

COMMISSIONER SIMINGTON REMARKS AT 2021 OHIO ASSOCIATION OF BROADCASTERS MEETING

Thank you Hank, for that introduction, and thank you to Chris for the kind invitation to speak with all of you today.

I guess I should say at the outset that I went to law school in that state up north. And as a Wolverine, I feel your pain. But, you know, it was ten years. We were due! So here's hoping we'll show well against the Bulldogs. Can't say I'm really looking forward to that one, but hey. We already beat long odds once this season.

My apologies. Just had to take a little lap there. One of my staffers is a Buckeye and I'm sure he's going to get me back somehow.

Now, not to dwell, but that same staffer told me he watched The Game with his parents while visiting them in Lorain, Ohio over Thanksgiving. So, get this.

For the first part of the game, he watched in the family living room. That was with a cable connection, a traditional MVPD. Well, the game started to take a bit of a turn, as you recall, and so he and his father adjourned to watch the game out in the garage, away from the rest of the family, so that they could engage in a few choice words without scaring the children who were present. Okay. That was an over-the-air broadcast.

After the game, they came back in, and my staffer checked highlights and analysis on his phone—over the top media content.

So over the course of one afternoon, this same person experienced the same basic piece of media content across three different methods of transmission.

Isn't there a point there? I think so. The point is: the modern media marketplace is complex and varied. The same content can arrive on a screen as small as a watch face to as large as a big-screen television. It can be transmitted in the air or over a wire. It can be searched for, downloaded, tuned into, or streamed. The very same piece of content.

So, if I, an ordinary viewer, can get the same piece of content delivered to me in three ways over the course of an afternoon and not think too much of it, does it make sense to think of the media marketplace as segmented by mode of transmission?

Well, probably not. Now, don't get me wrong. The Commission probably *should* track trends segmented by mode of transmission, if for no other reason than to observe what is happening to the industries we regulate—and, just as importantly, the industries we don't, especially where they affect those we do. But what good is it to, for instance,

observe the explosive growth of local advertising revenue in online platforms, and its decline from broadcast media, if we don't *do* anything about it?

Now, it isn't our job to run your business for you. In fact, I can assure you that lawyers in Washington tend to make a fine mess of things when they try to run businesses. But it ought to be our job to *listen*, and to take on board the undeniable realities of the marketplace. And the reality is: it's hard out there for broadcasters. It's hard for FCC regulated video providers in general, of course, but broadcasters are maybe struggling the most.

Consider, you know, the smaller broadcasters. The folks who have one, two, or half a dozen stations. Consider how difficult it is for them to achieve efficiencies of scale—consider what their margins look like because they're smaller operators. Now, is there a single online video platform that is a mom-and-pop operation? Of course not! Every single one is either backed by a massive tech platform, deep-pocketed venture capitalists, or a major network. If not, it's out of business in a year. There is no such thing as a 'small' online video platform. Not really.

Those platforms are competing with mom and pop broadcasters--or, shoot, even established station groups—with operating efficiencies, margins, and capital markets backing of which broadcasters dare not dream.

Can we seriously think, at this moment, with the arrows pointing in the directions that they are, that we should be making it harder for these small, regulated entities to operate? You are all already burdened by a raft of regulations designed for a bygone era while your insurgent online competitors have functionally none of the same constraints. Should we *now* turn the screw?

Of course we shouldn't. Look, we do have to regulate broadcasters. We license you the airwaves to operate on; we do not consign them to you. We hold them in trust for the public benefit. And, yet, I've had the good fortune to meet a lot of broadcasters. And you folks do a good job. As an industry, I can hardly imagine the public airwaves in better hands.

But we used to predicate this special treatment on the physical properties of radio waves themselves. You know, the involuntary penetration of emissions into the American home. That was the fundamental basis for our exercise of jurisdiction. But at the time the Communications Act was written—or even since its major revision in the 1990s—could we have imagined the *practical* penetration of online content; of, indeed, online culture, into our homes and lives?

I don't think we could have. The Communications Act was most recently revised back when American Online was still sending out CDs in the mail and a 28.8 kilobaud modem was a state of the art connection. It was in 1996, for instance, that the first 'internet fax machine,' such as it was, was used. And it was two years after that when Paul Krugman, the Nobel Prize-winning economist, predicted that, by 2005, the internet's

impact on the economy would have proven no greater than that fax machine. So much for prognostication.

We cannot see the future. But we can certainly see the recent past. And if the future is anything like it, video consumption on online platforms will continue to climb, with more and more advertiser and subscription dollars flowing to them, while broadcasters will continue to be squeezed when it comes to advertising revenue.

We have to take account of this reality and reckon with it. People of good will, within the Commission and throughout Washington, have varying ideas about how to preserve localism and enhance competition in the video market. And that's fine. But I worry a bit about the perspectives of career politicians, regulators, and academics who look across the media landscape and see the shadows of towers stretching across it and imagine them to be the broadcast towers of their early careers. More likely, they are utility poles and base stations.

We need not see this as a threat. Indeed, I don't. I'm delighted that Americans have greater access than ever to the content they want to enjoy, and the conversations they want to have, in as many ways as possible. But, I am also clear-eyed about where the power has shifted. It is away from broadcasters. Away from networks. Even away from traditional MVPDs. And toward online platforms. And if we are going to talk about serving as a check against uncontrolled concentration of media power that is presumably antithetical to consumer welfare—well. The conversation need not end at online platforms, but it must at least start with them.

Perhaps some of you imagine I'm arguing for more regulation of big tech. Well, not necessarily. Not everything is a regulatory problem. Maybe this one is. I don't know. But I do know three things.

One: online media platforms are growing rapidly and threaten dominance over traditional media platforms. That's a fact about which everyone agrees.

Two: broadcast advertising revenue has flatlined, having been siphoned off from higher margin online platforms. That's a statement about which the facts speak for themselves.

Three: the FCC will soon again consider media regulation in a quadrennial proceeding. And if it does not take serious account of facts one and two and accommodate them, it will have failed.

Thank you so much again for the kind invitation to speak, and I'm looking forward to your questions.