

Remarks of Commissioner Kathleen Q. Abernathy

NAB Radio Show

October 2, 2003

(As prepared for delivery)

Thank you very much for inviting me here to speak with you today. This is my third NAB radio show and I appreciate the chance it gives me to hear directly from many of you that I otherwise wouldn't get to see about what you've been doing and the challenges you foresee. In return, I'll try to give you my perspective on the FCC's activities during the past year, the challenges we face in the year ahead, and how these may affect radio broadcasters in the months to come.

To put it mildly, it's been quite a year. The Commission completed its statutorily-mandated biennial review of the broadcast ownership rules to a crescendo of concern voiced by members of Congress and the public. An important aspect of this concern relevant to the radio industry is the perceived loss of local control, local input, and locally-based programming that is seen as an unintended consequence of allowing licensees to own large numbers of stations nationally.

To be sure, this increase in national ownership didn't happen by accident. The Telecommunications Act of 1996 specifically eliminated limits on national radio station ownership while retaining limits on the number of stations that could be owned locally. The assumption underlying this change is that maintaining *local* ownership limits would assure that listeners had access to diverse and competitive radio programming, thereby making *national* ownership limits unnecessary.

Developments after 1996, however, have challenged this assumption. First and foremost, with no limits on national ownership some group owners acquired more stations than many observers expected. Compounding the problem was our discovery of certain anomalies in the way we count the number of stations in a market. These anomalies allowed some group owners to own more stations locally than the statute intended. The economies of scope made possible by this unexpected degree of multiple ownership accelerated the competitive pressures on all stations in the market to an extent many had not anticipated. And this lead directly to certain competitive responses consumers didn't like. In our biennial review proceeding we heard complaints about voice tracking and indecency, and there were calls to restrict local and national radio ownership.

My own views are fairly clear; you've heard them before. I believe the Congress got it right the first time: the fact that one company owns a hundred stations, or many more, isn't necessarily a bad thing, given that there are currently over 13,000 radio stations on the air. But, when one company can own 7 of the 8 stations in the local market, we have a problem.

Thus, in reviewing our radio ownership rules, we looked at the way the Commission has defined the radio market, and we thought that the current contour overlap method did not reflect economic realities. Therefore, for rated markets, we switched to Arbitron. I recognize that Arbitron is not without its problems, but hopefully we addressed the major ways in which Arbitron markets can be manipulated. With respect to the non-Arbitron markets, we sought further comment on the best way to define these markets. And in the interim, we are using a modified contour approach, which alleviates some of the major anomalies, and causes the least amount of disruption to existing licensees. But, we really need your input and your help with respect to where we go from here. We want to establish rationally based boundaries without being unduly disruptive to the current market structure. I look forward to discussing with you the options we proposed, including using metropolitan areas or cellular market areas, and any other suggestions you may have.

Now to the extent that increased ownership may be having unintended adverse effects on the amount or type of local programming, I do not believe that structural limits on ownership are the best way to address these concerns. As the segment of the mass media industry with the most time-honored tradition of local service, a perceived loss of that service is not just a loss to local listeners, but also to the fundamental contract of trust and responsibility that a broadcast license stands for. There are certain core obligations that all broadcasters have, regardless of whether you are a large media company or a mom and pop station, and those obligations are to understand and serve the interests of the community to which your stations are licensed.

I therefore support Chairman Powell's recent announcement of a "Localism Initiative," and particularly the formulation of a Localism Task Force, by which the Commission will take a close look at precisely how broadcasters are serving their local communities. We can then determine what, if anything, must be done to promote this goal. As part of the Commission's initiative, there will be a Notice of Inquiry on localism, public hearings, studies, and legislative recommendations, if needed. Fundamentally what we need to determine is whether our existing rules are serving the public interest, and or whether there are other steps we need to take, consistent with the First Amendment. One of the pivotal, and most fundamental, issues we need to tackle is how localism is best defined. Should we look at where the station owner lives? Or at what types of programming is broadcast? Or should we look at some other criterion entirely? For example, in the old comparative hearing process the Commission awarded an applicant extra credit if the proposed owner worked at the station and lived in the local service area. Should we now consider a similar approach? And is there a workable way of assuring that local interests and concerns are heard by licensees on an ongoing basis throughout the entire license period, rather than simply in the run-up to renewal?

I have said before that mandating, or even "suggesting," certain types of programming that might be necessary to meet a broadcaster's public interest obligations would place the FCC in the unfortunate position of being the national arbiter of what programming would be "good" for listeners in every local market. The imposition of a federally-approved "good programming" standard would, in my judgment, fly in the face

of the community-responsive localism we should strive to achieve. But there is no doubt that drawing a correct line between furthering localism and prescribing approved speech is one of the most difficult decisions any of us will be called upon to make.

Before leaving this subject I want to address one other problem area of particular concern when we speak of localism and the public interest obligations radio broadcasters assume. And that is indecency. As all of you know, Congress restricted the utterance of any obscene or indecent language over radio and television and gave the FCC the responsibility to enforce this provision, which the courts have upheld.

I know that the vast majority of you comply with these rules. And I also believe this comes less from fear of government retribution and more from your desire to serve your community and show respect for your adult listeners and their children. These people are your local community. By not debasing their values, you remain true to the most basic public interest responsibility you take on when granted a broadcast license. No government official can instill that responsibility in those who lack it. But our fines and other more stringent measures can, and should, impose appropriate limits on the notorious minority that, for whatever reason, cannot fulfill it.

As a regulator, I am careful to act only on what is indecent or obscene, not what I find to be personally objectionable. But for those broadcasts found to be in violation of our rules the costs will be high. Lately, the Commission has been taking a stringent stand on indecent broadcasts, doubling the amount of penalties and even raising the base forfeiture amount to the statutory maximum. We have also indicated that a single broadcast may contain multiple violations, and that we may revoke a license for egregious repeat offenders. I fully support strict enforcement of our rules, and I want to send the message -- loud and clear -- that this Commission will remain vigilant.

Looking ahead, this industry should expect more involvement and inquiry into insuring that *all* broadcasters are serving their local communities. I hope and believe that, given your industry's history of responsiveness to public concern, you will not view this inquiry as a setback, but rather as an opportunity. For just as I suspect the Commission will find areas in which its own rules and policies could be improved, you too will find areas in which your own performance and practices could likewise stand improvement. Throughout the days that lie ahead, you have an unparalleled opportunity to demonstrate the commitment you have to your communities. As long as we are honest with ourselves and with the public, as long as we look candidly at whatever problems are found to exist and do not shrink from addressing them, we will meet again next year knowing that *all* of us have done what is right and what is best for the American public that we all serve.