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Commissioner Kevin Martin, Chair
Commissioner Deborah Tate
Commissioner Robert McDowell
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Federal Communications Commission
445-12th Street SW
Washington, DC 20554

Dear Commissioners:

Thank you for the opportunity to testify before the Federal Communications Commission regarding media consolidation. As Attorney General for the State of Washington, I have a keen interest in competition and a fair and open marketplace. I am also a strong believer in the First Amendment and the importance of robust and diverse media in our democratic society. With this in mind, I have a number of concerns about this hearings process and the underlying policy proposals. I understand I am not alone in these concerns.

The Process

A. The Further Notice of Proposed Rule-Making is arguably improper. It does not clearly set forth specific rules, but outlines the history of the prior rules and asks a series of questions regarding what steps should be taken next. Rather than pose specific questions designed to determine the facts, the questions are generally philosophical. Therefore, it is extremely difficult for consumers to assess exactly what the FCC is proposing. I am concerned that any rules that come out of this process will be challenged in court again—and likely successfully.

B. The Seattle hearing itself was announced with very little warning. While there were rumors of a potential hearing, they were vague at best. Sen. Maria Cantwell and Rep. Jay Inslee were correct in asking for at least one month's time so that testimony could be adequately prepared in an informed manner. Yesterday, Sens. Byron Dorgan, D-N.D., and Trent Lott, R-Miss. proposed the Media Ownership Act of 2007, which would require the localism study be completed, formal policies be proposed and the public be given 90 days to comment, before other media-ownership issues are considered.¹ I agree with that proposal.

¹ See November 9, 2007 Seattle Times editorial "FCC in Seattle: Time to Listen".

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C. The hearings have been segregated into separate topics. The Commission should have invited input on all topics because the issues of local ownership and media consolidation are intertwined and cannot be segregated. In its holding, the *Prometheus* court explained how issues of localism and cross ownership intertwine. Part of the FCC's justification for lifting the ban on cross-ownership was that the ban might actually undermine localism. It claimed it had evidence indicating that:

- 1) newspaper-owned broadcast stations (grandfathered by the rule) were producing higher quantity and quality of local news;
- 2) commonly owned newspapers and broadcast stations do not necessarily speak with a single voice; and
- 3) there are diverse viewpoints from other media sources in local markets (cable, internet) to compensate for lost viewpoints due to newspaper/broadcast combinations.

Based on this, the Court asked that localism and cross-ownership be considered together so that the FCC's arguments can be explored. Continuing to segregate the topics prevents that from happening.

Media Consolidation

A. Changing the cross-media limits may have an impact on local ownership, which may reduce the amount of local news available: Driving the point home further that localism and cross-ownership are intertwined, and contrary to what the FCC studies apparently found, the group Reclaim the Media cites the following statistics:

- Locally owned broadcast companies devote, on average, an additional 20 to 25 percent of their newscasts to local news stories - approximately five more minutes per half hour broadcast than nationally owned stations.
- When ownership is transferred from a local family to a national chain, local issues get less coverage.
- Newsrooms owned by big chains rely more on syndicated feeds and are more likely to air national stories with no local connection.

Furthermore, Derek Turner, research director of Free Press, a media-overhaul group, said its analysis of FCC data found markets where companies had waivers to own newspapers and TV stations had less local news than markets that didn't.²

B. More complete, rigorously peer-reviewed and corrected economic studies are needed, especially if such studies are going to be relied upon to allow a loss of business competition: From an antitrust enforcement standpoint, the Attorney General's Office is concerned that lifting the ban on cross-ownership will result in market power far above anything allowed under antitrust laws.

Allowing unchecked acquisitions could concentrate market power into too few competitors. The FCC claims that it has conducted 10 studies in this area, yet critics say those

² See November 1, 2007 Seattle Times "Media Ownership Action May Stall"

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studies are biased and flawed. The disagreement between what the FCC is saying and what groups such as Consumers Union, Reclaim the Media and Free Press are saying about the economic literature indicates that there is room for more complete study.

Additionally, the lack of competition in the media could adversely impact small businesses. Small, local businesses need to be able to advertise via local media outlets such as radio. If national conglomerates own both national and local stations, and prefer to do business with national advertisers, or their own related companies, will small local businesses still be able to buy advertising time at a reasonable cost?

C. The FCC should use standard antitrust analysis: The Third Circuit repeatedly instructed the FCC to use the DOJ/FTC enforcement guidelines to measure market power and industry concentration. The Third Circuit repeatedly told the FCC to use real world data such as actual market share, instead of inadequate proxies. As directed by the courts, the FCC should use the standard measures of market share used by the DOJ and FTC to measure markets and should analyze the markets in the same way.

D. More complete studies should be conducted to assess the impact of the new rules on current and potential minority and small business owners: Ironically, while the FCC has expressed concern about maintaining viable ownership by women and minorities, their new rules allowing huge conglomerates to capitalize expansion into cross-ownership makes it impossible for small businesses, especially those owned by women and minorities, to compete for those licenses. The Third Circuit made note of this in the *Prometheus* decision. Cmmr. Copps says that people of color make up 30 percent of our population, yet own only 4.2 percent of our radio stations and 1.5 percent of our TV stations. Here in Washington we have a growing minority community and would like to protect those communities' ability to compete for licenses against huge conglomerates.

Clearly, there are many thorny issues the Commission must address before moving forward in this rule-making process. I respect your position and the difficult balancing act you face in protecting access to the media while ensuring a competitive marketplace. That is why it is all the more important that you provide complete, trusted, independent and peer-reviewed analysis of these issues—and why it is vital all interested parties have adequate time to read this analysis, review your proposals and provide informed input before any changes to FCC rules are adopted.

Sincerely,



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