

**Remarks of Commissioner Kathleen Q. Abernathy**  
**Museum of TV and Radio**  
**New York, NY -- Monday, April 14, 2003**  
As prepared for delivery.

Good morning. Thank you so much for inviting me here to speak with you today. It is such a pleasure to be at this museum, which I have to say, is truly a treasure. Not only do you educate the public about the history of television and radio, your programs challenge people to learn from that history. You teach them to look at the messages presented by the media critically and to see how it shapes our world. From your current exhibits to classes for children of all ages, you ensure all of us are more informed viewers and listeners.

Television and radio play a pivotal role in the lives of all Americans, not only as a source of entertainment, but it helps define us as a country. Media provides a critical source of news, information and education, as well as a forum for debate and discussion. Historically, the government has stepped in with regulatory oversight because broadcast media rely on scarce spectrum resources to deliver content to the public. FCC regulation has therefore concentrated on maximizing the value of the spectrum by promoting a competitive media marketplace that offers a diverse array of voices serving the needs of the local communities. At its core, FCC rules are designed to further the goals of competition, diversity and localism.

Congress, in 1996, instructed the Commission to review our broadcast ownership rules every two years and determine if they are still necessary to further the public interest in light of the changes in competition. Since that time, the Commission made only modest changes to these rules, and in a number of instances left them untouched. As a result, the courts have stepped in. In the past two years, five of our media ownership rules have been appealed to the courts and we have lost every case. The courts made clear in their rulings that *the Commission must justify the retention* of any our rules, or they will be eliminated. Thus, there is a presumption in favor of repealing or modifying our ownership rules. There is no presumption in favor of retaining the rules as they currently exist. Moreover, the courts have faulted the FCC for failing to take into consideration the plethora of voices that are now available to the public and for not taking a consistent approach with respect to all our ownership rules. Apparently, the courts do not ascribe to the notion that consistency is the hobgoblin of little minds.

There is no doubt that the media marketplace – and in particular, the television marketplace – has changed significantly since the adoption of many of our ownership rules. It was not that long ago – in the so-called “golden age” of television – that we had only a choice of three networks and a few independent stations. Now, in addition to ABC, CBS and NBC, we have Fox, UPN, WB and PaxNet, all available to us over-the-air. In addition, approximately eighty-five percent of homes have access to *hundreds* of programming networks through cable and DBS. Today, the national television marketplace has 7 broadcast networks, 1372 commercial television stations, and 287

national and 56 regional cable networks. In just a little over twenty years – from 1980 to 2001 – the number of channels available in a typical local household grew from 10 to 82. In that same time, the prime time viewing shares of ABC, CBS and NBC dropped from 90% to 38%.

It is against this backdrop that the Commission has undertaken a review of all of our broadcast ownership rules. Given the changes in the marketplace, we must reassess whether our current rules are necessary and continue to serve our core goals of localism, competition and diversity. It is only through reevaluation that we can ensure that our goals are furthered, and not undermined, and that we can successfully respond to the court losses. I am sympathetic that change is difficult. It takes vision, imagination, courage and foresight to let go of a current regulatory regime, and trust that you can formulate one that provides a better, more accurate and up-to-date reflection of the market as it exists today. But that is our job. That is what Congress has told us to do. In fact, the statute tells us that the media marketplace is not static; and that our rules should not be static, either.

Some have argued that despite the court decisions and the statutory mandate, we should nevertheless continue to embrace the status quo. But, that isn't really an option because if we don't commit to this undertaking, our rules will most certainly be appealed and may be remanded, or vacated by the courts. In fact, two of our rules – the local television ownership rule and the national television cap – have already been remanded by the courts for the Commission's failure to justify why they are still needed in light of competition. The Commission began reviewing these rules in 1996 and 1998, respectively. It is now seven and five years later, and we still don't have enforceable rules in place. Continued delay will only impose further uncertainty on licensees to the detriment of the marketplace and the public. Industry will be unable to develop business plans. And the public will suffer.

The court has warned us on prior occasions that a "wait-and-see" approach cannot be squared with the statute, which, as I stated earlier, carries with it a presumption in favor of repeal or modification of our rules. Many might not like the standard that the court has imposed, but it is our job, as an agency, to do the right thing and follow the statute and court's direction in this regard. It may not be the politically popular thing to do, but we cannot and should not substitute our personal preferences for the will of the courts and Congress.

I also fear that by holding on to an outdated regulatory structure, we may harm the very thing we are trying to maintain – a competitive broadcast industry. Restrictions that may have been needed in the past to ensure competition and diversity may actually make it more difficult for programmers and station owners to provide compelling quality programming in light of the competition they are facing from other sources. The world is very different today than when we were living in a three network world and advertisers were assured that the three networks could deliver 90% of the prime time audience. As I stated earlier, that number has now dropped to 38%, and that decrease in viewership directly translates to lost revenues for free over-the-air broadcasting.

One of my goals in the broadcast ownership proceeding is 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. Another goal is to anticipate what effect our rules will have on the broadcast industry as they position themselves to compete with cable, DBS and other new competitors. 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 over-the-air broadcast services. I want free over-the-air services to remain competitive and viable; I want the economics to justify quality programming alternatives for those that rely only on broadcast to receive news, information and entertainment. And finally, I don't want the competitive environment to drive the migration of quality programming to cable, and deprive the public of *free* access to sports, movies and other entertainment. If we hold on too tightly to our current regulatory structure in an effort to preserve broadcasting, I am afraid that we just might ensure its demise.

Admittedly, we can't talk about the changes in the marketplace without recognizing that there has been increased consolidation as well. Not surprisingly, companies seek the benefits of scale and scope unless curtailed by regulators or the courts. But, just saying there has been consolidation, does not tell us whether that is a good thing or a bad thing. 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?

For example, there is evidence in the record that the ability to own two television stations in a market, or the ability to combine a newspaper and a television station in the same market actually increases the amount of local news and information. In today's marketplace – especially when significant expenses are being incurred to transition to digital television – broadcasters may need more local outlets to continue to provide such vital services to their communities. Thus, some increased consolidation will provide benefits to the public by making broadcasters more effective competitors who offer a stronger, more diverse voice. Yet, I also believe that too much consolidation can be harmful. Companies may very well push for scale and scope economies that threaten competition, diversity, and localism. That is why the FCC must remain vigilant.

Precisely where we draw that line between good and bad consolidation is the challenge that we currently face. And there are no easy answers. But it is important to ensure that as we grapple with these issues, we take into consideration the realities of today's marketplace. Television broadcasters don't just compete with each other anymore. They compete with cable and DBS programmers for viewers and advertisers. We also know that a large percentage of the top cable and DBS channels are owned by the television networks. So we need to keep that in mind as we analyze the

competitiveness of a market. In doing so, however, we must look beyond the *popularity* of a program and ask whether consumers benefit from a diverse array of choices.

To be honest, I am not sure where all the pieces will land at the end of the day. But, I am committed to implementing rules that reflect the vibrant market that exists today and that I see when I turn on my television. And I want to ensure that these rules preserve and protect competition, diversity and localism for years to come.