

**Statement of
FCC Commissioner Jonathan S. Adelstein**

**Before the
Senate Committee on Commerce, Science, and Transportation
Hearing on FCC Oversight
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Mr. Chairman, Senator Hollings and members of the Committee, thank you for the opportunity to testify before you today. It's great to be back here, but, unfortunately, I do not have great things to report. It's been a sad week for me, and I think for the country, as a dark storm cloud now looms over the future of the American media. I'm convinced the FCC can benefit from this careful review by Congress of our recent decision allowing further media concentration. Since this issue goes to the heart of our democracy, we desperately need input from members of the world's greatest deliberative body.

On Monday, over my strong dissent, the FCC approved the most sweeping and destructive rollback of consumer protection rules in the history of American broadcasting.

I'm afraid democracy was not well served by Monday's decision. Allowing fewer media outlets to control what Americans see, hear and read can only give Americans less information to use in making up their own minds about the key issues they face.

The decision will diminish the diversity of voices heard over the public airwaves, which can only diminish the civil discourse and the quality of our society's intellectual, cultural and political life. It will diminish the coverage of local voices and local issues as media giants gobble up local outlets and nationalize the stories they broadcast.

In the end, our new rules will simply make it easier for existing media giants to acquire more outlets and fortify their already massive market power. Monday's order capitulated to many of the longstanding demands of the media companies the FCC oversees.

As media conglomerates go on buying sprees, they will accumulate enormous debt that will force them to chase the bottom dollar ahead of all else. This is likely to result in more sensationalism, more crassness, more violence and even less serious coverage of the news and local events.

The American people instinctively grasp that media concentration is not healthy for our democracy. They know how it will affect coverage of issues of local concern.

This is why we heard such a public outcry. Commissioner Copps and I reached out to Americans at field hearings across the country. People take their media very personally, and they are very articulate and substantive in what they say. We listened to thousands of people firsthand in city halls, schools, churches and meeting rooms. We heard a loud and unanimous chorus that they think media concentration has gone too far already and should go no further.

And the American people have flooded the FCC with nearly unanimous opposition from all sides, from ultra-conservatives to ultra-liberals, and virtually everyone in between.

In my years on the Hill, I worked on a lot of hot issues. But I've never seen an issue on which such strong opinion is so one-sided. It's touched a raw nerve. Three-quarters of a million people contacted the FCC, and 99.9% of them opposed further media consolidation. Of the thousands of e-mails I personally received, I saw only one that didn't oppose allowing further media concentration.

The American people appear united in believing that media concentration has gone too far already and should go no further.

I've heard it said the FCC can't make its decision by polls or by weighing postcards. I agree the FCC can't make these decisions according to popular opinion. But our statutory mandate from you is to do what's in the public's interest. Does that mean that we can simply dismiss those people who took the time to alert us to their deep-seated concerns with a passing reference? I don't think we should assume that people are wrong about what's in their own interest unless we have overwhelming evidence to prove it. Here, the opposite is true. There is plenty of evidence the people are right.

We've heard opposition from people and organizations from every political stripe, from liberal to conservative, Republican to Democrat, and virtually everyone in between. Organizations of nearly every political stripe have weighed in, from the National Rifle Association to the National Organization for Women, from the Catholic Conference of Bishops to the Leadership Conference on Civil Rights. The Parents Television Council, Common Cause, the National Association of Black-Owned Broadcasters, the National Association of Hispanic Journalists, the Writers Guild, and the Association of Christian Schools. Each of these organizations expressed grave doubt about the wisdom of allowing greater consolidation.

We also heard from hundreds of leading musicians and performing artists, including Tom Petty, Billy Joel, Pearl Jam, Neil Diamond, and Tim McGraw. The Small Business Administration's Office of Advocacy worries about the effect of our changes on small businesses. Media moguls like Barry Diller and Ted Turner, who know the industry intimately, are greatly concerned.

This should not be seen as a partisan issue simply because it broke down along party lines at the FCC.

My own Dad, for example, is a Republican – and an elected state representative in our state of South Dakota. He fears that if media giants swallow up locally owned outlets in rural states like ours, citizens will see less coverage of local concerns, including the key issues facing state governments.

He highlights a real threat to our democracy. One study found that the combined TV coverage of all campaigns in 2000 was about seventy-four seconds per night – and that included local, state and federal elections. As you all know best, people heard a lot more from political ads, many of them negative. That just depresses turnout. Could this media coverage help explain why half of Americans don't vote? Can anyone seriously argue that this will get better if we allow media giants to fortify their already massive market power?

The FCC's order assumes that economic efficiencies and cost savings from mergers will always get channeled into better news and programming. But it requires no steps to actually make that happen.

The majority made the leap of faith that fixed rules based on oftentimes arbitrary numbers are the be-all and end-all of what's in the public interest. They rejected an approach to look case-by-case, market-by-market in favor of bright line rules. They refused even to ask parties that seek to merge to say anything about how many news staff would be retained, the number of hours of local programming planned, cross-programming plans for TV duopolies or the overall impact on news and public affairs programming.

For example, the order assumes that every time a newspaper buys a TV station in communities where 97.7 percent of Americans live, it is in their interest. In some cases, those mergers may actually bring some new heft to a struggling TV station. But is that true in every case? There are many circumstances in which such a deal eliminates an important voice that is now serving a community. The FCC order makes no effort to sort that out, or to require any public interest commitments whatsoever.

The order essentially assumes one TV station swallowing another will always be of benefit in every community where 95.4 percent of the population lives, assuming that the community does not already have a television duopoly and depending on the success of any noncommercial station in the market.

And it assumes that networks should be able to own stations reaching 45 percent of the population – 90 percent if you count fully the UHF stations that are discounted by half – with no explanation as to how this will help diversity or localism.

It's true that Congress and the courts forced a massive review. But they did not force massive deregulation. The FCC had to undertake the review, but it had a choice on the outcome. Certainly, the media markets have changed, and our rules must keep pace.

But Monday's order goes much further than Congress or the courts required. It elects gratuitous deregulation.

The biennial review called for in the Act provides a simple directive – to determine whether the rules “are necessary in the public interest as the result of competition,” repealing or modifying them only if we deem them “no longer in the public interest.” The linchpin of our statutory mandate is two words – public interest. In the context of media ownership, the FCC still has a special duty to protect what the Supreme Court referred to as an “uninhibited marketplace of ideas.” And the public interest means that the American citizenry should benefit from each decision.

To protect the public, we could have required a market-by-market, case-by-case approach that would ensure that each merger served the interest of the communities affected. By failing to do so, the order went further than necessary in eliminating most of the last safeguards the FCC had in place to protect the public.

One argument in favor of unleashing the media giants is that free over-the-air television is threatened. That's a worthy goal, but the rumors of its demise, widely spread, are greatly exaggerated. In reality, just last month, broadcast network advertisers spent a record \$9.4 billion in upfront sales for next season, up 13 percent. The Wall Street Journal recently reported that some networks make \$600-\$700 million, though others are less profitable.

It is quite telling that the best case for consolidation is that the networks need to make still more. It's not the FCC's job to make sure every big TV network makes money – that's up to network management. Our first priority is ensuring the American people get a wide range of diverse viewpoints.

The day we will know over-the-air TV is in real trouble is when broadcasters start lining up to turn back their licenses. Today, instead, the value of television stations continues to skyrocket because these licenses are so scarce. One station in Los Angeles sold for \$800 million. Why are the networks so interested in increasing the nationwide cap or acquiring triopolies or duopolies in local markets if this business is on the way down?

Some argue that the concern about the threat to American democracy is overblown since it is so strong and resilient. While our democracy is strong and not about to crumble, does it mean we can afford to weaken it? Doesn't it matter that only half our citizens vote? The same people argue there is plenty of diversity already, so we can afford to lose some. I just don't agree.

It violates every tenet of a free democratic society to let a handful of powerful companies control our media. The public has a right to be informed by a diversity of viewpoints so they can make up their own minds. Without a diverse, independent media, citizen access to information crumbles, along with political and social participation. For

the sake of our democracy, we should encourage the widest possible dissemination of free expression through the public airwaves.

Despite the majority's assumption that technological advancements render broadcasters just another voice in a crowd of ever-expanding and fungible media channels, a simple fact remains. No technological advances have made it possible for every person who wants to broadcast in a local community to do so. Nobody yet has figured out how to replicate the spectrum for everyone who wants to broadcast a message. The exclusive right to use the broadcasting spectrum denies it to all others.

It is true that many Americans now access hundreds of channels on cable and satellite, the Internet and other media. But it turns out that the same few vertically-integrated global media firms own the bulk of what people see. A person can always add more electrical outlets throughout their home, but that doesn't mean they will get their electricity from new sources. The same goes for media outlets.

Neither the Internet nor cable changes the fact that people still get the vast bulk of their local news and information from the same places they always have: their local newspaper and local TV stations. And these are the very outlets we are giving the most new flexibility to merge.

We are moving to a world where in larger markets one owner can combine the cable system, three television stations, eight radio stations, the dominant newspaper, and the leading Internet provider, not to mention cable networks, magazine publishers and programming studios which could produce the vast bulk of the programming available to those outlets.

In smaller markets, say the town of Great Falls, Montana with a population of 56,690, under our new rules one entity could own the cable company, the dominant television station, the dominant newspaper, and multiple radio stations. Is that automatically in the interest of the residents of Great Falls?

To me, the public interest means more than just efficiencies and cost savings. Every community has local needs, local elections, local news, local talent, and local culture. While localism reflects a commitment to local news and public affairs programming, it also means much more. It means providing opportunities for local self-expression and reaching out to, developing and promoting local talent. It means making programming decisions to serve local needs. It means allocating resources to address the needs of the community. Localism's many virtues are hard to capture, but may get easier to ignore as companies consolidate.

In this order, we face tradeoffs between efficiencies and other public interest goals such as localism and diversity in the media. Guess who wins. The social benefit of diverse, locally originated and oriented programming and program selection to me carries a lot of weight and calls for more individualized decisionmaking.

I don't mean to suggest that bigness is always bad, or that free enterprise will always fail the public. There is some truth to the arguments that my colleagues make today. There's nothing inherently wrong with earning profits from using public property.

But when it comes to gaining even greater profits at the expense of the cornerstones of our democracy, we must carefully question the effect on the public. Our new rules just don't let the big get bigger, they will effectively prevent smaller entities from breaking in.

This is far from over. You may ultimately prove more responsive to the hundreds of thousand of citizens who have passionately pled for the independence and diversity of their media. To paraphrase Winston Churchill, this is not the end, or even the beginning of the end, but just the end of the beginning.