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March 12, 2001

Statement of Commissioner Harold W. Furchtgott-Roth

Mass Media Bureau Approval of Various Radio License Transfer Applications

I am pleased that the Commission finally has seen fit to approve pending radio license transfers and discard the unwarranted flagging system put in place by the prior Chairman. And what exactly was the flagging system that is today being abandoned? No one knows. No rules for flagging were ever written; no rules were proposed for public comment; no rules were reviewed by the Commission; no rules were approved by the Commission; no rules were available for parties to review and to understand whether their transaction complied or did not comply with those rules; and no rules were available to challenge in court. There were no rules. There was no rule of law. There were only the arbitrary decisions of a bureau in an agency unanswerable to any law or any authority but its own.

In short, the flagging system has been government at its worst. Today is not a day of triumph, but a day to write the final sad chapter of a government agency gone perilously astray. Private parties have doubtlessly been directly harmed by this misuse of government authority. But the direct costs of this flagging system to individuals pale in comparison to the greater harm done to the general integrity of government. Anyone familiar with what has been permitted at the Commission has reason to doubt the integrity of our governmental institutions; restoring the trust of the People of the United States in the integrity of their government is more than a one-day correction of past mistakes.

It is by now axiomatic that if a proposed radio license transfer complies with the numerical limits in Section 202(b) of the Telecommunications Act of 1996, this Commission's "competitive" analysis is at an end. The Communications Act, as amended in 1996, sets the definitive standards for radio ownership to be enforced by the Commission. When Congress set the numerical limits in the Act for local ownership, it made a specific, predictive judgment about how many stations any one person could own in a particular market. Clearly, Congress felt these limits were sufficient to protect the broadcast policies of diversity and competition. The Commission has no power to second-guess or to undermine those judgments and may not use its generalized authority under Section 310 to nullify these specific, considered Congressional judgments.

Before today's actions, there were scores of radio transactions pending before the Commission, with some dating back to 1998. While several of these transactions have been cleared this afternoon, I note that others are still awaiting Commission approval.

This is an unfair result as those companies who anticipate official action are stuck in regulatory limbo as their brethren breathe a sigh of relief. It is also important not to forget that the fate of the employees of radio companies subject to a merger are as much affected by the Commission's actions, or inactions as the case may be, as the shareholders are. Every day of uncertainty caused by Commission delay creates an unnecessary amount of anxiety for these individuals. For this reason, and the others stated above, I must express my dissatisfaction that all of the pending transactions were not granted *en masse*.

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