ORAL STATEMENT

of

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on

Broadcast Ownership Biennial Review

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I. INTRODUCTION

Mr. Chairman, distinguished Members of the Committee, it is my pleasure to come before you today to discuss the Commission's Biennial Review of our broadcast ownership rules. I want to personally thank all of you who provided the Commission with your respective views on the proceeding. You, along with well over 500,000 Americans and the Commission's dedicated staff, helped us build the most comprehensive and complete broadcast ownership record in FCC history.

Monday represented the culmination of a twenty month process that was required by the framework Congress crafted in the 1996 Telecommunications Act. In the now infamous section 202(h), Congress ordered the Commission to review its broadcast ownership regulations every two years. And, to "determine whether any of such rules are necessary in the public interest *as a result of competition*." Further, we must "repeal or modify any regulation" we determine no longer serves the public interest in its current form.

Critical to understanding our actions, is an understanding of the court's view of Congress' charge. In *Fox*, the D.C. Circuit held "the Congress set in motion a process to deregulate the structure of the broadcast and cable television industries." It noted in support that in the 1996 Act, Congress:

- Repealed the statutory telephone/cable cross-ownership ban;
- Repealed the statutory cable/broadcast cross-ownership ban;
- Repealed the limits on cable/network cross-ownership;
- Eliminated the national ownership restrictions in radio;
- Relaxed the local ownership restrictions in radio;
- Eased the "Dual Network" rule;
- Directed the Commission to eliminate the national cap upon the number of television stations any one entity may own; and
- Directed the Commission to increase the national television ownership cap from 25% to 35%

As to the biennial review provision, the court stated clearly that the Commission was required by Congress "*to continue the process of deregulation"* by reviewing each of the Commission's ownership rules every two years. It is this Congressional framework that guides the Commission's work, and it was the prior Commission's attempt to maintain rules in their current form and not heed the Congressional direction that led to so many of our broadcast rules being struck down, or remanded.

The FCC is an administrative agency and it is constitutionally bound to comply—willingly or not—with Congress' direction, as expressed by the text of the statute. The Commission does not have the luxury of always doing what is popular. Thus, I reject the sensationalist claims that our effort is nothing more than "gratuitous deregulation." We did our job, and we did it well—with professionalism, rigor, and with the public interest at the forefront of our minds. The court also appreciated that the law "requires the

Commission to undertake a significant task in a relatively short time." And although the job was a difficult one, I am proud to say that the Commission met the challenge.

Indeed, over the past twenty months we have worked tirelessly towards achieving three critically important goals in this proceeding: (1) Reinstating legally enforceable broadcast ownership limits that promote diversity, localism and competition (replacing those that have been struck down by the courts); (2) Building modern rules that take proper account of the explosion of new media outlets for news, information and entertainment, rather than perpetuate the graying rules of a bygone black and white era; and (3) Striking a careful balance that does not unduly limit transactions that promote the public interest, while ensuring that no company can monopolize the medium. I am confident we achieved these goals.

Because of the critically important nature of this proceeding, we set out to build a stronger foundation for our rule choices. It began when I created the Media Ownership Working Group, which commissioned twelve studies of how Americans use the media for different purposes and how media markets function. This was the first time the Agency sought to survey the people to see how they access news. We put out five *Notices of Proposed Rulemakings* and *Public Notices* during that time and gave the public over fifteen months of open comment time to assist the Commission in its fact-gathering efforts. Approximately ten public hearings were held on the subject, thanks in large measure to the efforts of Commissioners Copps and Adelstein. As a result of all this effort, we amassed the most thorough record ever in order to fulfill our statutory responsibility. Let me review only briefly the modern media landscape reveled by that record.

II. THE MODERN MARKETPLACE

Today's media marketplace is marked by abundance. For example, we found that the number of outlets and the number of independent owners have risen dramatically over the course of the last forty years. We learned that in 1960, the "Golden Age of Television," and as late as 1980, if you missed the ½ hour evening newscast, you were out of luck. But today, news and public affairs programming—the fuel of our democratic society—is overflowing. There used to be three broadcast networks, each with 30 minutes of news daily. Today, there are three *24 hour all-news networks*, seven broadcast networks, and over 300 cable networks. Local networks are bringing the American public more local news than at any point in history and new tools such as the internet are becoming an increasing and diverse source of news and information for our citizens. There has been a 200% increase in outlets. But, more importantly for diversity, there has been a 139% increase in independent owners. In sum, citizens have more choice and more control over what they see, hear or read, than at any other time in history.

III. THE PUBLIC INTEREST REMAINS PROTECTED

While competition in the marketplace of ideas remains robust, the Commission still believes the values of diversity, localism and competition remain paramount public policy objectives. Thus, while we concluded many of the rules cannot be sustained in their current form—many dating back nearly 60 years—we opted to modify the regime rather than eliminate it, Congress having provided only those two options. The package of changes are modest, albeit very significant: We kept in place the rule forbidding the top networks from merging. We have tightened the radio rule, fixing the anomaly that led to the now vaunted situation in Minot North Dakota. Given pending transactions, that market would be said to have 45 stations under our old rules. Under our new rules it would have only ten, thereby limiting the number of stations any one entity can own.

We modified the remaining rules to better reflect the record evidence and strengthen the public interest benefits. We retained a national cap, which is curiously defined in terms of the number of households a group owner can *potentially* speak to, not the number of stations one owns or controls. Indeed, all networks (those above the cap and those below) each own less than 3% of the 1, 300 television station in the country. We raised the cap from 35% to 45% in order to better balance the public interest benefits of network ownership (they produce more local news) and the putative harms resulting from their bargaining power with local affiliated stations. We also could not find that a complete cross ownership ban between newspapers and broadcast properties, or radio and television properties was defensible on the record. Such a complete prohibition was clearly harming the public interest in significant ways. Yet, we retained some meaningful limits on cross ownership, utilizing a Diversity Index for the first time to weigh diversity, consistent with the manner in which consumers do, in drawing ownership limits. Finally, our competition caps were modified to better reflect the state of competition in different markets.

The most important public interest benefit by far resulting from our actions is that we have reinstated meaningful limits that are once again enforceable, the existing rules having been taken out of action, suffering from their judicially-delivered wounds. And, I believe we faithfully implemented the Congressional scheme. I recognize, too, that by doing so we have forced an important debate about media regulation and the role of media in our society. I welcome and encourage that discussion and stand ready to aid the Congress in any way to consider any changes in its media blueprint.