A Public Interest Perspective on the Impact of the Broadcasting Provisions of the 1996 Act

Angela J. Campbell*

I. INTRODUCTION

The broadcasting provisions contained in Title II of the Telecommunications Act of 1996 ("1996 Act")[1] received much less public attention than many of the other provisions when the 1996 Act was adopted.[2] Nonetheless, these provisions, which governed the transition

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*Professor, Georgetown University Law Center. Professor Campbell served as counsel to the citizens groups that challenged the Federal Communications Commission's ("FCC") ownership rules in *Prometheus Radio Project v. FCC*. She also represents other public interest groups in FCC proceedings involving digital television, children's television, and license renewals. She appreciates the research assistance provided by Natalie Smith and the helpful comments from Marvin Ammori.

1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at scattered sections of 47 U.S.C.).

2. For example, the New York Times' article about the signing of the 1996 Act does not even mention the broadcasting provisions, but rather discusses competition between telephone and cable companies, indecency on the Internet, and the V-chip. Edmund L. Andrews, *Communications Bill Signed, and the Battles Begin Anew*, N.Y. TIMES, Feb. 9, 1996, at A1, D16. One law review commentary explained the lack of attention paid to the broadcasting provisions by noting that "broadcast licensing is only a grain of sand in the lengthy and detailed 1996 Act." Lili Levi, *Not With a Bang But a Whimper: Broadcast License Renewal and the Telecommunications Act of 1996,* 29 CONN. L. REV. 243, 246

from analog to digital television, revised the broadcast ownership rules, and altered broadcast licensing procedures, have had an important and often detrimental impact on the viewing public. This Essay discusses how these provisions have affected the viewing public over the last ten years in both expected and unexpected ways.

The broadcasting provisions in Title II resulted from lobbying by broadcast interests. They include the so-called "broadcaster spectrum flexibility" provisions of Section 201, the broadcast ownership provisions of Section 202, and the license renewal provisions of Sections 203 and 204. Broadcasters sought to ensure exclusive control over additional spectrum to facilitate the conversion from analog to digital technology, and thus better compete against multichannel video providers such as cable and satellite. At the same time, they wanted to eliminate or relax broadcast ownership rules to allow greater consolidation. Finally, they sought to lengthen license terms and make license renewals even easier and more foolproof than before.

Public interest advocates regarded these changes as harmful to the listening and viewing public at the time they were adopted. Andrew Jay Schwartzman, head of the Media Access Project, succinctly summed up his reaction: "The bill stinks."[3] Robert McChesney, who later founded Free Press, called the 1996 Act "one of the most corrupt pieces of legislation in U.S. history." He asserted that

> As a result of this bill, the information highway will be entirely controlled by the big firms, and it will be developed to make the most profit, regardless of the social implications. Forget about the public interest. The rich will get served, the middle class noticed, and the poor forgotten.[4]

In this Essay, I show that many, but not all, of the public interest advocates' fears were realized and that moreover, the 1996 Act has had other negative consequences that were not anticipated, or at least publicly discussed, when it passed.

(1996).

3. Mike Mills, *Ushering in a New Age in Communications: Clinton Signs Revolutionary Bill into Law at a Ceremony Packed with Symbolism*, WASH. POST, Feb. 9, 1996, at C1.

4. Robert McChesney, *Exposing Flaws in Telecom Law*, J. OF COMMERCE. Feb. 16, 1996, at 6A. Other public interest advocates were somewhat less negative. Gene Kimmelman, Co-Director of Consumers Union stated, "This bill went from being a consumer nightmare to being something that while it still has significant risks is dramatically improved and offers at least at [sic] hope of greater competition and lower prices." Andrews, *supra* note 2, at D16.

II. SECTION 201: BROADCAST SPECTRUM FLEXIBILITY

Section 201 added a new Section 336 to the Communications Act[5] governing the transition from analog television to what has variously been called high-definition television ("HDTV"), advanced television ("ATV") or digital television ("DTV").[6] Although the FCC had already begun planning for the transition to digital television through rulemaking,[7] the 1996 Act resolved some of the outstanding issues.

Digital broadcasting allows the electromagnetic spectrum to be used more efficiently and flexibly. With the same amount of spectrum used for a single analog television signal (6 MHz), a digital broadcaster may broadcast in high definition ("HD"), provide multiple program streams ("multicast"), and provide various data or other ancillary and supplementary services. To receive the digital signals, members of the public have to buy new, expensive television sets, or at least converter boxes. This presents what is known as the "chicken-and-egg problem": consumers have no incentive to buy new television sets if there is nothing to watch, and broadcasters have no incentive to provide digital programming if no one can watch it.[8]

The 1996 Act was supposed to solve this problem by allowing existing television licensees, and only existing television licensees,[9] to use an additional 6 MHz of spectrum free of charge so that they could simultaneously broadcast their traditional analog signal and their digital program streams, along with any ancillary and supplementary services. Both liberals and conservatives criticized the 1996 Act's plan to give broadcasters additional spectrum at no charge. Republican Senator Bob Dole attacked the provision as a "multibillion-dollar 'giveaway' to

5. 47 U.S.C. § 336 (2000).

6. DTV "is the umbrella term encompassing High-definition Television and several other applications, including Standard Definition Televis[sic]on, datacasting, multicasting and interactivity." DTV, Glossary, http://www.dtv.gov/glossary.html (click on "Digital Television") (last visited Apr. 17, 2006). "HDTV in widescreen format (16:9) provides the highest resolution and picture quality of all digital broadcast formats." DTV, What is DTV, http://www.dtv.gov/whatisdtv.html (last visited Apr. 17, 2006). "Advanced Television" is the terminology used in the early FCC rulemakings, but this term has fallen out of common usage.

7. *See, e.g.*, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, *Notice of Inquiry,* 2 F.C.C.R. 5125, para. 3 (1987) (initiating "a wide-ranging inquiry to consider the technical and public policy issues surrounding the use of advanced television technologies . . . .").

8. Jon Hart & Jim Burger, *Can the FCC Fix the Transition To Digital TV? Please Stay Tuned*, WALL ST. J. ONLINE, Jan. 11, 2001, http://online.wsj.com/public/resources/documents/SB979142461229012934.htm.

9. 47 U.S.C. § 336(a)(1) (2000).

broadcasters,"[10] while liberal Democratic Representative John Conyers, Jr. called it "a huge charitable corporate gift."[11] Proponents of the spectrum flexibility provision, such as Richard E. Wiley, former head of the FCC's Advisory Committee on Advanced Television Service, argued that spectrum flexibility was necessary to facilitate the transition to digital television, which would "provide viewers with dazzlingly clear, wide-screen TV pictures and CD-like sound" and would "provide easy access to the information superhighway and its advanced digital services."[12] In response to criticism that spectrum flexibility was a giveaway of valuable frequencies to broadcasters, Wiley responded that "in reality it is only an exchange of one block for another" and that "[b]roadcasters would not be allowed to retain two channels permanently."[13]

The 1996 Act conditioned the grant of digital licenses on the return at some unspecified time in the future of one of the licenses.[14] At that time, broadcasters would turn off the analog signal and return the spectrum to the government for other uses. Return of the spectrum is important both because auctioning the spectrum was estimated to bring up to $70 billion to the U.S. Treasury[15] and because of the great demand for spectrum for other uses such as wireless telephony and public safety.

Although the 1996 Act did not specify a particular date for the end of analog broadcasting, it was widely reported at the time that ten years would provide sufficient time for the transition to occur.[16] And indeed, the very next year, in the Balanced Budget Act of 1997, Congress mandated that analog television licenses could not be renewed after December 31, 2006.[17] However, the same bill contained an exception for markets where 15% or more of households did not have the capability to receive digital television signals.[18] Many observers were concerned that this exception would allow

10. *See, e.g.*, Edmund L. Andrews, *Telecom Bill: Another Day, Another Rift*, N.Y. TIMES, Dec. 30, 1995, at 41.

11. Edmund L. Andrews, *Congress Votes to Reshape Communications Industry, Ending a 4-Year Struggle*, N.Y. TIMES, Feb. 2, 1996, at A1, D6.

12. Richard E. Wiley, *I Want My HDTV,* N.Y. TIMES, Feb. 17, 1996, at 23.

13. *Id.*

14. 47 U.S.C. § 336(c) (2000).

15. Christopher Stern, *What is Spectrum Worth?*, BRDCST. & CABLE, Feb. 5, 1996, at 16.

16. *See, e.g.*, Christopher Stern, *No Doubt About Digital*, BRDCST. & CABLE, Apr. 1, 1996, at 5 (describing White House plan for ten-year transition); Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Fifth Report and Order*, 12 F.C.C.R. 12809, para. 99 (1997) (finding that 2006 was a "reasonable target" for shutting down analog service).

17. Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3003, 111 Stat. 251, 265–66 (codified at 47 U.S.C. § 309(j)(14)(A)).

18. *Id.* (codified at 47 U.S.C. § 309(j)(14)(B)(iii) (2000)).

broadcasters to hold on to both the analog and digital spectrum for much longer than ten years, if they ever returned it at all.[19]

Now that ten years have passed, broadcasters are still using both the analog and digital spectrum. In February 2006, President Bush signed a bill that established February 17, 2009, as the date for the DTV transition.[20] Thus, broadcasters will be able to hold the analog spectrum for at least an additional three years, preventing its use for other public service.

In the past ten years, the majority of television stations have begun broadcasting in digital as well as analog.[21] However, they have not provided significant new or different services for the public. Because of the lack of disclosure requirements,[22] it is difficult to even find out exactly what stations are doing with their digital capability. A recent analysis of one week of programming aired by ninety-one digital broadcasters in sixteen markets found that less than 5% of digital programming was aired in HD.[23] This study further found that 98% of HD programming was entertainment oriented, that only two stations aired locally oriented programming in HD, and that only 0.3% of digital programming focused on local public affairs.[24] The study also found little difference between the types of programming offered on primary and nonprimary multicast channels.[25] Recent press accounts support the conclusion that few television stations have used their digital capability to provide compelling programming or services, but suggest that the situation may be improving. As *Broadcasting and Cable* magazine notes, "HDTV has been around for years (*The Tonight Show With Jay Leno* switched to HD in 1999), but until recently, there hasn't been a lot to watch . . . ."[26] Moreover, multicasting by

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19. *See, e.g.*, DIGITAL BROADCASTING AND THE PUBLIC INTEREST xi (Charles M. Firestone and Amy Korzick Garmer eds., 1998) (noting that while broadcasters are scheduled to give back their analog frequencies by 2006, many observers believe this date will be delayed).

20. Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 3002.

21. As of April 17, 2006, 1550 stations in 211 markets were delivering digital programming. NAB, Newsroom, http://www.nab.org/Newsroom/Issues/digitaltv/DTVstations.asp (last visited Apr. 17, 2006).

22. *See infra* notes 33–40 and accompanying text.

23. MEDIA POL'Y PROGRAM OF THE CAMPAIGN LEGAL CTR., BROKEN PROMISES: HOW DIGITAL BROADCASTERS ARE FAILING TO SERVE THE PUBLIC INTEREST 3 (2005).

24. *Id*. at 8–9, 11.

25. *Id*. at 12.

26. P.J. Bednarski & Anne Becker, *HDTV Stars Finally Aligned*, BRDCST. AND CABLE, Jan. 2, 2006, at 20, *available at* http://www.broadcastingcable.com/article/CA6295761.html?display=Special+Report. This article reports that ESPN delivered 467 sporting events in HD in 2005 and plans to telecast more than 600 such events in 2006. *Id*. National Geographic's high definition channel plans to launch in early 2006 with 127 hours of programming in high definition. *Id*.

the major broadcast networks is just getting off the ground.[27]

Because of the lack of compelling programming and services, the public has had little incentive to buy new digital television sets, which, although they have come down in price, remain expensive.[28] At present, only about 11% of homes have HDTV sets capable of displaying the higher quality picture and sound.[29] Moreover, it is difficult for consumers to watch multicast channels since a vast majority of households receive their television signals by subscribing to a cable system or satellite service. Cable systems and satellite providers are not required to carry more than one program stream of local broadcast stations and because the multicast programming is not compelling—and it competes with their own programming—cable and satellite operators have little incentive to carry the additional streams.[30] Thus, the chicken-and-egg problem continues to hinder progress in the transition to digital.

And while broadcasters have been able to hold on to both the analog and digital spectrum, they have been able to use that spectrum without

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27. American Public Television is expected to launch a lifestyle oriented multicast service on 136 public television stations in January 2006. ABC has joined with AccuWeather to roll out a digital multicast weather service to compete with The Weather Channel. NBC also has a weather multicast service. CBS plans to multicast CBS 2, which is expected to be a mix of news, weather, local programming, and entertainment programming designed to complement programming on the main network. R. Thomas Umstead & Linda Moss, *Much Ado About Multicasting*, MULTICHANNEL NEWS, Dec. 12, 2005, at 6.

28. The average price of a 30-inch LCD TV, the most popular size for that format, was $1,600 in fall 2005. The average price for a 42-inch plasma TV was $1,944 in fall 2005. John C. Roper, *Seeing the Big Picture*, HOUSTON CHRONICLE, Nov. 27, 2005, at 1. In 2001, an HDTV set cost $2,000 to $10,000 not including the set-top box which would add up to another $1,000, or the roof-top antenna. Hart & Burger, *supra* note 8.

29. About 12 million homes currently have HDTVs. Bednarski & Becker, *supra* note 26. Since there are approximately 109,590,170 television households in the U.S., this works out to almost 11%. *See* BIA FINANCIAL, INVESTING IN TELEVISION MARKET REPORT (2005), http://www.bia.com/Images/Products/TV%20Market%20Report%20Info.pdf. Another article reports that there are an estimated 16 million HDTV sets (15% of households), but notes that more than half of "HD-equipped homes [have not] obtained the extra gear necessary to watch in HD . . . ." Paul Davidson, *Digital Confusion Frustrates TV Buyers; Set-up problems, poor analog picture sour high-def expectations*, USA TODAY, Dec. 30, 2005, at 1A. One survey has found that 26% of U.S. households plan to own an HDTV set by the end of 2006. HD UPDATE, *HD Penetration to Hit 26% By End of 2006*, BRDCST. AND CABLE, Dec. 22, 2005, http://www.broadcastingcable.com/index.asp?layout=nocclamp&doc_id=1340006329.

30. The FCC has declined to require carriage of multiple streams but does require carriage of a primary stream. Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, *Second Report and Order and First Order on Reconsideration*, 20 F.C.C.R. 4516, para. 8–9 (2005). While broadcasters are free to negotiate carriage, cable companies have little desire to negotiate with competitors. To date, the only large scale retransmission consent agreement has been between cable and public broadcasting.

having to comply with any additional public interest requirements. The 1996 Act made clear that all services offered by digital broadcasters were to serve the public interest, convenience, and necessity.[31] However, Congress did not specify what the "public interest" required in this new digital environment, leaving that question for the FCC to decide.

In March 1997, President Clinton established an Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters,[32] and subsequently appointed twenty-two members representing industry as well as public interest organizations.[33] The Advisory Committee held numerous meetings and produced a lengthy report released in December 1998.[34] Several of the Advisory Committee report's ten recommendations were addressed to the FCC. For example, the Advisory Committee recommended that broadcasters should be required to make enhanced disclosures of their public interest programming and activities on a quarterly basis.[35] Noting that the FCC already required stations to place some information about their programming in their public files, the Advisory Committee called on the FCC to augment those reports. The Advisory Committee also recommended that the FCC adopt a set of minimum public interest requirements for DTV broadcasters.[36] Recommended categories for minimum standards included community outreach, accountability, public service announcements, public affairs programming, and closed captioning.

The FCC waited more than a year before responding. After much prodding, it eventually issued a notice of inquiry seeking comment on the Advisory Committee recommendations in December 1999.[37] In October 2000, the FCC issued two notices of proposed rulemaking. One proposed that television stations make certain disclosures to the public about how they serve the public interest.[38] The other sought comment on how to modify the FCC's children's television rules to account for differences in

31. 47 U.S.C. § 336(d) (2000).

32. Exec. Order No. 13038, 62 Fed. Reg. 12065 (Mar. 13, 1997).

33. ADVISORY COMM. ON PUB. INTEREST OBLIGATIONS OF DIGITAL TV BRDCST., CHARTING THE DIGITAL BROADCASTING FUTURE: FINAL REPORT OF THE ADVISORY COMMITTEE ON PUBLIC INTEREST OBLIGATIONS OF DIGITAL TELEVISION BROADCASTERS v, 143 (1998).

34. *Id.*

35. *Id.* at 45.

36. *Id.* at 47.

37. Public Interest Obligations of TV Broadcast Licensees, *Notice of Inquiry*, 14 F.C.C.R. 21633 (1999).

38. Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Notice of Proposed Rule Making*, 15 F.C.C.R. 19816, para. 1 (2000).

digital television.[39] But other than to update the rulemaking record, the FCC took no further action for almost four years. Finally, in September 2004, the FCC adopted children's DTV rules which were scheduled to take effect in January 2005.[40] The effective date of those rules has subsequently been extended pending FCC action on petitions for reconsideration seeking changes in the rules.[41] The FCC has neither acted on the disclosure requirements nor has it issued a notice of proposed rulemaking on the other public interest obligations, despite many calls by public interest groups that it do so.

The *Children's DTV Order* should eventually result in real public interest benefits. It sets forth how the pre-existing rules, which require that broadcasters serve the educational and informational need of children and limit the amount and type of advertising to children, apply in the multichannel, interactive environment of digital television. The prior rules, adopted in 1996, established a processing guideline under which a station that airs an average of three hours of children's educational programming per week is deemed to have adequately served the educational and informational needs of children and can have its license renewed by the FCC staff.[42] A station that does not meet the processing guideline has the opportunity to demonstrate to the full Commission that it nonetheless provided adequate service to the children in its community.[43]

The *Children's DTV Order* extends the processing guideline to digital television. It states that where a station chooses to provide additional program streams, the processing guideline will increase proportionately. Thus, for each additional one to twenty-eight hours of programming broadcast, the processing guideline will increase by one-half hour. The station need not air the children's educational programming on the channel that resulted in the increase. Rather, it may air the programming on either its primary channel or any channel with comparable carriage.[44]

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39. Children's Television Obligations of Digital Television Broadcasters, *Notice of Proposed Rule Making*, 15 F.C.C.R. 22946, para. 1 (2000). The year of 1996 was a watershed year for children's television. The FCC adopted guidelines implementing the 1990 Children's Television Act.

40. Children's Television Obligations of Digital Television Broadcasters, *Report and Order and Further Notice of Proposed Rule Making*, 19 F.C.C.R. 22943, para. 2 (2004) [hereinafter *Children's DTV Order*].

41. The FCC stayed the effective date to give it time to consider changes to its rules jointly proposed by children's advocates and industry groups pursuant to an agreement. *See infra* note 47 and accompanying text.

42. Policies and Rules Concerning Children's Television Programming, *Report and Order*, 11 F.C.C.R. 10660, para. 5 (1996).

43. *Id.*

44. *Children's DTV Order*, *supra* note 40, para. 24.

The *Children's DTV Order* also applied all of the existing children's advertising rules and policies to digital streams. Thus, advertising on any program broadcast primarily for children aged twelve and under may not contain more than 12 minutes of advertising per hour on weekdays or 10.5 minutes of advertising per hour on weekends. In addition, advertising and program content must be clearly separated, and both host-selling and program-length commercials are prohibited.[45] The FCC declined to prohibit interactive advertising directed at children, as children's advocates urged, finding that it was premature to adopt a rule at this time. But it did decide to count the display of Web site addresses for commercially oriented Web sites toward the advertising limit and to prohibit the display of Web site addresses where the Web site contained host selling.[46]

All four major broadcast networks, the National Association of Broadcasters ("NAB"), the major children's cable channels such as Disney, Nickelodeon, and Cartoon Network, and the advertisers asked the FCC to reconsider its decision. In addition, Viacom—parent of CBS and Nickelodeon—and Disney filed actions in court in an attempt to stay and ultimately overturn these rules. In December 2005, these companies reached an agreement with the Children's Media Policy Coalition under which the companies will drop their legal challenges if the FCC adopts certain modifications on reconsideration.[47]

In sum, over the past ten years, the public has seen few benefits flow from the spectrum flexibility provisions. Despite expectations that the analog spectrum would be returned by 2006, it will be at least three more years before that spectrum becomes available for other purposes. While many television stations are broadcasting digitally, few are offering

45. A program is considered a "program-length commercial" when an advertisement for a product is aired in a program associated with that product. In such cases, the entire program is counted as commercial time. An example of this would be a cartoon program that aired a commercial for the dolls of its characters during the program broadcast. A television show may also be considered a program-length commercial when a commercial announcement is made primarily for a product otherwise unrelated to the program, but makes references to or promotes products related to the program. An example of this would be an advertisement for a cereal that has no relation to the program, but the promotional toy inside the box is related to the program. "Host selling," which also is prohibited, is any character endorsement that may confuse a child from distinguishing between program and nonprogram material. An example of host selling would be a promotion for a theme park or restaurant using a character in the program being viewed. FCC, Parents' Place: Commercial Limits in Children's Programming, http://www.fcc.gov/parents/commercials.html (last visited Apr. 17, 2006).

46. *Children's DTV Order*, *supra* note 40, para. 50.

47. Jube Shiver, Jr., *Digital TV, Kids Groups in Deal*, L.A. TIMES, Dec. 16, 2005, at C3. Under this agreement, most of the rules affecting DTV would remain the same; however, the prohibition against on-screen displays of Web addresses for Web sites with host selling would be narrowed.

compelling content or taking advantage of the ability to multicast. Moreover, except for the children's DTV rules, which for the most part have not yet taken effect, the FCC has failed to adopt minimum standards to ensure that digital broadcasters will serve the public interest or even to adopt enhanced disclosure requirements.

III. SECTION 202: BROADCAST OWNERSHIP

The 1996 Act's broadcast ownership provisions have also harmed the public interest by reducing the sources of programming available to the public. Since the number of broadcast stations in any community is limited, the FCC has traditionally limited the number of stations that may be commonly owned to promote both diversity of viewpoints and competition. While over the years the FCC has frequently modified its ownership rules, broadcasters apparently did not find the FCC's changes to have been sufficiently deregulatory.

The broadcast lobby sought to relax longstanding FCC ownership regulations to allow greater consolidation of the broadcast industry. While broadcasters did not achieve complete repeal of all broadcast ownership regulations, they were reportedly "well satisfied with its deregulation of several parts of their industry and looking forward to a booming market in television and radio stations."[48] As Richard E. Wiley noted, broadcasters were "beneficiaries of the deregulatory provisions of the new statute. It substantially liberalizes restrictions on the number of broadcast stations that one entity can own . . . ."[49]

Section 202 directed the FCC to relax many existing ownership limits. Radio got the most relief. FCC rules had limited a single owner to no more than twenty AM and twenty FM stations.[50] The 1996 Act directed the FCC to eliminate this limit altogether.[51] The 1996 Act further established caps for the number of radio stations that could be commonly owned at the local level, which turned on the number of commercial radio

48. Bill Carter, *The Networks See Potential For Growth*, N.Y. TIMES, Feb. 2, 1996, at D6. Putting a positive spin on the broadcast ownership provisions, Vice President Gore described them as "promoting diversity of voices and viewpoints that are so important to our democracy [and preventing] undue concentration in television and radio ownership." Press Release, White House Office of the Vice President, Statement of the Vice President on Passage of Telecommunications Reform Legislation, Feb. 1, 1996, http://www.sdsc.edu/SDSCwire/v2.4/5101.telecom.html.

49. Richard E. Wiley, *The Telecommunications Act of 1996*, 21 ADMIN. & REG. L. NEWS 1, 14 (1996).

50. 47 C.F.R. § 73.3555(e)(1)(i) (1995).

51. Telecommunications Act, § 202(a), 110 Stat. at 110 (1996) (codified as amended at 47 C.F.R. 73.3555).

stations in the market.[52] Thus, for example, in markets with forty-five or more commercial stations, a total of eight could be commonly controlled, while in markets with fourteen or fewer stations, one company could own up to five stations, except that no company could control more than 50% of the total number of stations. This represented a significant increase over the FCC's rules then in effect.[53]

Television limits were also relaxed by the 1996 Act. The then existing national ownership rule generally limited common control to a total of twelve television stations subject to a national audience reach cap of 25%.[54] The 1996 Act eliminated the numerical station limit and raised the audience reach threshold to 35%.[55] The 1996 Act further directed the FCC to complete a pending rulemaking considering whether to relax the local television rule, known as the duopoly rule, which prohibited common control of two stations serving the same area.[56]

The 1996 Act did not mention two other rules—the newspaper-broadcast cross-ownership rule, which prohibits common ownership of a daily newspaper and a broadcast station serving the same areas, and the radio-television cross-ownership rule, which limits the number of radio and television stations that may be commonly owned in the same geographic area. However, Section 202(h) directed the FCC to review the ownership rules every two years to "determine whether any of such rules are necessary in the public interest as the result of competition," and to "repeal or modify any regulation it determines to be no longer in the public interest."[57]

The FCC promptly eliminated the nationwide limits on radio station ownership and implemented the caps set forth in the 1996 Act. Predictably, these changes resulted in a flurry of radio station sales and the radio industry underwent substantial consolidation. A study by FCC staff found that from 1996 to 2002, the number of radio station owners declined by 34% even though the number of stations actually increased.[58]

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52. *Id*. § 202(b).

53. 47 C.F.R. § 73.3555(a)(1)(i) (1995). In markets with fourteen or fewer radio stations, FCC rules permitted common ownership of up to three radio stations, or up to 50% of the total number of stations, whichever was less. In markets with fifteen or more stations, the rules permitted ownership of two AM and two FM stations so long as the combined market share was less than 25%. *Id*.

54. *Id*. § 73.3555(e)(1)(i-ii).

55. Telecommunications Act, § 202(c)(1)(B), 110 Stat. at 111.

56. *Id*. § 202(c)(2).

57. *Id*. § 202(h).

58. GEORGE WILLIAMS & SCOTT ROBERTS, MEDIA BUREAU, FCC, RADIO INDUSTRY REVIEW 2002: TRENDS IN OWNERSHIP, FORMAT, AND FINANCE 3–4 (2002), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A20.doc.

A study by the Future of Music Coalition ("FMC") found that that by 2002, ten companies had come to "dominate the radio spectrum, radio listenership and radio revenues."[59] One company alone, Clear Channel Communications, quickly grew from 40 stations in 1996 to over 1200 stations.[60] The FMC study also found that in virtually every geographic market, four firms controlled 70% or more of the market.[61] Members of the public have widely complained that the consolidation of local radio stations has resulted in less program diversity, reduced local news and public affairs, failures to cover local emergencies, and a loss of opportunity of local musicians, political candidates, charitable organizations, and others to get access to the airwaves.

Concentration in television station ownership has also increased, although not as dramatically as in radio. The FCC promptly raised the national television limit to 35% as directed by the Act in 1996, which allowed the major networks to get even bigger. However, the FCC declined to further relax the rule after conducting the first biennial review begun in 1998.[62] Unhappy with the FCC's measured approach, three of the major broadcast networks went to court. In *Fox I*, the U.S. Court of Appeals for the D.C. Circuit found that the FCC had failed to justify its decision not to relax the national limits to allow greater consolidation.[63] The court initially interpreted Section 202(h) to mean that any ownership regulation found not to be indispensable to the public interest, as opposed to merely in the public interest, had to be repealed or modified.[64] On rehearing, the court retreated somewhat from this holding, but nonetheless found that the FCC had failed to justify its decision and remanded for further consideration.[65]

Broadcasters also challenged the FCC's revised TV duopoly rule. In 1999, the FCC relaxed the prohibition against ownership of stations with overlapping service areas to permit the ownership of two stations within a Designated Market Area ("DMA") so long as eight independently owned and operated television stations remained and there was no common ownership of the top four ranked stations.[66] In *Sinclair,* the court found the

59. PETER DICOLA & KRISTIN THOMSON, THE FUTURE OF MUSIC COALITION, RADIO DEREGULATION: HAS IT SERVED CITIZENS AND MUSICIANS? 3 (2002).

60. *Id.*

61. *Id*.

62. 1998 Biennial Regulatory Review, *Biennial Review Report*, 15 F.C.C.R. 11058, para. 25 (2000) [hereinafter *1998 Biennial Review*].

63. Fox TV Stations, Inc. v. FCC, 280 F.3d 1027, 1043 (D.C. Cir. 2002).

64. *Id.* at 1050.

65. Fox TV Stations, Inc. v. FCC, 293 F.3d 537, 540–41 (D.C. Cir. 2002).

66. Review of the Commission's Regulations Governing Television Broadcasting, *Report and Order*, 14 F.C.C.R. 12903, para. 64 (1999), *rev'd,* Sinclair Brdcst. Group v. FCC, 284 F.3d 148 (D.C. 2002).

FCC had failed to explain why it adopted eight voices as the standard and why it counted only television stations as voices, when it recognized in relaxing the radio-television cross-ownership rule, which was not challenged, that radio stations and newspapers also contributed to diversity of viewpoints.[67] Nonetheless, the court let the new rule go into effect. As a consequence, television duopolies have been created in many markets.

After conducting the *1998 Biennial Review*, the FCC determined that the newspaper-broadcast cross-ownership ("NBCO") rule still served the public interest but might be modified slightly in larger markets.[68] Thus, in 2001, it launched a rulemaking on whether to modify that rule.[69] The following year, in initiating the *2002 Biennial Review*, the FCC said it would address all of the rules in a single proceeding, including the NBCO rule, the national TV rule that had been remanded in *Fox I*, and the local TV rules remanded in *Sinclair*.[70]

The FCC's proposals to relax the ownership rules drew unprecedented opposition from the general public, while media corporations generally urged the FCC to deregulate further or eliminate the rules altogether. The FCC's decision adopted in June 2003 raised the national audience reach for television to 45% and relaxed the local television rules to permit common ownership of up to three television stations in the larger markets and two television stations in most markets.[71] The NBCO rule and the radio-television cross-ownership rule were repealed and replaced with a cross-media limit that allowed cross-media ownership in any community with three or more television stations. Had this rule taken effect, it would have had a major deregulatory effect, since 97.7% of the population lives in areas served by three or more television stations.[72]

This decision pleased virtually no one and led to unprecedented public outcry. Efforts were made in Congress to rollback the changes, and legislation passed that lowered the national audience reach limitation for television from 45% to 39%.[73] The legislation also increased the intervals

67. *Sinclair*, 284 F.3d at 152.

68. *1998 Biennial Review*, *supra* note 62, at paras. 88, 95.

69. Cross-Ownership of Broadcast Stations and Newspapers, *Order and Notice of Proposed Rule Making*, 16 F.C.C.R. 17283 (2001).

70. 2002 Biennial Regulatory Review, *Notice of Proposed Rule Making*, 17 F.C.C.R. 18503, para. 6 (2002).

71. 2002 Biennial Regulatory Review, *Report and Order and Notice of Proposed Rulemaking*, 18 F.C.C.R. 13620, paras. 186, 499 (2003).

72. *Id.* at 14000 (statement of Jonathan S. Adelstein, Comm'r, dissenting).

73. Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99 (2004).

between FCC ownership reviews from two to four years.

Both public interest groups and media corporations petitioned the courts to review the FCC's decision. The public interest groups accused the FCC of going too far, while the industry groups argued that the FCC had not gone far enough. The public interest groups won two significant victories early on. First, they obtained a stay pending resolution of the appeal. Second, they won their bid to keep the case before the Third Circuit, rather than the D.C. Circuit which had previously reversed the FCC for not acting quickly enough to relax television ownership rules in *Fox II*. All of the petitions for review were consolidated in the Third Circuit under the name of *Prometheus Radio Project v. FCC*.

In June 2004, the Third Circuit issued its decision upholding some parts of the FCC's decision and remanding other parts where it found the FCC had acted arbitrarily.[74] Specifically, the court found that the FCC had failed to adequately justify the cross-media limit, the revised local television rules, and its decision to retain, albeit with some modification, the numerical limits on radio station ownership that had been established by Congress.[75] The court also ruled that Section 202(h) only required repeal or modification of the ownership rules where the FCC concluded that the rules were no longer useful, not, as the *Fox I* court had suggested, where the rules were indispensable.[76] Significantly, the court kept the stay in effect until the FCC adopted a new decision on remand and the court had an opportunity to review that decision.[77] As I write this Essay in March 2006, the FCC has yet to do anything on remand. Soon it will be time to launch the 2006 quadrennial review.

Not only has the FCC failed to act on the remand, but it has failed to enforce the rules that remain in effect as a result of the stay. Given the stay of the revised NBCO rule, one would not expect to see any increase. But, in fact, companies have been able to create new cross-ownerships, and the FCC has been unwilling to enforce its rules against them. For example, the NBCO rule prohibits the creation of new cross-ownerships.[78] However, since the FCC must approve the transfer or renewal of broadcast licenses but has no authority over newspaper acquisitions, the rule provides that where an existing licensee subsequently purchases a newspaper, it has up to one year or the end of the license term, whichever is later, to come into

74. Prometheus Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004), *cert. denied,* 125 S.Ct. 2904 (2005).

75. *Id*. at 382.

76. *Id.* at 393–94.

77. *Id.* at 435.

78. 47 C.F.R. § 73.3555(d)(3) (2002).

compliance with the rule so as to avoid a fire sale. At the time this provision was adopted, license terms were only three years and so the amount of time that a cross ownership could exist was relatively limited. The 1996 Act, however, extended license terms to eight years.[79] Thus, a broadcast licensee can acquire a newspaper in the same community and operate both for a substantial period of time.

In fact, in at least four communities, Media General has done just that—acquired a television station and then acquired a daily newspaper.[80] To make matters worse, instead of coming into compliance by the date of license renewal, Media General has asked the FCC to permanently waive the rule and renew their television station licenses. Despite the fact that community groups have opposed Media General's waiver requests, the FCC has failed to act. Some of these applications have been pending for over a year, thus allowing Media General to hold the prohibited cross ownership well beyond the maximum time intended.

FCC inaction has also allowed prohibited cross ownerships to continue in New York, N.Y. and Hartford, Conn. In 2001, the FCC approved Fox's acquisition of ten television stations conditioned on its coming into compliance with the cross-ownership rule in New York within twenty-four months.[81] Fox has not come into compliance. It continues to hold two television stations and a daily newspaper serving New York City and the FCC has done nothing about it. In Hartford, the FCC similarly conditioned Tribune's acquisition on coming into compliance within six months. Tribune did not comply, and instead of enforcing the condition, the Commission recently extended the waiver of the cross-ownership rule until 2006.[82] As a consequence, Tribune controls two television stations and a daily newspaper in Hartford.

In sum, the ownership provisions of the 1996 Act have resulted in increased concentration especially in radio, which has in turn, resulted in a great deal of public dissatisfaction. We have also seen increased concentration of television station ownership at both the national and local levels. However, because of the Congressional rollback of the national limit and the court's stay of the local limits, the amount of concentration in

79. *See infra* Part IV.

80. Florence, S.C., Panama City, Fla., Columbus, Ga., and Bristol, Tenn. Each of these cities is in a relatively small market. In each, Media General has been able to acquire a top-rated television station and the only daily newspaper, thus significantly reducing the diversity of news sources for residents of these communities.

81. Applications of UTV of San Francisco, Inc., *Memorandum Opinion and Order*, 16 F.C.C.R. 14975, para. 45 (2001).

82. Counterpoint Communications, Inc., *Memorandum Opinion and Order*, 20 F.C.C.R. 8582, paras. 3, 24 (2005).

television has not been as extreme as initially feared. The cross-ownership limits have remained in effect, but companies have found ways to evade those limits, while the FCC has turned a blind eye.

As counsel to the groups that sought the stay and challenged the rules, I am pleased that the results to date have not been as bad for the public as they could have been. Yet, at some point the FCC needs to do something. Unlike the DTV public interest requirements, where there is no legal compulsion for the FCC to act, here the FCC remains subject to two court remands, *Prometheus* and *Sinclair*, as well as the statutory obligation to review its ownership rules every four years. When it does act, I hope that the FCC will take its obligation to regulate in the public interest seriously and not repeat the mistakes of the past. The FCC should seek public input by holding public hearings and elicit meaningful public participation by seeking comment on specific proposals, conducting appropriate studies, making any studies and the underlying data available for public review and comment, and providing adequate time for comment. The FCC should also take seriously its obligations to enforce the existing rules even as changes to those rules are under consideration.

While many of the problems faced by the Commission on remand are of its own making, the 1996 Act provides little useful guidance and may, in fact, establish a structure that unintentionally leads to uncertainty and instability. Although, in the abstract, requiring periodic review seems like a good idea, and requiring the FCC to conduct a review every four years is better than every two years, four years is still too short a time period. Four years is half the length of a license term, and it takes several years for the FCC to complete the rulemaking process and for that process to work its way through the courts. This process consumes a tremendous amount of resources. Moreover, the prospect that the rules might be changed creates disincentives to comply with the rules, as illustrated in the cases of Media General, Tribune, and Fox. Thus, I would prefer to see the quadrennial review requirement eliminated altogether. Since the FCC is always free to review its rules where circumstances warrant, mandating a review every four years puts an unnecessary burden on both the FCC and the public.

IV. LICENSE RENEWAL PROVISIONS

Section 203 extended license terms for television stations from five to eight years. Section 204 added new subsection 309(k), which prohibits the consideration of competing applications when licenses come up for renewal.[83] Despite the fact that Section 204 achieved "the renewal reform unsuccessfully sought by broadcasters for the past twenty-seven years,"

83. 47 U.S.C. § 309(k)(4) (2000).

Professor Lili Levi, writing shortly after the 1996 Act was passed, observed that it was "greeted with virtual public silence."[84] In contrast to the spectrum flexibility and ownership provisions, which received minimal press attention when adopted but have received greater coverage in recent years, the license renewal provisions have remained largely ignored. This is despite the fact that they have had significant, deleterious effects on the public interest.

The Media General cases discussed above provide one example of how extending the license term to eight years has negatively affected the viewing public. By making license terms eight years, the FCC allows cross ownerships that were intended to exist for only a brief period of time to avoid a fire sale to continue for many years. Consequently, the public suffers in two ways. First, the public is deprived a diverse voice for a significant period of time. Second, the longer time period makes such combinations economically attractive and thus more likely to occur.

Not only do longer license terms hinder enforcement of the FCC's ownership rules, they affect the FCC's ability to enforce a wide variety of other rules and policies. License renewal is the primary mechanism for enforcement of FCC rules designed to ensure that licensees meet their public interest responsibilities, such as the children's television rules and equal employment opportunity rules. It is also the main avenue of recourse for members of the public who believe that a licensee is not meeting the needs of their community. Members of the public can object to a license renewal by filing a "petition to deny."[85] Regardless of whether a petition to deny is filed, the FCC staff reviews the license renewal application to ensure that the station is complying with FCC policies and meets the standards for license renewal.

Under the FCC rules, every station within a state comes up for license renewal at the same time. Thus, for example, all television stations in the District of Columbia, Maryland, Virginia, and West Virginia had to file their renewal applications on June 1, 2004.[86] The next group, stations in North Carolina and South Carolina, filed their applications on August 1, 2004. The last group of states in the current cycle of renewals will file their renewal applications in April 2007. Then there will be a five-year gap before the renewal cycle starts again in June 2012, with stations in D.C., Maryland, Virginia, and West Virginia filing for renewal.

84. Lili Levi, *Not With a Bang But a Whimper: Broadcast License Renewal and the Telecommunications Act of 1996,* 29 CONN. L. REV. 243, 245 (1996).

85. 47 U.S.C. § 309(d) (2000).

86. FCC, License Renewal Applications for Television Broadcast Stations, *available at* http://www.fcc.gov/mb/video/renewal.html (providing the license renewal filing dates and license expiration dates).

Eight years is too long for a broadcast licensee to go without FCC review or the opportunity for public input. Citizens need to have an effective and timely means to express concerns when they believe they are not receiving adequate service from local broadcasters. For example, if a Maryland television station fails to provide adequate coverage of local elections in 2006, it is hardly an effective remedy to file a petition to deny in 2012.[87]

Moreover, stations are frequently bought and sold one or more times within an eight-year period. Thus, for example, in the first three years of the license term, a station could willfully exceed the children's advertising limits and yet avoid any meaningful sanction by simply selling the station before the license comes up for renewal. Similarly, the station could discriminate against minority or female job applicants for years and avoid sanctions by selling the station.[88] Even if the station is not sold, the FCC may be reluctant to punish a station for something that occurred many years earlier. The consequences of such actions are not trivial. Children that are denied access to appropriate educational programming when they are young will never have that opportunity later. Discrimination based on race or gender has many long-term effects that are difficult to remedy. Thus, although increasing license terms to eight years may seem like a minor administrative detail, in fact, it can have a significant, detrimental impact on the public.[89]

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87. Sometimes, the ability to complain about a time sensitive matter is purely fortuitous. For example, in the period before Christmas 2004, one of my clients, the United Church of Christ ("UCC"), sought to purchase time on the major broadcast networks to air an advertising campaign inviting new members to the church. CBS and NBC refused to sell time, citing policies against airing controversial advertisements. Because CBS- and NBC-owned stations in Florida were up for renewal, UCC was able to raise the issue of whether the networks' refusal to air these spots was consistent with a station's public interest responsibilities by filing petitions to deny the renewal of those stations. Had this incident happened when no network-owned stations were up for renewal, it would have been much harder for UCC to raise this important public interest issue.

88. Perhaps in theory, the FCC could hold the purchaser liable for the failings of the seller, but I am not aware of any cases where it has done so. In such a circumstance, the FCC is generally happy to transfer the station to a presumably more responsible licensee. Moreover, it is hard to see how punishing someone other than the wrongdoer will provide the correct incentives. In fact, the FCC's forfeiture policy requires it to consider factors concerning culpability.

89. Not only is it problematic that each station is subject to review only once every eight years, but so too is the fact that five years can go by without any license renewals being filed. The children's television guideline for educational programming illustrates this problem. This guideline took effect in September 1997. The television license renewal cycle ended in April 1999 and then five years passed before any stations came up for renewal. My sense from reviewing stations' children's television program reports over this time period is that while many stations substantially increased the quantity, quality, and diversity of their children's educational offerings when the guideline first took effect, these efforts often

The problems created by extending license terms may be aggravated by Section 204, which has eliminated the possibility of competition from new entrants. In the past, when a license came up for renewal, a competing application could be filed, and the FCC would have to hold a hearing to determine whether the incumbent or the challenger would better serve the public interest.[90] The 1996 Act changed this process by mandating that the FCC renew a station's license if it finds that the station has served the public interest, has not engaged in any serious violations of the Communications Act or FCC rules, and has not engaged in other statute or rule violations that "taken together, would constitute a pattern of abuse."[91] Even if a station fails to meet these requirements, the Commission has the option of granting a conditional or short-term renewal instead of holding a hearing to determine whether the renewal should be denied.[92] Moreover, in making the determination of whether the incumbent has met the requirements for renewal, the 1996 Act explicitly prohibits the Commission from considering whether the public interest might be better served by granting the license to a different person.[93] Although Section 204 eliminated the possibility of competing applications, it did not alter the standard of renewal employed by the Commission or address the public's ability to file petitions to deny.[94]

It is difficult to gauge the actual effect of Section 204. Even before the 1996 Act eliminated comparative renewal challenges, such challenges were relatively infrequent.[95] Through a series of cases, the FCC established the concept of the "renewal expectancy" for incumbents, so that even when comparative challenges occurred, they were unlikely to succeed.[96] Nonetheless, the possibility that competing applications could be filed provided some incentive for broadcasters to better serve the public and provided some opportunity for new entrants in an industry where entry was

tapered off over time. Were license renewals spread over a longer period of time, the occasional filing of a petition to deny or the referral of a license renewal application to the full Commission would remind stations that they need to take seriously their responsibilities to serve the educational needs of children.

90. *See generally* Citizens Comm. Ctr. v. FCC, 447 F.2d 1201, 1211 (D.C. Cir. 1971) (stating that when a comparative hearing for a competing license is denied by the FCC, an appeal may be sought).

91. 47 U.S.C. § 309(k)(1) (2000).

92. *Id*. § 309(k)(2)–(3).

93. *Id*. § 309(k)(4).

94. *See* H.R. Conf. Rep. No. 104-204(I) reprinted in 1996 U.S.C.C.A.N. 10, 1995 WL 442504 at 91.

95. *See generally* Levi, *supra* note 84 (observing that "in practice, licensees who do not flout the FCC . . . always get their licenses renewed.") (citation omitted).

96. Cent. Fla. Enters., Inc. v. FCC, 683 F.2d 503, 506 (D.C. Cir. 1982); Cent. Fla. Enters., Inc. v. FCC, 598 F.2d 37, 58 (D.C. Cir. 1978).

quite limited.

While comparative challenges have been eliminated, the number of petitions to deny may be on the rise. Since the television license renewal cycle started up again in September 2004, a rather surprising number of petitions to deny have been filed by citizens groups. As discussed above, petitions to deny license renewals by Media General stations have been filed by groups such as Common Cause, NAACP, and Free Press, for failure to comply with the NBCO rule. The Office of Communication of the UCC in addition to filing two petitions to deny against the Florida stations for their refusal to air controversial spots discussed in Footnote 87, filed petitions to deny the license renewals of two Washington, D.C. area television stations and two Cleveland stations for failing to serve the educational and informational needs of children. Parents Television Council ("PTC") also filed against two Washington, D.C. television stations for alleged violations of the FCC's rules on indecency.[97]

In November 2005, Chicago Media Action filed a petition to deny against all nine commercial television stations in Chicago, alleging that they singularly and collectively failed to meet community needs because they failed to present adequate programming relating to state and local elections in 2004. On the same date, a similar petition to deny was filed by the Milwaukee Public Interest Media Coalition against commercial television stations serving Milwaukee.[98] Free Press challenged the license renewal of seven television stations in North Carolina and South Carolina owned or controlled by Sinclair Broadcasting alleging, among other things, that replacing local genuine news with "local news" from Sinclair's centralized news facility in Baltimore failed to meet local needs. In late December 2005, Iowans for Better Local Television, filed a petition to deny against Sinclair-owned television station KGAN in Cedar Rapids alleging that it had failed to serve the public interest and had engaged in a pattern of rule violations.[99] To date, the FCC has not acted on any of these petitions.

Taken together, these petitions reflect significant public concern that stations are not meeting community needs through their programming.

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97. Ted Hearn, *'Indecent' Content, Kids Programming Land Washington Stations in Hot Water*, MULTICHANNEL NEWS, Sept. 6 2004, http://www.multichannel.com/index.asp?layout=articlePrint&articleid=CA450883.

98. Applications for Renewal of Station License of WBBM-TV, *Reply to Broadcasters' Opposition*, *available at* http://www.mediaaccess.org/ChicagoReply.pdf; Applications for Renewal of Station License of WTMJ-TV, *Reply to Broadcasters' Opposition*, *available at* http://www.mediaaccess.org/MilwReply.pdf.

99. *See* Application of KGAN Licensee, *Petition to Deny Renewal*, *available at* http://www.ibltv.org/KGAN-PTD-1223.doc.

They also suggest that removal of the incentive provided by competing applications has had a detrimental impact on public service.

V. CONCLUSION

In sum, the broadcast provisions of the 1996 Act have not served the public well. As critics feared, it seems that broadcasters will be able to use, free of charge, both the analog and digital spectrum for far more than a ten year "transition" period, thus preventing spectrum from being used for other important public purposes. At the same time, broadcasters have not been using the spectrum to provide compelling programming or other services to the public. Moreover, they have avoided the imposition of minimum public interest requirements or even any requirement that they publicly disclose how they are using the spectrum, as had been recommended by the Advisory Committee.

While broadcasters have succeeded in retaining the spectrum and avoiding public interest requirements, they have not obtained as much relief from the ownership rules as they would have liked. The new ownership provisions have allowed conglomerates such as Clear Channel to purchase large numbers of radio stations and to dominate local markets. However, those rules must now be re-examined as a result of the remand in *Prometheus*. The FCC's new rules, which would have allowed significant consolidation in television and among different kinds of media, have also been stayed as a result of that remand. However, the FCC still retains the ability to substantially relax the ownership rules on remand or in the upcoming quadrennial review. Moreover, the quadrennial review provision itself encourages licensees to figure out ways to evade the existing ownership limits.

The expansion of license terms to eight years provides disincentives for licensees to comply with FCC rules designed to promote the public interest. Moreover, limiting public opportunities to challenge license renewals to every eight years makes it is very difficult for the public to hold licensees accountable to local community needs. Despite these obstacles, community groups have filed a significant number of petitions to deny since the television renewal cycle began in September 2004. This suggests that the 1996 Act's elimination of the competitive spur provided by comparative license applications renewals has resulted in lower quality and less responsive service.

Finally, in each of these areas, the problems created by the 1996 Act have been compounded by FCC inaction and delay. Even though the 1996 Act clarified that the digital broadcasters were required to operate in the public interest, the FCC has largely failed to define what that means in the digital era and has failed to act on the recommendations of the Advisory

Committee. In the case of the ownership rules, it has been a year-and-a-half since the Third Circuit remanded the FCC's revised rules, and yet the FCC has yet to even ask for public comment on how to respond. While in this case, the public has benefited from the fact that the former rules remain in effect pending review of FCC's action on the court remand, FCC delay in enforcing its cross-ownership rules in specific markets has hurt viewers in those communities. Moreover, the FCC's delay in acting on petitions to deny license renewals, some of which have been pending since September 2004, allows stations that are not providing quality service to their communities to continue to broadcast beyond the already lengthy eight-year term, and suggests to broadcasters that they need not take the existing public interest obligations seriously.