



Office of Commissioner Robert M. McDowell
Federal Communications Commission
Washington, D.C. 20554

April 3, 2009

Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Prometheus Radio Project, et al. v. Federal Communications Commission, Docket Nos. 08-4454, 08-4455, 08-4456, 08-4457, 08-4458, 08-4459, 08-4460, 08-4461, 08-4462, 08-4463, 08-4464, 08-4465, 08-4466, 08-4467, 08-4468, 08-4469, 08-4470, 08-4471, 08-4472, 08-4473, 08-4474, 08-4475, 08-4476, 08-4477, 08-4478, 08-4652

To the Clerk of the Court:

I am submitting this letter to provide the Court with additional information concerning the pending cases in the above-referenced dockets (the "media ownership docket"). On April 2, 2009, the Federal Communications Commission (the "Commission") filed a Notice in the media ownership docket that alters the agency's litigation procedural posture. The Notice withdraws the Commission's Opposition to Motion to Hold for Abeyance made on January 9, 2009, under the leadership of then-Chairman Kevin Martin. By withdrawing that filing, the Notice effectively informs the Court that the Commission has no objection to delay in the resolution of the pending challenge to the agency's latest media ownership decision. *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order on Reconsideration, 23 FCC Rcd 2010 (2008).

The Notice states that the Commission has had a change in leadership since the January 9 filing was made and that the position expressed in that filing no longer reflects the view of the majority of the current commissioners. I wish to clarify here that I respectfully disagree with the substance of the April 2 Notice. Rather, I support the position expressed in the January 9 Opposition, which urged the Third Circuit to proceed with its consideration of the court challenge. I agree that, as that Opposition stated, "[t]here has already been a lengthy period of uncertainty surrounding the Commission's media ownership rules, and the public interest weighs heavily against further delay in judicial review, particularly given the deteriorating health of the newspaper industry." I also note that the grave economic situation now confronting the nation's "newspapers and news media" is a matter of immediate concern to lawmakers in Congress and top antitrust enforcement officials at the U.S. Department of Justice. *See Letter from Nancy Pelosi, Speaker of the U.S. House of Representatives, to Eric H. Holder, Jr., Attorney General of the United States, at 2 (March 16, 2009) (calling upon DOJ in merger reviews concerning newspapers to consider "other sources of news and advertising outlets available in the*

electronic and digital age”) (attached); *see also* R. Mikkelsen, *U.S. Law Chief Open to Antitrust Aid for Newspapers* (March 18, 2009), <http://www.reuters.com/article/-industryNews/idUSTRE52H81K20090318> (reporting Holder response) (attached).

In addition, I agree with the position expressed in the January 9 Opposition concerning the juxtaposition of the pending litigation and the agency’s ongoing obligations under Section 202(h) of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996): “The Commission would also benefit from a resolution to this litigation before the agency is required once again to perform its statutorily mandated periodic review of its media ownership rules next year.”

I request that this letter and attachments be included in the above-referenced dockets. Should any questions arise concerning this submission, please do not hesitate to contact me through my legal advisor for media issues, Rosemary Harold, at (202) 418-2272 or rosemary.harold@fcc.gov.

Respectfully submitted,



Robert M. McDowell
Commissioner,
Federal Communications Commission



Nancy Pelosi
Speaker of the House

March 16, 2009

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

I am writing about the conditions news organizations across the country are experiencing in their efforts to survive. This is prompted not only by the serious economic challenges facing my constituents in San Francisco, including *The San Francisco Chronicle* and other news organizations in the Bay Area, but also by major news organizations across the country.

I am sure you agree that a strong, free, and independent press is vital for our democracy and for informing our citizens, especially news organizations that devote resources to gathering news. Our newspapers and news media must be able to engage in investigative journalism and to analyze significant issues, so citizens are informed of public policy issues and public officials are held accountable. As a recent New York Times story on the threats facing the industry noted: "For more than two centuries, newspapers have been the indispensable source of public information and a check on the abuses of government and other powerful interests." (See Richard Pérez-Peña, *As Cities Go from Two Papers to One, Talk of Zero*, N.Y. Times, March 12, 2009).

Given the significance of this issue to our democracy, the House Judiciary Subcommittee on Courts and Competition Policy will soon hold a hearing and discuss its implications for antitrust policy.

Over the years, antitrust laws have been an essential protector of competitive choice in the newspaper business, both for keeping members of the public informed and for enabling advertisers to reach them. The antitrust laws are every bit as vital in this industry as elsewhere in our economy, and perhaps more so given the First Amendment issues that are also at stake. I am confident that the Antitrust Division, in assessing any concerns that any proposed mergers or other arrangements in the San Francisco area might reduce competition, will take into appropriate account, as relevant, not only the number of daily and weekly newspapers in the Bay Area, but also the other sources of news and advertising outlets available in the electronic and digital age, so that the conclusions reached reflect current market realities. This is consistent with antitrust enforcement in recent years under both Republican and Democratic

Administrations. And the result will be to allow free market forces to preserve as many news sources, as many viewpoints, and as many jobs as possible.

We must ensure that our policies enable our news organizations to survive and to engage in the news gathering and analysis that the American people expect. Thank you for your consideration.

with best regards,


NANCY PELOSI



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U.S. law chief open to antitrust aid for newspapers

Wed Mar 18, 2009 7:18pm EDT

By Randall Mikkelsen

WASHINGTON (Reuters) - U.S. Attorney General Eric Holder said on Wednesday preserving a healthy newspaper industry was important and he was open to adjusting antitrust policy if it could help.

"I'd like to think 20, 30, 40 years from now people will still be reading the newspaper," Holder told reporters.

He was responding to a call by House of Representatives Speaker Nancy Pelosi, urging the Justice Department to give newspapers more leeway to merge or combine operations.

The industry is reeling from declining circulation, economic recession and a shift in advertising and reader attention to online media. Venerable newspapers have closed or -- such as the Hearst Corp's Seattle Post-Intelligencer this week -- gone to Internet-only editions with reduced staff.

"I think it's important for this nation to maintain a healthy newspaper industry. So to the extent that we have to look at our enforcement policies and conform them to the realities that that industry faces, that's something that I'm going to be willing to do," Holder said.

Some struggling newspapers in multiple-newspaper cities have limited antitrust immunity under the 1970 Newspaper Preservation Act, allowing them to combine business activities while maintaining separate news operations.

Pelosi, a Democrat whose California district is served by Hearst's The San Francisco Chronicle, urged Holder to take a broad view of newspaper competitors under antitrust law and include "electronic and digital" outlets.

Such a view could make it easier for a paper such as the Chronicle to merge non-news operations with a company such as the Bay Area News Group, which owns papers in nearby San Jose and Oakland.

Newspaper defenders say online news outlets lack the resources and ambition of newspapers. "Our newspapers and news media must be able to engage in investigative journalism and to analyze significant issues, so citizens are informed of public policy issues and public officials are held accountable," Pelosi said in her letter to Holder.

Holder said he had not yet seen Pelosi's letter. He said he is a regular consumer of online news "on my computer and iPhone and all that."

"But I think that we need to have a healthy, vibrant newspaper industry, and I don't mean just online."

(Additional reporting by Richard Cowan; Editing by Eric Beech)

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