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Key Arguments for Rejecting the FCC's Media Ownership Rules in the Feb. 11 Third Circuit Court of Appeals Case

(Prometheus Radio Project et al v. FCC)

In creating its new media ownership rules, which allow massive consolidation among local broadcast media, including newspaper-TV mergers in 90 percent of local markets, the Federal Communications Commission (FCC):

- **CREATED AN IRRATIONAL AND INTERNALLY CONTRADICTORY ORDER:** The FCC says the amount of market share a certain media has is critical to determining diversity of television ownership, but then absolutely disregards market share when it comes to allowing newspaper-TV cross ownership. For example, the Commission counts UHF television stations as a "full voice" in the context of newspaper-TV cross ownership, which inflates their importance and allows for more mergers, but counts those same UHF stations as only a 50 percent voice in the national television ownership cap. The only thing consistent in the FCC rules is that they help big media companies get bigger in every instance, but the methods the agency uses to achieve those results are irrational and contradictory.

- **WRONGLY FOCUSED ON THE INCREASE IN MEDIA OUTLETS, NOT THE FACT THERE ARE FEWER OWNERS OF THOSE OUTLETS:** The FCC found that in order to meet its obligation to promote diversity and localism under the Communications Act, independent media ownership and local news should be the focus of its rules. But the FCC repeatedly ignored those criteria when creating the new rules by focusing on the number of outlets, rather than who owns those outlets, which is inconsistent with its self-described goals and mandates under the Communications Act.

  It is an uncontested fact that media ownership has become massively more concentrated in recent years: Since 1975, two-thirds of America's independent newspaper owners have disappeared and nearly three-quarters of America's media markets have only one local daily newspaper; since 1996, the number of radio owners had dropped by 25 percent (from 5,100 to 3,800) and television owners by one-third (543 to 360).

- **WRONGLY CLAIMED NEWSPAPERS NOT IMPORTANT SOURCE FOR LOCAL NEWS:** The FCC acknowledges the importance of local news in creating the rules, but then ignores the facts about local news usage. For example, in creating its Diversity Index – which determines where local newspaper-TV mergers will be permitted — the Commission gave newspapers a weight of only 29 percent (based on faulty survey data), undercutting their importance for local news.

Yet a new, scientific survey commissioned by Consumers Union and Consumer Federation of America shows newspapers are the most important and frequent source of local news for 61 percent of people. The FCC also dramatically overstated the importance of the Internet and radio, giving them a combined 37 percent weight — more than three times their real importance. Survey results show only 10 percent of people use the Internet and radio as their source for local information. The fact that the FCC underestimated the importance of local newspapers by a two-to-one margin, and overestimated the Internet and radio by more than a three-to-one margin when it comes to sources of local news, illustrates the fundamental illogic of the rules.

- **BASED RULES ON A WRONG PREMISE THAT PRODUCES NONSENSICAL RESULTS:** The FCC's poorly crafted Diversity Index produces absurd results that don't reflect the reality of the marketplace. In the New York City area, for example, Shop at Home Incorporated TV, Dutchess Community College TV and Multicultural Radio Broadcasting Inc. (with three radio stations) each has been given more weight under the index than the *New York Times*. In the Tallahassee, Fla., area, the *Thomasville Tribune* with daily circulation just under 10,000 per day is given equal weight with the *Tallahassee Democrat*, with more than 50,000 daily circulation, and twice as much weight as the local CBS affiliate, which has over 50,000 viewers a day and 59 percent of the TV market. These results illustrate how skewed the FCC's basis is for allowing media mergers in most of the nation's markets.

- **REFUSED TO SEEK PUBLIC INPUT ON THE TOOL THAT IS THE HEART OF THE RULES:** Since the "diversity index" is the primary tool the FCC uses to determine how much consolidation can occur in each media market, it should have solicited public input on the mechanics of the index as is required by the Administrative Procedures Act. Instead, the FCC formulated the index behind closed doors. In fact, a bipartisan majority on the Senate Committee charged with the FCC's oversight asked the FCC to show them how the Diversity Index operated before the agency issued a final rule; despite this reasonable request for information, the FCC barreled ahead with radical changes in the nation's media markets without allowing any sunshine in the process.

To view the national media usage survey, go to www.consumersunion.org.

For more on the case go to http://www.mediaaccess.org/mediaownershipcase.html