

**Remarks of FCC Commissioner Michael O’Rielly
Before the Massachusetts Broadcasters Association’s Sound Bites 2019 Event
November 14, 2019**

Thank you, Ms. O’Terry, for that very kind introduction and for your service as both a local broadcasting star and as such a strong advocate for increased employment of women in the communications industry. Let me also extend my appreciation to the Association’s Board for inviting me to join you here today. While I always appreciate the annual treks many broadcasters make to Washington, D.C., for meetings with the Commission and find great value in these conversations, there is something intrinsically beneficial in visiting with local broadcasters in their home states. Whenever my schedule allows, I jump at the chance to travel our nation and hear directly from those individuals serving their local markets, like you do.

Let me start my brief remarks, as I always do when speaking before broadcasters, by simply saying thank you. Whether it’s providing critical and timely information, such as weather alerts, fundraising drives for those in need, uplifting community spirits when tragedy strikes, or just entertaining those from the Bay State, thank you for all you do to help the people of Massachusetts. Your tremendous work is not lost on me, and hopefully not on my colleagues at the FCC.

To put a finer point on it, I recently had the opportunity to visit KDKA-TV, the CBS owned and operated station in Pittsburgh. The station is fiercely competing with the digital giants for advertising dollars and trying to stay nimble in the increasingly challenging marketplace. At the same time, they were bringing award-winning programming to area viewers while also conducting a fundraising food drive, known as the Turkey Fund, so that the many needy people of the Greater Pittsburgh area would be able to enjoy a Thanksgiving dinner. While I am not endorsing a private fundraiser, do note that last year alone, it raised \$500,000 for this same effort. Show me another private sector entity that is as tied to their community as this local broadcaster. And this story is not unique among broadcasters but replicated across the country and certainly here in Massachusetts as well. So, a hearty thank you is the least a representative of your government can offer for all of your efforts.

Given that I come from the FCC, I tend to focus on some of the policy issues facing broadcasters. With your indulgence, I would like to delve into some of those that may be of interest to this audience.

Update on Pirate Radio

I would be remiss if I didn’t start my speech to the Massachusetts broadcasters with an update on pirate radio and where things currently stand. As many of you know firsthand, the Boston metro area happens to be one of the more active places for pirates to operate, but of course we see them in many major metropolitan areas, and now they are spreading to smaller markets as well. Unfortunately, progress is slow, and I hoped to see more success when I first got involved several years ago. That said, we are playing a long game here, and there is reason to be optimistic that we will be able to get a better handle on the situation in the coming years.

First, I am told that Senate passage of the PIRATE Act is imminent and that we should see it signed into law in the near term. The bill is important for a couple of reasons, but I would highlight a few in particular. Increasing the amount of the fines is significant, not simply as a punitive measure, but in order to attract the attention of the Department of Justice (DOJ). Our enforcement tools are somewhat limited at the Commission, and often times we must rely on other agencies for assistance. In the case of prosecutions to collect our forfeitures, the cases must be worth more than a few hundred, or even thousand, dollars to gain the attention of DOJ, so the PIRATE Act will help in this regard. Further, the

bill will allow the Commission to skip existing intervening steps and file notices of apparent liability (NAL) as soon as pirate operators are discovered.

But there's an education component to the effort to combat pirate radio as well. I have met with officials in New York City to explain what pirate radio is and to enlist their support. One concern that has been raised is the difficulty in some cases of telling the pirates from the legitimate operators, as some pirates have relatively sophisticated advertising and programming. The PIRATE Act requires the publication by the Commission of a list of licensed operators, which will help to discern between good and bad actors. In the meantime, it's incumbent upon entities who are buying advertising time to provide a basic level of due diligence in making sure they are working with legitimate broadcasters and not pirates, whether these are retailers or political organizations buying ads during election season.

You should know that legislation alone won't completely solve the issue and the Commission is focused on using all of its tools to identify, track, punish, and end pirate radio in the Boston market and everywhere else. As I have alluded to in the past, we are also deploying state of the art technology to make it very difficult for pirates to escape scrutiny. Put simply, pirate radio is an affront to the rule of law, but more importantly, it directly harms local broadcasters and puts the listening public at risk. It will continue to be a top priority for me during my time at the Commission.

Update on New Children's Television Programming Rules

Next, I'd like to touch upon an issue that gained prominence this past summer when the Commission passed a reform package to update the Children's Television Programming regulations, known colloquially as KidVid. As I noted at the time, the final Order was a rather modest effort, especially given where we started. While I fully supported the original proposal, which would be more in line with today's market, when Chairman Pai asked me to find a path forward on KidVid, I knew we needed to engineer an approach that would make a real difference for station programmers who felt constrained by existing rules, but that would also alleviate some of the concerns raised by advocates.

In the age of nearly universal litigation over our agency's actions, I'm happy to report that our new KidVid regime to date has not faced any challenges in court. We were able to get to this point because everyone walked away from the bargaining table with a little less than they wanted but enough of what they fundamentally needed to make things work. Broadcast stations now have more flexibility in both timing and preemptions for locally produced shows, and content producers and special interests have ensured the continuation of the total number of hours of programming and the requirement of regularly scheduled thirty-minute shows for the bulk of the programming.

But this outcome is also the result of truly seeking to build rules around the realities of how an industry works and of a desire to spur competition across platforms. The barter system for KidVid programming has remained intact, meaning content producers can still afford to produce programming, and many stations are actually using fewer preemptions now that they have more flexibility, meaning a more reliable schedule for those who watch these programs, in turn making them more attractive for advertisers. When complying with the KidVid rules, I have said that we expect broadcasters to actively take advantage of the new rules, but with the caution of, "Don't screw it up." And I have to say, the stories are pouring in from stations that are doing exactly what we expected—you and your colleagues across the country are taking advantage of the new flexibility to produce more local programming that leverages your primary competitive advantage, a relationship with your local communities.

Specifically, since the rules went into effect, we've heard from stations from the Great Lakes and Midwest to the Southeast and the West Coast, and yes, the Northeast as well. There stations are adding an additional hour of local news to existing weekend news broadcasts, and there are several stations who

are launching as many as four hours of brand new local news programming on the weekends—where they had none previously. It's incredible to see stations *increasing* their staff, making new hires, and growing their news rooms as a result of additional flexibility. Moreover, it's also telling that some of these news programs are displacing paid programming, contrary to some critics who warned paid programming would increase. Further, one network was able to launch a weekly seasonal sports program as a direct result of additional flexibility for their stations and affiliates.

For many families, sports programming is a true family experience, perhaps even across several generations. While certainly not all families are sports fans or watch the local news on weekends, the point is that these examples illustrate how our thesis is being borne out that local broadcasters know what's best for their communities. If you give an industry a chance to compete based on what they are uniquely positioned to do—local news, public affairs, sports, and so much more—they will absolutely deliver.

Update on Payola and Current Law

Turning back to issues confronting the radio side of the industry, I wanted to take time today to provide a more fulsome discussion of an old-world issue that may have a new meaning in the modern world of streaming music: payola. As many of you may recall, following reports in the radio trade press that there may be instances of payola still occurring, I sent a letter to the trade association representing the major record labels asking for a very minimal response. For those who may question why an FCC Commissioner would have an interest in payola, let me remind you of the statutory prohibition on paying for airplay without having the proper disclosures. On a larger front, maybe the law should be changed, maybe it shouldn't, but that is not my role. Accordingly, my approach has been to take a thoughtful, collaborative tone on this matter, as we have not been able to pinpoint yet whether this is, indeed, an actual problem or not, and if so, whether it's an issue implicating the major labels or only independents, as the recording industry has alleged in their response to my letter.

The Recording Industry Association of America (RIAA) recommended that I reach out directly to their members, so I am in the process of doing just that. I'll be asking for feedback on what processes record labels have in place to prevent payola and their structure for responding if evidence shows the need to do so. More to the point, if it's true that the big labels have effectively rooted out this practice through implementing their own safeguards, then I'll look forward to learning how those processes work. In hearing from many participants in the industry and individual listeners – yes, my twitter account has been quite active as the topic generates significant, and passionate, responses – there are some legitimate questions involving fairness, competitive effects, industry trends, and the like generated by accusations of payola. It is not necessarily a victimless crime.

In the broader context of media regulation, it's important to recognize that what we're talking about is a statutory requirement put in place long before streaming or other forms of music distribution were developed. And yet, once again, we see a legacy regulation remaining in place for broadcasters that other substitute services are not required to abide by. From that perspective, it may be time to take a closer look at whether these rules should still exist or should be modified. It should not be lost on me or anyone else observing the industry that this is another area where the cutting edge high-technology companies operate without similar restrictions. While there is rightfully a policy discussion to be had by political leaders as to the merits of anti-payola rules, perhaps at the congressional level, the fact remains, until the statute is modified or repealed, there will continue to be two different sets of rules based on whether listeners tune in over-the-air or stream programming online.

Update on Media Modernization Going Forward

Continuing in the vein of media modernization, while we have not been limited to broadcast regulations, of course, under Chairman Pai this Commission has worked diligently each month to identify legacy regulations affecting broadcasters and cable providers that have outlived their usefulness. The goal is not simply to deregulate for the sake of deregulating an overburdened industry, although that would be reasonable enough and wholly appropriate. This is about removing unnecessary barriers imposed on traditional, regulated industries so they can better compete with new high-tech entrants to the video and audio marketplace. While we have more items in the pipeline to be considered soon, and many, many more ideas for both broadcasters and MVPDs on our short list, I would like to lay out a handful of ideas for immediate consideration.

First, I propose providing a guaranteed right at license renewal for a station to supplement its Issues Programming List. This would lessen the risk facing broadcasters when they file their lists throughout the year, which end up being massive documents full of over-inclusive materials because of an understandable hesitancy to leave out *anything* such that it may not be permitted to be added to the record if challenged at renewal. Now, when it comes to renewal time, I am told that our Media Bureau makes a sincere effort to help stations come into compliance before invoking enforcement penalties. But, from the perspective of a station paying thousands of dollars on compliance costs, it seems worthwhile to formalize certain protections at the outset.

Second, it may be worth considering shifting Class A television station certifications and Issues Programming Lists to an annual rather than quarterly system of reporting, similar to what we did with KidVid reporting. Another reporting requirement that may benefit from streamlining is bringing our Form 316 process – in other words, our license transfer process – in line with how the Wireless Bureau handles certain transfers and assignments, by establishing overnight processing, rather than requiring lengthy review and comment periods for pro forma transactions that have no possible effect on the ultimate control of the broadcaster. If a problem is identified, which is unlikely, opponents can always file a petition for reconsideration. The current mechanism is actually forcing inefficient company structures. Similarly, it may also be time to address the Broadcast Telephone Conversation Rule, which is largely duplicative of state law that already governs the recording of telephone conversations and provides sufficient remedies for violations. Eliminating our rule, or at a minimum creating a safe harbor, would bring over-the-air broadcasts in line with streaming broadcasts.

Finally for today's list, there are a number of what I call the Zombie Proceedings, which I would humbly suggest should be "killed off." These are rulemakings that were started under previous Commissions and for one reason or another have never moved forward, but have remained pending, not having been brought to a close. These include, in my opinion, the proposed classification of over-the-top (OTT) platforms as MVPDs; the proposed repeal of network nonduplication and syndicated exclusivity programming rules; the set top box rules proposal; the proposal on sponsorship ID and embedded advertising rules; and the remaining pieces of enhanced disclosures proceeding, especially Form 355. I'm sure there are yet others worthy of inclusion, but I'll leave you with these to consider for now.

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So there you have a snapshot of just some of the differing policies affecting television and radio that the Commission is currently facing. Thank you so much for your attention and including me in this event. I look forward to continuing the conversation surrounding these and other issues, and say thanks again for what you do in your local communities.