March 12, 2001

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Disposition of Applications for the Transfer of Control of Certain Radio Licenses.

In the 1996 Telecommunications Act, Congress eliminated the limit on the number of radio stations a single entity could own nationally and significantly relaxed the limits the Commission had placed on ownership of radio stations in a local market.[1] As a result, we have witnessed unprecedented consolidation in the radio industry.

A genuine concern about increased levels of concentration in local radio markets stemming from this consolidation led the Mass Media Bureau to start "flagging" certain radio sales cases.[2] The process was intended to scrutinize certain applications more closely and subject those transactions to further competitive analysis. Since commencing this process in 1998, the Commission has struggled with the disposition of these cases; attempting to balance the important goals of competition and diversity with the legitimate expectation of parties that their applications will be reviewed in a timely fashion.

The underlying difficulty in articulating a policy rationale and establishing clear rules for a market competition analysis is that the Commission may run afoul of the Statute. Congress established quite plainly the number of stations that could be commonly owned in a local market--- and the proposed transfers in *all* of the flagged cases comply with theses numerical caps. Does the Commission have the authority to conduct a separate competition analysis and review, which would discount these specific statutory provisions, because it has concerns, however genuine, about the level of concentration in local radio markets?

This is the conundrum under which the Commission has struggled to find a legally sustainable basis for disposing of these cases. It has been unable to do so for nearly three years. As a consequence, a substantial number of cases have been awaiting action, some for over two years. While I am sensitive to the issues raised by the concentration levels in some of these cases, I do not believe the public interest is served by inaction. Further delay is neither warranted nor just.

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[1] *See* Section 202 (a) and (b), Telecommunications Act of 1996.

[2] The Commission identifies for further competitive review ("flags") those applications that would result in one entity controlling 50% or more of the advertising revenues in the relevant market or two entities controlling 70% or more of the advertising revenues in the market.

Therefore, after consultation with my colleagues, I asked the Bureau to review this difficult backlog of cases and make decisions on these transfer applications. Today, the Bureau took an important first step in addressing this backlog; disposing of 32 transactions, approximately 75% of the pending applications. The Bureau found that based on existing rules and Commission precedent, these cases did not warrant further delay. Over the coming weeks, the Bureau will continue this process of backlog reduction with the remaining cases.

The Commission will have an opportunity in the pending rulemaking on radio market definitions to review its implementation of the numerical limits imposed by the Act. To the extent that the Commission's existing rules for determining the size and the number of stations that count toward the cap has led to higher levels of ownership than Congress intended, we will fix that problem. If the Commission determines that further competitive analysis is warranted, we will consider such changes consistent with the Act and in a proceeding that affords full and open debate on the issues.