

Remarks of Commissioner Mignon L. Clyburn (as prepared)
Media Solutions Summit
Washington, D.C.
April 27, 2017

Good morning everyone, and thank you Daphna, not only for that generous introduction, but for your tireless advocacy on behalf of independent and diverse media voices. I am thrilled to be in a room filled with so many people who are ready and willing to roll up their sleeves and work to ensure that our media landscape is a reflection of the rich diversity and strength of our local communities.

When I received the invitation to attend this inaugural Media Solutions Summit, I said yes first, and checked my availability second, because like you, I am about fixing what is broken. As some of you know, our office hosted a solutions-focused summit of our own last October, so I understand first-hand the desire to get beyond just talk and focus instead on developing actionable solutions that address and overcome existing harms.

With this in mind, it is clear that the definition of success must include the expeditious adoption of rules that will ensure a sustainable future for independent programmers. This must include networks that are women or minority-owned. Sadly, I am aware of only one women-owned independent cable network and a mere handful that are African American-owned.

Even beyond ownership however, is what these independent voices represent. According to one estimate by the National Cable Television Cooperative (NCTC), just nine companies represent more than 100 different networks or channels. To speak more plainly, content production is currently dominated by a few large media companies. So for the independent programmer with a single channel, competing for carriage up against a major network programmer with dozens of channels, the barriers to entry are steep, and the repercussions for speaking out about these barriers are many.

Since first arriving at the Commission in the summer of 2009, I have heard countless stories from independent programmers who struggle every day to remain viable. Those who have yet to strike a carriage deal with a major provider rarely if ever get their calls returned. Those independent programmers with carriage agreements may appear to have it made at first glance. What you may not see is that too many are forced to renegotiate for lower rates or face being dropped from the channel lineup. And I have heard from others, who want to innovate by offering their programming through new online platforms, but find that their contracts with traditional pay-TV providers prohibit them from doing so, even if there is no plan to air their content anytime in the near future.

And the ideological fissures that divide too many in this country, in this case, unify these programmers. They may offer content focused on rural America, the arts, weather, independent films, or foreign language programming, it matters not. INSP, a family-focused content provider based in Indian Land, South Carolina, which is an unincorporated community just south of Charlotte made clear during my visit to their campus last year, that while the content may vary,

the stories are the same when it comes to battling for carriage with the nation's largest pay-TV providers.

Fast forward to September of last year, when the FCC decided to take action to help independent programmers by adopting a Notice of Proposed Rulemaking (NPRM). Leading up to this point, the Commission built a public record that included more than 36,000 filings, including many from individuals who united around a common theme that independent programmers should be a foundational part of the media landscape. One of those commenters stated quite eloquently that: "It is of the highest importance that the FCC help minority, women and independently owned programming get more time on television. It is imperative to promulgate rules that level the playing field, and support these diverse voices. Too many big conglomerates are taking over the air waves, and the little guys are getting squashed." I agree.

Now the NPRM adopted in September targeted only two of the worst offending practices facing many independent video programmers: "unconditional" most favored nation (MFN) clauses and unreasonable alternative distribution method (ADM) provisions. Let me pause to give a quick explanation for those in the room that do not talk about MFNs and ADMS as part of their everyday vernacular.

First, let me explain an MFN. Imagine that as an independent programmer eager to grow subscribership, you strike a carriage deal in which you agree to accept a lower rate per subscriber in exchange for say, better channel placement. Now in negotiating with another distributor, you are told, that because of your previous deal with that other entity, that they will not only take your discounted rate, but now they will put your channel in a tier with just a quarter of the subscribers you thought you were negotiating for. How fair does that sound?

Similarly, with respect to an ADM, what if you were told that to strike a carriage deal with a traditional pay-TV provider, you must agree to a clause that will forever prevent you from striking similar agreements in the future, with online video distributors or what we call OVDs? These are very real scenarios independent programmers face each and every day, and it is what the NPRM we adopted in September aims to address.

The comment period for the NPRM has since closed, and it is my understanding that the Commission's Media Bureau is continuing to review the record. But the overwhelming response, particularly from consumers, is clear: independent and diverse programming must be preserved. What is important is that the proceeding remains open. This gives me hope that following a thorough review of the record, the Commission will proceed with the adoption of a final Order that ensures independent and diverse voices have a place in a vibrant media landscape.

In addition to the work needed on independent programming, we continue to fail miserably as a nation when it comes to the state of minority and women ownership in the broadcast space. The good news is that there is quantifiable data showing that a tax certificate program, can be a successful tool to combating the problem. During its 17 years of existence, the FCC's Tax Certificate Program, successfully helped to bring numerous diverse entrepreneurs into the broadcast industry. Earlier this month, Congressman G.K. Butterfield introduced the *Expanding Broadcast Ownership Opportunities Act*, legislation which would reinstate a tax

certificate program and establish a pilot incubator program. I strongly support the goals of this bill and look forward to working with Congressman Butterfield and other interested Members of Congress on legislation to improve the state of broadcast ownership diversity.

Finally, I am pleased to share that Chairman Pai has announced this week his intent to charter the Advisory Committee on Diversity and Digital Empowerment. You may recall the Commission had a similar group known as the Advisory Committee on Diversity for Communications in the Digital Age. This could be an invaluable venue for making recommendations on policies to enhance the participation of women and minorities in the communications space. I hope many of you will consider applying, so that you can share your knowledge and expertise with the Commission.

The Communications Act gives us a mandate to support localism, promote viewpoint diversity, and ensure programming that is in the public interest. I am grateful to each and every one of you not only for challenging us but for taking the time to be part of this solutions-focused forum. I look forward to working together to ensure our media landscape finally becomes one that reflects the rich diversity in this great nation.