

**TESTIMONY OF
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**BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION:
MEDIA OWNERSHIP”**

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Mr. Chairman, Congressman Upton, and members of the Subcommittee, thank you for calling this hearing to address the future of American media. No issue on the Commission's agenda has more far-reaching consequences for the future of our democratic society. It is clear the public grasps the gravity of the issue. As I have traveled to communities across the country, I have heard a bipartisan chorus opposing further media consolidation. Americans from all political perspectives, whether right, left and virtually everyone in between, do not want a handful of companies dominating their primary sources of news and information. I am afraid the Commission's current course, if unchecked, could cause lasting harm to the American media for future generations.

Given the importance of this issue, it has been disappointing to see the Commission proceed without due deference to the American public and their elected representatives. Perhaps there is no better example of a process gone awry than an event that had its origins at our last oversight hearing before this Committee. Congressman Jay Inslee had a productive discussion with the Commissioners that influenced the decision to hold the final media ownership hearing in Seattle, Washington. This was a positive

development, and just the kind of exchange with Congressional leaders that improves our responsiveness and service to the American people.

Perhaps symptomatic of this entire proceeding, what might have begun with good intentions soon ran off the tracks. As the date of a rumored Seattle hearing approached and no announcement was made, Congressman Inslee and Senator Maria Cantwell wrote to ask that the public be afforded one month notice so they could plan for the event. Within hours, their letter was ignored and the public hearing was announced with just five business days notice, the very minimum allowed by federal law.

The people of Seattle were outraged at the short notice, but showed up in large numbers anyway, over 1100 strong on a Friday night, in protest. Public witnesses expressed with passion and eloquence their concern about any steps that would further media consolidation, which they believed had gone too far already. They openly questioned how the FCC could proceed on such a course.

The next day back at the office, the American people received an answer. The Chairman announced plans in a *New York Times* op-ed and a press release on how he sought to relax the newspaper-broadcast cross ownership rule. That was not only the first time the public learned of the plan. It was also the first time the Commissioners were notified of the details. It is hard to imagine how it was possible to review and consider hundreds of public comments made in Seattle alone before issuing the proposal the next working day. What could have been a meaningful opportunity for public input and cooperation with Congress turned into a charade. It is also an ominous sign for those hoping their comments on the Chairman's proposal will be considered in the decision-making process and the final rule.

The proposal itself is fraught with substantive problems that require internal Commission cooperation, consultation and negotiations. Portrayed as a “modest” proposal that would only affect the top twenty markets, it would actually open the door to dominant local newspapers buying up broadcast outlets in every market in America and potentially of any size. It would transform the current ban on newspaper-broadcast into a wide-open nationwide bazaar that would only require buyers to meet the loosest standards for a waiver.

Even if the proposal were limited to the top 20 markets, that would account for 43 percent of U.S. households, or over 120 million Americans. But the details reveal loopholes that would permit new cross-owned combinations from the largest markets down to the smallest markets, potentially affecting every American household.

The waiver standards are like a wet noodle that a majority of Commissioners would be able to move and reshape at will. Even under the current stronger standards of a blanket prohibition on cross-ownership, the Commission has been lax in permitting waivers.

Under the proposal, each of the four factors considered for waivers are so overcooked they look like mush. First, we are to consider if a company will “increase the local news disseminated.” With no definition, presumably an additional 10 minutes of news a year could qualify. Second, each outlet would have to maintain “independent news judgment.” But there is no way to determine or enforce what that means. Third, we consider the “level of concentration” in the market. But there is no measure by which

to judge what is too concentrated, so evidence showing concentration can be dismissed on a whim. And fourth, we consider a newspaper's "financial condition." This factor is so vague that, for example, margins that have decreased from 30 percent to 20 percent could be grounds for approval. This economic "downturn" is exactly what has happened to the newspaper industry as a whole and forms the rationale for the current proposal. Although 20 percent margins far outstrip the national average, it could be grounds for a waiver based on "financial condition," because it is less than newspapers' previously even more outsized profits.

These loopholes also undercut the assertion that the proposal would prevent a newspaper from buying one of the top-four rated stations in the same market. That alleged protection would disappear with the wave of a hand if these loose waiver standards were invoked, so that a newspaper could buy any TV station in any city, no matter how large.

The main public interest justification for newspaper-broadcast cross-ownership has been the claim that relaxing the rule would create more local news. A path-breaking study by leading consumer organizations, using the FCC's own data, demonstrated that claim to be wrong. They found that the data underlying an FCC-sponsored study finding more local news by cross-owned stations actually reveals that there is less local news in those markets as a whole, taking into account all news outlets. It remains unclear exactly why the overall level of local news available diminishes. Perhaps it is because other outlets choose not to compete with the local leviathan or they lose equal access to the newspaper's investigative and news resources. But the fact is the Commission's own data reveals the other outlets in those cities reduce their news coverage more than the

cross-owned outlets increase it. So not only is less news produced in the market, but an independent voice is silenced when the dominant local newspaper swallows up a broadcast outlet.

We must find the root causes of this problem and address them before we proceed to relax the cross-ownership rule. But rather than study that critical question, a number of experts assembled by leading consumer groups found that the studies conducted under the auspices of the Commission were designed to support a foregone conclusion rather than the facts. They say the process by which the studies were conceived and executed was tainted at every stage. The result is a series of deeply flawed, if not outright misleading, research cobbled together to promote a media consolidation agenda. There are many important questions this Committee has asked that need to be answered about whether federal laws and regulations were followed in how these studies were procured and peer-reviewed.

This debate is fundamentally about priorities. As we solicited the views of citizens across the country, we did not hear a clamor for relaxation of the cross ownership rules. We only hear that from lobbyists for big media companies within the Beltway. The public is concerned about the lack of responsiveness of their media outlets to local communities, artists, civic and cultural affairs. They are concerned that people of color and women are stereotyped, misrepresented or underrepresented. They want us to address the public interest obligations of broadcasters first.

That is why I have insisted that we first address and implement improvements to localism and diversity of ownership before – not after – we address the media ownership rules. I have called for an independent, bipartisan panel to guide us on a course to

implement improvements in the level of ownership of media outlets by women and minorities. Many members of Congress and leading civil rights organizations have joined that call. And I have demanded, along with many members of Congress, that we finalize the Localism Report and implement real improvements in the responsiveness of media outlets to local concerns first. Rather than take this in order, address these lingering crises first, the Commission seems to be moving forward obsessively to allow more consolidation, notwithstanding congressional and public concern. That is unwise.

There is a path to get us out of the ditch and restore an open and transparent process to consider changes in our media ownership rules. I can support a process that has been laid out in bipartisan legislation introduced in Congress. Even if it is not adopted immediately, the Commission should, in the spirit of compromise, cooperation and responsiveness to Congress, follow the process outlined in the Media Ownership Act of 2007 (S. 2332), which would:

- require the FCC to complete a separate proceeding to evaluate how localism is affected by media consolidation;
- give the public an opportunity to comment on that proceeding for 90 days;
- require that the localism proceeding be done separately and be completed prior to a vote on proposed media ownership rules; and
- require establishment of an independent panel on female and minority ownership and for the FCC to provide the panel with accurate data on female and minority ownership -- this panel must issue recommendations and the FCC must act on them prior to voting on any proposed ownership rules.

Following these simple guidelines is a path to restoring a fair process to the media ownership proceeding.

As we focus today on the public's access to their media -- their airwaves -- it is also critical that the FCC show far greater leadership on a potential disaster that is the DTV transition. It is my firm belief that we need a national DTV outreach, education and implementation plan that coordinates the efforts and messages of all stakeholders. Here are some next steps that I believe we need to take, immediately, to get on the path of reaching and educating people in the more than 111 million U.S television households.

Create Federal DTV Transition Task Force. It is long overdue for the FCC, NTIA and other relevant federal agencies to formalize their relationship and develop a Federal DTV Transition Task Force with representation from the leadership of each agency. The Government Accountability Office (GAO) has told this Subcommittee that the FCC has the authority to establish a task force under the Federal Advisory Committee Act. This multi-agency task force would develop benchmarks and a timeline to achieve nationwide awareness of the DTV transition. And, it would be accountable to Congress. The private sector has established a coordinating mechanism through the DTV Transition Coalition, and it is high time we do the same for the Federal government.

The task force would need staff. The FCC, for example, should detail staff to the task force from CGB, the Media, Enforcement, and Public Safety and Homeland Security Bureaus, and the Offices of General Counsel and Engineering and Technology. With dedicated staff from different agencies, the task force would also serve as the clearinghouse for all things related to the DTV transition national campaign and for coordinating this network of networks. The aging and disabilities communities, for

example, would have access to financial and human resources to assist these at-risk groups in making the transition. The task force would be able to coordinate with public and private partners, leverage existing resources and develop a single unified federal message, *i.e.*, develop and use common terminology to describe the digital-to-analog converter box program and other DTV technology. In addition to coordinating government efforts at all levels – including state, regional, local, and tribal governments – the task force can convene joint meetings with the private sector DTV Transition Coalition to ensure a coherent, consistent message across all channels. And it can help coordinate the many public-private assistance efforts needed for at-risk communities.

Maximize Existing Federal Resources. Once a unified federal message has been developed, the task force could then work with other federal agency components, such as the Administration on Aging, the Social Security Administration, Departments of Agriculture, Labor, Education, and Health and Human Services, the Bureau of Indian Affairs, the U.S. Postal Service and AmeriCorps, to integrate DTV educational information into many points of contact with consumers. Relevant federal agency websites and correspondence to citizens’ homes, such as Social Security mailers and Meals on Wheels deliveries, are golden opportunities to educate and inform consumers about different aspects of the DTV transition, including the converter box program and the analog cut-off date.

Establish a National DTV Call Center and Hotline. We should establish a National DTV Call Center with a multi-lingual staff and a national toll-free number that is easy to remember, accessible to persons with disabilities, and unassociated with the ongoing, non-DTV operations of the FCC. NTIA’s toll-free number is a standard

recording, and some have complained the wait for the FCC's general customer helpline is much too long, as it covers many other issues, and consequently it is not as useful as it could be. There is no reason for two separate toll-free numbers for DTV information when it is easier to promote and staff one. Consumer outreach specialists should be able to develop a more succinct and consumer-friendly message. The call center could also be the point of contact for households in need of local assistance to obtain or install converter boxes. We can help state, local, and tribal governments connect seniors to community-based service providers. This is especially important to seniors, a disproportionate number of whom do not have access to the Internet or know how to reach our website.

Launch a Targeted Grassroots Information and Technical Assistance Campaign. The task force, working with state, local and tribal governments, the DTV Transition Coalition partners, and community-based service providers, could target communities with the highest concentration of over-the-air viewers, including senior citizens, low-income, non-English speaking, rural populations and tribal communities. It can launch a coordinated grassroots campaign, which would include posting signs in supermarkets, retail stores, churches, social service organizations, all modes of public transportation and other public places. Many at-risk citizens will need help acquiring and hooking up their converter boxes, and it remains entirely unclear who is going to help them. If it is to be done through volunteers, it will take a vast effort to vet and train them.

No Federal agency currently has the mandate or resources to help people who can't themselves hook up the boxes to their TV sets. For example, while the FCC, the AoA and its allied aging network -- which includes state and local agencies, as well as

community based service providers like Meals on Wheels -- have been in very early discussion about various grassroots efforts, no plan is in place. People with disabilities experience great difficulty accessing closed captions and video descriptions. A technical assistance program must be established soon, with timelines for training and outreach to ensure people who need help can get it.

While these steps may require some additional funding from Congress or a reallocation of funds already appropriated, first and foremost, dedicated leadership and focus are required from the FCC – the expert agency primarily responsible for the DTV transition.

Establish Much Needed Guidance for Broadcasters Soon. In addition to these outreach and education initiatives, the Commission must take steps to ensure that over-the-air viewer are not disenfranchised during or after the DTV transition, and that all full-power stations are prepared to cease analog transmission and to operate in digital by the end of the transition on February 17th, 2009. Accordingly, *I believe the Commission should: (1) complete the Third DTV Periodic Review as quickly as possible; and, (2) prepare a report to Congress on the status of the DTV transition on February 17, 2008 – one year before the hard deadline.*

Because the law does not provide for any waivers or extension of time, February 17th, 2009 is indeed the last day that full-power broadcast stations will be allowed to transmit in analog. There are a total of 1,812 stations that will be serving the American people after the transition but, to date, only 750 are considered to have fully completed construction of their digital facilities and are capable to broadcast in digital only in the final position from which they will broadcast. The remaining stations vary in levels of

transition preparedness. Some stations need to construct their transmission facilities, change their antenna or tower location, or modify their transmission power or antenna height, while others may have to coordinate with other stations or resolve international coordination issues.

In the Third DTV Periodic Review, the Commission is contemplating rules to govern when stations may reduce or cease operation on their analog channel and begin operation on their digital channel during the DTV transition. The Commission also sought comment on how to ensure that broadcasters will complete construction of digital facilities in a timely and efficient manner that will reach viewers throughout their authorized service areas. These and other important questions, such as the deadlines by which stations must construct and operate their DTV channels or lose interference protection, must be answered as soon as possible. Broadcasters need to know the rules as they invest billions into this transition. We have lost valuable time focused on other more tangential aspects of the transition while not moving forward on clarifying urgent demands on broadcasters to get a huge job done in short order.

The Third DTV Periodic Review also proposed that every full-power broadcaster would file a form with the Commission that details the station's current status and future plans to meet the DTV transition deadline. While each individual form would be posted on the Commission's website, I believe it is just as important for the Commission, Congress and the public to get a comprehensive sense of where each full-power broadcast station is 12 month before the end of the transition. A report to Congress *one year* before the transition ends will provide both the broadcaster and the FCC sufficient time for any mid-course correction.

As GAO has noted, there is nobody in charge of the transition and there is no plan. We still have time to turn this around, but only if we increase the level of leadership, coordination and resources dedicated to this undertaking. The ongoing leadership of this subcommittee has been and will continue to be extremely helpful in focusing our efforts.

Thank you for holding this critical hearing, and I look forward to working with you to make sure that American media remain the most vibrant in the world and it continues to enrich our democracy. I also look forward to working with the subcommittee to ensure that the DTV transition is a success for the American people.