TESTIMONY OF
COMMISSIONER MICHAEL J. COPPS,
BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
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Mr. Chairman, Senator Hollings, Members of the Committee, I am honored be here this morning and I am doubly indebted to Chairman McCain and Senator Hollings, first for holding this hearing on a subject that doesn't often get the attention it deserves and second, for inviting me to share some of my perspectives on this critical issue, and more importantly, to hear yours.

My time is short and I don't think you invited me to deliver a history lecture on the evolution of the public interest concept or to ramble on about its philosophical underpinnings. So, I'll just reaffirm the promise I made to you when I first appeared before this Committee that I would make the public interest the centerpiece of my commitment as a Commissioner. The public interest is important not just because I find it personally appealing – which I do – but because it's the cornerstone of the law of the land. My staff and I did a quick count and found that the term "public interest" appears approximately 112 times in the Communications Act. I take Congress seriously when it tells me something ***once***. When it tells me ***112 times***, I stand at attention.

I don't buy, and I never understood, the argument that the public interest is an empty vessel. We need look no further than the core principles of the Communications Act to find the oxygen that breathes life and substance into the public interest. For example, in telecommunications, Congress told us to promote consumer choice through competition and to ensure universal service so that all Americans have access to the communications networks. When it comes to media, communications law means localism, diversity and competition.

The statute further tells us that the airwaves belong to the American people. No broadcast station, no company, no single individual owns an airwave in America; the airwaves belong to all the people. Corporations are given a temporary right to use this public asset and even to profit from that use. In return, we direct these corporations to act as public trustees and to serve the public interest.

As Members of this Committee know, I am deeply troubled at the direction of the Commission's vote on June 2 to loosen the media ownership rules and caps. I had the opportunity to detail my objections on both the substance and the process of that decision when I appeared before this Committee on June 4th. As that decision approached, I saw two divergent paths. Down one road was a reaffirmation of America's commitment to local control of our media, diversity in news and editorial viewpoint, and the importance of competition. This path beckoned us to update our rules to account for technological and marketplace changes, yes, but without abandoning core values going to the heart of what the media mean in our country. On this path we would also reaffirm that FCC

licensees have been given very special privileges and that they have very special responsibilities to serve the public interest.

Down the other path was more media control by ever fewer corporate giants. This path would surrender awesome powers over our news, information and entertainment to a handful of large conglomerates. Here we would treat the media like any other big business, trusting that in the unforgiving environment of the market, the public interest will somehow magically trump the urge to build private power and private profit for a privileged few. On this path we would endanger time-tested safeguards and time-honored values that have strengthened the country as well as the media.

I believe that with the June 2 vote, the majority of the Commission took the latter – and in my mind, the wrong – road. The decision allows the giant media companies to exert massive influence over some communities by wielding up to three TV stations, eight radio stations, the already monopolistic newspaper, and potentially the cable system. It allows each television network to buy up even more local TV stations to cover 45 percent of the national television audience – and if you throw in the UHF discount, potentially up to 90 percent. Newspaper-broadcast cross ownership is henceforth apparently acceptable in 179 of 210 markets, and duopoly gets the green light in up to 162 of them. One broadcaster who is trying to figure out exactly what our new rules mean has told me that his preliminary numbers indicate that a single company could own up to 370 stations in 208 of the 210 markets in this country. The impact is even more dramatic when considered on a state-by-state basis. For example, in Texas, one company could own 33 television stations, the major paper in Houston, Dallas, San Antonio, and El Paso, plus numerous radio stations. That company might also own cable systems and cable channels and perhaps be the dominant Internet provider, too. Where are the blessings of localism, diversity and competition here? ***I see centralization, not localism; I see uniformity, not diversity; I see monopoly and oligopoly, not competition.***

Rather than spending my few minutes this morning further going over my objections to both the substance and process of the decision or the events leading up to the media concentration vote, I would like to talk about where we go from here. This Committee, other Members of the Senate, and now the House of Representatives are actively involved in deliberations over the June 2 decision, and I will be following what happens here with great interest. And hope. The courts will also no doubt be involved.

These ownership limits were about the last safeguards remaining against the rising tide of media concentration. This is only the latest, although perhaps most radical, step in a twenty-year history of weakening public interest protections. Step by step, rule by rule, we have allowed the dismantling of these protections and flashed a bright green light to the forces of consolidation. The Commission has allowed fundamental protections of the public interest to wither and die, relying instead on private profit as a proxy for the public interest. Requirements that we once had like ascertaining the needs of the local audience, requiring a rigorous license renewal process, providing demonstrated diversity in programming and the teeing up of controversial issues have gone by the boards. Relics, seemingly, of a distant past.

The Commission had also cut back and then eliminated important structural regulations that limited both horizontal (or distributional) concentration ***and*** vertical (or production) concentration, so that the same network distributing programs increasingly owned them. Nowadays, content and distribution increasingly report to the same master. On top of all this, we come now on June 2 and further weaken the horizontal caps, unleashing what many experts expect to be a great "Gold Rush" of swaps, mergers, and acquisitions. "Corporate Cupid," one fund manager called it during the high-powered meeting of media moguls in Sun Valley the other day. "Big-lovemaking, big deals out of this thing. You are going to see a lot," he said. Well, I don't mind brokers being brokers – that's what they're supposed to do. But I do wonder who is supposed to be America's broker in all this. Somehow I had the idea, maybe a little quaint since June 2, that the FCC had a role in all this. But we punted, and now I think a lot of it is up to you ladies and gentlemen of the Congress.

So, the question is, where does the Commission go from here? If we are going to take down the structural bars to media consolidation, then we'd better try to put some vitality back into the public interest. I am totally convinced this needs to happen. Accordingly, I will be asking my colleagues at the Commission to consider the following:

1. **An Effective License Renewal Process:** As more national conglomerates gobble up local stations, we need a process to ensure that licensees are serving their local communities. As one part of this effort, we should establish an effective license renewal process under which the Commission would once again actually consider the manner in which a station has served the public interest when it comes time to renew its license. The Commission formerly did that. But the system has degenerated into one of basically post-card license renewal. Unless there is a major complaint pending against a station, its license is almost automatically renewed. A real, honest-to-goodness and properly-designed license renewal process, predicated on advancing the public interest, would avoid micro-management on a day-to-day basis in favor of a comprehensive look at how a station has discharged its public responsibilities over the term of its license.

As part of the license renewal process, I believe it is important to go out and hear from members of the community. But that hasn't happened for years. It's time for that to change. As we begin the next round of license renewals for radio this fall and for television in 2004, I intend to hold a series of town meetings in regions where renewals are due in order to hear from communities how their airwaves are being used. How can we know if licensees are serving their local communities without hearing from the local community? I intend to get outside the Beltway to listen and to learn.

I hope my colleagues will join me in this outreach effort. At a minimum, I hope that I will receive support in terms of staff and funding so that we can make these town meetings maximally productive.

2. **Community Discovery:** The Commission should not be the only listening to the people. Let's get Clear Channel and other large station owners out among the people in the communities where they own stations. I believe the public interest would profit immeasurably with some meaningful, but user-friendly, successor to the old ascertainment process. As media conglomerates grow ever bigger and control moves further away from the local community, doesn't it make sense to require, as a condition of renewal or new acquisitions, that the owners come to town and visit with their listeners and viewers to learn about the problems, needs, and issues facing the local community, and understand what the people there really want to see and hear in their programming? An occasional visit to town by absentee station owners is not what I would call localism at its best, but at least it's something. And the owners would then tell the Commission if and how they followed through.

3. **Eliminate Indecency on the Airwaves:** Every day I hear from Americans who are fed up with the patently offensive programming coming their way so much of the time. I hear from parents frustrated with the lack of choices available for their children. I even hear from many broadcast station owners that something needs to be done about the quality of some of the programming they are running. I've referred to a "race to the bottom," but I'm beginning to wonder if there even ***is*** a bottom to it. How does this serve the public interest?

   We need a number of actions here.

   First, I will propose a proceeding to consider whether there is a link between increasing consolidation and increasing indecency on our airwaves and steps we should take to address any such problems. In its recent decision, the Commission failed to analyze this issue. Has consolidation led to an increase in the amount of indecent programming? Intuitively, it makes sense, but I don't pretend to know whether there is a causal effect or a correlation or what. When programming decisions are made on Wall Street or Madison Avenue, rather than closer to the community, do indecency and excessive violence grow more pervasive? We need to know the answer to this question. I believe we had no business voting on June 2 without having visited this matter and amassing at least a halfway credible record as to whether all this media concentration has concentrated a lot of smut on our kids. We owe it to our children, and their parents, to explore this question before voting on whether to allow more consolidation.

   Second, the Commission needs to do a far better job of enforcing the laws against indecency on our airwaves. The process by which the FCC has enforced these laws has long placed inordinate responsibility upon the complaining citizen. That's just wrong. It is the ***Commission's*** responsibility to investigate complaints that the law has been violated, not the citizen's responsibility to prove the violations.

I also believe, as I suggested in the recent WKRK-FM case, that we need to send some of the more outrageous transgressions to administrative hearing for license revocation. Taking some blatant offender's license away would let everyone know that the FCC had finally gotten serious about its responsibilities, and I think we would see an almost instantaneous slamming on of the brakes in the race to the bottom.

Third, I have long suggested, without much success, that broadcasters voluntarily tackle the issue of indecent programming. Many of you will remember the Voluntary Code of Broadcaster Conduct that for years and years saw the industry practicing some self-discipline in the presentation of sex, alcohol, drug addiction and much else. It didn't work perfectly, but at least it was a serious effort premised on the idea that we can be well-entertained without descending into that race for the bottom. I'd like to see my friends Eddie Fritts of the National Association of Broadcasters and Robert Sachs of the National Cable and Telecommunications Association convene a TV summit to tackle the issue. And you know what? A lot of their members agree. It wouldn't be easy, but it would certainly be welcomed by the American people.

It is also time for us to step up to the plate and tackle the wanton violence our kids are served up every day. Compelling arguments have been made that excessive violence is every bit as indecent, profane and obscene as anything else that is broadcast. Over the years, dozens of studies have documented that excessive violence has hugely detrimental effects, particularly on young people. I don't say this is a simple problem to resolve, because it is not. I do say the issue has gone unaddressed for too long.

I don't know what the precise mix of legislative initiative, regulatory enforcement and voluntary industry action should be here, but millions of Americans are asking us to get on the job, and I am pleased that this Committee is on the job. Today we have the best of television and undeniably the worst. When it is good, it is very, very good; and when it is bad, it is horrid. It's not what the pioneers of the great broadcast industry had in mind when they brought radio and television to us.

3. **Minority and Female Participation:** The Commission in the recent media ownership decision promised to initiate a proceeding to increase the participation of minorities and women in our media. I was troubled that in reaching that decision, the Commission did not even attempt to understand what further consolidation means in terms of providing Hispanic Americans and African Americans and Asian-Pacific Americans and Native Americans and women and other groups the kinds of programs and access and viewpoint diversity and ownership and career opportunities and even advertising information about products and services that they need. But the Commission moved forward notwithstanding my objection. Now that the vote has taken place, we must undertake and expeditiously complete a proceeding to increase opportunities for

minorities and women. I know that Chairman McCain and other Members of this Committee have tremendous interest in this issue and I commend them for it. We must never forget that America's strength is, after all, its diversity. America will succeed in the Twenty-first century not in spite of our diversity, but ***because*** of our diversity. Diversity is not a problem to be overcome. It is our greatest strength. ***And our media need to reflect this diversity and to nourish it.***

5. **DTV Public Interest:** Thanks to this Committee and its counterpart in the House, the transition to digital television has advanced on many fronts. And Congress made it clear that the public interest obligations of broadcasters would continue in the new digital world. But the FCC has not followed up on its responsibility to update its rules for those who are given the right to use spectrum for digital television. We have just recently managed to get a couple of proceedings, now more than three years old, dusted off and put out for further comment. We need to push these to conclusion and take a good, broad look at this so (1) the American people will know how digital TV will serve their interests and (2) broadcasters will know and understand the rules of the road.

6. **Independent Programming:** I will also propose a proceeding to examine independent programming on our airwaves. Numerous commenters urged us to include this in the recent ownership proceeding but the majority felt it didn't belong there. I disagreed. But now that we are further loosening the concentration limits, we should address whether there is a need for independent programming requirements to ensure that we do not end up with national vertically integrated conglomerates that control the distribution channels ***and*** all the content we see and hear. Network ownership of the full range of prime time programming constrains competition, consigns independent production to oblivion or, at best, minor and marginal roles, cripples the production of diverse programming, and also entails widespread job losses for workers, including creative artists, technicians and many, many others.

Members of this distinguished Committee, I present these proposals in the hope that we can build on the dialogue that has begun with media ownership. In the past months, we have seen this issue steamrolling across this country – a grassroots issue like we haven't seen in many years and one that developed without the FCC doing its part to spark it or Big Media doing its part to cover it at all adequately.

More than two million Americans have registered their views with the Commission now – more than for any proceeding in our history. In these times when many issues divide us, citizens from right to left, Republicans and Democrats, concerned parents and creative artists, religious leaders, civil rights activists, and labor organizations have united to fight together on this issue. I believe the American people want action on how their airwaves will be used. Who is going to control the media? How many—or, rather, how few – companies? How do we protect local broadcasting, diversity of programming and opinion, and the ability of local broadcasters to compete with the huge companies?

I read some inspiring words the other night from a former President who I think understood radio, back when radio pretty much was all of broadcasting. The spectrum is, he said, "a public medium and its use must be for public benefit. The use of a radio channel is justified only if there is public benefit. The dominant element for consideration in the radio field is, and always will be, the great body of the listening public, millions in number, countrywide in distribution." That wasn't my hero, FDR, but his Republican predecessor, Herbert Hoover, serving as Secretary of Commerce in 1925. Those words ring now truer than ever. I don't know who your heroes are, Members of the Committee, but I do believe that working together, in bipartisan fashion, we can once again propel the liberating spirit of the public interest to the forefront of our great country's media.

Thank you very much for this opportunity and I am anxious to hear your further thoughts and to try to answer any questions that you may have.