

**Remarks of FCC Commissioner Michael O’Rielly
Before the 2018 Radio Show
Orlando, Florida
September 27, 2018**

Thank you for that kind introduction and for the opportunity to join your esteemed industry in Orlando to discuss radio policy issues. A recent article, previewing this year’s show, began: “It’s been a busy year for radio on the regulatory front.” Talk about an understatement. But as the great innovator, Thomas Edison, said, “Being busy does not always mean real work. The object of all work is production or accomplishment and to either of these ends there must be forethought, system, planning, intelligence, and honest purpose, as well as perspiration.” In this case, the Commission’s actions have embodied all of these elements and the right things are getting done.

Before I launch into the minutiae of activity happening at the Commission, let me take a moment, as I try to do each opportunity permitted, to thank all of you in the radio industry in one capacity or another for all that you do. Thank you for providing critical emergency and weather information to your listeners when mother nature comes knocking. Thank you for your crucial role in raising funding and awareness for charities when people in your communities are in need. Thank you for bringing local news, sports, and/or events to your communities as many local newspapers falter. Thank you for your long tradition of helping your fellow Americans. And, finally, thank you for the many other benefits that you bring to those within your listening areas on a daily basis.

My prayers to the people and broadcasters of North Carolina, South Carolina, Georgia, Tennessee and Virginia and anywhere else affected by and still dealing with the aftermath of Hurricane Florence.

So, let’s examine, with your indulgence, what a full year it has been at the Commission. On the enforcement side, we’ve been incredibly aggressive against pirate radio perpetrators and issued our first Forfeiture Order against landlords, who were intentionally violating our rules prohibiting the unauthorized use of radio spectrum. From West Virginia to Massachusetts to Colorado to right here in Florida, pirate radio “stations” have been under constant attack by the Commission’s field offices, as well as D.C. Headquarters. Likewise, Congress has shown exceptional leadership, unanimously approving a bill in the House of Representatives to give the Commission even more authority to go after these bad actors. As I stated at a recent event, pirate radio operators and anyone facilitating their actions should be packing it in, because we are coming for them! If any of you are having problems with pirates in your area, please let us know. We will get someone on it!

Meanwhile, on the regulatory side, the Commission has been reviewing the rules on our books that no longer make sense in today’s vibrant media marketplace, eliminating a host of outdated broadcasting rules built for yesteryear. One of the reforms I am most proud of has been the elimination of the Main Studio Rule. I don’t have to tell this audience that eliminating the requirement that a broadcast station retains a physical location, with a de facto requirement to maintain two designated staff members, allows for real efficiencies — without a loss in service or devaluation of localism. This sentiment was echoed to me at a Univision Station in Phoenix, Arizona, and again, in a letter from a broadcaster in Durand, Wisconsin. As the latter broadcaster explained: “We have not dropped any level of community service and I would submit that because of the changes the station has *increased* the level of service.” Just what I expected.

All that being said, in my opinion, our 2010/2014 Quadrennial Review that we reconsidered in November did not provide sufficient relief from our Local Radio Ownership Rules. To be fair, we were limited in scope based on the petitions for reconsideration that were filed, and we were at least able to modify our rules on embedded markets. However, as we head into our next Quadrennial Review, more work remains, which I would like to spend my time discussing with you today.

Updating Our Media Market Definition

Over the last year, I have highlighted the need to review and revise the Commission's current narrow definition of the media marketplace. Unfortunately, the prevailing and myopic perspective amongst some is that individual communications sectors somehow do not compete with one another. Under such siloed thinking, AM radio only competes with AM radio, FM radio only competes with FM radio, and local television broadcasters only compete with other local TV stations.

But, as the National Association of Broadcasters (NAB) recently pointed out in a filing to the Commission, today, broadcast radio competes with Pandora, Spotify, satellite radio, podcasts, Facebook, YouTube, and others. To quote NAB: "in the digital audio world of 2018, local radio stations, especially AM, face intense competition for listeners and advertisers." Many of you experience this competition daily.

For example, I recently read in radio trade press – Yes, I do read your trade press – that a local advertiser survey by Borrell Incorporated pointed out that the traditional media platforms, including radio, are likely to face advertising cuts in the years ahead. The reasons provided were cheaper social media buys and the desire to spread ad dollars to create differing touch points to customers. Such a reduction in radio advertising demonstrates that sufficient alternatives exist in the market.

Let's face it, Sirius XM or Pandora or a combined entity may not be headquartered in Concord, North Carolina, or Concord, New Hampshire, Massachusetts, California, Virginia, or Ohio, but a teacher can still access these stations while driving home from school after a long day. Broadly, this means that, given the extensive competition from new technologies, the current generation of legacy media will only flourish, and in some cases survive, if the government recognizes this marketplace reality and rejects asymmetric regulation of the broadcast industry.

Accordingly, all relevant participants must be included in any media market definition. When I talk to existing providers in this space, they explain quite clearly how they compete directly against all of those operating in the market, especially given the development and scale of two large Internet companies: Facebook and Google. In not recognizing this in our rules, we penalize longstanding providers, such as the radio industry, skewing the market in favor of unregulated industries.

AM/FM Subcaps

On a similar theme, I have also highlighted in recent speeches the need to both raise the overall radio ownership caps within a market and eliminate the current AM/FM subcaps. However, this is the first opportunity I have had to discuss this issue since NAB proposed an updated approach to subcaps. As I understand it, under NAB's proposal, in the top 75 Nielsen Audio markets, a single entity would be allowed to own or control up to eight commercial FM stations and an unlimited number of AM stations. If a station participates in the FCC's incubator program that we approved last month, it can own up to

two additional FM stations (for a total of 10 FMs). Finally, the Commission would impose no AM/FM subcap in Nielsen markets outside of the top 75 markets, as well as in unrated markets.

While I remain open minded as the Commission begins our 2018 Quadrennial Review of our media ownership rules, including the Local Radio Ownership Rule, I do believe the NAB proposal is worthy of the Commission's consideration. First, there does appear to be a clear delineation between the top 75 markets and markets 76 to 201 plus. For example, the average station revenue in 2017 for markets 26 to 50 and markets 51 to 75 was \$1.8 million and \$1.2 million, respectively. This dropped down to \$716,000 in markets 76 to 100 and to \$399,000 in markets 201 plus. Thus, it seems to make some sense that the line was drawn where it was. At the same time, it may also make sense to consider delineating after the top 25 markets. Here, the drop off is even more apparent. In the top 10 markets, the average station revenue in 2017 was nearly \$5.2 million and in markets 11 to 25, almost \$3 million. Again, this dropped to \$1.8 million in markets 26 to 50 and \$1.2 million in markets 51 to 75. Going forward, I will be interested to see where the record supports drawing such lines, if any are needed at all.

As to the station limit proposal, I must admit that I have been skeptical of arguments suggesting that eliminating these caps would harm the market or individual stations. At the heart of the opposition, there appears to be a concern that the largest FM owners in the market would exit the AM business, taking with them any incentive for AM equipment manufactures 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 the most 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. All that being said, the NAB proposal does recognize these concerns, and creates what many might call a middle ground between our archaic rules that broadcasters live under today and the complete elimination of our subcaps.

Importantly, throughout my discussions with those concerned about lifting the subcaps, the focus has certainly been on the FM subcaps. In closed door meetings, those skeptical of deregulating in this space have suggested that lifting the AM subcap would be an acceptable reform – potentially even helpful. As to the FM subcaps, while I continue to see merit in full elimination, I am open to being convinced that we should instead allow ownership of up to eight stations – 10 for those that incubate – in a top 75 market. This could possibly be a good first step in modernizing our rules. I look forward to examining a full record on this topic in the upcoming months.

Incubator Program

Finally, since the issue is intertwined with the AM/FM subcap discussion, I would like to spend these last few minutes discussing the incubator program the Commission launched last month to help facilitate an increase in radio station ownership diversity. At the outset, I want to commend FCC Chairman Pai for his leadership in both proposing and carrying out this idea. As many of you know, this unique opportunity will currently only be available for radio stations. I personally would have liked to expand this to television as well, but it is now on your shoulders to demonstrate that this program can be a success before we expand the idea further.

With the focus of the incubator program resting on market-based incentives, such as further lifting ownership restrictions and allowing for full transferability, rather than on questionably successful tax certificates, I believe the program is on solid ground to be a success. However, I must admit that some questions do remain. For example, I wonder what will happen to incubators that take on a less-than-stellar incubatee. Will they be forced into pouring resources into a company that simply cannot get off the ground? There is no easy answer for this, other than the need for incubators to do appropriate due diligence and choose their incubatees wisely.

Moreover, I am concerned that litigation in this space will further delay the incubator program's implementation, exacerbating our abysmally low number of women-owned and -controlled and African-American-owned and -controlled radio stations in the United States. Unfortunately, it appears that some are still trying to alter our comparable markets algorithm to disallow comparability more than five market rank sizes removed in either direction from the incubated station's market. As I stated in August, this is an overly complex alternative that I fear will restrict participation in our program. I will continue to object to any changes in this area.

To conclude, let me implore upon you to review this program closely and consider becoming involved. Yes, there are potential benefits to your stations for participating, but, more importantly, participating keeps with the radio industry's long tradition of helping your fellow Americans.

* * *

Thank you for your attention this afternoon. I am, of course, more than happy to answer any questions you may have.