

Opening Remarks of Commissioner Kathleen Q. Abernathy
Broadcast Ownership En Banc
Richmond, Virginia
February 27, 2003

(As prepared for delivery)

Good morning. First, I want to thank Dane Snowden and everyone involved for all their hard work in organizing today's events. I also want to thank everyone that is taking part in today's hearing – whether you are on a panel or in the audience, you are making an invaluable contribution to the discussion on broadcast ownership.

I don't have to tell any of you about the important role that the media plays in our education, our entertainment, and in our civic discourse. The Commission, in establishing broadcast ownership rules, has focused on the importance of promoting localism, diversity and competition within the media industry for this very reason. I am committed to furthering these long-standing goals. It is only through reevaluation, however, that we can be assured that our ownership rules advance, and do not undermine, our policy goals.

It is also important to note that Congress instructed us to review our broadcast ownership rules and determine if they are still necessary in the public interest in light of the changes in competition. Our win/loss record in the courts over the past two years has been rather pathetic. We are 0 for 5. The courts have made clear that *we must justify the retention* of any rules, or they will be eliminated. In doing so, the court has faulted us for failing to take into consideration the plethora of voices that are now available. The courts have also faulted us for not taking a consistent approach with respect to all our ownership rules. This provides the context for any future decisions.

The marketplace has changed significantly since the adoption of many of our ownership rules. We now have a greater number of choices, as well as increased consolidation. It was not that long ago that we only had a choice of three networks and some independent stations to choose from. Now, in addition to ABC, CBS and NBC, we have UPN, WB and PaxNet available to us over-the-air. Eighty-five percent of homes, moreover, have access to *hundreds* of cable programming networks. Some have expressed concern, however, that 90% of the top 50 cable channels are owned by the television networks and the cable providers. I agree that cross-ownership issues are very important and something we need to look at. In doing so, however, I must look beyond the *popularity* of a program because the benefits of having a diverse array of choices is the ability to reach small niche audiences that may be ignored by the main stream, more *popular* programming. So, when discussing choices – we need to look not just at the top 50 cable networks, but also at the other over 200 national cable networks and over 80 regional networks.

I also recognize that there has been increased consolidation in the media industry; not surprisingly companies seek the benefits of scale and scope unless curtailed by regulators or the courts. My job is to look at the effects of consolidation and ask:

- How has consolidation affected the amount of diverse programming people are receiving?
- How has it affected the availability of local news and public affairs programming in small markets?
- How has it affected competition in marketplace?

Restrictions that may have been needed in the past to ensure competition and diversity may actually make it more difficult for programmers and stations owners to provide compelling quality programming in light of the competition they are facing from other sources.

In seeking answers to these and other questions, we need to be wary of the unintended consequences of changing our rules, as well as the unintended consequences of maintaining our rules. I want to ensure that if we eliminate or modify any of our current rules, we don't lose vibrant voices and diverse sources from our civic discourse. I also need to know what effect our current rules are having on the broadcast industry as they position themselves to compete with cable, DBS and other services that were not taken into consideration when our rules were put in place. And while we talk about the 85% of people that have access to cable and satellite, we can't forget about the approximately 15% of the American public that only receive broadcast services. I want to ensure that free over-the-air services remain competitive and viable and continue to provide programming alternatives to those that rely only on broadcast to receive news, information and entertainment. I don't want the competitive environment to drive the migration of quality programming to cable, and deprive the public of *free* access to these services.

These are important decisions that the Commission has before it and some have cautioned us not to rush to judgment. Far from rushing to judgment, we are responding to the fact that a number of rules that have been remanded or vacated by the courts, leaving the American people, the industry and the FCC in limbo. Inaction by the FCC only prolongs the uncertainty to the detriment of the public and the marketplace. At the same time, we must adopt a well-reasoned and informed decision and I have no doubt that we have the tools in place to do just that. We sought comment on 12 studies and we have received over 3000 comments, over 2900 of which are from individual citizens. In addition, there have been over 10,000 e-mails from the public, and a number of public hearings have been held and are being scheduled. I am taking a hard look at this information and am ready to keep moving forward. The statute and the courts require the Commission to act on a timely basis, and it is our obligation and duty to respect and adhere to that schedule.

Thank you for allowing me to take a few minutes to share with you the questions that I think need to be addressed. I look forward to understanding your perspectives on

these important issues. The insight and viewpoint of the public and the industry are, as always, an essential part of the FCC's regulatory process. Thank you for your time and your commitment to working with us to make well informed and reasoned decisions that will benefit all of us.