

**Remarks of FCC Commissioner Michael O’Rielly
Before the 2019 NAB State Leadership Conference
February 26, 2018**

Thank you for that very kind introduction and for allowing me to join you on this fine afternoon. Welcome to Washington, D.C.!

For the last few weeks, the foremost conversation in Washington has been about the weather. Not politics, policy, or sports, but weather. Just last Wednesday, a few snowflakes flew, and the entire town shut down. In fairness, these were real snowflakes, not a bunch of whiny, angst-driven teenagers forced to deal with a world outside of their parents’ bubble. In total, approximately 2.5 inches of snow fell. As a guy from the Buffalo area, I have always been perplexed by how so little snow can create such panic and havoc. Then again, as my Uber was careening down the George-Washington Parkway backwards, headed for a ravine, I started to see how this city wasn’t built for weather disruptions. Funny how enlightened you become when the circumstances arise.

In all honesty, I haven’t been able to join you at the State Leadership Conference for the last few years, because it conflicts with an important wireless trade show in Barcelona, where many of my colleagues are at this moment. Make no mistake, I have pushed hard to ensure the United States maintains its global leadership in wireless services. In fact, I’ve been talking about and seeking the requisite policy changes years before everyone joined the chorus. But this year, I made a decision early on, having missed this event too often, that, instead of talking wireless with the international community, I would spend my time with those who actually embrace American capitalism and values, those who rightfully reject the move to consider adopting the broken theology of socialism, and those who believe serving their local communities is the right thing to do and who don’t need government edicts to do so.

It didn’t hurt that my lovely wife kindly suggested that I would have far more fun and a better experience by staying in town with my young family rather than traipsing the globe. I rightly followed her advice and, turns out, she was correct once again. As I look out in the audience, I see that I’m amongst good friends from state associations whom I have personally visited, or who have visited me, and we’ve worked together to enact a positive trajectory for broadcast regulations. From the benign to the more highly-charged issues, you know that I remain strongly aligned with many of the policy positions of America’s broadcasters.

So, I want you to know how pleased I am to be here with you to discuss some important issues affecting your industry, before turning to questions and hearing what is on your minds.

Quadrennial Review

One of the FCC proceedings that should be on the top of your agenda, and in which you should be actively engaged, is the Commission’s Quadrennial Review of its media ownership rules. As you know, this statutory mandate is intended to be initiated every four years to review existing broadcast ownership restrictions and is designed to force a determination of whether these rules should be modified or eliminated if no longer in the public interest. Beyond our duty to comply with the law and the need for a thorough reconsideration of rules devised 40 and 50 years ago, which is just a matter of good government, these prohibitions and restrictions can have serious repercussions, acting as a limit on the ability of broadcasters to grow their respective businesses and provide competing viewpoints in the marketplace of ideas. As I am sure you are aware, the old business adage is: either grow or die.

There are some in the room that have active plans to pursue new opportunities within a particular market – if only the Commission would affirmatively remove its existing restrictions. After participating in so many quadrennials over the years, I am well-aware of arguments regarding the possible benefits to both the individual companies and the public at large for allowing certain combinations. It is not lost on me that despite these logical arguments and supporting data, federal court reviews of past efforts have stymied even the most mundane attempts at modernization. That needs to change. The Third Circuit can no longer be the Bermuda Triangle of FCC media reforms. Perhaps the pending court case, our future item, or both, will result in the appropriate judicial blessing to permit logical partnerships and merger opportunities. The media landscape is rapidly evolving, and it's time for the regulatory backdrop to get an update as well.

At the same time, some of you and those you represent may not be interested in new mergers, growing bigger, or possibly exiting the industry. Let me suggest that you should still be involved in this quadrennial. Contained within the notice are significant questions whose answers, based on the responses in the record, may require the Commission to acknowledge that the current media marketplace can no longer be defined solely by traditional media voices stovepiped into discrete categories, such as television and radio.

If done properly, this action will allow the Commission to jettison its myopic vision that broadcasters experience little competition in favor of one that recognizes the fulsome competitive forces in the current marketplace. It is one in which a vast array of companies – some traditional players, some established high-tech companies, and some companies still getting a foothold – are fighting fiercely for consumers' eyes, ears, and resulting advertising revenue. You should care because this monumental correction will put your business in line for future regulatory relief, mostly unrelated to media consolidation. Establishing this new approach and precedent will allow, and actually drive, the Commission to recognize the existing level of diverse competition when considering a host of other regulatory – and hopefully deregulatory – actions. It should alter how you are fundamentally viewed by advertisers, investors, competitors, consumers, and everyone in between, and even how the Commission is structured.

It's been claimed by naysayers that broadcasters are walking dinosaurs – a view I wholly reject. However, if you are going to be treated as dinosaurs, the FCC should recognize that there are other entities fighting for the same food. And if you are to be dinosaurs, let's untie your hands so you can be the T-Rex or Velociraptor and go after those high-tech snowflakes' market share, rather than idly await some cosmic fate.

DOJ Workshop

The misguided definition of a competitive marketplace is not just an FCC phenomenon. The Department of Justice (DOJ) shares such blind ignorance or willingness to inflict unjustified pain. For quite a while, I have been waving the caution flag that DOJ has been improperly blocking certain media transactions that would be permitted by this FCC under this Administration. For instance, numerous parties have been told that despite the Commission's actions to consider and potentially approve – on a case-by-case basis – a combination of two television stations that are both in the top four in terms of ratings in a market, DOJ staff have signaled it would never allow it. What? Would DOJ carelessly reject any proposed combination of the third and fourth largest stations in a small market? Really? How could it

be that DOJ leadership would allow such a strict policy, notwithstanding the facts in an application? Such an approach befuddles me. It can't be that DOJ staff is running amok with little supervision, right?

In somewhat good news, DOJ has announced that it intends to hold a workshop to examine how digital advertising should affect its broadcast merger review. I realize that some of you may find the prospects of a "workshop" and its aftermath to be completely underwhelming, as it may seem one step above chatting at a bake sale or the water cooler. Even so, I hold out some hope that this can serve as a starting point to fix a broken process and change the minds of those staffers as need be. Trust me when I tell you that I will not be content to let this issue stop at a workshop level and neither should you.

Radio Ownership

As the Quadrennial proceeds, I trust that those of you in the radio business will become active participants in the debate over how best to reform our radio ownership rules. In all reality, these rules haven't changed since Congress last addressed the issue in 1995. But the radio marketplace sure looks and operates far differently than it did then. As leaders in the industry, you have some of the burden to educate regulators about how the market has evolved and about the real challenges you will face in the foreseeable future.

Central to our debate on radio ownership will be what to do with the existing subcap limits placed on common ownership of AM and FM radio stations in a market. At the initial stages, there seems to be agreement that eliminating the AM ownership limit is more than timely. Although some may argue that certain AM radio stations have become the de facto news source once provided by local newspapers, that recognition is not a good argument against allowing for greater common ownership. On the contrary, allowing consolidation of AM stations may be a key way to preserve this function. Let's not ignore what happened to the newspaper industry and the role the Commission helped play in its demise by denying similar opportunities to grow and remain viable.

Similarly, there are a number of proposals that would permit a relaxation on the number of FM radio stations owned in a market. I am pleased to see that a large portion of the industry has moved past the issue of whether some cap relief is needed and towards just exactly what form it should take. Now that we are past the initial rhetoric, we can figure out how best to provide relief while preserving sufficient diversity of voices in markets.

Broadcast Incentive Auction Repack

On another note, the Commission is marching along on its transition schedule as it relates to the broadcast incentive auction repack. I suspect those involved are well aware that we are in the middle of Phase 2, with a completion date of mid-April. Most experts I have spoken to do not anticipate tremendous difficulties until Phases 3 or 4, but if your particular station has concerns, the repack would obviously become a top-tier issue for you and your organization.

Let me assure you, while I fully want the 600 MHz spectrum cleared as soon as possible, no station should be worried that the FCC would make it to go dark and cease offering programming to viewers. You have my word that I will not let that happen. This promise, however, should not be seen as an invitation to become complacent or lackadaisical. Instead, if real and demonstrable unforeseen circumstances develop, the Commission will want to work with the station to address and resolve issues

as quickly as possible. Your obligation is to notify and work with the transition staff if, and as soon as, any such problem is detected.

C-Band Reallocation

Another policy issue that is absorbing considerable oxygen at the Commission and elsewhere is how to go about repurposing a good portion of the existing C-Band satellite spectrum downlink – or 3.7 to 4.2 GHz – to provide a new mid-band spectrum play for 5G wireless services. This would be accompanied by expanding highly-popular unlicensed services into the corresponding uplink band at 6 GHz. This issue is one of my highest priorities at the Commission this year, especially given its importance in bringing needed spectrum resources to our nation’s private sector wireless providers as part of the global race to 5G. Having taken a lead advocate role on the matter for quite a few years, I would appreciate any assistance you can bring to make this happen as smoothly and quickly as possible.

Please know that there is near certainty that C-Band reallocation will occur. While the particular details are still to be worked out, this debate has matured into finding the best mechanism for reallocation and determining how quickly it can occur. From a broadcasting perspective, I have made it one of my conditions for approving any reallocation that the proposal include full reimbursement and retuning for those broadcasters that currently use C-band satellite services. My message to you is that if you don’t get greedy or seek unfair enrichment for the reallocation, your concerns will have to be fully addressed.

KidVid

While I have your attention, I would be remiss if I didn’t provide a brief update on the efforts by the Commission to reform our children’s programming obligations, better known as Kid-Vid. During the recent government shutdown, I read the comments and replies in the record and have begun the process of outlining a possible path forward to recommend to Chairman Pai. The original goal remains: provide some greatly needed flexibility for television broadcasters, respond to the tremendous market changes since the Commission’s last modifications, and preserve the television experience for those children who rely on or enjoy existing children’s programming. While simplification was one of my goals, we may see compliance becoming a bit more complex in order to bring necessary flexibility to those managing the programming schedules for stations. That’s a trade I am willing to make, and I am hopeful, in the end, that you all will see benefits far exceeding any added compliance burdens.

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Let me stop there as that should provide enough of a snapshot of FCC activities and my own views to generate sufficient audience interaction.