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## Chairman Martin Proposes Revision To Newspaper/Broadcast Cross-Ownership Rule

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**From: Michael H. Shacter**

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Federal Communications Commission Chairman Kevin J. Martin has proposed a revision to the ban on newspaper/broadcast cross-ownership. In an unusual twist, the Chairman's proposal was issued as a press release rather than as a further notice of proposed rule making in the docket for review of broadcast ownership rules.

The news release characterizes the Chairman's proposal as a modest one that "would permit cross ownership only in the largest markets where there exists competition and numerous voices." The Commission would presume that a newspaper/broadcast transaction was in the public interest if it met the following tests:

- the market at issue is one of the 20 largest Nielsen Designated Market Areas ("DMAs");
- the transaction involves the combination of a major daily newspaper and one television or radio station;
- following a newspaper/television transaction, at least 8 independently owned and operating major media voices (defined to include major newspapers and full-power commercial TV stations) would remain in the DMA; and
- in a newspaper/television transaction television, the television station is not among the top four ranked stations in the DMA.

A careful reading of the text of the proposed rule discloses that the revision is broader than might be inferred solely from the press release. Under proposed new Section 73.3555(d)(2), newspaper cross-ownership would be permitted whenever the Commission makes a finding that the joint ownership is in the public interest. The preceding factors create a presumption that the public interest would be served, but the Commission could also find that newspaper/broadcast joint ownership is in the public interest on an ad hoc basis. Among other factors, the Commission would be required to consider the following:

- whether the cross-ownership will increase the amount of local news disseminated through the affected media outlets in the combination;
- whether each affected media outlet in the combination will exercise its own independent news judgment;

- the level of concentration in the DMA; and
- the financial condition of the newspaper and, if the newspaper is in financial distress, the owner's commitment to invest significantly in newsroom operations.

Regardless of how Chairman Martin's rule is interpreted, it is certainly more restrictive than the proposal adopted by the Commission in 2003—which was struck down by the U.S. Court of Appeals for the Third Circuit. The Commission's 2003 rules would have eliminated the cross-ownership limitations in DMAs with more than eight full-power television stations. In markets with between three and eight television stations, a newspaper/broadcast combination would have been permitted to own (a) one television station and up to half the permitted number of radio stations in the market or (b) up to 100% of the permitted number of radio stations in the market and no television stations. Newspaper/broadcast cross-ownership would have been prohibited in markets with three or fewer television stations.

The Chairman's proposal drew a prompt response from Commissioners Capps and Adelstein, who characterized it as a "generous gift to Big Media before the holidays" and a "lump of coal" for everyone else.

The Chairman has invited public comment on his proposal. Comments should be filed in MB Docket No. 06-121 by December 11, 2007.

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