

**Remarks of FCC Commissioner Michael O’Rielly
Before the Communications Group of Garvey Schubert & Barer
April 9, 2018**

Thank you for that kind introduction and for the opportunity to discuss several topics that I hope will be of interest to this group. The famous moto of Las Vegas is “What happens in Vegas, stays in Vegas.” I think the less famous one is that “Nothing of value happens before Noon in Vegas.” Happily starting early on this fine day, I think we’ll just have to test out the limits of that theory over the next hour.

Since I last spoke before this audience almost exactly three years ago, much has changed in the world of communications and life within the FCC. For instance, in 2016, the prior Commission “concluded” its 2010/2014 Quadrennial review by keeping much of our ownership rules in place and tried to establish technology mandates for the offering of set-top boxes. Then, a new Commission took hold in January 2017 with a fundamentally different vision and approach. Last year was a busy one for the Commission, and 2018 shows no signs of slowing down. I’ll give you three examples in the media space: 1) we approved the ATSC 3.0 compilation of standards to set up the possibility of a *voluntary, consumer-driven transition*, 2) we reinstated the UHF discount to properly align our rules with the underlying statute and respective legislative history, and 3) through motions to reconsider, we “re-concluded” a portion of the 2010/2014 Quadrennial review by eliminating media ownership rules that no longer make sense, while modifying others.

We also have been active in clearing out the regulatory underbrush at the Commission, through Chairman Pai’s media modernization proceeding. On that note, I thought I would begin my remarks today by highlighting one issue area I believe is long overdue for an update.

Kid Vid

In January, I penned a blog post calling into question the value of the Commission’s children’s programming requirements, typically referred to as “Kid Vid.” My premise was straightforward: the media landscape has changed significantly since 1990 when the Children’s Television Act became law and 1996 when the Commission imposed a series of Kid Vid obligations on broadcasters. Today, cable providers, subscription services, and over-the-top platforms all offer a plethora of children’s programming in direct competition with television broadcasters.

And, they have found success in this endeavor. In data recently presented to me, the broadcast share of children audiences ages 2 to 11 has dropped 99 percent. Ninety-nine percent! And yet, the Commission imposes requirements on broadcasters to deliver 3-hours of informational and educational programming to children each week, which must be 30-minutes long, regularly scheduled, and aired between the hours of 7am to 10pm. Perhaps most difficult of all, the Commission limits how and when this programming can be preempted and still count towards our quantitative requirements, which of course must all be reported.

Shortly after my blog post, Chairman Pai asked me to take the lead in reviewing these rules and provide recommendations to the full Commission. This is a different role than I originally expected, so I have had to approach the subject with fresh eyes. Ultimately, it has forced me to step back and actively seek out interested parties to hear their differing perspectives. So far, that process has been quite successful and interesting, and I remain open-minded about the best path for the Commission to take to revise our rules.

Hopefully, many in this audience will participate in the related proceeding that we intend to initiate this summer. My goal is to further understand the market, determine if each requirement has produced benefits to our nation's children and families, and examine if these rules have resulted in any unintended consequences.

The fundamental question that is central to this debate is: can we breathe some flexibility into our rules to make them more dynamic and responsive to the needs of kids? For example, while studies show children have shorter attention spans, our rules only count programming that is 30 minutes in length. Should this be revisited? Moreover, if the original intent of our rules was to ensure children's programming for over-the-air viewers, would it make more sense to transition our requirements to a multicast channel? Could such a move give broadcasters the ability to launch an entire multicast channel dedicated to children's content or would such a transition make it harder to locate children's programming?

I look forward to reviewing what I hope to be a fulsome record on this topic and hearing directly from your clients and others on how the Commission's Kid Vid rules impact individual stations. For example, a broadcaster from Dallas recently reached out to my office to explain that he wanted to continue airing children's programming, with or without FCC rules, but could better allocate his resources if there was a relaxation in the reporting requirements. Another broadcaster, from Ohio, told my staff that he tried to launch a local news programming on Saturday mornings, but ultimately was derailed by our Kid Vid requirements. Understanding firsthand how our rules impact you and your clients is very helpful for my purposes.

Media Modernization

As I noted at the outset, reviewing our Kid Vid rules is part of the Chairman's larger proceeding to modernize our media regulations. I am so supportive of this entire effort, because not only is it consistent with my request for such a review two years ago at the NAB Show, but it also provides an opportunity to remove costly burdens on broadcasters that no longer make sense. Some may consider these small-ball items, but the sum of little bits of change can add up to be quite substantial. More importantly, for less established broadcasters in smaller markets, compliance costs influence and curtail other capital and program investments.

As communications practitioners, you are probably already familiar (and have billed accordingly!), but here is just a snapshot of the items approved under this endeavor:

- Eliminated the Main Studio Rule;
- Removed the requirement to maintain paper copies of the Commission's rules;
- Excluded FCC form submissions relating to ancillary or supplementary digital television income for parties that do not owe a fee;
- Proposed to eliminate existing requirements for broadcasters to submit contracts to the Commission or file notices in a local newspaper;
- Proposed to eliminate or modify an annual report that cable providers must file that includes information publicly available elsewhere;
- Proposed to revise our rules on broadcast carriage election notification;

- Proposed to streamline costly, lengthy applications for reauthorizing broadcast satellite waivers when a satellite station is assigned or transferred;
- Proposed to clarify that “written” notice – including notices cable distributors are required to provide to broadcasters or in response to consumer complaints – can be done electronically; and
- Proposed to eliminate Form 397, which I have been advocating for quite some time and amounts to resubmitting midterm EEO reports that are already available in online public files.

As you can see, we have been making good progress on eliminating outdated forms and rules that should have been jettisoned years ago. As we undergo this process, we are looking under every rock and shaking every page of the CFR to find outdated rules and regulations. On this, we could use your help. What have we missed? Even though the record is concluded on this item, my door remains open to hear your concerns. Please take this offer seriously. Who knows when an opportunity like this will come around again?

Radio Reforms

Of course, just as there are rules on our books that no longer make sense for TV broadcasters, there are similar rules for radio that I believe should be revisited. We have already made substantial progress – eliminating the main studio rule and taking key steps towards AM revitalization – but, again, more work remains.

When we reexamined the 2010/2014 Quadrennial review last year, our actions were confined to the topics raised in petitions to reconsider. For that reason, we were able to address an ownership issue regarding embedded markets by providing commonsense presumptive waivers. However, other radio ownership issues had to wait for our 2018 review, which we will hopefully launch later this year. One topic I would like to see the Commission consider under this review is the issue of AM/FM subcaps. While we need to look at raising the overall ownership caps within a market, I believe there is little justification to maintain the current subcaps.

Some have argued that without our subcaps, the largest FM owners in the market would exit the AM business, taking with them any incentive for AM equipment manufacturers to innovate in the AM band. First, I am not convinced FM station owners would sell off profitable AM stations in order to acquire additional FM stations. This is particularly true now that the FCC allows AM stations to pair with FM translators. The stations that may be sold would likely be the unprofitable stations that were not attractive investment opportunities anyway. Second, the claim of a so-called rapid decline in AM due to a sudden lack of innovation in the band is speculative at best. The Commission has asked about this as part of our AM Revitalization proceeding, and while ongoing upgrades are occurring, we have yet to see game-changing innovation in this band.

It is important to recognize that radio is facing significant challenges today. While we still have yet to issue licenses for our last open window for FM translators, once concluded we must address any resulting interference issues. Meanwhile we are undergoing the broadcast repack, which will impact radio stations residing on certain towers. Fortunately, I was pleased to see Congress allocate \$50 million in repack funds specifically for radio to ensure that these stations will be held harmless throughout that process.

And, all of these changes are taking place as new entrants seek to compete with the established radio industry for listeners. For my part, this is why I would like to remove outdated rules that are making the radio business more difficult without providing noted benefits to the public interest. This is also why I am hesitant to embrace ideas that would bring about even more uncertainty into this space. Rest assured, I will continue working with the industry to ensure that radio – both AM and FM – can find success.

Day-to-Day Commission Activity

Finally, I thought you may be interested to hear from me on the general workings of the Commission, as many of you can spend a considerable portion of your time on Commission proceedings on behalf of your clients. As you may know, process reform has been a high priority of mine since joining the Commission. Chairman Pai deserves credit for implementing many of these ideas in the first year of his chairmanship, including making meeting items available to the public three weeks in advance of a vote and establishing the new Office of Economics and Analytics that will ingrain more thoughtful cost benefit analysis in all our decisions. While more work remains, these actions are to be commended. I have a list of forty or so ideas that I am finishing up to get to the Chairman for action. Some of these I've talked about before and others will be new to the debate.

Again, my door remains open for new or innovative ideas. How can we make the Commission more efficient and effective? One problem in need of reform I recently heard about was that past Commissions had gotten in the habit of placing holds on broadcast license renewals whenever they received an enforcement complaint. Unfortunately, broadcasters were often unaware of the complaint or any holds on their license until the calendar struck and they proceeded to try to get their license renewed.

Upon looking into this, we have got some good news: due to better database management, enforcement holds are much less common place at the Commission. Moreover, a broadcaster can call the Commission's Enforcement Bureau at any time to find out whether or not a complaint has been lodged against their station or stations. To ensure a timely renewal process, this may be a helpful tool to use to get any pending issue resolved before memories fade, people move to new jobs, or documentation gets misplaced. As the same time, I am interested to hear from you on whether or not this process works, or if more reforms are needed.

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Thank you for your attention this morning. I am of course more than happy to answer any questions on these or other topics you may have.