

**DISSENTING STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*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; Public Interest Obligations of TV Broadcast Licensees*

Unprecedented media consolidation in recent years has allowed giant multinational media conglomerates to dominate growing numbers of local news markets from coast to coast. These media giants have swallowed up locally owned newspapers, TV and radio stations across America. This has presented challenges to both our culture and our democracy by undercutting the American tradition of a local press, rooted in and responsive to their own communities.

Central to our American democracy is a rich and varied supply of news and information. An informed citizenry requires the “uninhibited marketplace of ideas,” where there is an open exchange of communications regarding music, news, information and entertainment programming over the public airwaves. Broadcasters, along with newspapers, still produce, disseminate, and ultimately control the news, information, and entertainment programs that most inform the discourse, debate, and the free exchange of ideas. As the Supreme Court has observed, “it is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences.”<sup>1</sup> That right is enshrined in the First Amendment to the U.S. Constitution.

By moving forward now with relaxation of the newspaper-broadcast cross-ownership rule, the majority ignores the repeated pleas of the American people and their representatives in Congress. There is no time-sensitive issue that compels us to act today. In fact, we were asked by leaders in Congress, including our oversight committees, to defer today and conduct a more inclusive process. That we are moving forward when the voices that matter are asking us to refrain defies the imagination.

The FCC has never attempted such a brazen act of defiance against Congress. Like the Titanic, we are steaming at full speed despite repeated warnings of danger ahead. We should have slowed down rather than put everything at risk.

The reasons for Congressional concern were underscored by the frantic scramble to make major policy changes at the last minute to this item. Late last night, there was a brand new proposal to provide waivers to 42 newspaper-television combinations. And not until early this morning, we learned of massive changes to the waiver standards – an issue of grave concern to me and a number of leaders in Congress. The majority argues this item is the product of long and careful deliberation. But after an odyssey through the Commission and the Courts, massive changes and new, previously unseen waivers were adopted in the dead of night on the eve of a vote. That hardly inspires confidence that this was an open, transparent and deliberative process.

The choices made by the majority are stark. The only entities asking for relief are the very media giants we are charged with overseeing. As we were reminded on Capitol Hill, the law does not say we are to serve those who seek to profit by using the public airwaves. The law says we are to serve the public interest. And the public has repeatedly told us they are not interested in further media consolidation.

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<sup>1</sup> *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390; 89 S.Ct 1794, 1807 (1969).

Traveling across the country, we have heard this message in community after community. It is a nonpartisan chorus. Americans from all walks of life and all political perspectives, whether right or left and virtually everybody in between, do not want a handful of companies dominating their primary sources of news, information and entertainment. American distrust of the concentration of power is as old as our nation itself, and is rooted in the American spirit.

The millions of Americans who have spoken up scored a solid victory in forcing the majority to back away from further changes to the Commission's remaining TV and radio ownership rules. Nevertheless, by rolling back the cross-ownership rule, today's decision will open a nationwide bazaar of consolidation that flies in the face of overwhelming public sentiment. Today's decision says to all those people who spoke to us across the country, in churches, synagogues and city halls, "you were wrong. We here inside the Beltway somehow know what is best for you -- better than you know for yourselves." It is a big mistake for big government to say big media is good for you.

Well, I for one believe in the people who pleaded for us to stop further media consolidation. They have extensive experience in the field, devouring media at an enormous rate. The statute governing media ownership is unusually broad in allowing us leeway to define the public interest. Of course, the FCC cannot make these decisions solely by popular opinion, but we walk a dangerous course when three out of five unelected bureaucrats overrule the American people, a much better judge and jury.

People understand what study after study confirms. Despite the growth of other media delivery systems, broadcasting and newspapers are still the most pervasive of all platforms. When people look for local news and information, they turn to their local newspapers and TV stations. For example, 89 percent of people say traditional media are their most important sources of news and current affairs.<sup>2</sup> Free over-the-air broadcasting licenses are scarce, and broadcasters still have an enormous impact on the free exchange of ideas.

This debate is fundamentally about priorities. As we solicited the views of citizens across the country, we did not hear a clamor for relaxation of the cross-ownership rules. We only hear that from media company lobbyists inside the Beltway.

The public is concerned about the lack of responsiveness of their media outlets to what is happening in their local communities, their local artists, their local civic and cultural affairs. They are concerned that people of color and women own too few outlets to have their unique voices heard over the airwaves. They are furious about the level of sexual, violent and degrading material they are seeing and believe media consolidation has something to do with it. And they want us to address the public interest obligations of broadcasters first.

That is why I have insisted that we address and implement improvements to localism and diversity of ownership before – not after – we address the media ownership rules. To get it right, I called for an independent, bipartisan panel to guide us on a course to implement improvements in the level of ownership of media outlets by women and people of color. Many members of Congress and leading civil rights organizations joined that call. And I have demanded, along with many members of Congress, that we finalize the Localism Report and implement real improvements in the responsiveness of media outlets to local concerns first.

Instead, today we are offered half-measures, setbacks and draft proposals in place of real

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<sup>2</sup> See *Further Comments Of Consumers Union, Consumer Federation Of America And Free Press at 111* (Oct. 22, 2007) (noting that these findings are from an FCC-commissioned survey of media usage by Nielsen Media Research, Inc.) (also noting that while a full 46 percent of respondents use TV, radio and/or newspapers but no alternative media, a mere 1 percent of respondents use cable or the Internet, but none of the traditional media).

improvements to diversity and localism. While there are a few useful ideas put forth, for the most part these are half-baked gestures clearly intended as cover for the media consolidation agenda. Rather than take this in order, and address these lingering crises first, the Commission moves obsessively to allow more consolidation, notwithstanding congressional and public concern.

Most troubling, we are not dealing with the problems created by past media consolidation – loss of localism and diversity – before allowing even greater concentration. Allowing newspapers to merge with broadcast outlets only takes more opportunities out of circulation for local owners, women and people of color. And it even further raises the already exorbitant price of station ownership, the biggest barrier to new entrants and aspiring local owners.

The proposal, though portrayed as “modest,” is fraught with substantive problems that should have been addressed through more thoughtful Commission consultation and negotiations. The majority’s decision actually opens the door to dominant local newspapers buying up broadcast outlets in every market in America and potentially of any size.

Even if the proposal were limited to the top 20 markets, that would account for 43 percent of U.S. households, or over 120 million Americans. But the details reveal loopholes that would permit new cross-owned combinations from the largest markets down to the smallest markets, potentially affecting every American household.

There was an effort to tighten the waiver standards, but only very little progress was made, and the implications remain unclear. Unfortunately, we were not shown these changes until the last minute, with little time to respond or offer improvements. Those suggestions we offered were rejected. Despite these eleventh hour changes, the Commission historically has been so lax in granting waivers, even under the current stronger standards of a blanket prohibition on cross-ownership, there is little encouragement that the new waiver language will help. It will be open season for consolidation in markets of all sizes for those who engage in mergers that test our determination to hold the line on these waiver standards.

Exhibit A of a failed waiver process is what occurred just last night at the Commission. After all the time and debate that has occurred over this rule, we learned late last night, on the eve of this morning’s vote, that the Commission would grant waivers to six new newspaper-broadcast combinations, and 36 grandfathered stations, for a total of 42 new waivers. I doubt my colleagues in the majority engaged in much deliberation on how the public interest was served in those communities, ranging from Myrtle Beach, South Carolina to Phoenix, Arizona. Yet this late-night decision will affect the people of these communities profoundly on a daily basis for years to come. Anybody who thinks our processes are open, thoughtful or deliberative should think twice in light of these nocturnal escapades.

Exhibit B is a newly devised Chinese menu of ways to create newspaper-broadcast combinations in markets outside of the Top 20. Under the draft that was circulated around dawn, there are now at least three ways to merge a newspaper with a broadcast outlet in non-top 20 markets. Now, in addition to the rebuttable presumption factors announced in the Chairman’s November 13<sup>th</sup> press release, there will be a strong presumption in favor of more consolidation if a proposed combination meets our existing failing stations standard or results in a new source of local news in the market. I have serious questions about these new proposals. For example, I have real doubts about the Commission’s willingness to enforce the seven-hour weekly news requirement. Also, such a requirement could have a negative impact on the total amount of news through the media. As a study from Free Press and Consumer Union has shown, while the newspaper-broadcast combinations increase its news output – in this case, seven hours per week – news production market-wide diminishes. The Commission should more closely examine this proposal to ensure that it will produce the desired effect.

These loopholes in the Order also undercut the assertion that the proposal would prevent a newspaper from buying one of the top-four rated stations in the same market. That protection does not apply in markets below the top 20, and can be dismissed with the wave of the Commission’s hand in the

larger markets. In reality, under this proposal a newspaper could buy any TV station in any city, no matter how large.

A main public interest justification for newspaper-broadcast cross-ownership has been the claim that relaxing the rule would create more local news. A path-breaking study by leading consumer organizations, using the FCC's own data, demonstrated that claim to be wrong. They found that the data underlying an FCC-sponsored study finding more local news by cross-owned stations actually reveals that there is less local news in those markets as a whole, taking into account all news outlets. It remains unclear exactly why the overall level of local news available diminishes. Perhaps it is because other outlets choose not to compete with the local leviathan or maybe they lose equal access to the newspaper's investigative and news resources. But the fact is the Commission's own data reveals the other outlets in those cities reduce their news coverage more than the cross-owned outlets increase it. So not only is less news produced in the market, but an independent voice is silenced when the dominant local newspaper swallows up a broadcast outlet. We should have examined the root causes of this problem and addressed it before relaxing the cross-ownership rule.

We also failed to study the relationship between inappropriate programming for children, such as excessively sexual or violent programs, and the concentration of media ownership. A 2005 report found that 96 percent of all the indecency fines levied by the FCC in radio from 2000 to 2003 (97 out of 101) were levied against four of the nation's largest radio station ownership groups. The remaining 11,000-plus stations were responsible for just four percent of all FCC radio indecency violations, a fraction of their national audience share. While the radio report did not prove a causal link between ownership concentration and broadcast indecency, I believe the Commission has an obligation to study and understand the relationship between media concentration – station ownership and program ownership – and indecency before we permit more consolidation. Further, a study last year by the Parents Television Council found that, in the midst of an unprecedented wave of media consolidation between 1998 and 2006, violence on TV during the evening hours of 8:00, 9:00 and 10:00 grew by 45, 92 and 167 percent, respectively. Commissioner Copps and I requested a full FCC field hearing to explore the relationship between media consolidation and the rising volume of material inappropriate for children in the media, but not one was held.

For many years, the underpinnings of the Commission's public interest analysis with regard to media have been to promote localism, competition, and diversity. Yet it is clear from the record that this decision undermines all of these goals. As a result of newspaper-broadcast cross-ownership, there is less local news in the market as a whole and there is less competition for stories and ideas since two competing entities become one. There is also less diversity, as a voice in the market is lost, and broadcast outlets are taken even further out of reach of women and people of color.

The ostensible reason to ignore all of these detrimental consequences was the importance of saving the newspaper industry that would otherwise wither on the vine. As many have pointed out, we are not in the business of guaranteeing newspaper profits. Perhaps if we were, we would better understand why relaxing the cross-ownership rule is not the right prescription for addressing real issues and opportunities newspapers face as the internet rapidly becomes the means of distribution for news. The record shows that news content is still largely generated by newspapers and TV stations, even though the means of distribution are changing with the emergence of broadband.

In fact, the newspaper industry is quite healthy, with profit margins of around 20 percent, exceeding the average of S&P 500 companies.<sup>3</sup> The problem for newspapers is that those margins and revenues are declining, and Wall Street looks askance at the trends, despite the huge continued cash generation of newspapers. The problem is that broadcasters are also seeing slow growth or revenue

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<sup>3</sup> See *Further Comments of Consumers Union, Consumer Federation of America and Free Press at 48 (Dec. 11, 2007)*.

declines, again despite very healthy, if shrinking, margins. Wall Street analysts have recognized what the majority apparently missed. You cannot address the financial problem of shrinking margins of newspapers by combining them with broadcast outlets that also have shrinking margins. The real challenge for both outlets is to better monetize their news-gathering functions from the growing audience who views them for free on the Internet.

In the final analysis, we could have achieved a bipartisan agreement on a reasonable process to finalize the media ownership proceeding that addressed the many concerns raised by the public, leading consumer advocates and Congress. I worked to achieve that goal by offering to follow the bipartisan path laid out by Members of Congress and the Senate Committee on Commerce, Science and Transportation.

Sadly, that was a road not taken, and Members of Congress have clearly signaled there will be consequences for this breakdown of deference and cooperation. We ran so many red lights it would make Mario Andretti blush. It is now up to Congress and the courts to address the pileup that resulted. With the encouragement of the American people, who are certain to share the outrage over this decision, I certainly hope and believe that others will have the final word on this issue.

Finally, I want to recognize and thank the many groups and individuals who have provided me with important counsel during this difficult proceeding: Free Press, Media Access Project, Consumers Union, Institute for Public Representation, Consumer Federation of America, Communications Workers of America, the Writers' Guilds of America, the Media and Democracy Coalition and the tens of thousands of volunteers and members of the public who have reached out to this Commission to express their concerns.