

**REMARKS OF
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NATIONAL ASSOCIATION OF TELEVISION PROGRAM EXECUTIVES
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Good Morning and thanks to all of you who dragged yourselves out of bed and came down to hear a speaker who's not even present! In Las Vegas you can always watch your money disappear. But you didn't bet on your speaker disappearing, too! But my doctor says a few more weeks without travel, so I'm grateful for your putting up with this. I want to especially thank Tribune and Dennis FitzSimons for letting me use this wonderful Washington studio this morning. Actually, I think we should give Dennis the first "Good Sport of the Year Award" for 2005 for letting me use his facility to talk with you about media consolidation. Talk about above and beyond—thank you, Dennis.

Thank you my good friend, Mickey Gardner, for such a generous introduction and for everything you did to arrange this. Mickey has been a tremendous advocate for NATPE. In addition to understanding industry and understanding how to get things done in Washington, he has this wonderful sense of history that informs everything he does. He understands how America's media evolved and how important they are to our society. So his good counsel comes with a broad perspective that's really pretty rare these days.

So I'm grateful to be a part of NATPE 2005, even from a distance. Two years ago when I last joined you, it wasn't a sure thing that there would even be a NATPE 2005. But thanks to the leadership of Rick Feldman, Jon Weiser, Steven Davis and the rest of the board, NATPE is not only here, it is evolving and growing and making a real contribution to the industry and to the nation.

Let's think out loud about the future of our media. Few subjects rival this one on my list of priorities. I hope it's near the top of your list, too. I know that a lot of you in this audience share my concern about the media track we're on. Some of you have already spoken out and contributed your creative thought and hard work to the issue of how we reinvigorate the diversity and competition that our consumers and citizens not only deserve, but require. When a majority of my colleagues unwisely loosened the remaining rules on media ownership, creative artist groups like the Writers Guild, Directors Guild, the Screen Actors Guild, AFTRA, The Center for Creative Voices in Media, the Association of Independent Video and Filmmakers, the Caucus for Television Producers, Writers, and Directors, and many others labored mightily to bring this issue to the nation's attention and to let the sunlight of public debate shine upon it.

No one should have been surprised that so many in the creative community joined the fight. Creative artists have so often been in the vanguard of progressive change and democracy in times of social and political challenge. Now their voice is needed again, perhaps as never before. Many of you gathered out there have experienced first-hand the effects of increasing consolidation. You understand that this is about your industry, yes, but it's about your country, too. And you understand that we're not talking about some

future threat. We are talking present reality. Fewer companies own and control more media properties. Big companies already control radio, television, newspapers *and* cable – cable systems and cable channels. They own the production of programming. They own its distribution. Increasingly, they control creativity itself.

Many of you not directly affiliated with a conglomerate have felt the pain—the closing off of distribution channels, the inability to bring creative programming to a viable audience, watching good people lose their jobs and even their careers—artists, technicians and all kinds of workers who were once part of a thriving independent industry.

I'm not here to pick on television, because I think our media is in crisis across the board. But it tells a story that the media conglomerates that own the networks control approximately three-quarters of the primetime audience. That audience share of households is approaching – and could soon surpass, according to some analysts – the share the three networks had during the 1960s and 1970s. And today, these huge companies are far more vertically integrated than they were then, controlling the production of most of the programs as well as the distribution. History shows us that combining distribution with production was how John D. Rockefeller built his stranglehold. I'm not saying that history repeats itself exactly, but often there are enough similarities that we ought to at least pay attention to it. This is one of those times. By the way, in contrasting network power now with, say, 30 or 40 years ago, remember that back then they didn't have their own stable of "owned-and-operated" stations. Plus we had financial interest and syndication rules to check market power. We had a real FCC re-licensing process for stations. We had specific public interest requirements. And broadcasters had a Voluntary Code of Conduct far more disciplined than anything they have today.

Go back a short decade or so and two-thirds of primetime programming was independently-produced—a far cry from that three-fourths of prime-time programming produced by the networks and affiliated studios today. Why has this happened? Is it because the major studios affiliated with conglomerates have a lock on the creative genius in this country? I don't think so. Is it because independent producers can no longer come up with hit programs like *The Cosby Show* or *All in the Family*? No. Is it rather that we have allowed a few media conglomerates to wield gatekeeper control over the content and distribution of the entertainment that we get?

Whatever the cause, the effects are pernicious. Most observers tell me that the doors of opportunity are closing fast and that we won't have a new generation of Norman Lear and Marcy Carseys and Ted Turners because the opportunities they had are gone. I understand Ted Turner told you that first-hand yesterday. It isn't just independent entrepreneurs and creative artists who suffer the consequences. Each of us as citizens suffers from the lack of diverse programming. So much of today's network menu is geared to the 18-34 year old age demographic. (Now I've got to tell you, I love that group—four of my five kids are in it and the fifth is just 11 months away from her golden passport.) But I think many of you would agree that a case can be made for more

programs geared to older Americans—and let’s remember that shows like *Golden Girls* were independently produced. Similarly, there is evidence that younger viewers are being left behind in the new media environment. Children Now examined the impact of consolidation on kids. They analyzed the market in Los Angeles and found that the number of broadcast TV programs for children dropped **nearly 50 per cent** after independent local stations were swallowed up in media mergers!

If old people and kids have it tough, pity America’s minority groups. Their issues seldom rise to the level of serious coverage. When minorities do appear in programming, it is still all too often in caricature. And they are even ignored in the advertising that is selected. That’s just not acceptable. This country’s strength *is* its diversity. America will succeed in the Twenty-first century not in spite of our diversity, but *because* of our diversity. And our media have an obligation to reflect this diversity and to nourish it. We’re a long way from the goal-line.

Years ago some of the experts told us not to worry because the rapidly-expanding multi-channel universe of cable TV would save independent programming. It didn’t happen. Instead, 90 percent of the top cable channels are owned by the same companies that own the TV networks and the cable distribution systems. More channels are great, but when they are all owned by the same people, we’re not doing justice to diversity, localism or competition. Diversity is more than a bigger band belting out the same tune.

So all those “don’t worry” assurances didn’t pan out. And I do worry. I worry that anything with the name “independent” on it seems to be on the endangered species list. I worry about the toll this takes on media diversity. I worry about the effects on creativity across whole regions of this broad land. I see the effects wherever I go—people standing up at our town hall meetings and telling their often sad stories. News anchors and radio and TV journalists no longer needed as stations are consolidated. Workers told their jobs, their livelihoods, are gone. Independent producers and creators, some with hit shows under their belts, telling us how hard it is to launch new shows in today’s environment. Local recording artists denied a chance to get radio air time—and sometimes these are pretty well-known artists with their own CDs and followings around the country. Music from Motown, bluegrass from Appalachia, jazz from New Orleans and many other distinctive genres are fighting just to stay alive. Let me ask you: Is America going to be a better place without them?

So it is time—it is long past time—for the FCC to consider and *approve* a set-aside, like 25 or 35 per cent of prime-time hours, for independent producers and creators. There’s just so much more creativity and genius out there than our media currently reflect. More independent programs would be a wonderful boon to diversity, localism and competition—the three building blocks of a healthy and dynamic media environment. And you know, these building blocks aren’t luxuries, nice things to have if we can afford them. Diversity, localism and competition are *necessities* for a thriving American media, and we can’t afford *not* to have them. They are essential for the quality of entertainment our citizens enjoy, and they are essential for the vitality of America’s civic dialogue—a civic dialogue that I think is in serious, serious trouble—but that’s another speech. We

need these building blocks across our entire media landscape. And your FCC ought to be nourishing these all-American traits. Instead it has been busy subverting them.

Big media companies argue that they need the economic efficiencies of consolidation in order to survive. Now, we all realize that we live in a national economy—and a global economy—where the pressures of competition are extreme. We know that we cannot turn back the clock to a simpler past which never was, truth be told, quite that simple. I have never equated bigness with badness, and I have supported mergers and acquisitions that serve the public interest. That being said, we are talking here about a special industry—a very special industry. When we talk about media, we are not talking about just another commodity. Remember that former FCC Chairman who described television as just a toaster with pictures? No, when we talk media, we're talking about how we as a people converse with one another, how our democracy communicates with itself, how together we make decisions about where we want our country to go, how we share and benefit from the genius and creativity and diversity of nearly 300 million Americans, not to mention our brethren around the globe. Business has a powerful role to play in making this happen, even while making a living for itself in the process, and we encourage their success. But media is the people's business, too, and my take is that the people increasingly intend to have a say in how the media develop and how their airwaves are used.

I believe we have the opportunity to make a difference *this year*. Let me tell you why. As part of its drive to eliminate the structural and public interest rules that limited both horizontal and vertical concentration, the Commission in June of 2003 voted to loosen very significantly its remaining ownership protections. But in its heedless drive to loosen the rules and its stubborn refusal to share its proposals with the people before it voted, the Commission awoke a sleeping giant—the American people. Over 2.3 million Americans contacted the FCC on this issue. I didn't know there were 2.3 million people who even knew the FCC existed, much less were concerned enough to contact us. But citizens across the land stood up in never-before-seen numbers to reclaim their airwaves. In these times when so many issues divide us, and we're called a 50-50, or now a 51-49 nation, groups from right to left, Republicans and Democrats, concerned parents, creative artists, religious leaders, civil rights activists, and labor organizations came together and fought together for diversity in their media. They fought in the red states. They fought in the blue states. It's an all-American issue.

The people's representatives in Congress answered the call. The U.S. Senate voted twice to overturn the FCC decision in its entirety, and over 200 Members of the House of Representatives asked the House Leadership for permission to vote on the same resolution of disapproval. So far, they have been denied that vote. But if they were permitted to vote this afternoon, I'd lay a big Las Vegas wager that they'd vote those new rules down.

The courts responded, too. The Third Circuit Court of Appeals ruled last summer that the FCC's new rules were legally and procedurally flawed. A tip of the hat here to the Prometheus Radio Project and to Andy Schwartzman who so ably argued the case.

So, we have now heard from the court, the Congress, and the American people that the FCC got it wrong.

That's the good news. The bad news is that these rules were sent back to—guess where?—the very Commission that dreamed them up in the first place. So an entirely plausible outcome of all this could be rules every bit as bad as the ones sent back to us. Maybe even worse.

So we are entering a truly decisional year. The first decision will come in a few days when the Chairman decides whether to seek further appeal of the Third Circuit's decision. Some prefer the delay that an appeal entails, hoping the issue will disappear from the radar screen and get them off the political hook for a year. For my part, I believe that now is not the time for more delay through additional litigation. Others want the Commission to move quickly to eliminate or loosen the media concentration rules one by one, again by flying under the radar screen—another stealth process—instead of examining in public the collective impact of the rules on our media. Their goal is to accomplish gigantic changes with minimal public scrutiny.

This time, let's at least have the good sense to include the American people in the process – instead of shutting them out like last time. Commissioner Adelstein and I have asked Chairman Powell for FCC ownership hearings around the country to begin right away. You know, I learned fifty times more about what's going on in various media markets at grassroots hearings and town hall meetings than I ever could have learned by isolating myself inside the Beltway and reading formal comments written by the usual industry lobbyists. Plus, citizens have a right to expect direct access to decision-makers at the FCC. We have yet to get a positive response from the Chairman, and I'm not counting on one as a going-away gift as he departs the Commission. So, Jonathan and I have begun another round of our own hearings. They will continue.

I intend to have at least one of these forums focus on the needs of creative artists and how best to promote independent programming. Today, I ask for your help and participation as we put together a major forum for the creative community. And let's keep our eye on the doughnut and not the hole, as my friend Fritz Hollings used to tell me. The doughnut is here is how to build program diversity in a consolidated media environment. Let's not get deflected by other issues.

By the way, this issue may also come up as the Commission considers the public interest obligations of DTV broadcasters, hopefully this year. As we make the transition to digital television, there is a crying need to update our rules on the public interest obligations of those who are granted the privilege to use the people's spectrum for digital television, particularly those who will multi-cast up to six program streams. The potential of DTV to advance diversity is enormous and I believe its rewards, for everyone, can be enormous. We appear—industry and government both—to be getting truly serious about making the transition to digital TV actually happen. But amidst all the many conversations on the mechanics of the transition, we have yet to decide how DTV is going to enhance the public interest. A coalition—the Public Interest Public Airwaves

Coalition—has proposed a plan that includes a requirement for more independent viewpoints and sources in TV programming. So here is another venue in which you can push for an independent programming requirement. My belief is that we need to get this requirement on the books before the Commission completes action on must-carry.

Consider this a call to action. Don't tell me now is not the time to fight. Don't say let the courts decide. Don't let the usual suspects inside the Beltway write the rules. And don't just give token service to the cause. Jump in with both feet. Involve your colleagues, your industry spokesmen, especially your creative artists and stars who the American people know and respect. It's going to take that kind of effort—and more. But I believe millions of Americans are eager to take this on and get it resolved. And their representatives in Congress have already shown they will step up to the plate in response to that kind of citizen action.

Sure, we have a lot of work to do. Of course, it's uphill against powerful economic interests. Yes, the climb is made steeper by regulatory policies that pave the way for more consolidation and less public interest protection. Some say getting involved is risky. Maybe it is. But good policy delayed is good policy denied, and I believe if we don't do this now, we'll be past the point of no return. You folks in this audience know better than anyone else how to tell a story in a way that will reach an audience and make the critical difference. You need you to tell that story—in your own creative and diverse ways. I'll tell you this: those “Tell the Truth” recording artists made a difference when they went on tour last year to raise public awareness of these issues. Now, you may not all be great vocalists, but there's a role for everyone who wants to be a part of this great chorus. There's a song for you to sing.

Thank you very much.