

**Remarks of FCC Commissioner Michael O’Rielly
Before the 2019 Arkansas Broadcasters Association Annual Conference
July 19, 2019**

Thank you so very much for that kind introduction. It is an incredible honor to join Arkansas broadcasters in celebration of the 70th Anniversary of the ABA. Congratulations to the association and its many members for the decades of service to the people of Arkansas. During my time at the Commission, I have had the pleasure of traveling the country to hear from America’s broadcasters about the issues they face, and I am grateful for your hospitality and the opportunity to attend such a lovely event.

When I think about broadcasting, I am often reminded of a smug quote by the late British politician, Tony Benn who once said: “Broadcasting is too important to be left to broadcasters.” That viewpoint couldn’t be more patronizing and misguided. It also perhaps explains why we celebrate U.S. Independence Day each year with such fanfare.

It should go without saying that your phenomenal work in local broadcasting has earned you a high level of trust among both the American people and the government. This view may not be universally shared of your network brethren or cable cousins but local stations – both radio and television – focusing on the local markets and local news, as applicable, has high regard in our society. For the most part, the FCC doesn’t stand to second-guess the programming decisions you make or how best to service your local community. That it is not our role, nor should it ever be.

Having just spent some time in Great Britain, I recognize that our friends across the ocean see their purpose differently. In contrast to the FCC, UK regulators consider themselves *mandated* to doubt and engage on every little decision of those they regulate. This can be partially explained by the fact that, unlike the free-market, capitalist-driven, private-sector broadcasting system in the U.S., the largest British broadcaster is funded directly by billions of government-imposed taxes and fees. Such a paternalistic approach is at odds with our fundamental beliefs as a nation, and equally important, runs counter to the Commission’s respect for the benefits brought forward by U.S. broadcasting.

As I have said before, you and the staff at your stations have a distinct ability to influence viewers’ lives. You inform and educate, entertain and amuse, and console and reminisce as the circumstances dictate. Your stations are on the front lines providing information as severe weather develops and when crises hit our communities. And, no one is a more effective community fundraiser to help those in need. So, from the bottom of my heart, I thank you for all you do.

Some of you may have seen me at various broadcaster functions and know that I tend to focus on the substance of communications policy. At the risk of boring you all to death or ruining your celebration, let me touch on a few FCC-related issues that may be relevant and hopefully of interest to you.

Children’s Television Regulations

One issue that’s been front and center for the past few weeks, and about which I can happily share some good news, is the Commission’s recent approval of updated Kid Vid rules. No, we didn’t “slash” children’s programming or eviscerate our rules by creating loopholes to allow those inclined to avoid airing any kids’ programming at all, as some have asserted. On the contrary, our result is a balanced approach. We worked with those on either side of the debate to come up with a new framework that

both preserves existing shows for those who watch—no matter how small the audience—and gives stations more flexibility in meeting their requirements, both of which reflect the priorities I laid out when we started this process.

I admit, the new rules could, and likely will, make programming choices a bit more complex as some broadcasters, including those in this audience, consider taking advantage of new options, such as the minimum quarterly hours. But, I am hopeful that the added flexibility will be a worthy trade off. In fact, a common theme that developed in the record was the dilemma facing many local stations: either air Kid Vid shows to meet the rigid three hours per week mandate, or air public affairs and news programming that is of significant interest to their local communities.

It is unfortunate that many stations have found themselves having to pit these two programming choices against each other, but situations like this are all too common and a surefire indication of the need to update the regulations. In addition to offering quarterly minimum hours rather than weekly minimums, we also expanded the breaking news preemption to help alleviate these scheduling conflicts. We have determined that if a station produces its own live, local programming that is not regularly scheduled, then the station can air such programming during a time slot that preempts Kid Vid shows. The reasoning is simple: as local broadcasters, you know your communities better than anyone else, and you are best suited to determine whether airing a local parade or high school sports game or other public affairs program better meets the ideal of localism than prepackaged, off-the-shelf kids' shows.

Now, I know that you are not necessarily eager to go out and fill over a hundred hours a year of additional programming on your own dime just to get out of your Kid Vid requirements. Across the state of Arkansas and within communities across America, broadcasters are always looking to find ways to fulfill your local mission and comply with all your mandates. But, nonetheless, this is a good opportunity for me to remind anyone in the industry who might be eyeing the chance to take advantage of the rules: don't screw this up.

The Commission worked diligently for many months to find a more workable Kid Vid regime, and we absolutely expect stations to take advantage of the flexibility in the rules. We want you to innovate to the extent the law allows: air local programming, shift schedules with appropriate notice, promote your multicast programming, and benefit from the updated processing guidelines. However, the industry should be on notice: if bad actors blow through the restraints that are still in place or exploit the increased flexibility by broadcasting an infinite amount of infomercials, the next time the rules are updated, critics of your industry will surely be aggressive in swinging the pendulum back the other direction. I trust you to do the right thing to make sure those willing to gamble with broadcasters' reputations are preemptively admonished.

Pirate Radio

Next, I want to provide an update on the hard work going into combatting pirate radio, a major priority of mine and the Chairman's. While the well-known cases tend to be concentrated in major coastal cities, and hasn't generally affected Arkansas, failure to address the matter sufficiently elsewhere will lead to the problem eventually reaching your members as well. The interference caused by pirates is not only a blatant violation of federal law, but also deprives legitimate stations from needed revenues and audience share and poses significant safety concerns, implicating everything from emergency alerts (EAS) to the FAA's systems, and even RF health risks coming from completely unregulated, renegade

broadcasts. These are some of the points I raised recently in the first set of what I hope will be many meetings with local officials in some of the most problematic markets in the country.

For instance, when I met with New York Bronx Borough President Ruben Diaz, Jr. last week, he was very receptive to my request for help in combatting these “stations.” In addition to the safety issues I just listed, we also discussed the problem of scam artists advertising on pirate stations, and we are collaborating on ways to alert potential advertisers of pirates by making it easier for businesses to figure out which stations are legitimate broadcasters. And, you can expect to hear of future meetings and activities in the coming months. Expect the Commission to also take advantage of new technology to better pinpoint violations.

For those who argue that there aren’t enough opportunities in the broadcasting industry, and that this supposed scarcity is responsible for fueling the black market, I would argue that those individuals are simply ignoring the significant work that you all already do in your communities. I also suggest the Internet provides a worthy alternative for any individuals claiming to be wannabe broadcasters in training.

Competitive Market Definition, Deregulation & Media Ownership

Switching topics a bit, one of the things that frustrates me as a regulator is the unwillingness of some within government and outside of it to recognize when a given market has changed substantially and should be regulated differently than it has been in the past. When it comes to the broadcasting space, a significant number of individuals still believe it is 1959, not 2019. But the market of yesteryear is not the universe you operate in today. I have been preaching far and wide on this point for quite a while, but let me give you a couple of examples to demonstrate why this matters so much.

First, the FCC retains loads of regulations on broadcasters based on the premise that they ought to be subject to special burdens given their unique role in communications. While there is certainly a compelling argument that many of those extra burdens were never justified to begin with, this structure certainly cannot be sustained in the current environment. Unless you are living under a rock, it’s obvious that America’s broadcasters are competing on a daily basis with a multitude of other media providers. Not least among these are the giant high-tech companies. On the video side, there’s the so-called FAANGs: Facebook, Amazon, Apple, Netflix and Google. And, that is not to mention the plethora of traditional video providers like cable operators and satellite television.

Whether it is live programming, streaming, on-demand, short-form, or anything else, it would be preposterous to hold that those other entities are not substitute consumer options directly competing for your viewers and advertising dollars. The audio side may even be more fragmented, comprising many of the same high-tech companies, as well as satellite radio, and the developing podcast market. For the most part, this Commission has rightfully acknowledged that local broadcasting is subject to immense competition and therefore many of its existing burdens should be either removed or certainly reduced. Every costly obligation that can be lessened or eliminated means more funding for programming in the ongoing fight to retain audiences.

Second, the Commission has an open proceeding, as required by law, to review our local media ownership limitations, which were designed decades ago. While there may be a lack of universal agreement among broadcasters as to what exact reforms should be implemented, there is broad support for certain reforms on both the radio and television side. But, to truly bring about necessary

reform, the Commission must conduct any analysis using a proper market definition. In past attempts, the FCC asserted that FM radio only competed with FM radio, AM radio only with other AM radio, broadcast television only with other broadcast television stations, and so on. This siloed approach mischaracterizes the real competition facing all broadcasters and does a disservice to the agency. Instead, we must adopt a much more comprehensive view of what constitutes the relevant video or audio marketplace. That is why I successfully added a process in our last review proceeding, commonly called the Quadrennial Review, to force the Commission's analysis to be based on market realities.

Finally, the FCC is not the sole and final word on all of communications policy, as the Department of Justice is also involved in certain aspects, mainly transaction-related matters on anti-trust grounds. Sadly, it too has maintained an old school 1950's siloed view of which entities actually compete for advertising in a particular broadcasting market, and this has slowed or blocked many deals from being considered or advanced. Does anyone really believe that broadcasters don't face broad competition for advertising dollars? The answer is yes: DOJ! Recently, the Department took a first step in moving away from this delusion by—drumroll, please—holding a workshop. As underwhelming as that may seem, that initiative may not have worked out as DOJ anticipated. Specifically, the workshop didn't reaffirm their myopic view. Instead, even the high-tech giants admitted that they actively seek to and ultimately do steal advertising dollars from broadcasters. The real question therefore becomes: is DOJ leadership willing to move forward and accept the realities of the current marketplace or remain blinded to the point of irrelevancy by its past practices, which would be better swept into the dustbin of history?

So, there you have three instances where the definition of the relevant market for analyzing competitive impacts and possible deregulatory benefits really matters. I hope you will join with me in the quest for full recognition of the current marketplace realities.

STELA Reauthorization

The last issue I will briefly touch on, because I often get asked, is what about STELA reauthorization? As I always say, Congress makes the decision on this one, and the FCC simply operates according to the statute. However, over the course of my own career, which has included both Congress and the Commission, the reauthorization cycle tends to follow a basic pattern, ending with the law's renewal at the eleventh hour as it approaches expiration. The draft bill is typically broad and includes many provisions early on in the process. Over time, with congressional hearings, stakeholder meetings, and all sides weighing in, the bill gets whittled down to its characteristically narrow scope by the time it gets out of committee. We are currently in the stage of the process where all sides are making the proverbial swing for the fences. As Congress spends more time sifting through the issues and crafting a final bill, I would expect we'll see a more modest outcome.

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In closing, thank you again for the wonderful honor of joining all of you today. I've tried to cover a few of the topics receiving attention within your industry, including important deregulatory matters, but there are many more, so I'd be happy to try to answer any questions that are top of mind.