

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182

In formally launching the 2010 round of our media ownership review, the Notice of Inquiry (“NOI”) outlines many of the challenging difficulties that the regulated media face in a turbulent time of their transition to the digital media era. Broadcast stations and daily newspapers are grappling with falling audience and circulation numbers, shrinking advertising revenue and declining employee rosters as online sources – both those of competitors and the traditional media’s own Internet outlets – attract a growing degree of consumer attention and reliance. The strides being made by online media are creative and exciting, and the future evolution of sustainable business models is hard to predict. I am confident, however, that the answers will come from those actively engaged in media enterprises and not from Washington bureaucrats.

The Commission has known since at least the time of its 2002 ownership review that the Internet would have a profound effect on the media landscape, yet for various reasons the agency has been unable to fully adapt its regulations to the new realities. This time, I hope, we will get it right. Burdensome rules that have remained essentially intact for more than a decade should not be allowed to continue impeding, or potentially impeding, the ability of broadcasters and newspapers to survive and thrive in the digital era. It is not at all clear, of course, that relaxation or elimination of the existing rules necessarily will lead to a major wave of ownership consolidation. Many have predicted – and a question in the NOI suggests – that updating our regulations may be meaningless because traditional media owners now would prefer to spend their time and precious resources on new, unregulated online outlets rather than acquire any more of the heavily regulated ones. Yet even should this prediction to prove true, it is no reason for the Commission to continue to cling to inaction. We have a statutory obligation to eliminate unnecessary mandates and bring our regulations into line with the modern marketplace.

Nor does it seem necessary to begin this proceeding with a mere NOI rather than a Notice of Proposed Rulemaking (after all, the topic is hardly new to us). Nevertheless, I am pleased that the wide-ranging questions in the document include recognition of the legal precedent in this area and seek comment on how the recent court decisions may affect the scope of the Commission’s decision-making now. In fact, I expect that some commenters will draw upon the data and arguments they submitted just days ago in the U.S. Court of Appeals for the Third Circuit, which finally has reached the substantive review phase of pending court challenges to the Commission’s December 2007 media ownership decision. The appellate proceeding is moving on a separate but somewhat parallel track, and the court may act in time to inform our 2010 rulemaking effort.

Whether it does or not, however, it is high time for us to start moving. I therefore support the issuance of the NOI, even though I find some of its premises and questions disquieting. I am concerned, for example, by the suggestion that the Commission might attempt to use measures of “civic engagement,” such as voter turnout data or citizen knowledge of government officials and issues, to evaluate the degree to which broadcasters in a particular market are fulfilling the agency’s localism goal. The possibility of the government monitoring core protected speech should send shivers down the spine of anyone who cherishes liberty. I similarly question the possible focus on counting the number of journalists employed at broadcast stations. In a free society, the government has no business attempting to influence the Fourth Estate watchdogs of

state action. The practice of journalism, a constitutionally recognized freedom, is better off without the “help” of state intervention. I also wonder about the suggestion that our competition analysis should reflect the effect of our rules on “creators of content” apart from the “platform owners” (*e.g.*, broadcasters). I hope that commenters who weigh in on these and other questions bring their business and legal expertise, as well as their policy preferences, to bear on these issues.

I thank the staffs of the Media Bureau and the Office of Strategic Planning and Policy Analysis for their work on the Notice, and I look forward to reviewing the data and analyses that commenters will submit in response to it. I expect that the information we receive should allow us to move expeditiously to the next phase of this proceeding. In that regard, I commend the Chairman and the staff for issuing an open call for proposals on ownership studies to support the rulemaking effort. Although I may not agree with the concept for every study being contemplated, thus far the process for commissioning the analyses has been a good one.