceeding. Upon review, the CAC found the Commission was not being specific enough in its inquiry to generate relevant comments. The CAC recommended the Commission adopt and release another FNPRM with specific proposals concerning the changes to media ownership rules it plans to vote on.

Chairman Martin's proposal, not a formal FNPRM generated from the Commission's Media Bureau, was released on October 13, 2007. The public has been given just 19 working days to comment on his proposal and, if press reports are accurate, the Commission will vote on the proposal just one week after receiving these comments.

Attachment A

**Recommendation Regarding 2006 Regulatory Review of the Commission's Media
Ownership Rules**

Consumer Advisory Committee

Recommendation Regarding 2006 Biennial Regulatory Review of the Commission's Media Ownership Rules

The Commission's Consumer Advisory Committee (CAC) recommends that it would be in the best interest of consumers for the Commission to adopt a process in the 2006 media ownership review that will provide a full record on the potential impact of media ownership concentration and actively engage consumers in the proceeding. CAC recommends it is necessary to have a transparent process that ensures consumers understand the full implications of Commission decisions. Such an open forum is especially critical for public input on issues of this magnitude, especially where the main purveyors of information have historically provided little coverage of this issue. To these ends, the CAC recommends that the Commission:

- begin a comprehensive proceeding to adopt rules that will promote the core values of localism, competition, and diversity, and that will expand the multiplicity of voices and choices that support our marketplace of ideas and that sustain American democracy and creativity,
- schedule and attend a series of hearings across the country to engage the American people on the future of their media and to gain a better understanding of the impact of media concentration on our communities,
- compile a far more complete record, including independent research studies on media concentration in a variety of markets, so that the Commission can make a decision on a more solid foundation than the 2003 effort,
- in releasing a Notice of Proposed Rulemaking, provide full notice and a significant comment period on the specific proposals, as warranted, so that the public knows what new rules the Commission is considering.

Additionally, CAC recommends that it would be in the best interest of consumers for the Commission to answer critical questions before deciding to change media ownership rules.

Key Questions:

- **Will Consumer Questions on Localism Be Answered in Time by the FCC?**
From the earliest days of broadcasting, the Commission has obligated licensees to serve the needs and interests of their local communities, as localism is in the public interest and one of the fundamental goals of our ownership rules. In response to consumer warnings about the detrimental impact consolidation has had, and will continue to have, on localism and diversity, the Commission launched an inquiry in 2004 to examine localism. What will the commission conclude from its localism proceeding? How can the FCC proceed on ownership without the localism conclusions available?

- **Should Certain Consumers Count Only Half as Much?** On February 19, 2004, the Commission sought comment on one part of the 2003 media ownership decision, the so-called “UHF Discount.” Under the UHF Discount policy, a UHF station is considered to reach only 50 percent of the households that a VHF station reaches, notwithstanding that the majority of consumers receive identical UHF and VHF signals over cable and satellite facilities. Is there still good reason to count a UHF station as only half a VHF station in terms of audience reach?
- **What Are the Impacts of Ownership on Minority and Female Participation?** What effect could further consolidation have on providing Hispanics, African Americans, Asian-Pacific Americans, Native Americans, women and other minority interests the opportunity to own media outlets? Moreover, what effect does media ownership have on the programs, access, viewpoint diversity, and career opportunities available for these groups as well as the disabled and low-income communities? Specifically, how might media ownership rules affect the availability of closed captioning and video description in markets of all sizes?
- **Can Consumers Be Assured that their Community Is Being Served?** The public interest would profit immeasurably with some meaningful, but user-friendly, interaction between licensees and their communities. As media conglomerates grow ever bigger and control moves further away from the local community, does it make sense to require, as a condition of renewal or new acquisition, that the owners come to a community and visit with consumers to learn about the problems, needs, and issues facing the local community? Such a suggestion would promote awareness of what members of local communities really want to see and hear in their programming.
- **Will Ownership Concentration Increase Indecency and Impact Consumer Choice?** Has consolidation led to an increase in the amount of indecent programming? When programming decisions are made on Wall Street or Madison Avenue, rather than closer to the community, do indecency and excessive violence grow more pervasive? A recent study finds that from 2000 to 2003, four of the nation's largest radio companies were responsible for 96% of FCC indecency fines, while their stations accounted for only about half of the country's listening audience. Could meaningful station ownership caps, limits on vertical integration of program ownership, and promotion of localism and diversity in our nation’s media curtail broadcast indecency by providing greater consumer choice?
- **What Does Concentration Mean for Consumer Access to Small Local Broadcasters?** What is the potential impact of loosened media ownership rules on small, local broadcasters? Media analysts predict that the only option for most local broadcasters would have been to sell their stations if the 2003 rules were implemented. Would increased consolidation risk sweeping them all away?
- **Does Further Concentration Increase the Chances of Payola?** The Commission has launched an investigation into allegations of pay-for-play that might form the basis for an enforcement action under the current rules. Does increasing media consolidation make this problem worse?

- **Do Consumers Deserve More Independent Programming?** Is there a need for independent programming requirements to ensure that consumers do not end up with national, vertically integrated conglomerates that control the distribution of channels and of program content? Network ownership of the full range of prime time programming risks constraining competition, consigning independent production to oblivion or marginal roles, and crippling the production of diverse programming. It can also cause substantial job losses, including for creative artists, technicians and many others.
- **Should the Transition to Digital Television Effect how the Media Ownership Rules Are Formulated?** The broadcasters' primary argument for increased local consolidation is to take advantage of economies of scale derived from programming two channels. Once the transition to digital television is complete, television broadcast stations will be able to broadcast multiple program streams in the spectrum space that was previously necessary, with an analog signal, to broadcast only one program stream. With the availability of multiple program streams to each broadcaster without reducing the number of individual broadcast speakers in a local market, does it make any sense to relax any broadcast ownership rules based on economies of scale?
- **How have technological advances and new media changed the way consumers use different media obtain information?**

Attachment B
Further Recommendation Regarding 2006 Quadrennial Regulatory Review of the
Commission's Media Ownership Rules

Consumer Advisory Committee

Further Recommendation Regarding 2006 Quadrennial Regulatory Review of the Commission's Media Ownership Rules

The Commission's Consumer Advisory Committee (CAC) recommends that the Federal Communications Commission adopt media ownership rules that create an environment for civic discourse where numerous, independently-owned, institutionally-distinct media outlets are accessible to the public including people with disabilities, responsive to local needs and reflective of diverse socio-economic and cultural points of view.

INTRODUCTION

The Commission's stated goals in reviewing and possibly revising its media ownership rules are to promote localism, competition and diversity. From the earliest days of broadcasting, federal regulation has sought to foster the provision of programming that meets local communities' needs and interests. Thus, the FCC has licensed stations to serve local communities and it has obligated them to serve the needs and interests of their communities. Stations may fulfill this obligation by presenting local news and public affairs programming and by selecting programming based on the particular needs and interests of the station's community. Further, one of the FCC's purposes in retaining the national TV ownership rule has been "to preserve the power of affiliates in bargaining with their networks and thereby allow the affiliates to serve their local communities better."

The FCC has relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress than markets that are less competitive. In general, the intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers.

Diversity advances the values of the First Amendment, which, as the Supreme Court stated, "rests on the assumption that *the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.*" The FCC has elaborated on the Supreme Court's view, positing that "*the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.*"

The FCC has considered four aspects of diversity:

- *Viewpoint diversity* ensures that the public has access to "a wide range of diverse and antagonistic opinions and interpretations." The FCC attempts to increase the diversity of viewpoints ultimately received by the public by providing opportunities for varied groups, entities and individuals to participate in the different phases of the broadcast industry

- *Outlet diversity* is the control of media outlets by a variety of independent owners.
- *Source diversity* ensures that the public has access to information and programming from multiple content providers.
- *Program diversity* refers to a variety of programming formats and content.

Since 1973, minority media ownership has been a goal of the Commission’s structural ownership regulation. However, recent research shows that 1) Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations in the US, 2) Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations, 3) Hispanics or Latinos comprise 14 percent of the entire U.S. population, but only own a total of 15 stations, or 1.11 percent of all stations, 4) Blacks or African Americans comprise 13 percent of the entire U.S. population but only own a total of 18 stations, or 1.3 percent of all stations, 5) Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations, or 0.44 percent of all stations, and 6) Non-Hispanic White owners controlled 1,033 stations, or 76.6 percent of the all stations.

Minority ownership is endangered because of the present effects of past discrimination, much of which was practiced with the participation of the Commission itself. Discrimination among advertisers and lack of access to capital also remain systemic impediments to diversity. Unless implemented with caution and wisdom, further consolidation is likely to imperil the prospects for a fully integrated radiofrequency spectrum.

Minority ownership promotes competition by ensuring that all sources of intellectual and creative capital are put to their highest use, and because an integrated industry serves the public better and thus competes more effectively than a segregated industry. Minority ownership promotes diversity because minority owners serve interests and address needs not served or often recognized by most majority media.

RECOMMENDATION

I. Localism, Competition, and Diversity

The CAC reiterates its call that the Commission adopt rules that will promote the core values of localism, competition, and diversity, and that will expand the multiplicity of voices and choices that support our marketplace of ideas and that sustain American democracy and creativity. Specifically, accessibility for people who are disabled – including appropriate quality captioning and description – should be part of each broadcast station’s mandate.

Localism

The CAC recommends that the Commission adopts rules that encourage local ownership of media outlets. In addition, the CAC again calls on the Commission to define the consumer interest obligations of broadcasters so that local communities know what to expect from licensees and that these media outlets disclose their public service in an easily-accessible format.

Competition

As representatives of consumers, the CAC recognizes the benefits of competition to be innovation, better services and lower prices. The CAC recommends that the Commission adopt rules that it can justify with the delivery of these benefits and manifested through increased responsiveness to community needs and increased diversity of programming.

Diversity

The CAC recommends that the Commission adopt rules to promote ownership opportunities for minorities, women and people with disabilities before it considers other changes to its media ownership rules. Specifically, the CAC asks the Commission to consider six steps to design its structural rules to promote and protect minority ownership:

- 1) **Manage radio spectrum more efficiently -- including modernizing the antiquated FM allotments process -- so as to create opportunities for new entrants to build and operate their own facilities.** There are three ways the Commission could achieve this result:
 - i. The Commission could create two new FM classes: Class A1 (1,500 watts at 100 meters) And Class A2 (1,000 watts at 50 meters).
 - ii. The Commission could perform a comprehensive engineering search of the FM spectrum to identify the most-needed new allotment opportunities.
 - iii. The Commission could replace FM station classes with pure interference-based criteria.
- 2) **Require “Equal Transactional Opportunity”** – analogous to Equal Employment Opportunity – barring discrimination on the basis of race or gender in broadcast transactions. The FCC should design a nondiscrimination and modest outreach program in a manner that provides “transactional transparency” and does not disrupt the expectations of station sellers that potential buyers be qualified and observe confidentiality.
- 3) **Build incentives into the rules to reward licensees for trading with, selling to, or incubating socially and economically disadvantaged businesses, including but not limited to minorities.** For example allowing holders of expiring construction permits to sell the permits to socially and economically disadvantaged businesses, as an alternative to forfeiting the permits entirely.

- 4) **Adopt a Zero Tolerance Policy for ownership structure abuse**, thereby assuring that if new rules are adopted, companies will not push the limits even farther, on a de facto basis, than the Commission wishes to go.
- 5) **Phase new regulations into operation cautiously through a Staged Implementation Plan.** If the Commission changes media ownership rules, the regulations should take effect in a series of logical Stages (i.e., large markets, then medium, then small; or a few percentage points of permissible market power added at each Stage). Before each Stage, the Commission should measure diversity, competition, localism and minority ownership levels, and each deregulatory Stage would take effect only if each of these measurements shows that the factor being measured is healthy. This procedure will ensure that those lacking quick access to capital (particularly minorities) will have sufficient time to reconfigure themselves in order to compete effectively in the new regulatory environment. A Staged Implementation Plan would avoid the market dislocations that often attend sudden deregulation, and it would have the highly desirable effect of allowing the Commission to terminate its current practice of evaluating requests for waivers of its ownership rules.
- 6) **Encourage voluntary industry efforts to assist minority entrepreneurs**, and taking account of these efforts, both in crafting new regulations and in evaluating their impact as they are phased into operation.

II. A Complete Record

The CAC recommends that the Commission compile a complete record, including independent research studies, so that it can make an informed decision. Studies should include updated analyses of concentration in radio and television markets and accurate analysis of the number, location and type of broadcast stations owned by minorities, women and people with disabilities.

The CAC urges the Commission freeze all media ownership rulemaking until a full Inspector General investigation can be performed on recently-disclosed FCC studies concerning media ownership. Further, the CAC recommends expansion of the investigation in order to search for any more suppressed research including the results of a contract worth over \$300,000 with Edison Media Research to analyze local radio content.

III. Full Notice

In July, the CAC recommended that the Commission provide full notice and a significant comment period on the specific proposals, as warranted, so that the public knows what new rules the Commission is considering. Shortly after, the Commission released its current Further Notice of Proposed Rulemaking (FNPRM) in this proceeding. Upon review, the CAC finds the Commission is not being specific enough in its inquiry to generate relevant comments. The CAC recommends the Commission adopt and release another FNPRM with specific proposals concerning the changes to media ownership rules it plans to vote on.

IV. Enforcement

The CAC recommends that the Commission insure that the media ownership rules it does retain or modify are aggressively enforced. The CAC recommends that the Commission clearly state that it will not endorse efforts to evade the spirit of its ownership rules through devices like Local Market Agreements (LMAs) and Joint Services Arrangement (JSAs). An LMA, or time brokerage agreement, is a type of contract in which the licensee of a broadcast station makes available blocks of broadcast time to a broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. JSAs are agreements for the joint sales of broadcast commercial time. Without effective enforcement these agreements could lead to “virtual duopolies” in markets where such ownership is prohibited.

The CAC also recommends that the Commission ensure and provide clear guidance that requests for ownership rules waivers will be closely scrutinized.

V. CAC Assistance

The CAC offers to assist the Commission with the above recommendations by working with Commission staff to create specific language for the above recommendations.