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SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET  
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION:  
MEDIA OWNERSHIP”  
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Good morning Chairman Dingell, Chairman Markey, Ranking Members Barton and Upton and Members of the Committee.

This oversight hearing could not have come at a better time. The FCC is lurching dangerously off course, and I fear that at this point only Congressional oversight can put us back on track. The Chairman is proposing that, just two weeks from now, the FCC open the door to newspaper-broadcast combinations in every market in the country. At the same time, we have given short shrift to pressing problems like the sad state of minority ownership of U.S. media properties, the obvious decline of localism in our broadcast programming, and a DTV transition that holds real potential for television outages and a consumer backlash the likes of which you and I haven't seen for a long, long time.

Let me begin with media ownership. The proposal in front of the Commission has been portrayed as a “moderate” relaxation of the newspaper-broadcast cross-ownership ban in the 20 largest markets. But look carefully at the fine print. The proposal would actually apply the *same test in every market in the country*. That's right—*any* station can merge with *any* newspaper in *any* market in the country. The only difference is that in the top 20 markets you start with a presumption that you meet the test, while in the other markets you don't.

And that's the rub. The four factors proposed by the Chairman are about as tough as a bowl of Jell-O. You don't even have to meet them all—it's just a list of things the

FCC will “consider.” Given how the FCC has “considered” media regulation in recent years, I have about as much confidence that a proposed combination will be turned down as I do that the next Commission meeting will start on time.

This is not the only example of media regulation that seems like a chapter from Alice in Wonderland. Just last week, an FCC majority ostensibly “denied” Tribune a waiver before turning around and granting a two-year waiver if and when Tribune files an appeal. The majority turned these unprecedented legal summersaults to push Tribune to challenge the newspaper-broadcast cross ownership ban in a court they think may be more sympathetic to their cause than the Third Circuit.

There’s still more evidence of the real agenda at play. I’ve given Chairman Martin credit for holding six media hearings around the country. No one knows better than the American people whether they are being served by their local media. And at each stop, all of the Commissioners agreed—the public needs to be heard before the FCC acts on a subject as important as the American media.

Hundreds and hundreds of citizens came out at great inconvenience to themselves—and often waited for hours—to provide their testimony. Throughout the process, many openly questioned whether the hearings were real or just cover for a pre-determined outcome. Those questions gained credence last month when our last media ownership meeting was announced for Seattle with only one week’s notice. Well, last week we may have gotten our answer. I went through the draft Order to see how it handled the hundreds of public statements at these hearings. While there is a passing reference to the public hearings, *not a single citizen’s testimony is specifically cited or discussed*. I was flabbergasted. The whole point of these hearings was to gather

evidence from the American people—and the Order does not find a single comment worthy of mention?

So then I went through the draft to look for the public input from our six separate *localism* field hearings, which the *Further Notice* stated would be considered as part of the media ownership record. Again, *not a single citizen's testimony is specifically cited or discussed*. It's hard to reach any conclusion other than public comment is largely extraneous to the process. What else are we to think when a draft Order is circulated two weeks *before* public comment is due on the proposal?

I realize we are not taking a public opinion poll in this proceeding. But public comment deserves more consideration than this. As anyone who attended these hearings can tell you, calls for more media consolidation were few and far between. Indeed, a recent survey finds that 70 percent of Americans view media consolidation as a problem. And by an almost two-to-one margin, they believe newspapers should not own TV stations in the same market and they want laws to make sure that can't happen. Those poll numbers are consistent across the political spectrum. So this is no red state-blue state issue. It is an all-American grassroots issue.

I recognize that there is another possibility—that this is simply a rush job to be completed any way possible by December 18, so there just wasn't enough time to consider the full record. Whatever the reason, there is only one way to do this job and that is to do it right. The issues are too important to address in a slapdash manner.

No one on this Commission, even if some feel differently about the pros and cons of changing the ownership rules, should want to perpetuate those kinds of appearance

issues about the FCC. We need a process that allays fears rather than one that creates them.

In the meantime, I believe that there are two policy goals on which we need to make real progress—minority and female ownership is one, localism is the other. These issues have been languishing for years at the FCC. We always seem to be running a fast-break when it comes to more media consolidation, but it's the four-corner stall when it comes to minority and female ownership and ensuring that broadcasters serve their local communities.

Racial and ethnic minorities make up 33 percent of our population but they own only 3.26% of the full-power commercial TV stations. And that number is plummeting. Free Press just recently released a study showing that during the past year the number of minority-owned full-power commercial television stations declined by 8.5%, and the number of African American-owned stations decreased *by nearly 60%*. It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

It may be difficult for you to believe, but the Commission doesn't even have an accurate count of minority and female ownership. That is indicative of the lack of priority the Commission has attached to minority ownership in recent years.

There are recommendations that have been presented to address the issue, both by outside commenters and our own Diversity Committee. These need to be put together in a comprehensive and systematic response to a problem that is a national disgrace. And it is a national disgrace to have a media environment that is so blatantly unreflective of how we look as a nation. I support Commissioner Adelstein's call, joined by many others, for an independent panel to review the dozens of proposals before us. We need to fix this

problem *before* voting on any proposals permitting big media to get even bigger. Why should we change the ownership rules now, putting into play the very stations that small, independent, minority broadcasters could have a shot at if they had the proper incentives? Why would we even consider that?

It's the same story on localism. A draft Notice of Proposed Rulemaking was recently circulated, apparently on the basis that asking questions is sufficient to "check the box" so a Commission majority can move forward to loosen the newspaper-broadcast cross-ownership ban. But localism must never be seen as a means to an end—it is an end in itself. It is at the heart of what the public interest is all about. All deliberate speed in getting some localism back? By all means. A rush to judgment to clear the way for more big media mergers? No way.

And in all this haste to give big media a nice present for the holidays, critical issues are being neglected. We are 14 short months from a massive DTV transition that will directly affect millions of American households. We have one chance to get this right. Unlike many countries that are taking a phased approach, we are turning off analog signals in every market in the country on a single date.

I recently traveled to the United Kingdom to witness the first stage of their DTV transition. I was concerned before going over there; I am thoroughly alarmed now. The UK is taking the transition seriously, and has put together the kind of well-funded and well-coordinated public-private partnership that I, and many of you, have been calling for over here.

There are two basic things that need to happen for a successful transition on February 17, 2009. Number one, we have to get consumers ready. We have a pending

consumer education proceeding that could help ensure that the message is getting out in a coordinated and effective way. But no vote has been scheduled to get it done.

The second thing that has to happen is broadcasters need to get ready. Hundreds of stations need to take significant action in the next 14 months. Things like new antennas and transmitters, new tower construction, and new transmission lines—all of which can require financing, zoning approvals, tower crews, or international coordination. But many broadcasters need to know what the technical rules of the road are going to be before they can move forward. Those issues are teed up in a proceeding called the “Third DTV Periodic Review.” That proceeding also proposed to have every station in the country file a progress report—where they stand now, what more they need to do, and how they propose to get there. The record in the Third Periodic Review has been closed for months. No one but the FCC can make these decisions. Indeed, the original proposal called for the station reports to be filed by December 1 of this year so we could report to Congress about potential trouble spots with enough time to take action.

And yet—inexplicably—no draft Third Periodic Order has yet been circulated to the Commission for a vote. We need to address these issues *now*. Already, I fear that many broadcasters simply aren’t going to make it. If we don’t start making the DTV transition a national priority, we will almost certainly have a 9-car train wreck on our hands. And the American people will be looking for someone to blame. Those of us who plan to be on duty in February 2009 are going to need some real good answers.

Thank you for the opportunity to testify and I look forward to your questions.