

Written Statement

of

**The Honorable Kevin J. Martin
Chairman
Federal Communications Commission**

**Before the
Committee on Energy and Commerce,
Subcommittee on Telecommunications and the Internet
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Introduction

Good morning Chairman Markey, Chairman Dingell, Ranking Member Upton, Ranking Member Barton, and Members of the Committee. Thank you for the opportunity to be here with you today to discuss the Commission's review of the rules governing media ownership. I have a brief opening statement and then I look forward to answering any questions you may have.

A robust marketplace of ideas is by necessity one that reflects varied perspectives and viewpoints. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. To that end, the FCC's media ownership rules are intended to further three core goals: competition, diversity, and localism.

Section 202(h) of the 1996 Telecommunications Act, as amended, requires the Commission to periodically review its broadcast ownership rules to determine "whether any of such rules are necessary in the public interest as a result of competition." It goes on to read, "The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."

In 2003, the Commission conducted a comprehensive review of its media ownership rules, significantly reducing the restrictions on owning televisions, radio and newspapers in the same market and nationally. Congress and the court overturned almost all of those changes.

There was one exception. The court specifically upheld the Commission's determination that the absolute ban on newspaper/broadcast cross-ownership was no longer necessary. The court agreed that "...reasoned analysis supports the Commission's determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest." It has been over four years since the Third Circuit stayed the Commission's previous rules and over three years since the Third Circuit instructed the Commission to respond to the court with amended rules.

It is against this backdrop that the FCC undertook a lengthy, spirited, and careful reconsideration of our media ownership rules. I am pleased to have this opportunity to discuss the process and the proposed rule change with you today.

The Media Ownership Proceeding

In 2003, when we last conducted a review of the media ownership rules, many expressed concern about the process. Specifically, people complained that there were not enough hearings, not enough studies, and not enough opportunity for comments and public input.

When we began eighteen months ago, the Commission committed to conducting this proceeding in a manner that was more open and more transparent and allowed for public participation.

I believe that is what the Commission has done. First, we provided for a longer public comment period of 120 days, which we subsequently extended. We held six hearings across the country at a cost of more than \$200,000: one each in Los Angeles, California, Nashville, Tennessee, Harrisburg, Pennsylvania, Tampa Bay, Florida, Chicago, Illinois, and Seattle, Washington. And, we held two additional hearings specifically focused on localism in Portland, Maine and in Washington, DC. The goal of these hearings was to more fully and directly involve the American people in the process. Public input is critical to our process and informs the Commission's thinking on these and other issues.

We listened to and recorded thousands of oral comments, and allowed for extensions of time to file written comments on several occasions. To date, we've received over 166,000 written comments in this proceeding.

We spent almost \$700,000 on ten independent studies. I solicited and incorporated input from all of my colleagues on the Commission about the topics and authors of those studies. We have put those studies out for comment and made all the underlying data available to the public.

I also committed to completing the Notice of Inquiry on localism, something that was initiated but stopped under the previous Chairman. This included holding the two remaining hearings. All told, the Commission devoted more than \$160,000 to hear from expert witnesses and members of the public on broadcasters' service to their local communities. In addition, the Commission hired Professor Simon Anderson of the University of Virginia to produce an academic paper on "Localism and Welfare", which was made available on our website last December. I have presented to my colleagues a final report containing specific recommendations and proposed rule changes reflective of the comments and record produced by the inquiry.

Finally, although not required, I took the unusual step of publishing the actual text of the one rule I thought we should amend. Because of the intensely controversial nature of the media ownership proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review the actual rule prior to any Commission action.

The Media Marketplace Today

The media marketplace is considerably different than it was when the newspaper/broadcast cross-ownership rule was put in place more than thirty years ago. Back then, cable was a nascent service, satellite television did not exist and there was no Internet. Consumers have benefited from the explosion of new sources of news and information. But according to almost every measure newspapers are struggling. At least 300 daily papers have stopped publishing over the past thirty years. Their circulation is down and their advertising revenue is shrinking.

At *The Boston Globe*, revenue declined 9% in 2006. The Minneapolis *Star Tribune* announced an ad and circulation revenue decline of \$64 million from 2004 to 2007. *The Denver Post* saw a revenue decline of 15%. Tribune, owner of the *Los Angeles Times*, saw ad revenues decline 6% in the last year—a total loss of \$47 million. At *USA Today*, the most-read paper in the nation, revenue declined 6.6% over the past year as the total number of paid advertising pages fell from 929 to 803. And the *San Francisco Chronicle* reported in 2006 that the paper was losing \$1 million dollars—a day.

Newspapers in financial difficulty oftentimes have little choice but to scale back local news gathering to cut costs. *USA Today* recently announced it would be cutting 45 newsroom positions—nearly 10% of its total staff. In 2007 alone, 24 newsroom staff at *The Boston Globe* were fired, including 2 Pulitzer Prize-winning reporters; the Minneapolis *Star Tribune* fired 145 employees, including 50 from their newsroom; 20 were fired by the *Rocky Mountain News*; the *Detroit Free Press* and *The Detroit News* announced cuts totaling 110 employees; and the *San Francisco Chronicle* planned to cut 25% of its newsroom staff.

Without newspapers and their local newsgathering efforts, we would be worse off. We would be less informed about our communities and have fewer outlets for the expression of independent thinking and a diversity of viewpoints. I believe a vibrant print press is one of institutional pillars upon which our free society is built. In their role as watchdog and informer of the citizenry, newspapers often act as a check on the power of other institutions and are the voice of the people.

If we believe that newspaper journalism plays a unique role in the functioning of our democracy, we cannot turn a blind eye to the financial condition in which these companies find themselves. Our challenge is to address the viability of newspapers and their local news gathering efforts while preserving our core values of a diversity of voices and a commitment to localism in the media marketplace. Given the many concerns about the impact of consolidation, I recognize this is not an easy task. But I believe it is one that we can achieve.

Allowing cross-ownership may help to forestall the erosion in local news coverage by enabling companies to share these local news gathering costs across multiple media platforms. Indeed the newspaper/broadcast cross-ownership rule is the only one not to have been updated in 3 decades, despite that fact that FCC Chairmen – both Democrat and Republican—have advocated doing so. In fact, Chairman Reed Hundt argued for relaxation in 1996 noting, “the newspaper/broadcast cross ownership rule is right now impairing the future prospects of an important source of education and information: the newspaper industry.” *Application of Capital Cities/ABC, Inc.*, Memorandum Op. & Order, 11 FCC Rcd 5841, 5906 (1996). And as I mentioned, in 2003 the Third Circuit recognized this fact when it upheld the Commission's elimination of the newspaper/broadcast cross-ownership ban, saying that it was “no longer in the public interest.”

As a result, I proposed the Commission amend the 32-year-old absolute ban on newspaper/broadcast cross-ownership. This proposal would allow a newspaper to purchase a broadcast station—but not one of the top four television stations—in the largest 20 cities in the country as long as 8 independent voices remain. This relatively minor loosening of the ban on newspaper/broadcast cross-ownership in markets where there are many voices and sufficient competition would help strike a balance between ensuring the quality of local news while guarding against too much concentration.

In contrast to the FCC’s actions 4 years ago, we would not loosen any other ownership rule. We would not permit companies to own any more radio or television stations either in a single market or nationally. Indeed this proposed rule change is notably more conservative in approach than the remanded newspaper/broadcast cross-ownership rule that the Commission adopted in 2003. That rule would have allowed transactions in the top 170 markets. The rule I propose would allow only a subset of transactions in only the top 20 markets, which would still be subject to an individualized determination that the transaction is in the public interest.

The revised rule would balance the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity.

Proposed Newspaper/Broadcast Cross-ownership Rule

Under the new approach, the Commission would presume a proposed newspaper/broadcast transaction is in the public interest if it meets the following test:

- (1) The market at issue is one of the 20 largest Nielsen Designated Market Areas (“DMAs”);
- (2) The transaction involves the combination of a major daily newspaper and one television or radio station;
- (3) If the transaction involves a television station, at least 8 independently owned and operating major media voices (defined to include major newspapers and full-power commercial TV stations) would remain in the DMA following the transaction; and
- (4) If the transaction involves a television station, that station is not among the top four ranked stations in the DMA.

All other proposed newspaper/broadcast transactions would continue to be presumed *not* in the public interest. Moreover, notwithstanding the presumption under the new approach, the Commission would consider the following factors in evaluating whether a particular transaction was in the public interest:

- (1) The level of concentration in the DMA;

- (2) A showing that the combined entity will *increase* the amount of local news in the market;
- (3) A commitment that both the newspaper and the broadcast outlet will continue to exercise its own independent news judgment; and
- (4) The financial condition of the newspaper, and if the newspaper is in financial distress, the owner's commitment to invest significantly in newsroom operations.

Ensuring Localism

The Commission also needs to ensure that communities are served by local broadcasters who are responsive to their needs. Establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is an extremely important goal for the Commission.

Last week, the Commission adopted an order requiring television broadcasters to better inform their communities about how the programming they air serves them. Specifically, television stations will file a standardized form on a quarterly basis that details the type of programming that they air and the manner in which they do it. This form will describe a host of programming information including the local civic affairs, local electoral affairs, public service announcements (whether sponsored or aired for free) and independently produced programming. With a standardized form and public Internet access to it, the public and government officials will now be able to engage them directly in a discussion about exactly what local commitments broadcasters are and/or should be fulfilling.

In addition, I have circulated a Localism Report and NPRM that addresses other actions the Commission can take to ensure that broadcasters are serving the interests and needs of their local communities. The rule changes that I propose are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and other civic affairs programming.

Among other actions, the item tentatively concludes that:

- Qualified LPTV stations should be granted Class A status, which requires them to provide 3 hours of locally-produced programming;
- licensees should establish permanent advisory boards in each community (including representatives of underserved community segments) with which to consult periodically on community needs and issues; and
- the Commission should adopt processing guidelines that will ensure that all broadcasters provide a significant amount of locally-oriented programming.

Increasing Diversity

In order to ensure that the American people have the benefit of a competitive and diverse media marketplace, we need to create more opportunities for different, new and independent voices to be heard. The Commission has recently taken steps to address the concern that there are too few local outlets available to minorities and new entrants.

Last week, we significantly reformed our Low Power FM rules in order to facilitate LPFM stations' access to limited radio spectrum. The new order streamlines and clarifies the process by which LPFM stations can resolve potential interference issues with full-power stations and establishes a going-forward processing policy to help those LPFMs that have regularly provided eight hours of locally originated programming daily in order to preserve this local service. The new rules are designed to better promote entry and ensure local responsiveness without harming the interests of full-power FM stations or other Commission licensees.

I believe it is important for the Commission to foster the development of independent channels and voices. Again, last week, the Commission took significant action adopting an order that will facilitate the use of leased access channels. Specifically, the order made leasing channels more affordable and expedited the complaint process. These steps will make it easier for these independent programmers to reach local audiences.

I have also circulated an order that proposes to adopt rules that are designed to promote diversity by increasing and expanding broadcast ownership opportunities for small businesses, including minority and women-owned businesses.

This item proposes to give small businesses and new entrants that acquire expiring construction permits additional time to build out their broadcast facilities. It also proposes to revise the Commission's equity/debt attribution standard to facilitate investment in small businesses in order to promote diversity of ownership in broadcast facilities. In addition, among other things, the item would adopt a rule barring race or gender discrimination in broadcast transactions, adopt a "zero-tolerance" policy for ownership fraud, and commits to the Commission convening an "Access-to Capital" conference in the first half of 2008 in New York City. Finally, the item proposes to permit broadcasters to lease their unused spectrum to designated entities including minority and women entrepreneurs to put out their own additional programming stream. As with the localism item, I am hopeful that my colleagues will move forward on these proposals quickly.

The Commission is also working to ensure that new entrants are aware of emerging ownership opportunities in the communications industry. Recently, I sent a letter to our Advisory Committee on Diversity. I suggested that they help create educational conferences that will encourage communications companies that engage in transactions and license transfers to include small businesses, minorities, and women

entrepreneurs, and other designated entities during negotiations on assets and properties identified for divestiture.

Conclusion

It is my sincere belief that all of these proposals together will serve the public interest, providing for competition, localism, and diversity in the media. My proposed change to the newspaper/broadcast cross ownership rule addresses the needs of the newspaper industry and helps preserve their local news gathering, while at the same time preserving our commitment to localism, diversity, and competition.

It is not an exaggeration to say media ownership is the most contentious and potentially divisive issue to come before the Commission. It certainly was in 2003 and many of the same concerns about consolidation and its impact on diversity and local news coverage are being voiced today. And it is no wonder. The decisions we will make about our ownership rules are as critical as they are difficult. The media touches almost every aspect of our lives. We are dependent upon it for our news, our information and our entertainment. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. So the Commission has no more important responsibility than to strike the right balance between ensuring our rules recognize the opportunities and challenges of today's media market place and prioritizing the commitment to diversity and localism.

I look forward to working with my fellow Commissioners in the upcoming weeks to adopt rules consistent with these goals.

With that, I would be happy to answer any questions you may have.