

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART**

Re: *2010 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, MB Docket No. 09-182, Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294, Notice of Proposed Rulemaking*

The media marketplace has experienced a dramatic transformation over the past decade. More relevant to this proceeding, however, significant market developments have taken place since the previous review of our media ownership rules commenced in 2006. American consumers no longer live in a world limited to broadcast stations and newspapers. They also receive programming via cable, satellite and the Internet, not to mention mobile platforms. Today’s notice recognizes that the current media landscape has more delivery platforms than just broadcasting and newspapers; however, this vibrant competition is not reflected in the tentative conclusions. Instead, the Commission appears to be prepared to accept a regulatory *status quo* by entrenching itself into an overly-cautious, wait-and-see approach regarding the further development of new media platforms even though they have already revolutionized the market.

Perhaps the Commission’s proposed regulatory sclerosis can be explained by the history of appellate litigation that has affected our media ownership proceedings. Even though several stakeholders recently petitioned the Supreme Court to review the 2006 rules, no legal hurdles preventing us from modernizing our rules to reflect the economic and technological realities of the current marketplace stand in our way. The Commission has been aware since at least 2002 that the Internet was having a profound effect on the media landscape. Maintaining decades-old industrial policy in this age of competition, mobility and new media is not in the public interest, and it certainly is not what Congress intended when it directed the Commission to repeal or modify unnecessary regulation.

While I applaud the proposal to eliminate the radio-television cross-ownership rule, I am disappointed that we tentatively conclude to retain most of the existing media ownership rules, including the dual network, local television and local radio ownership rules. Moreover, while the Commission does propose an anemic relaxation of the newspaper-broadcast cross-ownership rule for the largest markets and seeks comment on eliminating restrictions on newspaper/radio combinations, the proposals do not go nearly far enough. We should seek comment on a much more dramatic modernization, if not complete elimination, of the 36-year-old newspaper-broadcast cross-ownership rule. Broadcast stations and daily newspapers are grappling with falling audience and circulation numbers, diminishing advertising revenues, and staff reductions as online sources gain in popularity. The notion that broadcasters may distribute their content through radio, television, the Internet, mobile devices and other unforeseen portals, but must be prohibited by law from printing the same content on the medium of newsprint, seems anachronistic at best. Arcane and burdensome rules should not be allowed to continue impeding, or potentially impeding, the ability of broadcasters and newspapers to survive and thrive in the digital era.

In fact, contrary to eliminating outdated regulations, the Commission is suggesting rule changes that would be more burdensome than existing regulations. For instance, the proposal to apply ownership combination restrictions to daily newspapers and television stations within the same Nielsen Designated Market Area may prohibit ownership combinations that are currently permitted. Further, I am troubled by yet another round of inquiries – this time within the framework of our attribution rules – into shared service agreements and other local newsgathering cooperative efforts. These arrangements are used to reduce the costs of news production and any action taken to hinder such relationships may have unintended consequences, such as reducing the quality and quantity of local news and exacerbating the failure of more newspapers. We must be wary of taking actions in the name of promoting journalism, especially if they could have the opposite effect. As I have often said, journalism does not need the government’s “help.” That very notion raises serious constitutional concerns.

In this notice, we also seek comment on the myriad proposals to enhance media diversity that have been introduced over the past few years. Our query is not only understandable but necessary as well in light of the *Prometheus II* decision, whereby the Third Circuit struck down many of the diversity provisions adopted in the 2007 Diversity Order. While some are neutral, several of these proposals are race and/or gender based. For those proposals aimed at expanding media opportunities for minorities and women, we have to be mindful that any action the Commission would take in this area *must* also be legally sustainable and satisfy the rigorous demands of the Equal Protection Clause, as interpreted under the Supreme Court’s *Adarand* line of cases. As I have said several times before, the diversity studies should be completed as soon as possible to assist us in supporting any new race- and/or gender-based regulations and determining the best approaches to increase media diversity, in accordance with the Constitution.

For these reasons, I vote in support of seeking comment on the diversity proposals and eliminating the radio-television cross-ownership rule. I must concur, however, on the rest of the notice, because I cannot agree with the tentative conclusions to retain the remainder of the media ownership rules and have serious concerns regarding the possible attribution of agreements broadly relating to the programming and/or operation of broadcast stations. I have not seen any data, nor is there any evidence cited in the notice, that would support such regulation. Nevertheless, I will keep an open mind and look forward to reviewing the submissions that are filed. I hope that stakeholders will provide comprehensive data and information regarding the competitive nature of the media sector and the effects that the proposed rules will have on industry and American consumers. I also remain hopeful that the Commission will pursue the deregulatory approach mandated by Congress. In that regard, I commend the Chairman for accepting edits to elicit information about the benefits of shared service agreements and newspaper-broadcast cross-ownership and the possible harms that could result if the proposed rules are adopted. Finally, I thank the staff of the Media Bureau for their hard work on this notice and the work that still remains before them.