

## STATEMENT OF CHAIRMAN KEVIN J. MARTIN

Re: *In the Matter of 2006 Quadrennial Regulatory Review*

Over the past year and a half the Commission has had to grapple with the most contentious and divisive issue to come before it: the review of the media ownership rules. Today's Order strikes a balance between preserving the values that make up the foundation of our media regulations while ensuring those regulations keep pace with the marketplace of today.

A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. To that end, the FCC's media ownership rules are intended to further three core goals: competition, diversity, and localism.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning television stations, radio stations and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that "...reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." It has been over four years since the Third Circuit stayed the Commission's previous rules and over three years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules.

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input. When we began eighteen months ago, the Commission committed to conducting this proceeding in a manner that was more open and allowed for more public participation.

I believe that is what the Commission has done. First, we provided for a long public comment period of 120 days, which we subsequently extended. We held six hearings across the country at a cost of more than \$200,000: one each in Los Angeles, California, Nashville, Tennessee, Harrisburg, Pennsylvania, Tampa Bay, Florida, Chicago, Illinois, and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, DC. The goal of these hearings was to more fully and directly involve the American people in the process.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. We've received over 166,000 written comments in this proceeding.

We spent almost \$700,000 on ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies. We put those studies out for peer review and for public comment and made all the underlying data available to the public.

Although not required, I took the unusual step of sharing with the public the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review my proposal prior to any Commission action.

We cannot ignore the fact that the media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than thirty years ago. Back then, cable was a nascent service, satellite television did not exist and there was no Internet. Indeed, the newspaper/broadcast cross-ownership rule is the only rule not to have been updated in 3 decades, despite that fact that FCC Chairmen – both Democrat and Republican—have advocated doing so. In fact, Chairman Reed Hundt argued for relaxation in 1996 noting, “the newspaper/broadcast cross-ownership rule is right now impairing the future prospects of an important source of education and information: the newspaper industry.” Application of Capital Cities/ABC, Inc., Memorandum Op. & Order, 11 FCC Rcd 5841, 5906 (1996). And noted above, in 2003 the Third Circuit recognized this fact when it upheld the Commission’s elimination of the newspaper/broadcast cross-ownership ban, affirming the Commission’s determination that it was “no longer in the public interest.”

Consumers have benefited from the explosion of new sources of news and information. But according to almost every measure, newspapers are struggling. At least 300 daily papers have stopped publishing over the past thirty years. Their circulation is down, and their advertising revenue is shrinking.

Newspapers in financial difficulty oftentimes have little choice but to scale back local news gathering to cut costs. In 2007 alone, 24 newsroom staff at The Boston Globe were fired, including 2 Pulitzer Prize-winning reporters; the Minneapolis Star Tribune fired 145 employees, including 50 from their newsroom; 20 were fired by the Rocky Mountain News; the Detroit Free Press and The Detroit News announced cuts totaling 110 employees; and the San Francisco Chronicle planned to cut 25% of its newsroom staff.

Some have suggested that it is not in the business of the FCC to regulate newspapers and their condition should be of no concern to us. But if that is the case, then why do we have rules about what newspapers can or cannot own?

Without newspapers and their local news gathering efforts, we would be worse off. We would be less informed about our communities and have fewer outlets for the expression of independent thinking and a diversity of viewpoints. I believe a vibrant print press is one of the institutional pillars upon which our free society is built. In their role as watchdog and informer of the citizenry, newspapers often act as a check on the power of other institutions and are the voice of the people. Allowing cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share the high fixed costs of newsgathering across multiple media platforms.

Today’s Order amends the 32-year-old absolute ban on newspaper/broadcast cross-ownership. The revised newspaper/broadcast cross-ownership rule would allow a newspaper to purchase a radio station in the largest 20 cities in the country or a television station in such cities—but not one of the top four television stations—as long as 8 independent major voices remain in the market. This relatively minor loosening of the ban on newspaper/broadcast cross-ownership in markets where there are many voices and sufficient competition will help strike a balance between ensuring the quality of local news gathering while guarding against too much concentration.

As I have previously stated, I always intended the negative presumption for all other transactions to be a very high hurdle. As I testified before Congress, I invited suggestions from my colleagues and those in the public interest community as to how we could tighten that standard so everyone would agree it was not a loophole. The edits we included in the order were made at the suggestion of the public interest and consumer advocacy groups to make more meaningful the presumption against transactions in

smaller markets.

I believe we did that today by expressly stating that we will require any applicant attempting to overcome a negative presumption to demonstrate by clear and convincing evidence that post-merger, the merged entity will increase the diversity of independent news outlets and increase competition among independent news sources in the relevant market. Our analysis of the four factors will inform this determination.

In contrast to the FCC's actions 4 years ago and in response to many of the public comments we received in the proceeding, we do not loosen any other ownership rule. We do not permit companies to own any more radio or television stations either in a single market or nationally. Indeed, this rule change is notably more conservative in approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. That rule would have allowed transactions in the top 170 markets. The rule we adopt today would allow only a subset of transactions in only the top 20 markets, which would still be subject to an individualized determination that the transaction is in the public interest.

The new rule balances the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

As the Commission revises its media ownership rules, we must not lose sight of two critical public interest goals – localism and diversity. Indeed, I believe that it is incumbent upon the Commission to do everything it can right now to further these goals and I am pleased the Commission is acting on both today. As difficult as these issues are they are some of the most important to come before us. In fact as many have noted throughout this proceeding, promoting localism and diversity as well as responding to the Congress and the court on the media ownership rules themselves, have been pending before the Commission for far too long. These issues also are ripe for decision and should not be put off any longer.

I appreciate that some of my colleagues and I do not share the same views on the amending the newspaper broadcast cross-ownership rule. But I reject the claims that the process has been unfair or even too rushed. At every step of the process during the last 18 months, whether it came to picking dates or cities for public hearings or commissioning independent studies, I have continually sought, albeit unsuccessfully, consensus with my colleagues throughout this process. For instance, I provided my colleagues a public notice announcing dates for all the remaining hearings, including the Seattle hearing, over a month before it was held, but they did not vote to release it. When we finally announced the Seattle hearing date publicly a week prior to the hearing, they objected that we hadn't provided enough notice. They also claim I didn't listen to the comments of the people in Seattle. However, only 2 people even mentioned newspaper cross-ownership, and one in fact supported relaxation. Indeed, the majority of people expressed concern about consolidation generally, and I believe we are responding by *not* changing the local TV rule, the local radio rule, the local TV/radio rule, the national TV cap, or the national cable cap.

Unfortunately, my Democratic colleagues have been quick to say no to whatever was proposed but never getting to yes or even putting forward their own ideas on the substance of the issues before us.

They wanted public hearings. We agreed. And we provided six.

They asked for independent studies. We agreed.

Only one Commissioner, later in the process, suggested authors for a study. We agreed again, and created another study for those authors to do.

They asked for the studies to be made public. We agreed. They then complained that the studies were posted on the web too soon.

They asked for the studies to be peer reviewed. We agreed. They asked for peer reviews to be made public. We agreed. They then presented us with new individuals they wanted to do additional peer reviews. We again agreed. They then demanded an entirely separate comment cycle on just the peer reviews.

They asked me to complete the localism hearings. We agreed. They then wanted to complete the localism report. We again agreed. They wanted an NPRM on localism. We again agreed. They then wanted more time for the Commission to consider the localism issues and do a final order.

And finally, they demanded I share with the public my proposed rule. I agreed. They then criticized me for making the proposal public in *The New York Times*. They asked for time for the public to comment on my proposal. I agreed. They then demanded a new NPRM on the proposal with many months of comment.

This is a long way of stating the obvious. For a year and half, I have attempted to respond to the legitimate concerns about conducting an open and transparent process with ample opportunity for public input. At each step along the way, as I was crossing the goal line, the goal posts were moved.

While I have and will continue to seek consensus, I have come to the conclusion that it won't ever be possible to ever reach consensus on the media ownership issue. Nevertheless, it is important for the Commission and for the American people that we render a decision on this issue. We must respond to the court remand and to Congress which requires us to review the rules. And we must provide certainty to the media industry which for years has operated in a climate of uncertainty.

In sum, I believe the time has come to act. And I believe today's very modest relaxation of the one rule not relaxed since 1975 is appropriate.

#### **ATTACHMENT TIMELINE OF MEDIA OWNERSHIP REVIEW PROCESS**

<b>July 2, 2003</b>	Commission releases 2002 Biennial Review Order
<b>June 24, 2004</b>	The Third Circuit Court of Appeals issues its decision in <i>Prometheus v. FCC</i> , affirming some Commission decisions and remanding others for further justification or modification
<b>July 24, 2006</b>	The Commission releases <i>Further Notice of Proposed Rulemaking</i> to call for comment on the rules and to seek arguments and factual data about their impact on competition, localism and diversity.
<b>September 8, 2006</b>	FCC Announces Public Hearing in Los Angeles on Media Ownership
<b>September 26, 2006</b>	FCC Announces Details for Public Hearing on Media Ownership in Los Angeles,

CA

- September 29, 2006** FCC Announces Further Details for Public Hearing on Media Ownership in Los Angeles, CA
- October 6, 2006** Public Hearing on Media Ownership, Los Angeles & El Segundo, CA
- October 23, 2006** Comments due in response to July 26, 2006 Further Notice of Proposed Rulemaking
- November 14, 2006** FCC Announces Public Hearing in Nashville, Tennessee on Media Ownership
- November 22, 2006** FCC Names Economic Studies to Be Conducted As Part of Media Ownership Rules Review
- December 1, 2006** FCC Announces Details for Public Hearing on Media Ownership in Nashville, Tennessee
- December 5, 2006** FCC Announces Revised Agenda for Public Hearing on Media Ownership in Nashville, Tennessee
- December 11, 2006** FCC Announces Further Revised Agenda for Public Hearing on Media Ownership in Nashville, Tennessee
- December 11, 2006** Public Hearing on Media Ownership, Nashville, TN
- January 16, 2007** Reply Comments due in response to July 26, 2006 Further Notice of Proposed Rulemaking
- February 8, 2007** FCC Announces Public Hearing in Harrisburg, PA on Media Ownership
- February 16, 2007** FCC Announces Details for Public Hearing on Media Ownership in Harrisburg, PA
- February 21, 2007** FCC Announces Further Details for Public Hearing on Media Ownership in Harrisburg, Pennsylvania
- February 23, 2007** Public Hearing on Media Ownership, Harrisburg, PA
- March 13, 2007** FCC Announces Public Hearing on Media Ownership in Tampa-St. Petersburg, Florida Area
- April 13, 2007** FCC Announces Details for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida
- April 23, 2007** FCC Announces Agenda for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida
- April 26, 2007** FCC Announces Revised Agenda for Public Hearing on Media Ownership in Tampa-St. Petersburg Florida
- April 30, 2007** Public Hearing on Media Ownership, Tampa, FL

<b>June 8, 2007</b>	FCC Announces Localism Hearing in Portland, Maine June 28, 2007
<b>June 12, 2007</b>	FCC Announces Details for Localism Hearing in Portland, Maine on June 28
<b>June 25, 2007</b>	FCC Announces Agenda for Public Hearing on Localism in Portland, Maine
<b>June 28, 2007</b>	FCC Holds Hearing on Localism Issues in Portland, Maine
<b>July 19, 2007</b>	FCC Announces Public Hearing on Media Ownership in Chicago, Illinois
<b>July 31, 2007</b>	FCC Releases and Seeks Comment on Research Studies on Media Ownership
<b>August 1, 2007</b>	FCC Releases Second Further Notice of Proposed Rulemaking
<b>September 4, 2007</b>	FCC Announces Details for Public Hearing on Media Ownership in Chicago, Illinois
<b>September 17, 2007</b>	FCC Announces Agenda for Public Hearing on Media Ownership in Chicago, Illinois
<b>September 20, 2007</b>	Public Hearing on Media Ownership, Chicago, IL
<b>September 28, 2007</b>	Media Bureau Extends Filing Deadlines for Comments on Media Ownership Studies
<b>October 1, 2007</b>	Comments due in response to August 1, 2007 Second Further Notice of Proposed Rulemaking
<b>October 16, 2007</b>	Reply Comments due in response to August 1, 2007 Second Further Notice of Proposed Rulemaking
<b>October 22, 2007</b>	Comments due in response to July 31, 2007 release of media studies
<b>October 24, 2007</b>	FCC to Hold Localism Hearing and Open Commission Meeting, Wednesday, October 31, 2007
<b>October 29, 2007</b>	FCC Announces Panelists for Public Hearing on Localism at FCC Headquarters
<b>October 31, 2007</b>	FCC Holds Public Hearing on Localism in Washington, DC
<b>November 1, 2007</b>	Reply Comments Due in response to July 31, 2007 release of media studies
<b>November 2, 2007</b>	FCC Announces Public Hearing on Media Ownership in Seattle, Washington
<b>November 8, 2007</b>	FCC Announces Agenda and Witnesses for Public Hearing on Media Ownership in Seattle, Washington
<b>November 9, 2007</b>	Public Hearing on Media Ownership, Seattle, WA
<b>November 13, 2007</b>	Chairman Martin Publishes Revision to Newspaper/Broadcast Cross-Ownership Rule
<b>December 4, 2007</b>	Letter sent from Secretary of Commerce, Carlos M. Gutierrez to the Honorable

Harry Reid, Senate Majority Leader, expressing opposition to legislation that would delay FCC action on media ownership rules

- December 11, 2007** The Commission waives the sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 C.F.R. § 1.1203, until 5:30 pm on Friday, December 14, 2007
- December 14, 2007** Sunshine rules go into effect at 5:30pm; Last day to comment on Chairman's proposed rule
- December 18, 2007** FCC Open Meeting