

Remarks of Michael O’Rielly, FCC Commissioner
2016 Conference of New Jersey Broadcasters Association
June 23, 2016

Thank you so very much for having me here today, and a special thanks to Paul Rotella for being such a thoughtful advocate for New Jersey Broadcasters’ concerns and issues at the Federal Communications Commission (the FCC or Commission). Let me admit that growing up in Western New York, I didn’t get the opportunity to travel to New Jersey; there is that little rivalry between the two states and I am sure your preconceived notion about Buffalo was similar to mine about the Garden State. Until recently, I probably had only been in this state a couple of times. That all changed when I married a woman from New Jersey, specifically from the Shore Region. I can now proudly say that I regularly visit your great state and will get to do more as I introduce my new daughter to your beaches in the coming weeks. Maybe if I am lucky, I may get a chance to see the ponies at Monmouth Park, which can be our little secret with no obligation to report that to my wife.

It is not lost on me that New Jersey has a unique situation with regards to television broadcasting. New Jerseyans are some of the most sought after consumers in all the world but do not have a DMA of their own, given the proximity to other metropolitan centers. Part of my career was spent working for the people of New Hampshire, also a state without its own DMA, so I understand about the difficulties this can bring in terms of citizens feeling or believing that the big market stations are not as “local” as they might like. For viewers, how local the content of news is – especially sports and weather – can matter for their overall support and interest in a broadcast station. Thankfully, the people in this room already know this and take it into account on a daily basis. It is equally important that general managers for stations in New York City and Philadelphia continue to understand this as well.

Importance of Broadcasting

It is always refreshing to be before group of local broadcasters and related industries. This is my second chance to meet with a state association over the last few months, the other being Oklahoma, and I have been trying to do as many state delegation meetings in Washington as possible during their annual visits. I get a great deal of enjoyment – which doesn’t always occur in my line of work – visiting with people with such passion and interest for the work they do.

It only seems appropriate to start by sharing my general thoughts about broadcasting. While it seems that not everyone at the FCC these days is a fan of broadcasting to say the least, let me be one to publicly thank those of you for being involved in broadcasting and serving your communities. You, and the people at your stations, have the distinct ability to influence people’s lives. You inform and educate, entertain and amuse, and console and remember as the circumstances dictate, sometimes all in the same week. Your stations are on the first lines for information as severe weather develops and when crisis moments hit our communities. And no one is a bigger community fundraiser to help those in need or less fortunate. You do this because it is the right thing to do, because you have an important responsibility and history serving your neighbors and friends, and because it makes sound business sense and generates profits, which is a good thing in my opinion. So, thank you for all you do.

If you don’t mind, I thought I would take a few moments to talk about some policy issues before the FCC that either are or should be important to New Jersey broadcasters.

Pirate Radio

First on my agenda is a discussion of pirate radio. This is a key area needing significant attention by the Commission as it represents a very real problem that is growing. While this may seem insignificant nationwide, if you are in a market where pirates operate, it is a very big deal. There are commonly known markets that have many pirate radio stations, such as Boston, Miami, and New York. But the scourge of pirate radio is spreading and there are reports it has reached unexpected markets like Poughkeepsie. Yes, even Poughkeepsie. But closer to home, we know of the hotbed of pirate radio residing in Patterson, New Jersey and other parts of this state, including Linden and Passaic.

These illegal stations – and it is somewhat unfair to call them “stations” since they can be as little as a laptop, a tower, and a transmitter – need to be eliminated. They have no legal or moral right to operate. In fact, their activities are extremely detrimental to those trying to provide radio service to local citizens. By stealing listeners, they are weakening the financial situation and undermining the health of licensed radio stations trying to operate. By interfering with legitimate signals, they are keeping citizens from listening to their favorite real broadcasters. And by operating without rules, such as FCC emergency information requirements, they are putting the safety of listeners at risk.

There are some that have tried and failed to justify pirate radio’s existence. They argue that these stations wouldn’t exist if real stations were meeting the needs of listeners. Others try to argue that they bring hands-on experience to the people associated with the station. Still others argue that trying to close pirate radio stations is somehow an attack on niche markets, including minority or immigrant populations. These arguments, however, cannot overcome the fundamental problem that their mere existence violates the law and Commission rules. If someone wants to change this, they should approach Congress or petition the Commission, but I suspect they will find little support. Our society is not one in which citizens are permitted to pick and choose which laws they want to follow and ignore the others. We are not a candy shop. Equally important, if the needs of local listeners are not being met, then there are proper and legal ways to address this. Moreover, there is no provision in the Commission rules to permit violators on the excuse that the function serves as a job apprentice program or if a pirate station targets a particular segment of the population.

Pirate radio cannot be allowed to continue. I promise you that I am doing everything I can to raise the profile of this issue and rid the airways of these violators. For instance, I have been out in the field talking to the FCC agents to understand the scope of the problem and explore what kinds of assistance they may need to better combat violators. To aid in that effort, I tagged along on one of their recent investigations. We drove through parts of New York City and staring right before our eyes was a pirate radio tower in operation. The whole experience was eye-opening and sharpened my focus on what needs to be done to help close down pirates.

To that end, my staff and I have started conversations with Congress, including Representative Frank Pallone of New Jersey, who serves as House of Representatives’ Energy & Commerce Committee Ranking Member, on ways to change current law as it pertains to pirate radio, including addressing those people or companies that facilitate pirate stations via housing and funds, increasing the fines and penalties for violators, and easing the process for seizing pirate equipment. I am hopeful that legislation will be introduced soon on this very topic and will continue to provide my advice to Congressional leaders as they deem helpful. In the meantime, the Commission must do all that it can to increase enforcement efforts and protect licensed radio stations from these insidious harmful operators.

Media Ownership

Turning attention to a slightly different topic, let me spend a few moments discussing the issue of Commission's media ownership rules and the fact that these rules do not reflect the modern media marketplace. I realize that for most of you this may not seem like a major concern to your business, but it should be. At some point in time, your business may seek to grow through acquisition. Alternatively, you may face difficult finances and seek an exit. Standing in your way or hampering your plans may be artificial barriers initiated during the Johnson and Nixon Administrations. More importantly, these rules may directly impact your business because they constrain the permitted bidders for media properties, which depresses station valuations. So, the FCC's actions are effectively and negatively impacting your station's worth and its cash flow.

On that note, it is ironic that the Commission has been spending so much time and energy on an effort to pole-vault over the bounds of its legal authority in some areas, while at the same time completely ignoring clear statutory requirements, like the Quadrennial Review of media ownership rules. We're supposed to conduct this review every four years in order to ensure that these rules continue to reflect the real-time status of the media marketplace. But the Commission has been AWOL on this requirement for almost ten years. Why? Well, it puts Commission leadership in an awkward position when so many advocates they tend to listen to advance arguments that fly in the face of all the development in the dynamic media marketplace within the last 17 years. In particular, there is a view that the Commission must keep in place every single one of the current rules, which were really last changed in 1999. In fact, many of these advocates are pushing the Commission to add *even more* restrictions, like limiting shared services agreements, or eliminating the UHF discount. As such, I am expecting to be underwhelmed by the 2014 Quadrennial Review, which the Chairman has promised to deliver within the next week, two years late. Better late than never, I guess?

For purposes of clarification, the Commission's media ownership rules apply only to broadcasters and newspapers, exempting any of the other obvious players in the 2016 media scene, such as pay-TV providers, over-the-top video, websites, streaming music services, or satellite radio, not that I would want to extend the rules to other market segments. Broadcasters have so much to contribute in terms of diverse, local content, but are being kept on a regulatory leash, and given an artificially-narrowed range of options to navigate this new territory. As the Commission moves forward, it must first and foremost take a realistic view of the current market and include non-broadcast and non-newspaper competitors in its analysis. This definition could set the table for us to better promote localism, competition, and diversity by thoughtfully removing outdated restrictions to media combinations.

Moreover, I support eliminating the current cross-ownership bans that are keeping broadcasters and newspapers from potentially forming multi-platform entities that could better serve consumer demands for 24/7 access to updated content. These cross-ownership bans assume an entirely different environment from what exists today. For the life of me, I can't understand why we should consider it a greater danger for a local broadcaster to invest in a local newspaper than for an Internet billionaire who lives thousands of miles away. Similarly, we should eliminate or loosen the duopoly rule restricting common ownership of two television stations in the same market. And the Commission should use this opportunity to create a presumption that potential ownership of a station in an embedded market should be evaluated only in the embedded market at issue, not in the core market overall, a practice that severely curtails options in several New Jersey markets.

Sadly, the only change this Commission has seen fit to make in this space was the decision to make JSAs attributable, which it executed in the absence of any attempt to fulfill our mandate for a holistic review all of the rules. Let's hope that when potential changes are circulated at the Commission in the coming days, we will see substantial work to comply with the letter and spirit of the law.

Set Top Boxes

On a related issue area, one item broadcasters should remain vigilant on this year is the Commission's Navigation Devices proceeding. Most people are calling this the set top box item, but it's really about much more than that. You might think, and might have heard, that the Commission is just tweaking the current rules on set top boxes... what's the big deal? In reality, this has almost nothing to do with set top boxes. It's really a play for the Commission to get its hooks into video apps – technology outside of the agency's authority, using a 90's regime designed to get competitive cable boxes into your now-defunct local Circuit City.

But the Commission's proposal itself is a black box, a question mark for broadcasters, MVPDs, and consumers alike. I believe it would be harmful for almost every type of business involved in producing or distributing video content today. By forcing MVPDs to stream their entire content pipeline, for free, to third party apps, as the proposal would do, the Commission would subject broadcasters' video content to greater risk of theft, and endanger the advertising and channel placement deals many of you have hammered out with MVPDs. Ultimately, the proposal would devalue all content produced by programmers large and small. The good news is that many parties, including NAB, are doing a very effective job raising these concerns in Washington. There is still time for the Commission to reverse its course, and I sincerely hope that it will do so.

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So, there you have it. You just got a peek into the policy issues I deal with on a daily basis. Hopefully, I found a receptive audience for some of my views about substantive issues facing the broadcasting industry. I wish you continued success in meeting the needs of your listeners and viewers. Thank you for being a wonderful audience and listening so diligently. Let me end with a pertinent quote by Ralph Waldo Emerson, "The purpose of life is not to be happy. It is to be useful, to be honorable, to be compassionate, to have it make some difference that you have lived and lived well."