

**Remarks of
Commissioner Michael O’Rielly, Federal Communications Commission
Before National Association of Broadcasters State Leadership Conference 2015
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(as delivered)**

Good morning everyone and thank you for your warm welcome on this cold morning. Looking around this room you can see that when broadcasters set out to do something, they go all out. After working with your industry for more than 20 years, it’s great to see so many familiar and friendly faces. The quintessential local business, broadcasters provide great services to your communities, none of which would be possible without the passion and commitment of all of you gathered here today.

With the immense time and energy you spend focusing on your local communities, it’s wonderful that you have managed to find this time to come together and focus on a different community: the legislative and regulatory worlds here in Washington. The personal, real world experiences you can share with us here are an invaluable element in the policy-making process.

You would not have traveled all this way if you weren’t already deeply aware that what happens in this town can, and often does, have a profound impact on your businesses. But there are also many people who are working every day to get Washington out of your way as much as possible, and to make the legal and regulatory framework governing the industry more cognizant of the realities of today’s media marketplace, and responsive to changes as they occur. Much of your attention today and tomorrow will be focused on Capitol Hill and the legislative side of things, but from the FCC perspective there are several important issues I suspect will be part of your efforts to catalyze change.

Incentive Auction

While perhaps not the number one hot topic at the Commission this particular week, the broadcast incentive auction continues to rank very high on the list. It’s certainly high on my list of priorities, as it is the result of a Congressionally-enacted statute. I am sure many of you are taking in the financial numbers in the latest Greenhill report, conducting your own analyses and considering your options, or possibly attending one of the FCC’s broadcaster information sessions coming soon to cities all around the U.S. It makes all the sense in the world for you to do due diligence and determine what is in your station or group’s best interest.

The first of its kind ever to be attempted, the incentive auction could present attractive opportunities for participants in the broadcast and wireless industries alike. Congress has provided the Commission with broad authority on the timing of the auction, requiring only that the receipts be submitted within the ten-year budget window. In my opinion, we should proceed forward to hold the auction as soon as possible. But a number of outstanding issues remain for the Commission to address thoughtfully, and I believe getting the auction structured correctly to ensure success is more important than the timing.

I know that satisfactory resolution of many open questions, such as opening bid prices and dynamic reserve pricing in the reverse auction, will be critical to any potential participation by broadcasters. Similarly, improvements must be made to the forward auction, such as eliminating reserved spectrum and limiting impaired markets, to ensure that we maximize revenues to compensate interested broadcasters for their stations. Concerns about the details of repacking and interference must also be

addressed, and we must work with broadcasters by providing realistic, clear and concise information about all of these issues.

In the end, the incentive auction can only work if it is fair to all parties, especially for those broadcasters that decide not to participate, and is consistent with the statute. You have my commitment that I will continue to work to ensure these directives are met as the Commission moves forward.

Contest Rule

Most of you are very familiar with the FCC's Contest Rule, which requires detailed on-air disclosures of the rules that apply to contests promoted on TV and radio. While I agree that it is important to notify the public about the terms and conditions of these contests, during my time at the Commission I have questioned whether fast talkers and tiny print are the most effective means to communicate this information in the Internet age. An update of the Contest Rule could allow a broadcaster to substitute simple instructions to visit a specific website, where consumers could access the complete contest rules at their convenience, and determine how best to participate.

Late last year, this idea advanced significantly as the Commission issued proposed rules recognizing that the Internet is an effective tool for distributing information to broadcast audiences, and allowing Contest Rule obligations to be satisfied by disclosing material contest terms on a website. I was happy to support this item and look forward to the implementation of a final rule that I hope will result in greater flexibility, fewer burdens on stations, and greater availability of contest information to consumers.

EEO "Widely Disseminated" Rule

Use of the Internet could also relieve unnecessary burdens in your efforts to comply with the Commission's Equal Employment Opportunity rules. EEO rules require broadcasters and MVPDs with more than a handful of full-time employees to distribute information regarding vacant positions far and wide, as part of an effort to recruit more minority and female applicants. Evidence of these search efforts are required to be part of your public files, and are subject to Commission review.

In a recent enforcement action, the Commission reaffirmed that using the Internet to post job vacancies and recruit prospective employees is not sufficient to comply with the EEO "widely disseminated" requirement. The determination was based on a 2001 NTIA report that suggested only 50 percent of U.S. households had Internet service, and only a slightly larger percentage used the Internet from any location. So companies in 2015 are still forced to duplicate their recruiting efforts using old-school methods like newspaper ads, based on an estimate of Internet availability circa 2001.

I am not suggesting in any way that we alter or modify our overall EEO requirements, or discount the need for wide dissemination of information about job opportunities, but at some point current realities must be taken into account. 2013 NTIA data shows that 99 percent of Americans now have access to broadband at speeds of at least 6 Mbps downstream and 1.5 Mbps up. And with this connectivity now so common, it should surprise no one that the Internet has become a central component in personal networking and job hunting. In fact, many, if not most, employers (including the FCC) now require applicants to apply online, with few exceptions.

In the past, a number of state broadcast associations petitioned the Commission to modify our EEO rule to allow dissemination of job vacancy information online, combined with aggressive notification to candidate referral organizations. This small update could streamline your recruiting process for greater efficiency, and seems to make eminent sense. I will continue to promote it as the Commission considers updates to our policies and processes to better reflect today's marketplace.

Ownership Rules

We all remember a time when consumer options for audio and video content were extremely limited and focused largely on a handful of radio and TV stations. Today, given the availability of multiple platforms, the choices are almost limitless, and Americans can access whatever they want, whenever they want. Once the only content providers in town, broadcasters must now compete fiercely for listeners and viewers, and you are holding your own in this ultracompetitive environment. For instance, the most popular TV broadcast programming consistently puts up ratings well beyond the reach of any other content provider.

Section 202(h) of the Telecommunications Act of 1996, as amended, anticipated disruptions in the dynamic media marketplace and set up a process for the FCC to recognize and respond to change, by reviewing certain media ownership rules every four years and repealing or modifying any rules that are no longer in the public interest due to increased competition. This requirement has proven to be remarkably prescient; in fact, it would be difficult to identify another industry where the competitive landscape has changed so dramatically in such a short time frame.

There is one glaring problem, however. In recent years, the FCC has virtually ignored this Congressional mandate for an ongoing review and adjustment of media ownership rules. The 2010 quadrennial review was never completed, even as the 2014 review has commenced, but as a result of this backlog, the ownership rules haven't been reviewed since the 2006 proceeding. So the industry continues to be saddled with many restrictions, like the newspaper-broadcast cross-ownership rule, that seem downright quaint from a 2015 perspective. It is certainly a disappointing impasse. I will keep up the pressure for the Commission to comply with the law and move forward to holistically update the ownership rules, and I know I can count on you to do the same.

Process Reform

With all of these substantive issues of great importance to your industry in play, it may be easy to lose sight of underlying structural features that greatly affect your ability to participate in all of these discussions. FCC procedural rules determine everything about the playing field on which you engage at the Commission, from the field markers to the time clocks. And there is a lot of room for improvement in current FCC processes that effectively lock out minority Commissioners and the public from having any impact at critical decision points.

It is time to take transparency past the buzzword stage and make public all FCC items to be considered at our Open Meetings. Far from being a rare or isolated circumstance, Commissioners must "vote on it before you can see what's in it" every single month. While this problem has gotten more attention recently in relation to a certain very high-profile item before us this week, the reasoning applies across the board for every item we consider, and this is why I have been a strong advocate of reform throughout my time at the Commission.

The current practice is to circulate the text internally three weeks before the meeting, but the public is left out of the loop, leading to an incomplete picture of what is in a pending notice or order, and often a lot of confusion over what exactly is at stake. Commissioners are not allowed to discuss any of the substantive details during meetings with outside parties like you, and we can't even correct inaccurate impressions you may have received along the way. It's an extremely frustrating process for all involved.

But despite the positive buzz on this reform recommendation from the public, Members of Congress, and people within the FCC, not a single meeting item has yet been posted in advance. The lack of transparency continues to generate unfairness and inefficiency as people attempt to engage on important questions of the day with asymmetrical information. Some may not be briefed at all, others have some approved talking points they have interpreted to the best of their ability, while still others may have gleaned some precious details about the mysterious document depending on who has been talking. Many may have incomplete information based on one-sided fact sheets, blogs or press releases that spin a particular issue. When the day finally arrives (days or even weeks AFTER the votes have been cast and everyone has gone home) you almost expect to see a poof of white smoke as the document is uploaded to the FCC website at long last. There is only one way to stop the he-said-she-said and put everyone on the same playing field. Post the documents and let everyone see exactly what is up for a vote.

Another way to ensure that issues of importance to you get a full and fair hearing is making sure that consequential matters of first impression are addressed by the Commissioners, not FCC staff. The full Commission must have the opportunity to weigh in on items that may have significant and long-lasting legal and policy consequences, or may have implications for multiple segments of the communications industry. Also, a full Commission decision ensures that parties who want to challenge final decisions are able to do so in a more timely manner than would be possible if a Bureau decision is appealed to the full Commission.

Unfortunately, it seems that more and more decisions are being pushed to Commission staff under delegated authority, even in the face of requests from minority Commissioners to bump an item up to the full Commission for resolution. Some items are decided and released by Bureaus without giving Commissioners any notice at all. These practices can shortcut the attention and consideration that the issues you care about need and deserve. I can't help you if I don't even have the opportunity to weigh in on an item before it goes out the door. Fixing the delegation process at the Commission should be a top priority.

I appreciate your time and attention here today and wish you all the best in your Washington endeavors today and tomorrow. Hopefully, you will find your discussions interesting and fruitful. With that, I would be happy to take any questions you may have.