



Congress of the United States

House of Representatives

Washington, DC 20515

September 14, 2007

The Honorable Kevin J. Martin
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Martin:

We are deeply alarmed by the current state of affairs at the Federal Communications Commission regarding the Further Notice of Proposed Rulemaking on media ownership in America. We write to request that you immediately clarify a number of issues that seriously jeopardize any future progress you hope to make on this FNRPM, and delay all deadlines pertaining to public comment on these studies until such clarification is complete.

On July 31, 2007, the FCC made public ten scientific studies it had commissioned from internal staff and outside groups regarding media ownership in America. While we do not possess the scientific expertise to judge the accuracy of these studies, we are concerned by a number of process issues that nonetheless call their legitimacy into question.

- The FCC has not revealed how it recruited individuals to conduct these studies. There has not been any discussion of either how the FCC developed its pool of qualified candidates, or of the rubric that was ultimately employed in selecting these authors from that pool. In addition, there have been no assurances made that the commission followed procurement procedures required of federal agencies.
- Furthermore, we have learned that on Tuesday, September 11, 2007, the author of the third media ownership study, Dr. Gregory S. Crawford, was appointed Chief Economist of the Federal Communications Commission. This revelation will unfortunately raise significant conflict-of-interest concerns regarding this study. The commission has failed to address how the timing of Dr. Crawford's aspirations to or negotiations on the chief economist position might have overlapped with the work he was conducting on behalf of the FCC.
- We must unfortunately question the FCC's decision to focus the research topics on these ten particular areas of interest, as well as the accuracy of the reports' findings. This problem would normally be resolved through a confirmation of scientific validity through the peer review process required of all federal agencies by the Office of Management and Budget. However, it appears that there are a number of areas where the FCC has skirted the peer review guidance set forth by the January 2005 OMB Bulletin¹ meant to ensure that federal

¹ See *OMB Peer Review Bulletin*, 70 Federal Register 2664.

scientific work impactful of public policy would be conducted in as transparent and open a process as possible.

- * In requesting peer review analysis from selected scientists, the FCC failed to identify the media ownership studies as "highly influential scientific assessments," whose dissemination could have a potential impact of more than \$500 million on the public or private sectors. Instead, the commission chose to identify the studies as "influential scientific information," thus warranting a less-stringent peer review process. We have difficulty understanding how this debate on media ownership, which would affect the structure of a multi-billion dollar industry, could be classified so weakly by the Federal Communications Commission.
- * The FCC released the ten studies on July 31, 2007, well before the peer review responses had been submitted to the commission. In fact, the Chief Economist's office did not formally invite scientists to conduct their peer reviews until at least a full week after the base studies were published on the FCC's website. These actions were taken in direct contradiction of the OMB Bulletin, which states at its outset that "important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government." While the bulletin does go on to say that an agency head is allowed to defer peer review requirements where warranted by a compelling rationale, you do not provide such a rationale.
- * Much like during its efforts on the base ownership studies, the FCC did not reveal how it recruited individuals to conduct peer review. Furthermore, while the OMB Bulletin instructs agencies to select individuals "that represent a diversity of scientific perspectives relevant to the subject," there is no demonstration of that diversity by the commission. Nine of the ten studies were subject to review by only one individual, and the FCC has failed to publicly identify the academic backgrounds of three of the ten scientists conducting the reviews.
- * The FCC failed to publish in advance any sort of public disclosure for peer review planning for the ten media ownership studies. According to the OMB, such disclosure is supposed to inform the public of the number of peer reviewers planned for each study, the nomination process for selection of peer reviewers, the timing of the peer review process, as well as whether or not the agency will use any deferrals of peer review. In fact, the American public is supposed to be given an opportunity to comment on a peer review process before it is put into use.
- * The FCC has yet to respond to the peer reviews that it has collected. Therefore, three weeks before the public comment period window on the base reports closes, those reports have not yet been finalized. To our knowledge, no plan exists to enable individuals to provide comment after finalization is complete.
- The public was given only 60 days in which to comment on the ten media ownership reports that were released by the FCC. Despite this short turnaround period, the commission has yet to release all of the background data used for analysis in these reports; as late as September 5,

2007, additional information was still being posted on the FCC's website. Additionally, the commission did not settle upon a process for the public to access all of the reports' underlying data sets until September 6, 2007, and those individuals who want to gain this access will be required to physically report to the FCC's building and have a facility with certain statistical software computer programs. We have heard from a number of advocacy groups who have given up hope of meeting this egregious and unnecessary deadline.

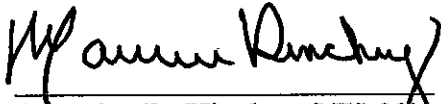
- Finally, in September 2006, we learned of the existence of two FCC draft reports on media ownership that, for unknown reasons, had never been disclosed to Congress or the American people before. A full year later, we are very troubled that the FCC Inspector General, Kent Nilsson, has failed to complete the investigation you requested into the mystery of why these reports had been kept from the public eye. It is impossible for us to understand how it is appropriate for the FCC to proceed with its current reports on media ownership without resolving lingering controversies over these hidden reports first.

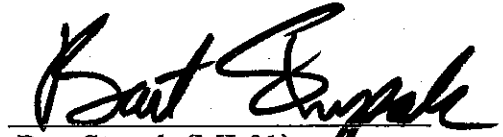
While we wholeheartedly support the Federal Communications Commission's effort to generate scientific research that will help inform future action on media ownership in America, we are very disappointed that this effort has been so woefully lacking in transparency. We hope that you will take immediate steps in order to address these very serious problems. At a minimum, we expect that you will:

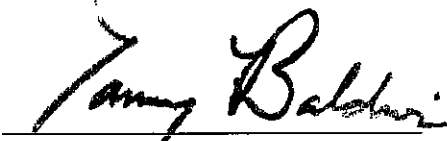
1. Make public your recruitment efforts for the base studies and for the peer review process;
2. Provide detailed background justification on how the commission chose these ten specific topics for the studies, including information on related studies conducted in-house by FCC employees;
3. Reclassify the media ownership studies as "highly influential scientific assessments;"
4. Recruit additional individuals to provide a more diverse array of peer reviews for the base studies;
5. Publish the professional biographies of all individuals providing peer reviews;
6. Stop taking public comments until all peer reviews have been received and responded to by the Federal Communications Commission, and until the Inspector General has finished his investigation into the missing reports;
7. Finish and make public the IG investigation on the missing reports within 60 days; and
8. Re-open the public comment period for at least 90 more days after the peer review process is complete. Provide those individuals who offered commentary while the peer review process remained in flux with the opportunity to amend their statements based on the finalized base reports and all peer reviews.

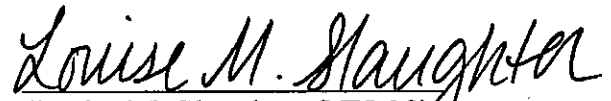
Thank you for your attention to our requests. We look forward to your reply.


Sincerely,


Maurice D. Hinchey (NY-22)


Bart Stupak (MI-01)


Tammy Baldwin (WI-02)


Louise M. Slaughter (NY-28)


David Price (NC-04)

CC: The Honorable Jonathan S. Adelstein
The Honorable Michael J. Copps
The Honorable Robert M. McDowell
The Honorable Deborah Taylor Tate